



Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT

(Hansard)

Justice Bill: Informal Clause-by-Clause Consideration

27 January 2011

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
Lord Empey
Mr Paul Givan
Mr Alban Maginness
Mr Conall McDevitt
Mr David McNarry
Ms Carál Ní Chuilín
Mr John O'Dowd

Witnesses:

Ms Nichola Creagh)
Mr David Hughes) Department of Justice
Mr Gareth Johnston)
Mr Dan Mulholland)

The Chairperson (Lord Morrow):

The officials are at the table. I welcome Gareth Johnston, Nichola Creagh, David Hughes and Dan Mulholland. I suspect that we may need your expertise from time to time.

Clause 20 (Establishment of PCSPs and DPCSPs)

Clause 20 deals with the establishment of policing and community safety partnerships (PCSPs) and district policing and community safety partnerships (DPCSPs). If any member wishes to comment, indicate to us and we will let you in right away.

I draw members' attention to the paper summarising the responses to the Bill. The majority of the community safety partnerships (CSPs) recommend that the Justice Committee re-examines the proposed title. Moreover, clarity is needed on the Belfast model, and the Committee was asked to ensure that the legislation, guidance and codes of practice enable flexibility in the future if, for example, the Chief Constable were to bring about a change to the number of police districts in Belfast. Do any officials or members wish to comment on that?

Does the Committee formally agree clause 20?

The following members indicated assent: Lord Browne, Mr Givan, Mr Maginness, Mr McDevitt.

The Chairperson:

Three members have abstained, and the rest have agreed it.

Mr McNarry:

Chairperson, the Ulster Unionists will abstain, as there are some items that we have not fully resolved. We would like to hold our position on that until later stages of the Bill.

Lord Empey:

Chairperson, may I make a comment, or have you closed the debate on this?

The Chairperson:

You may if it is to do with what Mr McNarry said.

Lord Empey:

There is a particular issue with the Belfast model in that there will be subgroups, which is not the case in other districts. Members can see from the paper that the complexity of the model is of concern to Belfast City Council. That is one issue that we want to follow up. It claims that this would be a significant added burden. You will remember that, in our session in the Long Gallery, other concerns were expressed by people from other districts. We certainly want to revisit that issue. I do not know whether the officials have any views on that.

The Chairperson:

We will hear what other members have to say and then we will give the officials an opportunity to comment if they wish.

Ms Ní Chuilín:

I will just repeat the comment that I made at the start of the meeting, which is that we are abstaining on this clause because there are difficulties in Belfast that have not been resolved yet. For the sake of the smooth running of the Committee, we formally abstain. It is worth noting that there are issues there that we need to come back to. I want that to be put on the record.

Lord Browne:

I declare that I am a member of Belfast City Council. Lord Empey said that there is difficulty with how the PCSP and, in particular, the DPCSP will integrate with existing structures, such as the West Belfast Community Safety Forum, Partners and Community Together (PACT) groups and the West Belfast Partnership Board. I think that the Department has had conversations with them to try to satisfy them that this can be done.

Mr David Hughes (Department of Justice):

I am not sure whether there is an issue with the clause as drafted or whether those issues could be addressed when the guidance on the operation of the functions of the partnerships is drawn up. The question of the relationship between the statutory partnerships that the legislation will establish and the non-statutory organisations, partnerships and forums that exist in Belfast or elsewhere is whether there is a flaw in the current drafting that needs to be addressed or whether it can be addressed on the back of the clause as it is currently drafted and proposed.

Ms Ní Chuilín:

To clarify further, there are issues with the clauses and schedules as well as with the guidance and other areas of concern. I am reluctant to agree the clauses and the schedules on the basis that, if they are in the Bill, they may have an impact on the guidance when it is produced. The devil is in the detail, so we are parking everything until we get clarification across the board.

The Chairperson:

Does anyone else wish to comment before we move on?

Lord Empey:

What appears to be happening is that the Bill could impose an additional administrative burden and, consequently, a resource burden on another body. There is a significant issue there, and that is at the core of some of our issues. That is why we wish to revisit the proposal.

The Chairperson:

Some of you are telling us today that you have not made up your minds. Are you saying that you have not made your minds up today and that you are not likely to do so during the Committee's consideration of the Bill, or are you saying that you want to make your minds up in another arena?

Mr McCartney:

We will have our minds made up before the end of Consideration Stage.

Ms Ní Chuilín:

Yes, we will.

Mr McNarry:

As far as we are concerned, we are unable to do it today. We hope that through further development we will be able to contribute an opinion, but we cannot do so today. We just need to clarify some positions.

The Chairperson:

Members know the timescale and where we are with all of this.

Ms Ní Chuilín:

Yes, we appreciate that.

The Chairperson:

I am not sure whether we can come back to it another day. Time may not permit that. If time permits, we will. If it does not, we will have to go ahead with the verdict of the Committee. Is that understood?

Ms Ní Chuilín:

We appreciate that.

The Chairperson:

If members want to come back to the business another day, it is entirely up to them. If we have time to do so, we will, but this was to be the day that we were to make decisions. I think that everybody agreed to and signed up for that, if I remember correctly.

Mr McNarry:

By no means do we wish to impair the process in the Committee, which we respect fully. It is just that our position is that we are not able to participate as fully as we would like. We are also aware that, if the time schedule in this Committee does not suit, there are other options open to us whereby, if we have reason to propose amendments, we can do so.

The Chairperson:

That is what I thought. Folks, I will park that until the end. I have been advised of another option. I am told that we can agree the clause informally, and, when we come to the end of the process, we can put the Question again and agree it formally. Is everyone clear on that?

The Committee Clerk:

Just to clarify the position: if the Committee wishes, it can agree its informal position on this clause today. Some members may wish to abstain. At the end of the Committee Stage, in about a week and a half, we can formally put the Question, if that is the decision of the Committee. If, in the meantime, members are in a position to add more information or revisit it, that allows the Committee to do so. Otherwise, the Question will be formally put on the basis of today's decision and will go through on that basis in about a week and a half.

Ms Ní Chuilín:

That was our understanding anyway, but thanks for that clarification.

The Chairperson:

The only downside is that we could chew them all up like that and come back to all of them another day. The real danger is that we could have all the clauses informally agreed to be formally agreed, which can sometimes make the whole process a bit convoluted. At the end of

the day, we need to bring down the guillotine. If members are agreed, we can follow that process, but I think that there is an element of risk attached.

Ms Ní Chuilín:

Well, in fairness, this is the first time that this has happened, Chairperson. There is a first time for everything.

The Chairperson:

Yes, but I am just afraid of people learning bad habits. That is all that I am saying.

Ms Ní Chuilín:

I appreciate that. So, we agree to informally abstain. *[Laughter.]*

Mr McNarry:

I enjoy your flippancy at times, but I am not encouraging anyone to fall into a bad habit. We actually have a right to adopt the position that we have. As I said, we hope that we are doing that without impairing anybody else.

The Chairperson:

I did not think that I was being flippant, but I must try it more often.

Mr McNarry:

It is meant to be a bit more serious, Chairman.

The Chairperson:

I cannot tell anyone what stance or attitude they should take here, and I have no intention of doing so. However, we sometimes give a commitment one week, but that commitment seems to last only until people go out through the door. Then, when they come back to make an actual decision, they discover that they are not in a position to do so. Maybe if we all stayed for the full meeting, we would be able to do that more often.

Are members agreed with what was outlined by the Committee Clerk? I do not hear anyone saying nay; well, not today anyway.

Ms Ní Chuilín:

We have made our position clear; we are abstaining even at this informal stage.

The Chairperson:

And might even be abstaining the next time we come to it.

Ms Ní Chuilín:

As you outlined, that is our right.

The Chairperson:

Who is abstaining?

Ms Ní Chuilín:

Raymond, John and I.

The Chairperson:

Five members are abstaining.

Clause 21 (Functions of PCSP)

The Chairperson:

The majority of PCSPs recommended that the Committee for Justice re-examine the proposed functions. Coleraine Borough Council recommends that the Committee re-examine clause 21(1)(c) and does not restrict the function of the policing committee as it applies to the whole partnership. Include Youth has concerns that clause 21(1)(c), clause 21(1)(d) and clause 21(1)(e) in particular have limitations. It suggests the addition of the following words to clause 21(1)(d): “fully considering” after “to make arrangements for obtaining”, which would make clause 21(1)(d) read:

“to make arrangements for obtaining and fully considering the views of the public about matters concerning the policing of the district and enhancing community safety in the district”.

Include Youth has fundamental difficulties with what it describes as a vague definition of behaviour and asks that the term “antisocial behaviour” be removed from the Justice Bill until there is a definition that is clear and can support the partnerships in actually doing something about it.

Does anyone wish to comment on any of that?

Mr McDevitt:

I apologise to you and the officials for being late, Chairperson. I want to ask about the definition of antisocial behaviour. It is one of those definitions that we keep batting about the place. I wonder whether the officials could tell us what the working definition of antisocial behaviour is. Is there a statutory basis for it elsewhere? How would they respond to the point that Include Youth and others have raised?

Mr Hughes:

We are not aware of a statutory definition of antisocial behaviour. In fact, a definition of community safety has been developed to serve the purposes here, but it is common, as it were, in that it is a combination of improvement and the perception of somewhere being safer to live and work.

Mr Dan Mulholland (Department of Justice):

At the Long Gallery session on 16 December 2010, my colleague Nichola Creagh read out our understanding of the position on that matter. We will come back to you on that; I do not have it to hand. It is a definition that is in common usage across a number of criminal justice agencies, and it is used by the community safety unit.

Mr McDevitt:

Normally, officials are very reluctant to come to us with any term that is in any way vague, unspecific or untested. Normally, draftsmen and draftswomen are very reluctant to allow such phrases to creep into a Bill. Is this an exception to the norm, or is it something to which you could respond properly in a way that meets the genuine concerns that have been expressed?

Ms Nichola Creagh (Department of Justice):

The definition of antisocial behaviour is, as my colleague said, is one that is in common usage in the community safety strategy, which has been in existence for quite a few years now. I would not refer to it as vague, but that does not preclude the fact that people could have a difference of opinion as to what it is. Certainly, from our point of view, we are content that the current definition is the one that we will use here. As I say, we can certainly provide the Committee with

the wording of that.

Mr Gareth Johnston (Department of Justice):

It is important to remember the context in which it is used here. It is about the sorts of issues that PCSPs will talk about, think about and make plans about. Nobody goes to prison or gets arrested because of what is written here. It is about trying to suggest to the PCSPs what they need to take account of.

Mr A Maginness:

Clause 21(3) says:

“References in this section to enhancing community safety in any district are to making the district one in which it is, and is perceived to be, safer to live and work, in particular by the reduction of actual and perceived levels of crime and other anti-social behaviour.”

I am concerned about the use of the term “perceived to be”. In other words, it is not just a matter of satisfying the community that the community is, as a matter of fact, safer to live or work in or has been empirically established as such — it must also be perceived to be. How do you measure perception in that context? It adds a vague extra dimension; it adds something that is very difficult to measure to something that should be objective. For example, from looking at the number of burglaries, we can say that burglaries have decreased. However, if people in a district believe that burglaries are widespread, they have that perception. The phrase “perceived to be” jars, and I do not think that it should be in the clause. It is not a huge point, but it complicates the issue.

The Chairperson:

Include Youth’s submission says that the words “fully considering” should be added to clause 21(1)(d) to make it read:

“to make arrangements for obtaining and fully considering the views of the public about matters concerning the policing of the district and enhancing community safety in the district.”

Mr A Maginness:

That might be a better formulation.

The Chairperson:

Do any other members want to comment on that?

Ms Ní Chuilín:

The issue will re-emerge in clause 34.

Mr McCartney:

Do officials have a view on the Include Youth amendment and the addition of “fully considering”?

Mr Hughes:

The addition of that phrase does not damage the effect of what is currently drafted. As an amendment, it would be perfectly acceptable in view of the intention of the legislation. Therefore, we would not oppose that amendment. It is implied that, if one obtains the views of the public in that context, something must be done with those views, because the remaining functions require the views of the public to inform what is to be done. That amendment does not cause us any concern.

I will respond to the point about a district in which it is, and is perceived to be, safe to live. The point was well made that crime can be reducing but that the perception of crime continues to be very strong. That is precisely the circumstance that Northern Ireland has been in for some time: crime has been reducing but the perception that crime is going up is absolutely persistent. If people’s perception that they are not safe affects the way they behave and think, that is significant in itself, even if their safety is increasing year on year.

That is one of the reasons why the functions of a partnership to address people’s perception of crime in a district sit alongside addressing crime and antisocial behaviour themselves. I think that those two things need to be addressed together; otherwise, there will be only a partial solution to the problem.

The Chairperson:

What are the views of members on the inclusion of the words that Include Youth has asked to be considered: “fully considering”? Clause 21(1)(d) would then read:

“to make arrangements for obtaining and fully considering the views of the public about matters concerning the policing of the district and enhancing community safety in the district”.

Are members content with that? My view is that it does not take anything away. It may not enhance the clause, but it does not do any damage. Are members agreed?

Members indicated assent.

The Chairperson:

Further down, the table of responses states:

“Include Youth has fundamental difficulties with what it describes as a vague definition of behaviour and asks that the term ‘antisocial behaviour’ be removed from the Justice Bill until there is a definition that is clear and can support the partnerships in actually doing something about it.”

I suspect that, if we talked to 100 people, we might get 100 different answers to the question of what antisocial behaviour is, or how it should be defined. Include Youth is saying that, since no one seems to be able to agree on what antisocial behaviour is, the term should be removed. I do not think that it should be removed, but that is a personal view. I have some sympathy with those who say that the definition is not very clear, but maybe it will be clear one day.

Mr McDevitt:

I would like a much clearer definition of antisocial behaviour. That would be in everyone’s interest, but I am sensitive to the point that Mr Johnston makes, which is that the Bill is not scheduling or creating a new realm of offence that someone could be convicted of. Therefore, I am happy for it to remain in the Bill, but I want to see some concerted efforts by the Department and other criminal justice agencies to firm up the definition so that we use the opportunity to hone what is really meant by that term.

The Chairperson:

Are members agreed that the words “antisocial behaviour” should be included?

Members indicated assent.

The Chairperson:

Therefore, the clause will stand as drafted and amended.

Strabane, Derry and Limavady District Policing Partnerships (DPPs) propose that, because funding can be provided only to constituted groups, “persons” should be replaced by “organisations” in clause 21(1)(h). I would like to hear from the Department on that issue.

Mr Hughes:

Although we have not had the formal word from the draftsmen, we do not believe that the fact that the Bill states “persons” and not “organisations” precludes organisations being covered.

The Chairperson:

Are members agreed that the wording stays as it is?

Ms Ní Chuilín:

Our position remains the same, Chairperson.

The Chairperson:

Are you opposed?

Ms Ní Chuilín:

No; we are abstaining.

The Chairperson:

I take it that you speak for the three members from your party.

Lord Empey:

What are we talking about, Chairman?

The Chairperson:

We are talking about the proposal that, because funding can be provided only to constituted groups, the word “persons” should be replaced with “organisations”.

Lord Empey:

At the top of page 14 of the summary document, which deals with the legal status and powers, there is not a lot of substance, but concerns have been expressed. Do the officials have any update on the point the Belfast CSP was trying to make, particularly about the legal status and powers? Some of the functions for community safety were in local government and others were in central government. Will bringing them together create a legal difficulty for a local authority versus a central power? Have the officials had a look at that?

Mr Hughes:

I am sorry; I am not absolutely clear what the question is.

Lord Empey:

The view has been expressed that there needs to be clarity on the legal status of the new powers that DPCSPs will have. In other words, what will fall to the new body we are creating and what powers will fall to the councils in the future? There seems to be a bit of uncertainty amongst the local authorities as to what their powers will be, if any, when the changes have been made.

Mr Hughes:

The reassuring point to be made is that the structure that is seen here mirrors the current structure of DPPs as regards the statutory organisation of a body. The question was raised previously about whether those are organisations in their own right and have a legal entity, so I will take this opportunity to make the position clear. We went back to lawyers to check that, although they are statutory bodies, they are not a body corporate. The partnerships will not, in themselves, be able to enter into contracts, but the council will be able to enter into contracts on their behalf, which is currently the relationship between the councils and the DPPs. That is my understanding of the current position.

Lord Empey:

Does that mean that they do not have what I think is termed a “legal personality”?

Mr Hughes:

I think that is right.

Mr Givan:

I will follow up on that. The Lisburn Community Safety Partnership is a limited company. I think it is the only community safety partnership that is a limited company. Will the legislation be able to address that?

Mr Mulholland:

The legislation will place a duty on councils to establish PCSPs, so it will be for Lisburn City Council to establish a PCSP. It is up to the council how it chooses to do that, whether through a limited company or not.

Mr Givan:

So, that limited company that has been formed will become defunct?

Mr Mulholland:

It could, if Lisburn City Council forms it directly.

Mr Givan:

It does not have to, though?

Mr Mulholland:

Not that I am aware.

The Chairperson:

If no member wishes to comment further on clause 21, we will move on. I will put the Question. This is the informal position, you understand. Are members content with clause 21, with the proposed amendments that we seem to have agreed?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

Five members have abstained.

Clause 22 (Functions of DPCSP)

The Chairperson:

If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 22 agreed to.

Clause 23 (Code of practice for PCSPs and DPCSPs)

The Chairperson:

If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 23 agreed to.

Clause 24 (Annual report by PCSP to council)

The Chairperson:

If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 24 agreed to.

Clause 25 (Annual report by Belfast PCSP to council)

The Chairperson:

If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 25 agreed to.

Clause 26 (Annual report by DPCSPs to principal PCSP)

The Chairperson:

If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 26 agreed to.

Clause 27 (Reports by PCSP to joint committee)

The Chairperson:

If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 27 agreed to.

Clause 28 (Reports by Belfast PCSP to joint committee)

The Chairperson:

If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 28 agreed to.

Clause 29 (Reports by DPCSP to principal PCSP)

The Chairperson:

If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 29 agreed to.

Clause 30 (Reports by policing committees to Policing Board)

The Chairperson:

If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 30 agreed to.

Clause 31 (Reports by policing committee of Belfast PCSP to Policing Board)

The Chairperson:

If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 31 agreed to.

Clause 32 (Reports by policing committee of DPCSP to policing committee of principal PCSP)

The Chairperson:

If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 32 agreed to.

Clause 33 (Other community policing arrangements)

The Chairperson:

If no member wishes to comment, I will put the Question.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 33 agreed to.

Clause 34 (Duty on public bodies to consider community safety implications in exercising duties)

Mr McDevitt:

This clause seems like it could be —

The Chairperson:

Just before Mr McDevitt comments, I refer members to correspondence from the Department, which details a proposed amendment to clause 34. Sorry about that; go ahead.

Mr McDevitt:

OK; thank you. It seems like clause 34 could present the Committee with an opportunity to include in the Bill the concept of community impact assessments, which could be brought into force later. Colleagues will remember the interesting debate that the Committee had about the report on the Donagh case before the summer, and the need for the Department to consider the introduction of community impact assessments in Northern Ireland. Although I accept that the details of how they would operate are yet to be agreed, I am not sure that there is a massive political debate about the findings of the Donagh inquiry and the need for community impact assessments.

Looking at the clause, it seems that it would give us the opportunity to get the ball rolling through this piece of legislation, obviously subject to subsequent commencement. You would think that that would happen by affirmative resolution, given the importance of such measures. I was wondering whether the officials or my colleagues had any opinions about that.

Mr Johnston:

As members will be aware, the Minister welcomed the Criminal Justice Inspection report into the events in Donagh and noted that, in response to its recommendation on community impact statements, a lot of work is now under way. However, it is important to bear in mind that the Chief Inspector of Criminal Justice, in making that recommendation, said that consideration should be given by the Department and a proposal brought. Inherent in his report and recommendations was a recognition that it would take a bit of time to look at the area and consult — there would be views from victims and from organisations that represent offenders — and to come up with something that was workable for the future. Our plan is to bring forward a proposal in June.

I am not sure whether Mr McDevitt is proposing a specific form of words, but it seems rather difficult to capture something at this stage before all that work has been done and when we do not really know what a community impact assessment will look like.

Mr McDevitt:

I thank Mr Johnston for his commentary. The clause is entitled, “Duty on public bodies to consider community safety implications in exercising duties”. The first part of the clause seems to list a series of areas that the bodies would have to pay due regard to in considering such duty. Without wanting to second-guess draftsmen and draftswomen, you would think that you could add:

“(c) and community impact assessments, where appropriate.”

Or:

“(c) and community impact statements, where appropriate.”

That would allow us to take on the power, subject to future detailed debate following the formal publication of your views in June and the subsequent public consultation.

If we do not take that on here, we will have to do it some other way, by way of amendment, for, example. Given that we at the end of January and the Department’s proposal will be published in June, and we know that we are going to be doing it, but it is just a question of how, why would we not take on the power in principle

Mr Johnston:

We are really talking about two things that are directed at different groups of organisations. The

clause 34 duty is very much directed at a range of organisations and it is about making sure that they participate in thinking about local community safety issues.

The proposal that came out of the Donagh review for a community impact statement is more focused on decisions of courts so that information on the impact on a community would be available to a court when deciding on appropriate disposals.

So, we are talking about two very different things. I can reiterate the Minister's commitment to giving active consideration to the whole area of community impact statements. That work has started and is ongoing. It will need to be a very inclusive process that involves consultation, but it is one of the Minister's priorities and there is a commitment, as I said, to get an early result from it. I can certainly give that commitment to the Committee, but I suggest that, in clause 34, we are dealing with something that is rather different.

Mr McDevitt:

I have one last question. I can see the argument that Mr Johnston is making. However, if it were thought about rationally, you would think that the community safety partnerships would be the most likely vehicle through which community impact assessments and statements would be formulated. They will be the branch of the criminal justice system that takes it down to community level. At one level, it could be argued quite sensibly that, if a court were looking for a community impact statement or assessment, it would, in the first instance, approach the community safety partnership in that area, say that this was a major case and that it would like that partnership to reflect on that. In my mind, there is an inherent link between CSPs and community impact statements. I take the point that maybe clause 34 is not the place, but, somewhere along the line in this bit of the Bill that deals with CSPs, we should anchor that concept.

Mr Johnston:

I could suggest a couple of ways to anchor that concept. One is that I will communicate to colleagues who are taking forward the work what has been said about the potential link with CSPs. I could also commit to asking them whether the views of CSPs could be taken on board in some way as the work on community impact statements goes forward so that we would ensure that, if there is a link to be made, it can be made.

The Chairperson:

OK?

Mr McDevitt:

OK, for now.

Ms Ní Chuilín:

We have not had a chance to look at the amendment in proper detail. We should bear in mind the evidence that we received from the Attorney General on clause 34. Again, I take the position that I will come back to it.

Mr Givan:

The amendment would enable the Department, if it so wished, to issue the regulations or guidance that could, in effect, replace what would be removed from the Bill. If we accept the amendment, even though the Department would have to consult with other Departments, ultimately it could then issue guidance about “reasonably” and “the likely effect”. Is that correct?

Mr Hughes:

The Department’s responsibility to issue guidance that explains how the duty is to be effected is in the original version and is then reflected in the amendment. It is a requirement to ensure consultation with all Departments. It is fair to say that the amendment would place that responsibility on the Department to consult with all Departments. However, in practice, the Department of Justice would consult all Departments on that guidance anyway because we anticipate that it would affect public bodies across all Departments. It is an important assurance to Departments that the guidance will provide them with a sufficient understanding about how to effect that duty in the exercise of their functions, and that they would not then subject to challenge for doing it in a way that someone else thinks is inadequate. There is considerable weight in the guidance for Departments to have the assurance that they are doing what is sufficient to demonstrate that they have given due regard to the duty as set out. It strengthens the importance of the guidance for the effective implementation of the duty.

Ms Creagh:

If you are asking whether we would be seeking guidance to reintroduce “reasonably”, the answer is no. The guidance is as it is written. We would not be seeking to try some strange or underhand

means to put that back in. It would simply be about explaining the actual clause as it would be redrafted. If those bits were removed, it would not hark back to those in any way.

Mr Givan:

The Attorney General said that clause 34 could be very litigious for organisations. My concern was that removing those aspects then giving the Department the power could be a way of doing the same thing through the back door. I welcome the clarification.

Mr A Maginness:

Sorry, Chairperson, I had to go out and so I did not hear all the discussion. Clause 34 creates a new statutory duty. I am unhappy about that, because I think it adds to the burden placed on public bodies. I think that it will add to their administration and will make them culpable for any default or breach of this public duty. They could be exposed to claims for compensation and so forth. I do not think that public bodies are ready for this new and very sweeping statutory duty, and I think that there should be a serious rethink about it.

Lord Empey:

I think Alban Maginness raised this issue at a previous meeting. Think, for example, of circumstances around the design of a housing estate that has too many nooks and crannies and insufficient lighting; in other words, those mistakes that have been made in the past. It is perfectly right that we try to design things that reduce the potential for antisocial behaviour.

I am not a lawyer, but the way this is written gives me the impression that, even if you were not responsible for the original design of something, let us say a housing estate, you might be responsible, or deemed to be responsible, for allowing it to remain in its present position. That takes us back to the use of the word “perception”. I think that the question was asked of the officials before, and they answered us, but I wonder whether the full implications of this are filtering through to public bodies. It opens a whole area of potential litigation for all sorts of things that we probably have not even thought of. We need to be very careful to ensure sure that people understand fully what this could mean. It is not as if it would start from the date on which this Bill is enacted and that everything done after that is subject to it. Someone could perfectly well argue that a public body has known for a certain time that something, a structure or housing estate, for example, has bad design features where youths gather and so on. They could argue that it has been pointed out to the statutory body that the site has been a crime hotspot, and that

the body has done nothing about it. Perhaps a case could be constructed on those lines, so I just think it is a very sweeping power.

Of course we want to point out to people that they should take things into account when they are designing housing, for instance, or other issues that we have not perhaps even thought of. However, bodies are responsible for the historical mistakes, or for things that were designed in an era when the behaviour patterns of the population were different, and this is a pretty sweeping power. I just wonder whether public bodies really fully understand what this would sign them up to. I remain to be convinced.

Mr Hughes:

We held discussions with stakeholders about the development of the policy that led to the Bill, and there was a strong appetite for a statutory duty to underpin the co-operation of public authorities to address community safety at a district level. That sentiment was evident during the Committee's evidence session in December, and, after the clause was discussed by the Committee and the Executive, it was reiterated that the structures of the PSCPs could be weakened if not undermined if there were no statutory duty on public authorities to contribute to the shared enterprise of addressing community safety. There are potential vulnerabilities in establishing a statutory duty in that area, but, on balance, having that statutory duty is better than not having it.

We have taken on board the concerns, and we proposed an amendment to the clause. The amendment will limit the scope of the duty in a number of ways, and it will ensure that we do not paint with too broad a brush, which would increase the risk. Rather, the amendment will draw closer parameters around that duty to mitigate the risk. There is strong argument for having a statutory duty, but the Minister has made it clear that he does not intend to take it forward without the agreement of Executive colleagues who have expressed concerns about it.

Lord Empey:

I have no difficulty with the principle of applying a duty to take things into account; that is fair. The first thing that a Department will do is to conduct an audit to establish what the liabilities are. Over time, behaviours will change and issues will arise in areas that were not thought about originally, but we should not expose public bodies to the sins of the past. If, after conducting audits on areas or parts of their activity that do not help with community safety, public bodies

become aware that they are liable for areas over which they had no original control, we may open up a new area that will be extremely difficult to resolve.

Has provision been made for, or thought given to, how much the duty will cost to implement? It is not going to cost nothing? If the duty is placed on public bodies, the first thing that they will do is appoint an official who is responsible for community safety planning. They will then appoint others to be responsible for this, that and the other in the audit process, and will engage consultants to draft strategies. We could add that to the mix of what Departments already do, but it will inevitably cost public bodies money, or it will divert them from doing the stuff that they currently do: it must be one or the other. It will not be cost neutral, and I am sure that you would accept that.

Mr Hughes:

One of the ways in which the amendment is intended to limit the scope of the duty is to ensure that it applies to only those bodies that are set up and prescribed by the Department in regulations. Therefore, there is an intention that the duty will not apply universally in the way that the original duty was cast, and, in the first instance, it will apply only where it is most likely to be relevant.

It is also intended that the guidance should provide Departments and other organisations with an indication of how the duty can be applied in the most proportionate way. That is because we do not intend to create a bureaucratic structure or an enforcement regime around it; rather to underpin the fact that there will be areas of business and the organisation of Departments where it is quite right that implications around crime and community safety are taken into consideration. There is a statutory duty that underpins the exercise of functions that will focus attention on that. However, that is the first step, which is not intended to create an elaborate bureaucratic regime.

Lord Empey:

I am quite sure that is the intention, but I will tell Mr Hughes exactly what will happen: when the power is enacted, the function will be allocated to a particular division in a Department. The assistant secretary or the grade 5 responsible for that particular division will form a group within that division who will devise a strategy that will lead to a policy. That will go to the management board of the Department and will then spread out to every other division. Every other division in the Department will then have somebody in that Department who is responsible for that aspect of their work. They will then establish a reporting mechanism, and all that will be copied to the

financial side, to the finance director, and so on. They will subsequently bid in the departmental estimates for money to do that.

Once you apply a statutory duty to a public body, the first thing that that body does is to set up a working group to establish what that duty will mean for that particular Department. It will do a scoping study, it will do the whole ball of wax, and there will be an army of people working on it. That is how the system works. When I heard Alban Maginness talking about it back in December, I got the feeling that, perhaps, people do not understand how public bodies work, think and organise themselves.

For every piece of legislation that goes to a Department, the first thing that they say, rightly, is that either Parliament or the Assembly has decided it, so they now have to get on and do it. People — or in other words, man hours — will automatically start to be applied to the new duty, because if Parliament or the Assembly wants to do something, if that is the will, then it is quite rightly up to these bodies to implement it. They can implement that only by putting people on it. Once they do that, it will have to be followed by resources, so there will be a scoping study, a group will be established, which will lead to a strategy, a business plan, bids for resources, and so on. That will become an extra line to the Department of Finance and Personnel in every Department's bid, and will therefore be reflected, so the Department will have another line of expenditure that it did not have before. That is how it is going to be, Chairperson. You have done the job yourself; you know what I am talking about.

Mr Givan:

Has there been any evidence to suggest that public bodies have not been considering crime and community safety? Is there any evidence that would require a duty to be placed on them, or that they have been found to have failed?

Mr Hughes:

I am not suggesting that there has been a forensic examination of all public bodies that could be contributing in that way to find out whether some are doing more than others. Anecdotally, if one goes to partnerships currently at work in districts, in some places, members of partnerships may well say that they wish that a particular organisation or group was more wholehearted in contributing, was contributing in a way that it is not thinking about at the moment, or was contributing in a way that has been suggested to them. That is the kind of thing that is talked

about, but there is no quantitative evidence as to whether some organisations are just simply not delivering where they could be.

Mr Givan:

I can understand stakeholders saying that there should be a duty. Often, those stakeholders have a very narrow perspective, and wish a public body only to carry out a duty in regard to that perspective. Public bodies have to take broader considerations, and I think that the duty will remove that type of thinking in those public bodies. That is why I have concerns about it.

Mr McNarry:

Will you refresh my memory as to what is meant by:

“and other anti-social behaviour in that community”?

Mr Hughes:

Going back to the question of the definition of antisocial behaviour?

Mr McNarry:

No. Clause 34(1)(a) states:

“the likely effect of the exercise of those functions on crime and other anti-social behaviour in that community”.

Will you refresh my memory as to what you mean by “and other anti-social behaviour”?

Mr Hughes:

We have not set out a definition of antisocial behaviour in the Bill, and I know that that is contentious, but I think that there is agreement —

Mr McNarry:

What you are saying to me is that there is more than one definition of antisocial behaviour.

Mr Hughes:

There are certainly types of behaviour that could be deemed antisocial without being criminal.

Ms Creagh:

Where it states:

“functions on crime and other anti-social behaviour” —

it is implying that crime, by its nature, is antisocial, but there that could be other antisocial

behaviour that is not a crime but that comes within the ambit of “antisocial”.

Mr McNarry:

I understand and accept what you are saying, but I am just trying to find out whether you can tell me what you actually mean — you have written it here — by “and other anti-social behaviour”, because, if you cannot, how is anybody going to interpret it?

Ms Creagh:

What it is trying to say is similar in many ways to the definition of the functions. Obviously, a crime such as assault could be committed in a darkened area — harking back to the design features of an area — but there could be other antisocial behaviour that is not, strictly speaking, crime. It could be that, because there is that darkened area, people are hanging around.

Mr McNarry:

Will you illustrate to me what other antisocial behaviour you are talking about? What length is the list? I do not want to dwell too much on it, but the problem that I see with the phrase “and other anti-social behaviour” is that your interpretation of “other anti-social behaviour” might not be the same as that of someone else. That is why I think you need to tighten it. Are there illustrations that you can give me? The danger is that if you illustrate something, you might leave something out.

Ms Creagh:

That is why the idea is that, if a community is concerned that there is a darkened area in a particular housing area where people hang around, and people walking by are scared, the provision of a street lamp or something like that could perhaps solve the problem. There is no crime — or maybe there is, but the crime is not the whole problem there. The fact that it is dark and that people are scared to walk by because there are people hanging about could be a problem in an area. The idea is that a bit of lighting there might solve that problem.

Mr Johnston:

There are other examples. There could be a group of people who are using a piece of waste ground to drink in the evenings. There is a certain amount of noise generated, people are getting drunk or tipsy and perhaps being insulting to passers-by, bottles end up getting broken, etc. That does not really fall within the category of criminal offences, but it is all stuff that contributes to a

feeling of a lack of safety in a community and affects people's quality of life in that community. That is the category that we are trying to capture.

Mr McNarry:

I can understand why you want to put it in, but how will it be implemented? Unless you throw out a list, you could invent new instances of antisocial behaviour on a daily basis. I just think that communities might want to be enlightened.

Mr Johnston:

I am not sure that communities are not fairly clear about what they regard as antisocial behaviour. When we have discussions with communities, do surveys and hear feedback from community safety partnerships, issues about drink, noise and litter are raised. I appreciate that there is no scientific definition, but for the purposes of this and of asking local bodies to consider the problems of antisocial behaviour in a local context, they will not be short on suggestions from localities about what sorts of problems they need to tackle.

Mr McNarry:

OK. Maybe I am just confused about the word "other".

Ms Ní Chuilín:

Have you received a copy of the Hansard report of the meeting when the Attorney General attended the Committee to discuss clause 34? In his evidence, he said that he had significant reservations about that clause. Did the Department consult the Attorney General about the amendment to clause 34? If so, what was his view on that?

Mr Hughes:

We consulted the Attorney General on the clause as drafted and on the ideas that he had raised. We have not consulted him on the specific amendment, but we have taken into account his views and points.

Mr Johnston:

I understand that the amendment is about to be sent to his office for more formal consultation.

The Chairperson:

I am not sure that members are ready to take a definitive position on this clause, particularly in light of the fact that they received the amendment only today. Therefore, if the Committee is content, we will park the clause and, time permitting, return to it at another date.

Ms Ní Chuilín:

I understand that the tabled items were e-mailed to us this morning. I want to make it clear that I did not pick it up this morning. That was not the Committee's responsibility; it was mine. I want to put that on the record in case it has been implied that the Committee did not forward it to me until 2.00 pm. That is not the case.

The Chairperson:

Are members content to return to this matter?

Members indicated assent.

Clause 34 referred for further consideration.

Clause 35 (Functions of joint committee and Policing Board)

The Chairperson:

As there are no comments, I will put the Question on clause 35.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 3; Noes 0.

AYES

Lord Browne, Mr Givan, Mr McDevitt.

Question accordingly agreed to.

Clause 35 agreed to.

Schedule 1 (Policing and community safety partnerships)

The Chairperson:

I refer members to the correspondence from the Department that proposes an amendment to provide for the payment of expenses to all members of the CSPs. Does anyone wish to comment?

Lord Empey:

I have a point about political members. In another Committee, we recently came up against a particular circumstance involving councils. I just want clarity on the matter. If a council appoints x number of members to partnerships, does the Minister have any role in signing off those appointments formally to the body?

Mr Hughes:

No.

Lord Empey:

An issue has arisen recently about appointments to library boards and other agencies. The Minister invoked the fact that people had to go through a process equivalent to that which is used by the Office of the Commissioner for Public Appointments. Either councils have the right to choose the members of the partnerships or they do not. Is there any way in which that choice can be inhibited by the Minister?

Mr Hughes:

The appointments of political members are made by the council in light of the requirement that it does so, as far as is practicable, to reflect the balance on the council. There is no role for the Minister or the Department in the appointment of the political members of the partnerships.

The Chairperson:

Does anyone wish to comment further, having heard that?

Mr Givan:

Are we open to comment on all the paragraphs?

The Chairperson:

No. We are dealing with paragraph 1. I will, therefore, put the Question on paragraph 1 of

schedule 1. Are members content?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

Paragraph 2 deals with composition. Does anyone wish to comment on that?

Mr Givan:

Will the representatives from the specified organisations have the same voting rights as the independent and political members?

Mr Hughes:

Their members are in exactly the same position.

The Chairperson:

I will put the Question formally on paragraph 2. Are members content?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

Paragraph 3 deals with political members. Does anyone wish to comment on that?

Ms Ní Chuilín:

Can I have some clarification? Does paragraph 3 deal with the appointment of the chairperson or anything like that?

Mr Johnston:

No.

Ms Ní Chuilín:

Thank you.

The Chairperson:

I will put the Question formally on paragraph 3. Are members content?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

We move to schedule 1, paragraph 4. I refer members to the correspondence from the Department proposing an amendment providing for the payment of expenses to all members of PCSPs and DPCSPs. Does anyone wish to comment?

Mr O'Dowd:

The way in which this is worded, the Department of Justice is saying that the councils can pay them, but are you going to be paying them, rather than any assistance?

Mr Hughes:

It needs to be read with the paragraph on finance, whereby the expenses incurred by the partnerships are funded. It is not the council's function.

Mr Givan:

I would expect that the organisations would pay their members' expenses. The amendment proposes that expenses be paid to "members of" the partnerships; therefore, I take it that the council can determine whether members are already receiving expenses from their organisations.

Mr Hughes:

That is right. We expect that it would effectively need to be self-regulated and that an individual who claimed expenses from two organisations would be committing a fraud. It is perfectly legitimate for a council not to pay expenses when they know that they are being paid elsewhere.

The Chairperson:

Are members in favour of schedule 1, paragraph 4, as amended by the Department?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

We move to schedule 1, paragraph 5. Does any member wish to comment on that? Are members content with paragraph 5?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

Are members content with paragraph 6?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

Are members content with paragraph 7? I refer members to correspondence from the Department, which proposes an amendment to designate certain organisations to partnerships. A list of the organisations has also been provided to members. If any member wishes to comment, we are happy to listen. Otherwise, I will put the Question on the proposed amendment.

Mr McCartney:

The list refers to “Most desirable” and “Desirable” organisations. I wonder about the logic of the Probation Board being a desirable, rather than a most desirable, organisation.

Mr Hughes:

The list was based on the assessment of the Community Safety Unit and an element of work that it has done in the past. As I understand it, community safety partnerships would recognise that pattern in their work — the “most desirable” and “desirable”. I am not in a position to speak on behalf of the Community Safety Unit, which has greater expertise on the matter. The list illustrates that it is very difficult to pinpoint a small number of organisations that really must be on every partnership. However, if we were to go down that route, that would be the first advice that we would look at.

The Chairperson:

The Probation Board put up a strong case as to why it believes that it should be on the “most desirable” list. You do not agree, Mr Hughes?

Mr Hughes:

It is fair to say that I do not believe that one can separate the desirability of, for example, the Probation Board being more desirable than, say, the Youth Service or alcohol and drugs co-

ordination teams. It would be desirable to have the involvement of many organisations. However, if we are looking at the possibility of specifying a number of organisations that must appear on every partnership and maintain the balance between elected, independent and representative members, it would be possible to have only a small number of organisations that appear as representative members on every partnership. Otherwise, there is no flexibility and the balance of membership on partnerships is skewed.

Therefore, the challenge was, in a sense, to prioritise organisations so that there was a very small number that one could argue would be best to appear on all partnerships. That is what we have attempted to do. The fact that we have provided quite a long list demonstrates that there is an awful lot of organisations whose involvement would be valuable.

The Chairperson:

The Youth Justice Agency is included in the “Most desirable” list. I have no great argument against that. However, the Probation Board works with these people from the day of conviction, and if its representatives were here today, I am certain that they would tell you that their role is to try to ensure, to the best of their ability, that those people will not reoffend. In other words, they are trying to turn them out, after they have been through their hands and supervision, to be better or good citizens. Yet, the Probation Board is not deemed by the Department to be in the “Most desirable” category, but the Youth Justice Agency is, which is very difficult to understand. I am not batting against the Youth Justice Agency, I want to make that very clear, but I think that the Probation Board should be included in that category.

Ms Ní Chuilín:

I agree. My concern is around the fact that the Youth Justice Agency is jumping off the page up there on the “Most desirable” list, which makes it seem as though a lot of antisocial behaviour is caused by young people. I can see how people are going to translate that. The Probation Board has the same access and delivers across the whole of the North, and yet it is down in the “desirable” category; I do not understand that. The Housing Executive, councils, the PSNI and the Probation Board have representation in most towns and cities, yet they are not in the “Most desirable” category. I am sure you will find that people working as advocates for children and young people will, when they see that list, see the Youth Justice Agency and think, “Here we go again with the criminalisation of children and young people.”

Mr Hughes:

Although I could not put it as eloquently as colleagues who work in the community safety field, it is worth emphasising that the great thrust of dealing with community safety is to address issues before they reach the stage of criminality. Therefore, I would not necessarily say that, for example, the Probation Board is a more important member of a partnership than the Youth Justice Agency, which has a role in ensuring that the route to criminality is not reached by the vast majority.

The list is purely illustrative, but I think it demonstrates the large number of organisations that can usefully contribute to enhancing community safety. If we are to go down a route of specifying certain organisations that must appear on every partnership, and there is a desire that those representative members of the partnership are not too many in number, it is very difficult to specify which of those small number of organisations must appear on every partnership. That is not to say that they cannot be involved, because I think partnerships should be able to bring in as many members as they like in accordance with the size that they want and the balance of members. However, the challenge to us was to set out the organisations that we think must appear on every partnership. This is a proposal; it is not the final word, but you can see from the discussion that no one is going to agree on a relatively small number.

Ms Ní Chuilín:

I appreciate that, but the fact is that, for example, the Housing Executive in my area will tell you that, if there are people partying in houses, it is not children and young people but adults. The fact of the matter is that the nature and complexion of each partnership, whatever the needs or the response from the bodies, has to come from the community. I am not disagreeing with you on that point, but what is consistent across the board is that, when people are released from prisons or whatever sentence they received, it is often the gaps in the follow-up that cause the problem, for example, if bail conditions are broken, if cautions are not honoured or whatever the case may be.

The Youth Justice Agency, for example, deals with one aspect of our population, and the Probation Board deals with adults, but they are all related to the justice family. Going by your argument, I would include only councils, the Housing Executive and the PSNI, because they are practically in every town, village and city, but then some organisations would be taken off the list and excluded.

Mr Hughes:

It is important to say that we will not exclude anybody from membership of the partnerships. We have been asked to come up with a short list to illustrate the organisations that must be on every partnership, but that will not exclude any organisation that an individual partnership wants to bring on board. If partnerships were told by the centre that two or three organisations must be represented, I would be surprised if they did not want another half a dozen others because of the contribution they make in addressing community safety. That pattern may be similar across all the districts, but partnerships need to have the flexibility and discretion to make those choices.

Ms Ní Chuilín:

I agree with you; it should not be prescriptive.

Mr Hughes:

It may be that an even shorter list is a more valuable place to start. Our suggestion was that four organisations would be “Most desirable,” but that may not be the case.

Mr Mulholland:

Our starting position was not to designate any bodies, as that would allow for maximum flexibility. During discussions with the Committee in December, the suggestion was made that there are some organisations that should be on each partnership. We want to keep the list as short as possible to allow for maximum flexibility, and, as David said, it is up to the partnerships to say which groups best reflect the needs of their respective communities.

Ms Ní Chuilín:

In your list, you included one branch of the justice family under “Most desirable” and another branch of the justice family under “Desirable.” I would not like to have dinner in your house.

Mr Mulholland:

The list simply reflects current practice in community safety partnerships.

Ms Ní Chuilín:

Fair enough.

Mr Mulholland:

The groups under “Most desirable” are the ones that regularly attend meetings of the partnerships.

Mr Hughes:

That is part of the reason why the proposed amendment, which reflects the comments made by Committee members and stakeholders, does not attempt to set out a list in the Bill. Rather, the proposed amendment would allow for a designation to be done separately after the legislation is enacted. That designation could be amended, but that would be done after full consultation and with the agreement of organisations that they should appear on those lists.

Mr Givan:

If that agreement can be reached, will some organisations be specified and the partnerships left with the flexibility to pick their own members? Not all will need to be specified; flexibility will be built in.

Mr Hughes:

That is right; the intention would be to specify a number. However, there will be no maximum number on the partnerships and they could designate any number of organisations themselves.

Mr Mulholland:

If an organisation is specified, it would have to be on every partnership, but some districts do not require some of the organisations.

The Chairperson:

Mr Hughes, did you say that it will be difficult to make changes to the legislation, if, at some stage, you wanted to include —

Mr Hughes:

Yes; relatively speaking. If the Bill contained a list it would be more cumbersome to change. The proposed amendment will bring in the less cumbersome mechanism of designation.

The Chairperson:

Could those changes not be made by subordinate legislation?

Mr Hughes:

They could, but that would necessitate a greater degree of process to make any necessary changes.

Ms Ní Chuilín:

We do it all the time in Committees; it is no big shakes.

The Chairperson:

You said that your list is only a wish list of “Most desirable,” “Desirable” and “Possible”. Therefore, it would seem that you do not have any strong opposition to the Committee’s suggestion that the Probation Board, for example, should be included in the “Most desirable” category. Is that correct?

Mr Hughes:

In any exercise that creates a list of specific organisations, the role of the Probation Board and the fact that its potential role in partnerships has been strongly advocated by this Committee and itself would need to be taken into account.

The Chairperson:

Yes; that is the hub of it. Therefore, if there was no recommendation from this Committee, it is unlikely that the Probation Board would make it into the “Most desirable” category.

Mr Hughes:

That would not stop every partnership in every district bringing the Probation Board onto the partnership by designating it themselves.

The Chairperson:

It would not stop them but it would not encourage them.

Mr McDevitt:

I agree with you, Chairperson. If I am right, what you are saying is that there seems to be nearly a clash of culture here. The Probation Board clearly believes that it needs to play a fuller role in community safety. However, the Community Safety Unit seems to think that, because the Probation Board’s job is to pick up the pieces after the crime, so to speak, it does not have such a

central role.

Mr Hughes:

I think it is unfair to say that when it is stated that the board is in the “Desirable” category.

Mr McDevitt:

With the greatest respect, when you were asked, one of the rationales that you presented for the Probation Board not being in the “Most desirable” category was that it tends to get involved only after the crime, so to speak. The Probation Board has a strong opinion about needing to be more involved in the conversation about community safety in a more holistic sense. The Committee welcomes that, because it shows an appetite for reform and for changing the way in which the board is perceived and its role. Are we dealing with a slightly different emphasis of opinion between the Department and the Probation Board? Are you trying to deal with that by keeping it out of the Bill and out of the realm of further scrutiny?

The way you have answered the questions suggests to me that there is a cultural gap here or two schools of thought. It is not terribly reassuring for me to hear that. It seems to me that the Probation Board is not arguing for inclusion for the craic, it is for a good, thought-through reason, which it has taken the time to articulate to me and, I presume, to my colleagues. What is the reason for the Department’s resistance? What is the problem with the Probation Board playing a much more central role in community safety?

Mr Hughes:

I do not think that there is any problem with the Probation Board playing a greater role in community safety. The challenge to the Department was to set out a relatively small number of organisations which ought to, in every case, be represented on a PCSP. We acknowledge that it is very hard to set out a relatively small number, and that is why we came up with the categories of “Most desirable” and “Desirable”. The Probation Board is on the list with other organisations that are desirable members of PCSPs. The others do not do what the Probation Board does. We do not have a particular difficulty with the Probation Board being involved in PCSPs, any more than we have a particular difficulty with the Youth Justice Agency or alcohol and drug co-ordination teams being involved. However, fettering the discretion of partnerships to choose representative organisations was not our starting position. We started from a position of allowing partnerships to designate organisations for membership. The Department was asked how it would

be done if some organisations had to appear on every partnership, so we asked the question internally, and, reflecting current practice, this is the pattern that we see.

Mr McDevitt:

That may be the issue. I presume that the list with the categories of “Most desirable” and “Desirable” is the one that will be used when a partnership asks a local government official to phone the Community Safety Unit to ask for guidance about appointing a representative group. Is that —

Mr Hughes:

That does not happen.

Mr McDevitt:

That does not happen. So, the community safety partnerships receive no guidance, at all. Could they appoint a bunch of football clubs?

Mr Mulholland:

There are sporting groups that have a contribution to make to a project that delivers against —

Mr McDevitt:

When the new bodies are set up, surely someone somewhere will be able to indicate to them the type of bodies that will make a useful contribution.

Mr Mulholland:

When the Community Safety Unit and the community safety partnerships were set up, they were able to draw on the community safety strategy, which was introduced in 2002 and which detailed the sorts of organisations that might be useful for a partnership to consider bringing on board. There is a list of such organisations, and the health and social services boards and the education agencies are on it, as well as the Probation Board and the Fire and Rescue Service. Each partnership looks at its own needs in the locality and invites people to come on board and contribute to the partnership.

Mr McDevitt:

Have you guys ever been asked for an opinion? Have you ever offered any guidance?

Mr Mulholland:

About?

Mr McDevitt:

About which bodies may be included.

Mr Mulholland:

There is a certain level of autonomy among the partnerships.

Mr McDevitt:

I understand that they are autonomous, but it seems reasonable for a partnership to phone up and ask for some guidance and advice. It seems a reasonable thing for members of the partnership to ask a partnership officer to determine whether there is anyone who can help them out.

Mr Hughes:

It is fair to say that, over the course of the years that the Community Safety Unit has been running, no one here can put their hand on their heart and say that a phone call had never come from a community safety partnership asking whether it might be an idea to include a particular organisation. I am not going to say anything that I cannot stand over. However, the community safety partnerships, the elected members who may be involved and the organisations that are already involved in community safety, to their credit, are well aware of who can contribute to delivering the objectives of the partnership without necessarily needing to seek that degree of guidance from the centre.

We are also working in two quite distinct areas. Community safety partnerships can be of variable size and can bring a lot of people in. A lot of organisations can be represented on some partnerships. PCSPs will be of limited size, because they are a combination of different types of members. It is a slightly artificial position, in which the representatives of the designated organisations would not come from all the organisations that can contribute. That is why the model includes the capacity to establish subgroups and groups that deal with specific issues in specific areas.

There is also strong representation, in that the elected members should be the largest group on

the partnership. If that principle is to be carried through, there has got to be a degree of self-limitation of the number of organisations that are brought onto the group. It may well be that, in some areas, the representative members who are full members of the partnership could usefully be a slightly different combination in one district to those in another district. That is why we have resisted the idea, to a degree, of specifying organisations to be represented there. That is not to say that all sorts of organisations cannot be involved and engaged or contribute to delivering outcomes. Giving partnerships the flexibility to determine who should be represented as full representative members is a valuable thing. However, we have heard the position that the Committee has taken, which is why we have proposed the amendment.

Ms Creagh:

It may be worth looking at what the amendment says. It is not saying that the Department will designate any of those organisations. It is saying that the joint committee, which comprises departmental officials and Policing Board representatives, will consult all PCSPs about the designations. It is not the case that we would, in any way, reflect issues concerning the Probation Board, for instance. It is about a choice and a consultation process that will go on to identify those organisations. The list illustrates only those that are currently represented. It could be those organisations or different ones. That will depend on the consultation between the people who are best placed to make a determination as to who should be on the partnership.

The Chairperson:

I hear what you say, but you have taken it to the next step. You have broken it down into different categories: “Most desirable” and “Desirable”. If you had produced that list and declared it as a suggestion, your argument would have held a bit more. You have not done that; you have gone further than that. You not only suggested the list but said how the partnerships should form. You have said that you accept that, ultimately, others will make that decision. However, had you produced the list and simply said that the partnerships will put the organisations into different categories, we would maybe not be having this debate.

Mr McNarry:

I think that you are right about that. I want the Probation Board to be specified and included. Although I cannot speak for others, I have had discussions with its representatives and have satisfied myself that their intentions on that issue are professional and genuine. I sense and fear that we are digging deep when I hear the resistance from the Department. Given that it is the

Committee's consensus, do you think that there is a way that you might be able to reflect more appropriately its views? It is not a deal-breaker, but genuine views are being expressed, and I cannot see any reason why the Probation Board should not be included. I do not know why we are stuck on it, but because we are, it makes me wonder why. You have your opinions, and we have our opinions.

Mr Hughes:

If we had provided a list of 10 organisations whose membership of the PCSPs is desirable, it would have undermined the consistent position that, in partnerships, elected members should form the largest group. There could well be districts with only eight elected members. That is perfectly possible. Therefore, I am not sure that that is a credible way to approach the exercise. We were asked —

Mr McNarry:

What kind of a list will you produce?

Mr Hughes:

We do not know. We have not begun the process of consulting on a list because, until recently, it was not the intention —

Mr McNarry:

I do not know how many organisations you want on the list. A fair argument has been made that the Probation Board should be clearly recognised in through what we are trying to achieve.

Lord Empey:

I am sorry for missing part of the discussion. It could be phrased in a way so as not to be exclusive. I understand the difficulty with that. However, we could draft the clause to say that the list of organisations "shall include" and add a reference to the fact that other organisations could be included, "as might, from time to time, be appropriate." It could be drafted in an inclusive way that it is not designed to exclude organisations and be made clear by way of a schedule or an example. Organisations come and go, and it could be phrased in such a way to enable flexibility.

The Chairperson:

I will ask Sian to comment on whether there is an alternative way, either by statutory rule or otherwise.

The Clerk of Bills:

It is difficult for the Committee to agree something when the policy has not been developed. In those situations, the Department sometimes likes to bring forward regulations later through an affirmative procedure that the Committee could then scrutinise in the usual way. Although that would mean giving the list the status of a statutory instrument, the Committee would get to see it, debate it and have dialogue with the Department on it. Therefore, the Committee could ask it to amend the Bill in that way to bring forward regulations to allow the Committee more scrutiny.

The Chairperson:

Thanks; that was helpful.

Mr O'Dowd:

That may resolve the issue. We are almost now in negotiations with the Department on what we want it to do when, in reality, the power lies with us.

The Chairperson:

Do you think that we are near to telling the Department what to do?

Mr O'Dowd:

I think that we are near the time to tell it what to do.

Mr McNarry:

Do you think they are listening, John?

Mr O'Dowd:

It is beyond the point of listening. The power lies with us and, hopefully, the Department will agree with us. However, if the Bill gets into the Chamber and the Assembly agrees with it, life will move on.

The Clerk of Bills:

It is worth pointing out that the Committee can have a say over the Bill and any regulations that come forward to change it, and that is the guarantee that it will happen. If the Department has its own guidance, it is up to the Department to change it whenever it wants, so whatever is agreed now may change in the future depending on what the Minister wants to do. That is worth bearing in mind.

The Chairperson:

We are going to try to unstick ourselves — I think that is a word. We are sort of stuck, but we will see whether we can move out of it. If I have taken the pulse of the meeting correctly, if there is going to be a designation list in the order in which it is here, the Committee is of the mind that the Probation Board should be in the “Most desirable” category. Am I right on that?

Members indicated assent.

The Chairperson:

I formally put it to the meeting — we are going to get into a spot of bother here, but we will try not to.

Mr McNarry:

Informally or formally?

The Chairperson:

We might have to do it both ways. Can we deal with paragraph 7 of schedule 1? We have the proposed amendment from the Department. We are going to make the proposal that we want an amended regulation. Bearing in mind what we have been told, are members agreed to adopt that, with the powers of amended regulation? Is that clear? I will let the Committee Clerk comment, because she will make it even simpler.

The Committee Clerk:

The Department has proposed for the Committee’s consideration an amendment to paragraph 7 of schedule 1, which is:

On page 66, line 4, at end insert —

“(2A) The joint committee may, after consulting all PCSPs —

- (a) designate organisations for the purposes of this paragraph;
 - (b) at any time revoke such a designation.
- (2B) A designation under sub-paragraph (2A) has effect in relation to all PCSPs."

The Committee has taken advice from the Clerk of Bills that an alternative proposal to amend the legislation is to include a requirement for the Department to produce a regulation, which would then come before the Assembly, listing the proposed designated organisations. The Assembly would scrutinise that list and either agree the regulation or not.

If you want to look at those two proposals, the advice is that you take the proposal regarding the regulation first, because if you agree that proposal, the Department's amendment will not apply. The proposal is that the Committee wishes to see the clause amended so that a regulation is required to set out the designated organisations. That will come through the Assembly for scrutiny.

The Chairperson:

It would be great if we could agree that without having to formally agree. Can we agree that?

Members indicated assent.

The Chairperson:

You stepped up to the plate at the end; well done.

Mr McNarry:

We are unstuck now; we are all right.

The Committee Clerk:

If the Committee is content with that position, we will bring the draft amendment for you to have a look at.

The Chairperson:

The good news is that you get another go at it. Does any member have any comment on paragraph 8 of schedule 1, which deals with removal of members? If not, I will formally put it to the meeting. Does the Committee agree to paragraph 8 of schedule 1?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

Paragraph 9 deals with disqualification. Are there any comments on that? If not, I will put it formally to the meeting. Is the Committee in agreement?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

Paragraph 10 deals with the chair and vice-chair. Are there any comments on that?

Mr Givan:

I raised an issue when we were considering it informally. Initially, the chair and vice-chair of the policing committee will also then be the chair and vice-chair of the entire PCSP. I think that makes sense; there is good logic to that. However, I disagree that that should then change so that there may be different chairs of both bodies, and the chair of the entire PCSP may not be an elected member, which I do not think is appropriate. I, therefore, want those provisions removed from the Bill and schedule 1. It makes sense to have the same chair and vice-chair on the policing committee and the policing and community safety partnership. However, if there is not agreement on that, I would still like the chair of the wider policing and community safety partnership to be an elected member or to be appointed under the same system that is used to elect the chair of the policing committee. I am keen to hear other members' views on that.

The Chairperson:

Do any other members wish to air their views or comments on that?

Mr McCarthy:

We agree in principle.

Mr Givan:

Do you agree that the same individual should chair both bodies?

Mr McCarthy:

It is more that the chair should be an elected member.

The Chairperson:

Paul, I will ask you to make a formal proposal in a moment or two.

Mr McDevitt:

Just before Mr Givan puts the proposal, will he go through it again step by step? Are you proposing that the chair must be an elected member and that that elected member must chair both bodies?

Mr Givan:

I am not hard and fast on that. It makes sense for the same individuals to be the chair and vice-chair of both bodies in the first year. I am relaxed about the wider partnership having a different chair, so long as that individual is an elected member. However, the chair of the wider partnership should be appointed in the same manner as the chair of the policing committee; that is, by the council using the same procedures that currently exist. It should not be left to independent members of the wider partnership to designate and select a councillor to be chair.

The Chairperson:

Do the departmental officials want to comment on that? If not, we ask them to take that away and come up with wording to incorporate Mr Givan's proposal.

Mr Givan:

I would appreciate that.

The Chairperson:

It is you I am thinking of.

Mr Hughes:

We can explain why the current arrangement is designed that way. We had strong representations that it is not necessarily the case that an elected or independent member would make a better chair or vice-chair; therefore, there could be flexibility in due course. An issue is the importance of having the same two individuals as chair and vice-chair of both bodies, or vice versa. The way that it is currently presented allows partnerships a degree of flexibility. However, I am happy to take away the points that are being made here.

The Chairperson:

It seems that Mr Givan's proposal has universal support around the table. I am sure that he is mightily relieved that you are going to take that away. Will you come back to the Committee with the amended wording?

Mr Hughes:

We will need to take that away and ensure that we have properly grasped the precise detail of what Mr Givan has suggested.

The Chairperson:

Other members will want to see that what comes out is exactly as they have agreed.

Paragraph 11 deals with the procedure of PCSP. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

Paragraph 12 deals with the policing committee's constitution. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

Paragraph 13 deals with the policing committee's procedure. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

Paragraph 14 refers to other committees. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

Paragraph 15 refers to indemnities. Do members have any comments? Are members content

with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

Paragraph 16 refers to insurance against accidents. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

Paragraph 17 is around finance. I draw members' attention to the Department's proposed amendment. Does anyone wish to comment or ask for further explanation? Since the Department is represented here, do the officials wish to say anything?

Mr Hughes:

The principles behind the amendment have been flagged already and are outlined in the papers provided. I was previously asked whether the duty on the Department and Policing Board is to fund the partnership plan as presented, and I gave a very swift yes. I will make sure that I am understood: the Department and the board shall fund the partnership plan inasmuch as it can, in that it delivers the objectives being set. If a partnership plan steps completely outside its objectives and the strategic objectives of the board and the Department as a whole, there would have to be consideration of that before it is funded.

The Department and board can only fund what they have a remit to fund. That sounds like a qualification, but what I mean is that, if the partnership plan includes buying a yacht, it will not be funded.

Lord Empey:

Chairman, I will raise something that you and other colleagues will be aware of. What we are saying is that the Department and board will make a grant in connection with the expenses incurred by the council. Are we talking about a full, total grant, or a contribution? How will that be determined?

Mr Hughes:

Administrative arrangements are being worked through, but the intention is that the partnership will be informed of the sum that will be given by the Department and board, acting as a joint committee. That is not necessarily all the money that that partnership will have to use. Councils contribute to the work of DPPs on a fixed formula and to the work of CSPs on a minimum proportionate. We are ensuring that how much the council should contribute in addition to the grant made by the Department and the board is not prescribed in the legislation. Rather, the legislation sticks to the simple grant from the Department and the board. After that, how much additional funding is provided is at the discretion of the council and other partners.

Lord Empey:

What I am trying to get at is that there has been a pattern over the years of grants being given to local councils that start off at a particular rate, which then goes south. Given that local government's ability to spend money is much more circumscribed legislatively than central government's, I am trying to prevent a further burden being transferred from central to local government as a result of this formula. Is there any mechanism to address that? Can Mr Hughes provide us with any illustration to allay that concern?

Mr Hughes:

When the original draft came out there was a concern with the wording, which said that the Department and the Policing Board "may" fund the partnerships, so that was changed to "shall", meaning that there will be a duty to fund. I am not sure whether legislation is ever the place to bind an Executive to the degree to which it funds work, and I am not sure whether the text of that paragraph can be made to provide the assurance or comfort for which the member is looking.

Lord Empey:

Mr Hughes seems to be reinforcing my concerns. There is a long history of councils being sucked into things that are not in their remit, with them ending up holding the baby.

Mr Hughes:

Given that they are statutory bodies in their own right, the reference to councils funding something is not there. However, the partnership will be there and it will have objectives that it wants to meet, and because it is a partnership, there will be other organisations for which the

work of the partnership is to meet objectives in the policing and community safety field.

Lord Empey:

The reality of the situation is different. Elected representatives are accountable, so, if things are not being done for reasons of funding, they will be out there front and centre taking the heat, because people can get at them. I will give you a classic example, Chairperson, of which you will be well aware, as will other members. Years ago, in order to improve community relations and draw a lot of young people away from antisocial behaviour, councils were encouraged, with large capital grants, to build leisure centres. At the start, they got 75% of capital and 75% of running costs. Once the leisure centres were built, the 75% did not take long to go down to nil. To this day, councils are paying millions of pounds a year for many of those facilities, and, if they decided to close them, they would be hammered and would get all the pressure.

My point is about trying to limit potential liabilities, because, until comparatively recently, local government was not involved in that area of activity, so, by and large, it is new territory. Ten years ago, there were not any of those rules. It is a bit like my earlier point about liability issues. It is another role: the organisation has to appoint staff to do the work, and it takes up directors' time and so on. As far as local government is concerned, it is just another spending machine and another cost centre. However desirable the policies might be, they cannot be delivered for nothing, and, under the current system, the only source for such money is, by and large, the ratepayers.

My anxiety is that, as time passes, central government will employ their exit strategy, leaving the locals to pay the bills. That is a long-established pattern. There is form there, over a range of areas. I have been talking about leisure centres, but community centres fall into the same category. They, too, were built for the perfectly good reason of trying to avoid antisocial behaviour. There are very few new things under the sun, and I am just pointing out that I can see where things will end up in a few years' time. That is my only worry.

The Chairperson:

Does anyone else wish to comment on that?

Mr Hughes:

Only to offer by way of comfort the fact that, although you say that this is new, in fact it will

inherit the last numbers of years' work of the CSPs and DPPs. That is a relatively short period, but it is not brand new.

Lord Empey:

If we go back a few years more, we had none of this. That is my point. Therefore, it is a new spending area for local government that was not there before.

Mr Johnston:

The assurance may be that the Department's budget is subject to Committee scrutiny, so the amounts being spent on community safety and on this are matters that the Committee could keep under review. That power, now available under devolution, would not previously have been available. That having been said, the launch of a consultation on community safety shows this to be one of the Minister's priority areas, which will be significant when we make funding decisions. I add the rider that there is now that level of scrutiny of the Department's spending plans that there would not have been in the bad old days of the NIO.

Mr McNarry:

The what old days of the NIO? *[Laughter.]*

As a matter of interest, where did you come from?

Mr Johnston:

I am a faithful member of the Department of Justice. *[Laughter.]*

The Chairperson:

Right from its inception.

Mr Johnston:

Since its inception, yes. *[Laughter.]*

The Chairperson:

Members have heard what has been said. The proposed amendment to paragraph 17 of schedule 1 changes "may" to "shall". It may do other things, but we can take it only as we read it. Are members content that we adopt this amendment, or do you want a bit longer to think about it,

since there are noticeable changes? Are members content with the proposed amendment to paragraph 17 of schedule 1?

The following members indicated assent: Lord Browne, Mr Givan.

The Chairperson:

Paragraph 18 deals with validity of proceedings. Do any members or officials wish to comment? In the absence of any comments, I will formally put the question on the acceptance of paragraph 18.

Lord Empey:

Chairperson, how can we accept that the validity of any proceedings:

“shall not be affected by … any defect in the appointment of any member”?

If somebody is wrongly appointed to something and that person takes a decision, do we just shrug our shoulders and say, “So what”?

Mr Hughes:

I come back to my point that that reflects precisely how DPPs are governed at the moment. The alternative is that there would be a question mark over the validity of proceedings even if there were a minor, trivial defect in the appointment process.

Lord Empey:

It will come to me eventually, but I remember an issue like this before, regarding a decision being taken by a person who was or should have been disqualified for something. It will come back to me; I will not hold up proceedings now.

The Chairperson:

I will formally put the question on paragraph 18 of schedule 1. Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan.

The Chairperson:

We will move to paragraph 19, on disclosure of pecuniary interests, family connections, etc. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan.

The Chairperson:

Paragraph 20 deals with joint PCSPs. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

Paragraph 21 deals with the Belfast PCSP. Do members have any comments? Are members content with this paragraph?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

Schedule 2 (District Policing and Community Safety Partnerships)

The Chairperson:

In my estimation, the Committee has agreed around 96% of schedule 2. There are some amendments that will be brought to members' attention. Some of the proposed amendments have been drafted at the Committee's request.

There is a proposed amendment to paragraph 4(11) of schedule 2. That is not one of our amendments; it is from the Department.

Lord Empey:

Sorry; I am a bit lost.

The Chairperson:

We are dealing with paragraph 4(11) of schedule 2, on page 73 of the Bill. Would the Department like to comment on the proposed amendment?

Mr Hughes:

The proposed amendment to paragraph 4(11) of schedule 2 is precisely the same amendment that was proposed to paragraph 4(12) of schedule 1. All the Department's amendments are replicated in both schedules, as they are virtually identical.

The Chairperson:

Members, the three proposed amendments that were previously agreed for schedule 1 also apply

to schedule 2. As the proposed amendments are the same, the Committee must decide whether it is happy with the read across from schedule 1 to schedule 2. I cannot for the life of me think why the Committee would not agree to those amendments as they are the same as those agreed for schedule 1, but there are a lot of things that I do not understand. Are members content with schedule 2, as amended?

The following members indicated assent: Lord Browne, Mr Givan, Mr McDevitt.

The Chairperson:

That concludes this section of the Committee's consideration of the Justice Bill. We will adjourn the meeting until 5.00 pm. I thank the officials for their attendance.