Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT
(Hansard)

Review of Court Orders Made in Sexual Offences Cases 1997-2011

23 June 2011

NORTHERN IRELAND ASSEMBLY

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Review of Court Orders Made in Sexual Offences Cases 1997-2011

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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 Seán Lynch
Ms Jennifer McCann
Mr Basil McCrea
Mr Alban Maginness
Mr Jim Wells

Witnesses:

Mr David Ford	)	The Minister of Justice
Mrs Jacqui Durkan	)	Northern Ireland Courts and Tribunals Service
Mr David Lavery	)	
Mr Peter Luney	)	

The Chairperson:

The Minister and Mr Lavery are still with us from the previous session. I welcome Northern Ireland Courts and Tribunals Service officials Jacqui Durkin, head of business operations, and Peter Luney, deputy head of business planning. This session will be recorded for the Hansard report. Minister, I invite you to make some opening remarks, and then we will have questions from members.

Mr Ford (The Minister of Justice):

Thank you very much, Chair. You will appreciate the fact that I now need three officials sitting beside me. This may be an issue about which I hand over some of the more detailed questions on how things are being carried out to Jacqui and Peter. As members will know, I ordered an in-depth review last September in the wake of the McDermott case. The investigation involved a review of literally thousands of sex offences cases in the Crown Courts and Magistrates' Courts spanning 14 years.

The issues that have been highlighted are primarily for the Lord Chief Justice to address, and I believe he has taken that issue very seriously. I trust that members received the copy of the letter from the Lord Chief Justice to me, which makes some references to it, in time. I see that members have — Mr Dickson is turning it over.

My concern was to ensure that we accurately record sentences in sex offences cases and that any errors that were turned up were remedied immediately, because it is clearly an issue on which there can be no complacency around sentencing. Courts and Tribunals Service staff have worked extremely hard over a period, given the large number of paper files that had to be carried through by a manual trawl. Unfortunately, not everything was available electronically. They have worked with the Office of the Lord Chief Justice to ensure that those witnesses are not only highlighted but addressed, and significant steps have been taken to improve training guidance and controls, as a result of which I am now satisfied that we have the necessary arrangements in place.

The particular concerns that you highlighted in your letter to me, which related to the cases where sexual offences disqualification orders were not made by judges and no reason was stated, have been lying predominantly with the Lord Chief Justice. I will ask Jacqui and Peter to outline what the current position is and how those are being carried through.

Mrs Jacqui Durkin (Northern Ireland Courts and Tribunals Service):

The position is that the judiciary has completed its review of 74 cases, and seven disqualification orders have been made. In 67 cases, the judge has given reasons for not making a disqualification order. In each of the seven cases, I can confirm that we have engaged with AccessNI, and that none of the defendants have applied for an enhanced disclosure certificate to enable them to work with children. Obviously the judges are addressing and reviewing the remaining cases as outlined

in the Lord Chief Justice's letter. If they decide that they need to have them relisted before the court, they aim to have that done by the end of September.

Mr Ford:

We hope that the summer period, when the courts are slightly quieter, will enable that backlog to be dealt with. As I said earlier, it is a fairly significant manual trawl. If judges have to review their own case notes and then consider whether to take action, in some cases, it may be necessary for further hearings to be held. Therefore, it will not necessarily be that smooth, but, as Jacqui said, we hope that we will see that process completed in September. One key thing that needs to be said is that, so far, there are seven out of 53. Therefore, we are not talking about a situation in which 484 sex offenders are working with children in Northern Ireland. At the moment, there is no suggestion of any problem having been turned up. In the great majority of cases, judges have seen that it was not appropriate to make a disqualification order and have made that particular determination.

The Chairperson:

Thank you for that. If there was a presumption that a disqualification order would be made, why will the overwhelming majority of those 484 cases not be disqualified?

Mrs J Durkin:

That is a matter for the judge in any individual case to decide. It is also important to remember that those cases relate to offences of violence, as well as sexual offences, so every case may have its own particular aspect. However, the Lord Chief Justice has indicated how seriously he takes the matter through the actions that he has taken with his fellow judges to make sure that there is appropriate training so that every judge is aware of what they need to consider under each individual offence in which a disqualification order would apply. They were very concerned about the issues that have arisen for us, and they have addressed those through a number of measures. However, the sentencing issues are primarily a matter for the Lord Chief Justice to consider with his judges and with the Judicial Studies Board.

The Chairperson:

In a letter that he sent to you, Minister, the Lord Chief Justice said that he was very concerned about the lapses that occurred in these cases. He alluded to the fact that it is clearly important that statutory sentencing requirements are properly addressed if public confidence is to be maintained

in the administration of justice. The way in which cases have been handled has been damning. In my view, it causes huge reputational damage to the way in which things have been handled and questions people's confidence in how the system has been administered. What are you views on how things have been handled? Clearly, the Lord Chief Justice is not happy. Do you share the same level of concern?

Mr Ford:

We all share that level of concern. Much of this originated from the fallout from the McDermott child abuse case in Donagh. We established at a very early stage that there were minor errors in paperwork in a small number of cases, but none of them had affected what happened with the treatment plans for offenders/sentencing options. We have now seen that the issue of the disqualification orders not being carried through is very much a responsibility of the judiciary, and the Lord Chief Justice makes it absolutely clear in his letter to me how seriously he is taking that. He has already established that the relevant judge tutor has been carrying out work with other judges. Some of that could be dealt with by district judges as well as in the Crown Court. A large number of the judiciary could be involved, and, through the Judicial Studies Board, it is being carried through to ensure that those mistakes are not made in the future. At the same time, the process is being looked at to deal with what happened in the past.

We can take a degree of comfort that what has been done so far has not turned up anything that has gone significantly wrong, but the blunt reality is that the loophole should not have been there. That is something that needs to be looked at. However, given that I have to respect the independence of the judiciary, I need to be careful not to say anything more than that. You have greater freedom to criticise judges than I do.

The Chairperson:

Some of those cases will not be reviewed until the end of September. Do you think that is satisfactory? Seven disqualification orders have been issued from 74 cases. If you take that 10% ratio, there could be 21 people who still need to be disqualified. It could be higher, it could be lower, but, based on the review so far, there are people who should be disqualified. What risk does that pose to the public?

Mr Ford:

We cannot quantify the risk. All we can do is to say that we are moving as fast as possible. As

Jacqui said, as soon as the issue comes back from the judge, we will engage directly with AccessNI to ensure that there is no problem with that particular individual. Courts and Tribunals Service staff are moving as fast as they can to deal with the matter, but they can deal with matters only when they come back from the relevant judge.

Mr David Lavery (Northern Ireland Courts and Tribunals Service):
It is also important in those cases that the defendant — the convicted person — has a right to be heard. It is not that it will take until September to get through the process; it will take until the end of September to relist the cases that require a hearing, and it is right that they should be heard.

The other thing that is worth drawing your attention to at the end of the Lord Chief Justice's letter is the fact that, in those cases, there is also a responsibility on the prosecution to open the relevant sentencing options to the court. There have been discussions between the Lord Chief Justice and the Director of the Public Prosecution Service (PPS) to ensure that, in future, the prosecutor assists the court with the range of sentencing options.

This is a very complex area of the law, and, in effect, the Lord Chief Justice issued a sentencing checklist to all the judges. I attended the Criminal Bar conference this year, where the Lord Chief Justice spoke to practitioners and issued a sentencing checklist as part of the conference materials. He said that, as officers of the court, it is also the responsibility of the Bar, whether defending or prosecuting, to help the court to get things right.

We are not here to be apologists for the judiciary, but that fact that the law says that there is a presumption that you make a disqualification order does not mean that it is appropriate in each case. It means that the court should address the merits of each case, and if it decides that it is not appropriate to make a disqualification order, it should give reasons for that. Therefore, with respect to the Committee, I do not think we can assume that the judges just did not turn their mind to the issue; it is just that we do not have a record of the decisions that they arrived at, and that is why we are asking them scrupulously to review —

The Chairperson:
However, you accept that in seven out of 74 cases they clearly got it wrong?

Mr Lavery:

Certainly, on the basis of whatever reconsideration they have given to the matter, there is clearly a case. That is a reassurance also that they are taking it seriously. It would be all too easy to just tick the "no order" box if they wanted an easy administrative way through this, but they are clearly looking at the merits of each case.

The Chairperson:

I hear what you are saying, and I know that legal issues are complex and that I do not have the same legal background as you, but if we do not have confidence in the legal experts who preside over cases, who are we to have confidence in?

Mr Ford:

The simple answer to that is that you can now have confidence that the issue, having been highlighted, is being addressed. I entirely accept your point that a layman might have difficulty in having confidence in what went on previously.

The Chairperson:

So long as that is the case. The table provided to us shows that, in the first three months of this year, there were nine failures either to disqualify or to provide a record, and that is not going back to the couple of years following 1997. It was going on in the first number of months this year. Can you assure me that there will be no failures of non-disqualification or of no reason being given?

Mr Ford:

I would be a foolish man to give you a 100% assurance on behalf of those who are responsible to me in my Department. I will certainly not give a reassurance on that blanket scale for the actions of the judiciary. What I can say is that, although I accept that there were still some cases earlier this year, the review process started with the Courts and Tribunals Service procedures as they flowed through from the evidence from the McDermott case. We then proceeded to look into the way in which the judiciary dealt with things, such as the issuing of disqualification orders, which occurs at a later stage of the process. In that sense, we got our procedures right administratively, but, the judiciary came further down the line, which is why there may still be some concerns. However, if you read the Lord Chief Justice's letter, you will see there is no doubt that Sir Declan takes the issue extremely seriously, and, in implementing the guidance that has been issued, the

relevant judge has also taken it very seriously.

Mrs J Durkin:

In addition to the actions taken by the Lord Chief Justice, we are continuing to review current cases in conjunction with his office, and, if any issues arise, they will be brought promptly to the relevant judge's attention.

Mr Peter Luney (Northern Ireland Courts and Tribunals Service):

Mr Chairman, you also indicated that you had concerns around the potential number of additional disqualification orders that have not yet been made. A disqualification order is only one of a number of mechanisms that can be used to provide protection. The multi-agency public protection arrangements Northern Ireland (PPANI) are in place to deal with violent and sexual offenders.

A number of other court orders, such as sexual offences prevention orders (SOPOs), may be applied to individuals. However, we are in a transitional period between the protection of children and vulnerable adults legislation, under which these disqualification orders can be made, and the safeguarding of vulnerable groups legislation, under which an awful lot of these offences are auto-bar offences, so the conviction alone will prevent somebody working with children. Hopefully, that might provide some additional assurance.

The Chairperson:

Could any of those seven who have been disqualified have been in a position where they could have worked with children, or would AccessNI have detected the conviction, which would have prevented it?

Mr Luney:

AccessNI would have had the conviction information available. I cannot be certain how it would have responded to that in the absence of a disqualification order. If the conviction had been post-2007, it would have been caught by the safeguarding of vulnerable groups legislation, so it would have been an auto-bar in some cases.

Mr Ford:

However, AccessNI would have had access to the conviction, regardless of the disqualification,

even before 2007.

Mr B McCrea:

When the correspondence arrived last week, I thought that it raised interesting issues. My interest has come from my period on the Policing Board. We had a number of difficult and tragic cases, and, in retrospect, you look at things that should have been picked up on or done. I will not talk about individual cases, but some of the more troubling ones developed from situations where procedures had been followed correctly but that still did not trap the particular circumstances that came to bear. I know that people try to fix these issues, particularly when they have been multi-agency ones.

My point follows that made by the Chair about the fact that the court record was inconsistent with relevant legislation in 10% of Crown Court cases. The Minister mentioned Magistrates' Courts, and there was a similar figure there of 13%. When I previously engaged with the Lord Chief Justice about this issue, the response invariably was that it would be dealt with through judicial training. Judicial training is something of a black art to me; I do not actually know what that means. Minister, can you tell me what that is and whether it is the appropriate way to deal with the issue?

Mr Ford:

There are no 100% guarantees in things such as public protection. Obviously, that is what we aspire to, but we fool ourselves if we think it is possible to be so certain. I do not know what the Lord Chief Justice may have said about black arts or otherwise —

Mr B McCrea:

He did not mention black arts.

Mr Ford:

About that which you have described as a "black art". All I can say is that, since I became Minister, the information that I have had from the current Lord Chief Justice and the tone of the letter he has written, as well as the very fact that he has directed examination of the several hundred past cases, indicates that this is not an issue about which someone is saying that they will look at it and make sure it is all right in the future; this is an issue about which someone has said that they will absolutely trace every one of these cases, ensure that the judge reconsiders the case,

and, if necessary, issues a disqualification order. This is a response from a Lord Chief Justice who is seeking to be absolutely proactive to ensure that things are done as best as can be.

Mr B McCrea:

I will not go on, but, in my experience of these things, which sadly starts to build up, there are serial offenders. Quite often, you realise that they are serial offenders only after you get the first offence. I look back and see that there were issues because the way it was dealt with was not perfect. There are consequences and knock-on effects as regards sexual offenders and children at risk. I know that the Minister, because of his background, will understand those things. The insidious nature of those things is distressing. It is an area of particular public interest, and rightly so. We have to find a way of reassuring the citizens that we are dealing with it and are setting up systems to ensure that whatever information we have links together.

I am a little worried that you have to do manual trawls on the information, although, maybe that has been addressed. You know the way that it works. If somebody has a suspicion about a particular case, inevitably they phone the police, and the police's response is to check the records. If the records show nothing, the police say that the records show nothing. We need to find a way of getting that integrated, and you might want to address the issue of resources at some future stage.

Mr Ford:

You raised two points. First, Jacqui referred to ensuring that, when those cases are considered by judges, there is an exercise to ensure that all the options have been considered and properly recorded. As Peter highlighted, the change in legislation means that many of those things will be picked up now automatically. To some extent, that will address your concerns.

I referred earlier to the manual trawl. We trawled manually because our records are not computerised as far back as we have had to go in this case. It would have been much easier if we had been examining those cases where the records are fully computerised for more recent years. However, we went through manually to ensure that we went back far enough.

Mr B McCrea:

Is that information computerised somewhere now? These things take place over, perhaps, five years. I know of people who have records and have been discharged, and, therefore, there is no

issue. However, subsequently —

Mr Ford:

I will let Jacqui and Peter explain the computer.

Mrs J Durkin:

The court records were manual records, but conviction information will have been shared with the PSNI or, previously, the RUC, on criminal convictions. The criminal record will have been updated with those convictions, even though our records were manual records.

Mr B McCrea:

In at least one case that I know of, the conviction may well have been noted, but as the person was receiving treatment and had been considered to be not at risk — either a category A or C, the lowest category — there was no cause for action. Had there been a disqualification, it would have been a different matter.

I am sure that the Chair wants to move on. The point is that it is an issue of particular interest to the public, and we are all aware of that. I know that it is difficult, but the insidious nature of it means that we have to find a way of gathering all the information together. We have to put some resources towards that.

Mr Ford:

That point is absolutely taken. I hope that what we have talked about this afternoon has shown that we have taken it and will continue to do so.

Ms J McCann:

I want to follow on from what the Chair highlighted at the beginning about disqualification orders now having been issued in seven cases. David, you said that it will take time for the people who have been convicted here. The protection of children is the key issue. I have concerns, as has the Chair, that there are people out there who should have received disqualification orders. It is intolerable that that could be the case.

The submission states:

"there is a presumption that the Court will make that disqualification order. Where a Judge decides not to make such an

order, he must give reasons ... In 278 cases (57%) the Court did not make a disqualification order and did not give reasons for this decision."

How is that the case? Why is that so high?

Mrs J Durkin:

The reason why it is so high is that the judges either did not turn their mind to making a disqualification order or did not state clearly in court why they were not making an order. It is important to note that we are not saying that the cases that have still to be reviewed will not be looked at before September; they will be. That work is ongoing and will be progressed. It is only if they are in that category of cases that may need to be relisted where the defendant needs an opportunity to make their case and say why an order may not be made.

I cannot speak on behalf of the judges, but I can emphasise that the Lord Chief Justice has gripped the issue firmly and is taking a number of actions with the judges to ensure that, in future, the consideration of a disqualification order is made very clear in court, and, if they are not going to make an order, the reason for that is detailed in court.

Ms J McCann:

I appreciate that it is not your decision, but I think that the numbers are very high, particularly when we are talking about somebody who is charged and convicted of an offence of that nature. For me, it is about protecting children and vulnerable adults. That is the key issue.

Mr Dickson:

Under the heading in the submission "Remedial Action", we are told:

"The Judicial Studies Board for Northern Ireland is organising judicial training on sentencing in sexual offence cases and a sentencer's checklist is being developed to assist Judges sentencing in sexual offence cases."

Given that there are 278 cases remaining to be checked and that cases have turned up where orders were required, I find that a rather weak statement. I would like the Lord Chief Justice to have told judges that there will be a red note on their desk for every case that they will deal with that is of that particular nature, stating that they must give consideration to that and they must state that consideration in court.

I am also somewhat surprised that, when judges are giving their decisions and issuing the

sentence, they are not working against a checklist. Everyone else in the public sector does it. It is good practice. Why are judges and magistrates not working to that standard, and why are there not clear written records of decisions at the end of every case? Particularly, why are there not checklists, and why is there not a simple yes or no answer? If it is yes, it has to be issued, and if it is no, beside that you put another little box if they cannot understand what they are being asked to do, and you state in that little box that they should give a reason.

Mr Ford:

I should probably leave the question of how much instruction can be given to judges to David because of his contact with the Courts and Tribunals Service. The tradition, in this jurisdiction and others, has been the presumption that the judiciary takes all decisions relating to sentencing, is aware of the law and its obligations under the law, and it is the job of the Courts and Tribunals Service staff to record those decisions and pass them on to other relevant agencies such as the Prison Service. It is not the responsibility of Courts and Tribunals Service staff to advise judges on how things should be done.

What is happening in this case, because of the initiative of the Lord Chief Justice, with input from my staff, is that we have now got to the point of a checklist. In that sense, we have gone significantly further than would have been the case previously on virtually anything I can think of about judicial independence.

Mr Dickson:

When will it be developed?

Mr Lavery:

It has been developed.

Mr Ford:

That was in the future tense when it should have been in the past tense.

Mr Lavery:

What I said earlier was that I attended the Bar conference at the beginning of June. The Lord Chief Justice included the checklist in the pack at the conference and gave a talk to the barristers there about their duty as officers of the court to help the court in following through with a

checklist approach. The suggestion for a checklist came from us, because, after the McDermott case in Donagh, we found that there were variations in the sort of language that judges were using in imposing, for example, restrictions under what they call a SOPO. There may have been three orders in which three different judges tried to achieve the same thing, such as stopping somebody having access to a computer, but expressed it in three different ways.

We introduced a standardisation and checklist because our IT system then makes it so much easier. If they use a standard formulation, there should be no scope to make a mistake. When we brought that to the Lord Chief Justice's attention, he readily adopted it, which is why we have got to the sentencers' checklist. It is the first instance of that that I have come across. In a way, you are preaching to the converted. We have now realised that that is exactly what the complexity of that area of the law cried out for. There are so many permutations of offence and available orders that a checklist is the only way to be sure that you do not miss something. It may be a bit belated, but it is now in place.

Mr McCartney:

I will follow on from the points that were made by Stewart and Jennifer. Who should have detected this?

Mr Ford:

I am not sure that "who should have detected this?" is the right question. Who should have got it right in the first place? Clearly, the trial judge should have done so. Who has assisted in remedying it? The direction of the Lord Chief Justice has assisted in remedying it, alongside my staff, who do not have that responsibility at all but have been doing it and who have taken responsibility for the trawl of past cases.

Mr McCartney:

In your answer to Stewart, you said that, in this jurisdiction, there is a presumption that the judiciary is responsible. "Presumption" is not a definitive word. The report states that, if a defendant who is 18 or over at the time of the offence is convicted, there is a presumption that the court will make a disqualification order. It should be that the court will make that, rather than there being a presumption. Presumption allows for a lack of clarity.

Mr Ford:

The judicial system has always operated on the basis that — trying not to use the word "presumption" — the judiciary knows the law, ascertains the facts, applies the law and records it correctly. It then transmits it to my staff and other relevant agencies. In this instance, it is clear that has not happened, but it is also fair to say, in deference to the Lord Chief Justice, that he has taken the issue extremely seriously and is working with my staff to remedy it. I take your point that we are looking at past cases that were completely mishandled.

Mr McCartney:

Even allowing for what were referred to as errors, if the judge makes the error and does not do what they are supposed to do under the law, what role does the prosecutor have? Does the Public Prosecution Service not stand up and say —

Mr Lavery:

That is an interesting point, and I have had that discussion with the parties concerned. There is a duty on the prosecution to open the sentencing options to the court, and the Director of the Public Prosecution Service now recognises that. When those cases were dealt with, there were at least three people in court — the judge, a defence barrister and a prosecution barrister — who were legally qualified and trained. It is hard to expect a clerical grade court clerk to know about all the complexities of sentencing, although the checklist approach will now give us much more of a safety net.

The point that the Lord Chief Justice was trying to make is that there is a shared responsibility between the judge and the two officers of the court, the prosecution counsel and the defence counsel, to ensure that, in the public interest, the right sentence is imposed in the particular case.

I began earlier by saying that I am not here to act as an apologist for the judiciary, but perhaps counsel now realise that their job does not finish when they do their address to the court and that they share a responsibility to assist the court if it has overlooked something as important as that. As your colleague said, that is important from the point of view of public protection.

Mr McCartney:

We cannot rerun history, but, if the Donagh case had not occurred and the "failings" had not come to light, this would have run on and on. Nearly daily, people were being sentenced in the

courts and judges were not doing what they were supposed to be doing. The defence team might argue that it is not its responsibility, but the Public Prosecution Service must have a responsibility in ensuring that proper prosecutions are not only pursued but concluded.

Mr Lavery:

I find it hard to dispute that. We had in place a system of checking that was conducted by our administrative staff, which simply did not work in the Donagh case. That is a matter of regret to my management colleagues and me. Before that case, I would have told you that we had a very good system of checking. I would have said that it is a really good system because not only did the court clerk make a record but there was a court manager who checked the work of the court clerk. What I did not realise was that the checking did not refer to some independent information. In other words, the manager who was doing the check might only have been confirming a mistake that had been made by the clerk in court. What we have now said is that every case must be recorded digitally. So, there is an audio recording, just as there is here this afternoon, and the manager has to listen to that and to the sentencing remarks before they can sign off on the work of the court clerk. We have learnt a few hard lessons, Raymond.

Mr Lynch:

On that very point: but for the people of Donagh campaigning vigorously and meeting you, Minister, this would not have come to light, as Mr McCartney said, even after a number of weeks of campaigning.

Mr Ford:

That is probably a fair enough expression of the way things arose. However, significant action taken by the Courts and Tribunals Service certainly turned up a number of matters. At least two members of the Committee will recall the joint meeting with the Health Committee, which went to the depths of some of the detail about what had happened there. It is the kind of lesson that we need to learn to ensure that we continually improve and upgrade our systems.

Mr A Maginness:

Clearly, it is a very unsatisfactory state of affairs. However, I think that the Department has worked thoroughly to deal with the situation and to unearth the various discrepancies and difficulties that have arisen. It has done a thorough and difficult piece of work. To that extent, the Department should, in fact, be commended.

At the end of the day, a judge should consider a presumption of disqualification, but that is a discretionary act, and it does not automatically follow that the judge will, in fact, impose such a disqualification. If there is an alternative method that achieves the result of people being disqualified from working with children, the judge may be satisfied with that and say that there is no need to go any further. However, the Lord Chief Justice clearly takes the view that the issue has to be approached in a systematic, sequential manner so that this situation does not happen again. The Department has done a thorough piece of work and has acted well.

I have just one further point. Any prosecutor has a duty to advise the court, but the defence counsel does not. It has an entirely different function, regardless of whether it uses legal aid. *[Laughter.]*

Mr Ford:

We were doing so well up to that point, Alban. *[Laughter.]*

I think that David said that there would be three legally qualified people there, and he did specifically refer to the onus on the PPS.

I will take the first comments that you made, Alban. On behalf of the Committee, you expressed an entirely valid point that should be reflected in the work done by Jacqui and Peter's team in dealing with this. That said, I would not wish people to think that we are in any way complacent about what went wrong in the past and about the need to ensure that we continue to work to make sure that it does not go wrong any time in the future. However, as I said to Basil, there is no such thing as a 100% guarantee. I think that a lot of extremely good work has been done in the Courts and Tribunals Service, with the full co-operation of the Lord Chief Justice, to ensure that that message goes to the judiciary as well.

Mr S Anderson:

Do we know who the presiding judges and magistrates were in the almost 300 cases where disqualification orders were not handed down? Is there any pattern to suggest that it was one, two or so many particular judges who made the decisions not to issue those orders, or was it right across the board?

Mr Ford:

I suspect that that will emerge as the process is gone through.

Mrs J Durkin:

It would be fair to say that it was not restricted to one or two individuals, and that information has been shared with the Lord Chief Justice. The Office of the Lord Chief Justice is aware of every case and of the judge involved in every case.

Mr Lavery:

Although we will not know so until September, it is fair to say that it might simply demonstrate that, as Mr Maginness said, there was a practice of considering the appropriateness of making an order. The judge concluded that an order was not justified in that particular case. The judge just did not take the next step that they were meant to, which was to give an explicit reason to that effect. We need to keep a sense of proportion here. It is arguable that judges made the right decision in some of those cases, though certainly not all of them, because, as colleagues pointed out, there are some for which orders have now been made. My hunch — and it may be dangerous to have a hunch — is that it is very unlikely that the judge would have turned their mind to the legislation and simply ignored it. I think that the more likely explanation is that the need to record the reasons for not making an order seems not to have been part of their method of working. That has definitely been addressed now.

The Chairperson:

I will choose to take the words of the Lord Chief Justice, who said that he is very concerned about the lapses that have occurred in those cases.

Mr Lavery:

They are strong words. I agree with you.

The Chairperson:

OK, members. No one else has any point to make. Thank you, Minister, and your team, for coming along.