Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

Planned Justice Legislation

16 June 2011

NORTHERN IRELAND ASSEMBLY

COMMITTEE FOR JUSTICE

Planned Justice Legislation

12 June 2011

Members present for all or part of the proceedings:
Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Stewart Dickson
Mr Colum Eastwood
Mr Seán Lynch
Ms Jennifer McCann
Mr Basil McCrea
Mr Alban Maginness
Mr Peter Weir
Mr Jim Wells

Witnesses:

Ms Maura Campbell	)	
Mr David Hughes	)	Department of Justice
Mr Gareth Johnston	)	
Ms Amanda Patterson	)	

The Chairperson:

I welcome Gareth Johnston, head of the justice strategy division; Maura Campbell, head of the criminal justice development division; David Hughes, deputy director of policing policy and strategy division; and Amanda Patterson, head of the public protection unit in the justice strategy division. The meeting will be recorded by Hansard. I invite you, Gareth, to take over for the next

10 minutes.

Mr Gareth Johnston (Department of Justice):

Thank you, Chairman. I will say something by way of an introduction, and I am sure that colleagues will chip in when we get to questions.

Today's presentation builds on our appearance last week, when I mentioned that we intend to bring four pieces of legislation before the Assembly over the next couple of years. I should preface my comments by saying that legislating is, of course, an important part of the Justice Minister's programme of reform of the justice system, but it is only one part. Of course, not everything requires legislation, and many of our improvements can be affected by changes in practice. Take the topic of, for example, reducing offending, where much can be done simply by doing things better and without having to legislate. Therefore, although today's presentation is focused on planned legislation, that is only part of the Minister's broader plan to deliver a better justice system.

There are four Bills in the programme, and I will deal with each in more detail in a moment. The first is a compliance Bill that has, at its core, two policy areas in which we simply must ensure the early delivery of human rights-compliant law. The second is a more substantial strategy Bill, which focuses on the delivery of a faster and fairer justice system. The three themes in that Bill will be speeding up justice; improving access to justice; and tackling offending. Thirdly, we will introduce a mental capacity Bill to deal with mental health issues in the justice system. Finally, a bail Bill will follow on from the work of the Northern Ireland Law Commission, which is currently reviewing bail law in Northern Ireland.

The compliance Bill will provide new legislation on DNA and fingerprint retention and, separately, new provisions on sex offender notification law. In both areas, the catalysts for change have been court judgments that our law needs to be amended. The legislative proposals on the retention of DNA and fingerprints are a response to a European Court of Human Rights ruling, which stated that the blanket and indefinite nature of our current retention framework disproportionately interferes with an individual's right to a private life and, therefore, breaches article 8 of the European Convention on Human Rights.

Under existing legislation, the police have the power to retain indefinitely the fingerprints and DNA of people arrested for any recordable offence, irrespective of whether they are convicted. The Minister's new framework will make specific distinctions between the convicted and non-convicted, convicted adults and juveniles, and serious and minor offences. Our proposals are closely aligned to the system for retention in Scotland and broadly similar to that which is in the process of being legislated for in England and Wales within the Protection of Freedoms Bill at Westminster.

Public consultation on the proposed legislative framework concluded on 7 June. David Hughes will brief the Committee specifically on the outcome of that consultation at its meeting on 30 June.

I move now to the sex offender content. The main compliance issue, as members will recall, arose during the passage of the Justice Bill in the previous mandate. The Supreme Court of the United Kingdom made a declaration of incompatibility under section 4 of the Human Rights Act 1998 in respect of sex offender notification requirements for an indefinite period. That is commonly referred to as the sex offender register. Specifically, the Supreme Court found that indefinite notification for sex offenders, with no opportunity for review, was incompatible with the European Convention on Human Rights, and proposals are being brought forward to remedy the law in Northern Ireland by introducing a review mechanism. We are also making some changes to remove notification requirements for some offences that no longer exist in law.

The previous mandate's Committee focused primarily on the arrangements in England and Wales. Our proposals take into account the legislative proposals to remedy the compliance issue, which were published by the Home Office on Tuesday. If it would be helpful, we can say more about that during questions. It would be fair to say that, before the Assembly dissolved, there was general unease about that whole area. Although members recognised the need to address the Supreme Court's points, there was a desire to ensure that we did not weaken our tough stance on the seriousness of sex offending. Mr McCrea, in particular, made points to that effect. Having listened to those points, we are also taking the opportunity, as an additional step to what was proposed in the previous mandate, to incorporate other changes to strengthen the effectiveness of

notification and to address the related issue of risk management with violent offenders. All of that is within the framework of public protection. We will propose the tightening of the arrangements for sex offenders to notify travel plans; require homeless offenders to notify every week; make it necessary to give details of bank accounts, passports and living with a child; and require offenders convicted abroad to notify without the need for a court order. We are also assessing the effectiveness of sexual offences prevention orders.

Subject to Committee and Executive considerations, our intention is to consult on the sex offender changes from early July to early October and to introduce the compliance Bill this coming autumn. The core issue is ensuring that our existing laws are compliant with the European Convention on Human Rights, and we must make early progress.

Secondly, and moving swiftly on, the strategy Bill is much more substantial legislation, which we intend to lay next year, in and around Easter. I mentioned a few headings that will be included. Under reducing delay, we propose that the strategy Bill adjust committal proceedings and arrangements to streamline how cases move from the Magistrate's Court to the Crown Court. It will include proposals for a prosecutorial fine in cases in which a prosecutor can, with consent, impose a fine for a number of minor offences. Potentially, it would take powers relating to the mutual recognition of community sentences imposed across the European Union.

To remove inefficiencies, we will bring forward proposals to tackle the problem of fine default, including deducting fines from earnings and considering a specialist civilianised enforcement system. We propose to create a single court jurisdiction to increase flexibility when moving cases between County Court divisions. We will also consider further opportunities for the use of live video links.

We will examine the potential for introducing violent offender orders and consider domestic violence protection orders. Changes are proposed to vetting and barring arrangements to develop portable disclosure arrangements for those working with children and vulnerable adults, which will be very much welcomed. The Committee will be briefed separately on the outcome of the review of the criminal record regime in Northern Ireland, including AccessNI procedures and processes.

Alongside all those changes in the strategy Bill, we propose to improve our services to victims by putting our code of practice for victims on a statutory footing. That Bill will also be the vehicle for changes that come out of the consultation planned for the autumn on the governance and accountability of the Public Prosecution Service (PPS), which came up at last week's meeting.

The Bamford review, of which members have, I am sure, some knowledge, produced wide-ranging recommendations for a new framework for mental health and capacity legislation. That capacity-based approach raises important issues for the justice system. We acknowledge that it has taken us somewhat longer than the Department of Health, Social Services and Public Safety (DHSSPS) to develop our thinking. We have, for example, been considering the position of public protection, court discretion in sentencing and the duty of care versus the balance in autonomy when offenders present with mental health issues. We have agreed project management structures with DHSSPS, and we will get on track as far as we can with a parallel timetable. The goal is for replacement mental health legislation to be approved by the Assembly by 2012-13. Alongside capacity assessment, the Bill will deal with powers of detention and treatment; court disposals for remand and sentence, including possible changes to the unfitness to plead and insanity provisions; departmental powers to manage and transfer prisoners; and revisions to the functions of the Mental Health Review Tribunal.

Finally, when the bail Bill was proposed, the Northern Ireland Law Commission included as part of its first programme of law reform an overview of the law on bail in Northern Ireland. The comprehensive consultation closed at the end of January. The basis of the proposed Bill is the need to consolidate and rationalise existing bail law in Northern Ireland, which, at the moment, is based on a fairly complex legal framework. It comes from a range of statutory and common law sources, some of which are complex and some of which are, in truth, inconsistent with others. The law had developed on a piecemeal basis over many years and was, therefore, an ideal subject for the Law Commission to review.

The review is considering several issues. In cases involving police bail, for example, should pre- and post-charge bail be subject to the same regimes? For court bail, should there be statutory

grounds for the refusal of bail? On bail decision-making, is there is a place for bail information schemes? In bail conditions, how important are sureties or bail guarantors? Finally, should it be an offence to breach bail? The product of the Law Commission's review will be a draft bail Bill to be presented to the Justice Minister for consideration and legislation. We envisage that being presented by the commission around Easter, at which point the Minister may wish to conduct his own consultation on the proposals.

In the last minute, I will sum up exactly what consultations we have coming up to give the Committee an impression of how everything will fit in. As a result of the programme, some consultations, such as the one I mentioned on DNA and fingerprint retention, are complete. There has been consultation on the single court jurisdiction, and we consulted previously on a prosecutorial fine. Of course, in the run-up to Bills, we anticipate briefing the Committee again on each of those areas, but those consultations have already concluded.

We propose to launch three consultations before the summer recess, and those will run from early July to early October. The first is on the problem of fine default, on which we will give the Committee a full briefing next week. The second is on a more technical issue: the transfer of community sentences and mapping together a mutual recognition of European Union disposals. A written brief on that will come to the Committee on 30 June. The third area is one that I set out in a little more detail today: the sex offender proposals to be carried in the compliance Bill. The core of those proposals is, of course, familiar to the Assembly and was debated thoroughly at the end of the previous mandate. I hope that everyone will welcome those additional provisions, as they strengthen the powers relating to sex offender notification. As I said, that issue really is urgent. We know of cases stacking up in the wings that could be brought as challenges to the existing law. We want to get our regime in first rather than leaving it open to the courts to decide what arrangements need to be put in.

After the summer recess, we envisage consulting on, first, speeding up justice and tackling delay; secondly, the review of the criminal record regime, including the AccessNI changes that I mentioned; thirdly, some targeted issues, such as making court rules by Assembly procedure, about which the previous Committee was concerned; and fourthly and finally, the governance and accountability of the PPS. We have been planning a consultation on that for some time, and that

will happen in the autumn.

Chairman, I hope that my fairly rapid overview has been helpful to the Committee. We are happy to deal with any questions that members may have.

The Chairperson:

Gareth, thank you very much. You mentioned the sex offender issue and the publication from the Home Office. Have you been given any indication of when Westminster hopes to have its legislation in place? Will you seek to put Northern Ireland's legislation in place before the Home Office has concluded its work?

Ms Amanda Patterson (Department of Justice):

I think that the timetable will be roughly similar, but it is hard to tell at this stage.

Mr Johnston:

The Westminster consultation was published on Tuesday, so we know exactly what its proposals are. It faces the same legal issues as we do with the possibility of challenges. As Amanda says, we do not anticipate too much difference, but we can update the Committee on that as we move ahead.

The Chairperson:

One issues raise was that it seemed as though England was heading down the route of the police making the final decision, which would then go to a judicial review, whereas, in Northern Ireland, it would be referred to the High Court. Under your proposals, will decisions still be referred to the High Court?

Mr Johnston:

I will explain why that remains the plan. There will be three distinct approaches in UK jurisdictions. The Scottish Government propose a three-stage approach: a first consideration by the police, a right to apply to the sheriff and, finally, a right to appeal to the sheriff principal. In England, the first stage involves the police, followed by a judicial review. Our proposal is that, after the police stage, there would still be a right of application to the courts rather than an appeal.

That is for two reasons, the first of which is based on legal advice on human rights. The position is that Parliament can do whatever it wants and consider any human rights-based challenge later. The Assembly requires certification from the Minister that something is human rights-compliant before a Bill is laid. The strong legal advice to us is that simply allowing the judicial review option would place us on a sticky wicket. Therefore, we are partly basing our position on legal advice. However, we are also basing it on what the police are saying they would prefer, because there are no terms of engagement in a judicial review. Anything can be raised or opened up in front of the court. We want to say that an application can be made to the court as the second stage but that there is the list of things that a court must take account of in reaching its decisions. Those will be exactly the same things that the police would have had to take account of at their stage. Therefore, the court would be required to take a structured approach, rather than the approach that would be taken in a judicial review, where any arguments could be made.

The Chairperson:

I will not pursue it any more, because I know that it will come before the Committee, when we will get to scrutinise it in detail. I wanted to flag up those issues.

There seems to be a variation of issues to be included in the justice strategy Bill. Will that Bill be put forward as a single Bill or is there scope to have those areas broken down into separate Bills?

Mr Johnston:

If your question is based on the experience of the recent Justice Bill and the timescales —

The Chairperson:

I am talking about such areas as sports law.

Mr Johnston:

We are not looking to get things through in quite the same timescale as we did with the Justice Bill in the previous mandate. At that time, we were very much informed by the fact that the Assembly was soon to dissolve. There will be three key themes: one about faster, fairer justice; one about improving access to justice; and one about tackling offending. There is logic to the Bill

in respect of those three themes. We will keep under review whether it remains sensible to do all of that in one piece of legislation. Given that the other three pieces of legislation will be going through, we felt it sensible to limit it to one justice strategy Bill. As the proposals crystallise, I will be happy to keep that under review.

Mr A Maginness:

You say that one of the themes of the justice strategy Bill relates to delivering a faster, fairer justice system. You are talking about improving efficiency. Do you envisage introducing statutory time limits for the different processes that are involved in a criminal trial?

Ms Maura Campbell (Department of Justice):

We already have provision for the introduction of statutory time limits in one of the criminal justice Orders that is on the statute book. Those provisions have not been commenced yet, and the Minister's view is that, first, we should see whether the programme of work that we have in place is having the desired effect. If it is not, he says that he is willing to look again at whether we should move the statutory time limits as a way of trying to accelerate the process of reducing delay.

Mr A Maginness:

No additional provisions will be introduced into the Bill?

Ms M Campbell:

We did not propose to introduce any additional provisions, because we felt that if we needed to go down the route of statutory time limits, we could rely on the provisions that we already have.

Mr A Maginness:

Would that be through subordinate legislation?

Ms M Campbell:

It would be through a commencement Order, which would be straightforward.

Mr A Maginness:

What is the thinking behind the creation of a single court jurisdiction?

Mr Johnston:

Although there is currently a single jurisdiction at the higher level for the higher courts, the County Court divisions and petty sessions districts are based on local government districts, and there is limited flexibility to move cases between districts. We are conscious of the review of public administration (RPA), but the proposals are not conditional on it. The proposal is that there would be a single petty sessions district and a single County Court division in Northern Ireland. That would allow for flexibility in cases in which it is needed. I will come to one or two examples in a second. Practice directions would be put in place by the Chief Justice, and they would create administrative court boundaries, which would be the boundaries that everyone is familiar with at the moment.

For the vast majority of cases, we still use the system that is familiar to people. However, where it is appropriate to a move a case, there would be flexibility to do so. That might be to consolidate similar proceedings involving the same parties; to move a case to where the majority of witnesses reside; to use a court that has specialist facilities; or to avoid delay. Furthermore, it could be because the court facilities in one area are not available. It would have benefits by speeding things up and being more responsive to witnesses and victims. However, the protection of a practice direction and administrative arrangements means that, by and large, something that happens in one district would be dealt with in that district.

Mr A Maginness:

Finally, is that for both criminal and civil jurisdictions?

Mr Johnston:

It would be for County Court divisions and petty sessions.

Mr A Maginness:

It would be for civil and criminal?

Mr Johnston:

That is my understanding.

The Chairperson:

Are prosecutorial fines to deal with £7-bag-of-prawns-type offences?

Mr Johnston:

That would be on the condition that someone was prepared to admit to the offence, which has not always been the case in some of those very public cases, but, yes, minor offences would be most susceptible to a prosecutorial fine.

Ms J McCann:

Thank you for your presentation. I have a couple of questions, the first of which is about fine defaults in the bail Bill. Your paper states that you are looking at improving ways of setting and targeting fines, encouraging payment and dealing with defaults. You mentioned taking money from people's benefits or their earnings. The reason that most people whom I know have been unable to pay fines is that they do not have the money to do so. I think that making provision in legislation to take money from people's benefits is not really a good way of addressing that, given that those people are already finding it quite hard financially.

The other thing about fines is that some people who default on the payment of fines are put in prison for very minor offences, such as the non-purchase of a television licence. Perhaps a wider view should be taken on that issue, whereby instead of fining people who are unable to pay fines, they be given community service or something similar.

I welcome the paragraph on the mental capacity Bill that mentions personality disorders. There has recently been another suicide — Mr Baxter — in the prisons here and a very damning report from the Prisoner Ombudsman. Again, we are seeing people going to prison for very minor offences who should not be there in the first place. They are locked up in their cells and not given access to education facilities or training facilities. Is that the type of thing that you are going to be looking at in the mental capacity Bill? I would particularly welcome that.

I remember visiting the women's side of Hydebank Wood several years ago and having conversations with the then prison governor. There were quite a lot of women in there, particularly young women, who had a personality disorder and really should not have been there in the first place. Is that the type of thing that you are going to look at? To return to the issue of fines, I would like to hear your views on people who cannot pay.

Mr Johnston:

On the issue of fines, alongside these proposals, the Courts and Tribunals Service has recently launched a new imitative to try to make sure that people provide means information to the court. A means inquiry form, and an information initiative around that, is being launched, the idea being that means information will be available to the court when it is making a decision on a fine, and the level of that fine. The fine-payment history of individuals will also be available more reliably to the courts so that if there has been a problem or default in the past, the court can take account of that in sentencing.

Ms J McCann:

Does the court take into consideration people's income when they are being fined?

Mr Johnston:

If they provide that information. We are trying to make sure that, in a greater number of cases, people are coming to court with that information available.

We very much realise that there need to be safeguards around deduction from benefits and earnings. Those safeguards will deal with how much would be deducted on a week-by-week basis. The experience elsewhere has been that it is often quite a small amount coming out of benefits week by week, but at least that means that the fine is ultimately paid and, in the meantime, somebody is not being committed to prison for non-payment. It is a payment plan for the fine.

The issues that you raise are why we want to consult. We want to hear, including from the voluntary and community sector and those who work with people on low incomes, what the best way to approach that area would be. The consultation is very much a genuine consultation.

You mentioned the alternative of community service. There is legislation, which we have not yet commenced, on a supervised activity order as an alternative to imprisonment for fine default. We want to pilot that in the autumn. We have agreed with the Courts and Tribunals Service and Probation Board the terms for that pilot so that we can see how we might rule that out in the future. There are resource implications. Providing a community alternative can be expensive. Nevertheless, we want to see how that would work in practice.

If I may, I will now talk about mental health. Legislation is one part of what we are looking at, but we are also looking more widely at how we tackle mental health in the justice system. On Tuesday, the Criminal Justice Board (CJB) commissioned a fresh piece of work to look at that. That work moves from how people with mental health issues enter the system — the early contact that police have with them and how we can perhaps divert them at that stage into mental health services rather than into the justice system — right through to how we deal with people in prison with mental health issues and personality disorders. As you said, the death of Allyn Baxter was tragic. I know that there are lessons to be learned from that. We want to make sure that, at every stage in the justice system, we are taking sufficient account of mental health. We are realising that that is a bigger and bigger issue for us. I can confirm that all those issues are going to be taken account of, not so much in the legislative work but in the strategy work that we are doing. If, in the autumn, it will useful for the Committee to have a wider briefing, I am very happy to do that.

Mr McCartney:

Thank you for the presentation. I want to talk about the four broad areas. The compliance Bill is obviously a leftover from the previous mandate, and I can see the need to try to get that completed as soon as possible. As for the other three areas, what scope is there for expansion, particularly of the consultation process? Much of this is driven by the Department. It is stating its priorities for what it would like to see carried out. How do, say, individual Members, parties and this Committee feed their views in to try to broaden the parameters, particularly for new offences?

Recently, we have seen legal drugs be sold in shops. The inability to move quickly to close

those down, and the fact that a new product emerges after another is made illegal, means that we find that we have to go back and make different legislation. I am wondering whether there is any provision to tackle offending. The speeding-up of justice does not always have to be about how the court is run. It can be about speeding up how justice is seen to be done by having a quick means of closing the holes in the law to ensure that a new product does not replace another product and keep us stuck in an ongoing cycle. Are there any views on how that can be done?

Mr Johnston:

We are certainly aware of the issues, and the Minister has discussed that with Southern colleagues, where there has been a lot of experience with head shops and so-called legal highs. I need to take some advice from colleagues in the community safety unit on the exact thinking on the proposals on legal highs. I do not know whether David has anything specific to add.

However, the wider issue about how people feed into legislative plans is, if I may say so, a very good point. We tend to scan the horizon, trawl around, come up with priorities for legislation and then consult. I have to admit that we do not necessarily ask what else people think we should prioritise in legislation. We go across the organisations in the justice system to ask what useful improvements we could make, and we certainly take account of the responses. However, I take the point that we could cast the net somewhat wider. I envisage that, after the summer, we will give a more detailed briefing on the justice strategy Bill to the Committee. If members want to flag up any issues at that stage, or even now, we will certainly take note of those.

I take account of the wider point. I can perhaps invite the members of the Criminal Justice Delivery Group, on which the voluntary sector is represented, to think about whether, from their perspective, there are issues that we should include in the legislative programme. I am happy to cast the net in that way. Beyond those members who are represented on the group, the Northern Ireland Council for Voluntary Action (NICVA) organises a constituency group comprising organisations that are interested in criminal justice. I am happy to ask the question.

Mr McCartney:

From our experience of the Committee Stage of the Justice Bill, a number of proposed provisions

were extracted because we did not think that they were necessary. As a legislature, we should try to look at the practical application. I know that we will discuss ticket touting for the Olympics later, but I am not exactly sure that that will be a big issue here. Instead of spending time on that, we should perhaps look at issues out there that have an impact on the communities, such as head shops and legal highs. We do not seem to have a methodology to try to fix those issues in a speedy and efficient way. If we did, the people whom it impacts on would see that that was justice. The Justice Bill contained stop-and-search powers for alcohol. That was not seen as a big problem, yet we spent weeks and weeks going over it. If we were to look at legal highs and head shops, people in the community would recognise that we were tackling the issues that affect them, not some sort of panorama of views.

Mr Johnston:

I certainly hear your point.

Mr B McCrea:

I am not overly happy with the tone you use for the compliance Bill. It seems to me that it reads as if we have to legislate because we are in breach of various human rights rules. We will have a problem if we keep introducing legislation because we have to rather than because it is right to do so. At present — I do not know what the consultation will reveal — the average person on the street may well think that retaining DNA and fingerprints, no matter how they are secured, is a good thing because it will ultimately catch criminals. I just wonder what steps you will take to explain to the population why we would want to introduce such legislation.

Mr Johnston:

Let us remember that this is the structure that Parliament, as the supreme body of the United Kingdom, has put down in the Human Rights Act 1998: that we all have to have regard to the European Convention. I am sure that your colleagues will want to ask about DNA retention. On the sex offender notification, the risk is that if we do not put a framework in place, the courts will do it for us. We are aware that people are lining up to challenge the current law.

Mr B McCrea:

I understand the risks. I understand the legal point. I point out to you, however, that the

population may not understand it. If you ask people how they feel about sex offenders, you will get a pretty strong response. The Supreme Court's issue was not that you cannot make various arrangements but that you should not have a one-size-fits-all approach. It affects issues such as the right to vote. People get very exercised over whether a person in prison should be allowed to vote, yet there is a difference between being in prison for six weeks and being in prison for 35 years. You have not satisfactorily explained to the electorate the differentials that we have been asked to look at. There is a good rationale for why those things are put forward. Failure to explain that means that you continually make human rights legislation be considered a really bad thing — something that people from outside have foisted on us that we would rather not do. Even the language that you use is inappropriate. I know that it is a working title, but the term "compliance Bill" reinforces that. I offer that observation: you must go much further in explaining that we should do these things because they are right and that, even if legislation did not oblige us to take note of human rights, we should do this because it is appropriate and correct.

Mr Johnston:

I take that point. I focused on the human rights angle in the presentation, but I assure the Committee that public protection arrangements are at the heart of the proposals. The police use a lot of resources in applying the requirements of a sex offender notification to people who offended years ago, have served their sentences and, while one can never say that there is no risk, present a very low risk of reoffending. Those resources could be better employed keeping an eye on people who present a much more serious risk. The public protection angle — perhaps we need to make more of it, absolutely — is very much informing the proposals.

Mr B McCrea:

Can I say to you, Gareth —

The Chairperson:

I do not want to rehearse the debate that we have had, and obviously we will go into the detail of this. Can we move on from the issue?

Mr B McCrea:

I take the Chairperson's direction.

My second point is about paragraph 14, which is about the review of access to justice. We seem to be looking at civil proceedings and alternative methods of resolving disputes. There is a common perception that, to get justice, you need to be either very rich or very poor. I am not sure that just moving it out and saying that we will do it some other way is the right way forward. There exists a huge middle ground that feels that it cannot receive the protection of the criminal justice system. You should address those issues as well.

Mr Johnston:

The work on access to justice and anything that goes into the Bill will be very much based on the outcome of the review that Jim Daniell is leading at the moment, which is the fundamental review of access to justice and public legal services. I know that he has been consulting widely. At this stage, it is a kind of a place marker, and I cannot offer you detailed proposals on what will go in, because we do not know exactly what is going to come out of that review. However, the points that you raise are very much in the review's mind.

Mr B McCrea:

Finally, with the Chairperson's indulgence, I have a question on the mental capacity Bill, specifically on paragraph 19. You state that mental capacity assessments will be a gateway to mental health law. Obviously, that will provide appropriate health resources and suggest where a person should be detained. However, there are far-reaching implications, and I am interested in how far you intend to go with it. For example, if people do not, through lack of capacity, realise that they have committed a crime, is it right that we should be prosecuting them at all?

Mr Johnston:

Part of the work will look at the whole area of fitness to plead and see whether we need to make reforms in that area. Therefore, yes, that is on the agenda.

The Chairperson:

We must ensure that that is not an excuse to get away with being prosecuted. It is a fine line and a fine judgement.

Mr Johnston:

There is a balance to be struck. We are conscious of the discussions that the Committee and the Committee for Health, Social Services and Public Safety had in the wake of the Donagh case, and we can feed those into our consideration.

Mr Lynch:

I have a quick question on the justice strategy Bill. You talked about faster and fairer justice. Has a restorative justice concept been built into the proposed Bill?

Mr Johnston:

There is certainly a wider programme of work on restorative justice. I am not sure whether we feel that there is anything that needs to be legislated for in the Bill. However, we are looking at how we take a more strategic approach to restorative justice and bring together the different work that is happening across the justice system.

Mr S Anderson:

Non-payment of fines was touched on. I have a question on fines handed down for minor offences. When a person defaults and is taken into prison, is consideration given to mental problems when the magistrate hands down the fine, as happened in the case referred to earlier? When the police go to arrest a person and bring him to prison in the first place, is there any tie-up to see whether prison is the best option, or is that person just taken to prison for non-payment of a fine when perhaps community service would have been better in the first place? We all know that the system can be played, especially at holiday time, if that still operates. People who are sentenced to five days for non-payment of a fine appear on a Thursday, there is a bank holiday on a Friday, there are no discharges at the weekend, and there is a bank holiday on the Monday, so they walk in one gate and out the other gate. It seems a bit of a farce. What is your opinion on that? Will community service be considered instead of a fine? Will consideration be given to see whether a person is best suited to community service as opposed to prison?

Mr Johnston:

At the moment, the prison penalty is automatic. Effectively, when a court gives a fine, what is implicit in it is that, in default of the fine, there will be a custodial penalty, and there is a scale of

custody according to the amount of the fine. At the moment, no, between the fine being placed and someone being committed to custody, there is no formal mechanism for mental health issues to be taken into account. If there were obvious mental health issues, the police would have some discretion. I think that it might be a case of slipping the warrant in a drawer and letting the mental health services play their part. However, there is no formal mechanism. I think that that makes it more important that we do explore the community alternative.

Mr S Anderson:

[Inaudible.] when you are talking about fining people?

Mr Johnston:

Yes.

The Chairperson:

OK, members, we are now over our time for this session, so the last question will be from Mr Dickson, and then we will move on.

Mr Dickson:

I want to go back to the issue that Mr McCrea raised on the compliance Bill and its title. I do take the point. Perhaps you could indicate that "compliance Bill" is a working title and that you may give consideration to a more community-friendly title for the legislation. There are obviously problems with the fact that it is a result of Supreme Court and European Court decisions, but we are doing it because it is right as well as because there is a requirement to do it.

The second area that I want to touch on concerns alternative dispute resolution (ADR), particularly in the civil proceedings. Paragraph 14 of your paper states that it is not so much in criminal proceedings as it is in civil proceedings. ADR is a particularly important tool for resolving family, matrimonial and various other disputes, and, quite often, the costs come because of the requirement to, or the perception that one should, be legally represented. There are many voluntary organisations and others that can provide and deliver those services just as effectively, and substantially cheaper. That whole area needs to be explored and widened. Who can actually deliver alternatives? "Alternative" means alternative from a cost perspective as well.

Mr Johnston:

First, yes, "compliance Bill" is very much a working title. We will be guided by the draftsmen on the title. Judging from past experience, I suspect that we will end up with an extremely boring title — the Criminal Justice (Sex Offender Notification, DNA, etc.) Bill, for example — but I take the implicit point. Language is important in how such things are presented.

Secondly, on the role of the voluntary sector, it is precisely those sorts of radical thoughts that we have commissioned Jim Daniell to have when carrying out the access to justice review. I could quote the example of statutory compensation for criminal injuries, for which there is now a system whereby you can make free use of victim support services rather than go to a solicitor. I speak as a former chief executive of the Compensation Agency, and that system is working very well. I anticipate that Jim will be taking account of those sorts of issues.

The Chairperson:

I thank all your officials, Mr Johnston. You are staying with us, but you may want to discharge your colleagues.