



Northern Ireland  
Assembly

Committee for Social Development

# OFFICIAL REPORT (Hansard)

Houses in Multiple Occupation Bill:  
Department for Social Development

14 May 2015

# NORTHERN IRELAND ASSEMBLY

## Committee for Social Development

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**Members present for all or part of the proceedings:**

Mr Alex Maskey (Chairperson)  
Mr Mickey Brady (Deputy Chairperson)  
Mr Jim Allister  
Mr Roy Beggs  
Ms Paula Bradley  
Mr Gregory Campbell  
Mr Stewart Dickson  
Mrs Dolores Kelly  
Mr Fra McCann  
Mr Gary Middleton  
Mr Sammy Wilson

**Witnesses:**

Mr David Grimley	Department for Social Development
Mr Stephen Martin	Department for Social Development
Mr Ronan Murphy	Department for Social Development

**The Chairperson (Mr Maskey):** I welcome again to the Committee Stephen Martin, David Grimley and Ronan Murphy. You are all very welcome. Without any further ado, Stephen, I ask you and your colleagues to take the Committee through your briefing paper.

**Mr Stephen Martin (Department for Social Development):** Good morning, Chair. Thank you for the opportunity of updating you on where we are on the Bill to improve the regulation of houses in multiple occupation (HMO). HMOs are an important part of the housing mix in Northern Ireland and can provide affordable rented housing for a range of tenants, including students, migrant workers and single people on a low income in particular. Because of the higher risks of living in an HMO, they are subjected to greater regulation than other rented housing.

The current HMO registration scheme is produced and operated by the Housing Executive. We undertook a fundamental review of the current system in late 2012 and found a number of weaknesses, not least around the difficulty of identifying HMOs and the approach to enforcing management and physical standards. We reported the outcome of the public consultation on the fundamental review to the Committee in 2013. At that time, Committee members raised concerns with the present system and asked for the new system to be more robust.

HMOs is a complex area of policy and law. Since our last Committee briefing on the issue, we have been refining our thinking, identifying lessons learned from other HMO regulatory systems and working with our legal advisers to draft a Bill. The drafting process is almost complete and, subject to

Executive approval, the Minister intends to introduce the Bill in the Assembly before the summer recess. The key aim of the Bill is to better protect tenants living in HMOs. The Bill will do that by requiring landlords to meet important standards on quality and safety before an HMO is let, linking the licensing system with the planning and building control systems to reduce the scope for gaps in oversight to be exploited, and updating important physical and management standards. The revised system will also allow regulation to be targeted in a way that is proportionate to the risk presented. Because of the importance of linking HMO regulation with other critical local government functions, such as planning, building control and environmental health, we feel that the new system will work most effectively if responsibility for it sits with district councils.

If it is OK, Chair, I will ask David to give members a brief overview of the key proposals in the Bill.

**Mr David Grimley (Department for Social Development):** The new HMO Bill consists of 90 clauses and seven schedules, with a mixture of the best practices in other jurisdictions and a number of new policy proposals taking account of comments received from the consultation exercise. New provisions are designed to be straightforward, with the intention of making a complex and technical subject as clear and informative as possible, whilst also allowing the system to be easily administered and operated by councils, with the Department retaining overarching policy responsibility. It may be helpful for the Committee if I spend a few minutes outlining the key provisions in the Bill.

The introduction of a new HMO definition and associated exemptions will provide clarification and guidance on what is or is not to be classed as an HMO. In the Bill, the meaning of a house in multiple occupation is a building or part of a building that is classed as living accommodation, occupied by three or more persons who are all not members of the same family or of one or other of two families, in specific types of accommodation with use of prescriptive basic amenities. The Bill specifies that only rented properties are to be included as HMOs and that a fundamental requirement for designation as an HMO will be shared living. People count as occupants only if the accommodation is their only or main residence. It also specifies the list of persons who will not count in the determination of an HMO and expands it to include others outside the standard family relationship, such as domestic help and some carers. It also specifies that living accommodation that ceases to operate as an HMO because the occupancy level has been reduced should continue to be treated as an HMO for the entire licensing period for the purposes of regulatory activity.

A mandatory licensing scheme will introduce HMO licensing and bring Northern Ireland into line with other UK jurisdictions. A separate clause in the Bill will ensure that an application for an HMO licence cannot be determined unless living accommodation occupied as an HMO has planning permission. This will reduce the possibility of over-provision in the locality in which the HMO is situated. The HMO inspection will ensure that the property is not overcrowded and that it has suitable amenities and facilities for the number of people occupying it. Landlords will be required to apply for a licence to rent the home out lawfully, with licences granted subject to management conditions and conditions requiring any necessary work to meet current amenity or safety standards. The Bill will retain the duration for a licence similar to that in the current scheme, which is five years, with licences of shorter duration being granted only in cases where the council is satisfied that there is justification for that shorter period.

The current definition of HMOs has been criticised as being too wide and for bringing houses into HMO regulation where it is not warranted. The Bill provides for exemptions from the licensing requirement where there is some other form of statutory regulation that is acceptable to the Department, or where, because of the purpose to which the HMO is put, the risk to its occupants is reduced to a level where regulation is not needed.

As a result of concerns raised during the consultation, the Bill will now include a fit-and-proper-person test. This clause specifies material that the councils will have regard to when deciding if the applicant, or applicant's agent, is a fit and proper person to hold a licence and to operate the HMO. This will ensure that those individuals who are unsuitable to hold a licence and operate an HMO are identified at the earliest opportunity and prevented from doing so.

The HMO legislation does not currently provide for information to be obtained for statutory and non-statutory bodies for the purpose of HMO identification. A clause in the Bill will open statutory information-sharing gateways with a number of Government and non-Government organisations and bodies. Gateways will provide for relevant information to be sent from appropriate sources to assist in the identification and regulation of HMOs. Having a more robust method of identification will provide a firmer basis for the effective regulation of HMOs. The sharing-of-information clauses will also permit

the councils to check with the PSNI or Government agencies to ascertain whether the applicant has any relevant convictions, since the HMO operator will be in a position of trust.

If the HMO is subject to any other form of regulation, the council may wish to approach the relevant regulatory authority for their comments. This will usually focus on the applicant's record of maintaining standards and their response when concerns are raised. The introduction of greater and more comprehensive enforcement powers will ensure that any deviation from the licensing system is penalised in a timely and proportionate manner. The findings from the review considered it unacceptable that the fines imposed by courts appear not to serve as either a deterrent or an incentive for HMO owners to comply with regulatory requirements. A lack of other options leaves a deficit in the options to deal with many non-compliant situations. Additionally, the time and effort involved in taking court action is not justified by the penalties awarded.

The Bill has included the power for councils to use fixed-penalty notices that will run alongside criminal offences and sanctions. Introducing fines is a practical alternative that will provide a more cost-effective and less time-consuming means of enforcing legislation, with benefits for both councils and occupiers. Councils will also be given powers to obtain information from various specified persons in the house. They can require any occupier to disclose the nature of their relationship with any other occupier, where the information is required to determine whether the accommodation is an HMO that is required to be licensed. The Bill creates a power for the Department to bring forward regulations approving a code of practice laying down the standards of conduct and practice to be followed in the management of HMOs.

Moving forward, the Department intends to publish guidance for the licensing scheme for councils and landlords, to help them meet the requirements of the regulations. Councils will be free to decide how best to deploy these in the context of departmental guidance. With the enabling powers established in the Bill, the detailed administration of the new arrangements will be set out in regulations and the Assembly will be given the opportunity to consider the issues. Subject to the successful passage of the Bill, councils will, thereafter, need some time to complete the preparations necessary to administer the new licensing scheme. Therefore, the main provisions of the Bill will come into operation on a date appointed in an order made by the Department following liaison and agreement with councils.

**The Chairperson (Mr Maskey):** Thank you, David. Before bringing in members, I will raise a couple of points. Based on my previous experience in south Belfast and the experience of other members in different constituencies, the previous subject plans around HMOs identified zones first of all, and then restricted the numbers of HMOs permissible in those areas. In some cases, it was 30% and, in others, it was 10% in a street. When the subject plan came out, I do not think that there was one street in any of those zones that was not already oversubscribed, so, in my view, the subject plan was fatally flawed from the outset. There was then a shocking record of non-compliance. The Housing Executive was supposed to identify where the HMOs were and then get them regulated and identified. That never happened. I was told as far back as 2008 or 2009 that it would not happen until 2013. It still has not happened. There is not yet a full register of HMOs.

David, you made the point that this is about moving forward. I am deeply concerned about north Belfast and other parts of the city. Given the university development in north Belfast, I am very worried for communities over there that will be completely and utterly overturned within a very short period of time. We had the shocking example of the very unscrupulous developers. They are not all the same. There are some very professional and very well-intentioned developers of great integrity. I am not branding everybody, or landlords for that matter, but we did have people literally pestering older people — knocking their door routinely and offering them good money to move out of their house so that they could buy them and transform them into HMOs. We saw the result of that in the Holylands and surrounding neighbourhoods. How do we guard against that type of unscrupulous activity in the future?

We also have to try to sustain communities and help communities sustain themselves. It is writ large throughout all the Executive and various Departments' policies that it is about sustaining communities, helping people and empowering people. I fear that, if we have an even lighter touch on this, you will potentially effectively discard the community basis of quite large swathes. I do not want to be putting fear into this, but I saw the example in south Belfast and so I am speaking directly from experience. I had the opportunity to speak to people like Sammy, when he was a Minister wearing another hat, about that when planning officers were actually directing people into areas in south Belfast and other areas for development. I had to raise that with the Minister at the time, who was Sammy Wilson.

So I have a very direct negative experience of this issue, and I certainly do not want to put my hand to legislation that allows that to happen all over again without it being unfettered. I need to be satisfied. That is just me, but I think that a lot of members will be concerned about the impact of this on local communities. What assurances can we get that the regulations that are coming in for this will be substantially better than what was there in the past?

**Mr Wilson:** Chairman, can I just follow up? It is an important question. It is something that was said during the briefing, and it is also in the brief. There is no indication that councils will be enabled to limit the number of licences that are granted in a certain area, and you are still falling back on the argument that a licence will only be granted if planning permission has been given. You have highlighted the problem: planning does not stop the congregation of houses. If the planning system still allows houses to be turned into houses in multiple occupation, unless the person is not a fit person or the property is not fit, a licence will be granted. At least that is what I took from what you said. Or will there be the potential for councils to say, "It does not matter whether the planners say that that house can be a house in multiple occupation; we can still limit the number of licences that we grant in an area," because of the kind of reasons that you have given in that you do not want to disrupt the community?

**Mr Grimley:** Licensing is linked to planning, and we have taken account of the subject plan that DOE currently has in operation. If a landlord applies for a licence, the council will take account of a certain threshold of the number of HMOs in an area, which I think is currently 30% in the HMO subject plan. This Bill will take account of that, particularly for the new university moving into north Belfast, which you mentioned, Chair. For new accommodation, this Bill will take account of stopping there what happened in the Holylands, based on the fact that it is local planning.

**The Chairperson (Mr Maskey):** According to the report, the latest Housing Executive figures tell us that 5,225 are registered and possibly 500 not registered. There are probably 30,000 people in those accommodations. It may well be great accommodation and all the rest of it — hopefully it is very good, with good tenancies and all the rest of that — but it eats into a community. If you are taking account of the existing subject plan, you are fatally flawed before you start, because you start from a failed premise.

I see no protection in that whatsoever if you are saying that you will take account of the existing subject plan. From day one of this subject plan — I cannot even remember in what year it was published, maybe 2007, but it was quite a while ago — I do not think there was any street in those zones that had not already been oversubscribed, so how do we start from that?

**Mr Martin:** The problem in the past, as far as we understand it, is that when the subject plan was introduced, it was too late for south Belfast. The issue in north Belfast will be to make sure there is proper join-up, as David said. The subject plan limits the number of HMOs in an area, but when it was introduced in south Belfast, there were already too many. In north Belfast, that is not the case.

There are two key issues. The first is the link between the HMO regulatory authority, which is the councils and the planning authority. The difficulty in the past was that proper link between the Housing Executive, as the HMO regulator, and DOE, as the Planning Service, was not as effective as it should have been. Having this in one body will improve that link, so that is a critical point.

The second point is having to have a licence before you operate an HMO. At the minute, you operate an HMO and then apply to be registered. You will have to have a licence to legally operate an HMO, and one of the conditions is planning permission. If this system had been in place 20 years ago, we should not have got to where we were in the Holylands. The problem was that when the subject plan was introduced, the stable door was open and the horse had bolted. This is to try to prevent that from happening again.

We will certainly take from this that we need to have a further conversation. We have been talking to planning policy colleagues in DOE. Obviously, we need to have a further conversation just to make sure that this system is as tight as it can be. Our sense now is that this system, if properly implemented, should prevent a Holylands situation from happening again with a saturation of HMOs in one locality.

**The Chairperson (Mr Maskey):** Can you also reflect, because there is another problem there with properties that are not identified as HMOs because they are not officially HMOs, but they could be in the same street? The ordinary person will see those as HMOs. It is rented accommodation and a

transient population, which adds to the problem. The ordinary punter does not distinguish between an HMO and a bedsit, or three or four people living in a set of flats. I would like to know how those dovetail. The regulation is really about only the standard and fitness. It is not about the numbers, the penetration of an area or tipping the balance from a residential community to a transient population. I would be keen to know how those two issues will dovetail as well in the overall governance.

**Mr Martin:** The key issue is the definition of an HMO. It is too unclear what an HMO is; it is too open to interpretation. One of the things that we are trying to do here is to make it very clear what an HMO is. We are making clear that before operating an HMO, it needs to be properly licensed, and to be licensed you need to have planning permission. It is trying to join up the dots and be much clearer about what an HMO is. At the minute, that is not clear, and that is a fundamental weakness in the system.

**Mr F McCann:** Thanks for the presentation. Like Alec, I remember when Margaret Ritchie was Minister and there were regulations and legislation brought in. I actually remember talking to Sammy back in the day when there was new legislation coming in. I remember that at that time many residents and community organisations felt that, finally, a move was being made to try to deal with the serious problem that existed out there in relation to HMOs. As Alec said, you never seemed to get *[Inaudible.]* I think there was a guy called Terry Waide, who was the guru in the Housing Executive at the time. Whilst Alex is talking about 5,200 HMOs, that fell far short of the actual figure. He said that there could be thousands more out there that are operating illegally. Maybe you can comment on that and how we get to the bottom of it.

We have an opportunity here not only to update legislation but, when it goes to council, to arm the council with the proper weapons to effectively deal with it. One of the things that we have done in the past is pass legislation that near enough tied the hands of councils in dealing with conditions, especially in the private rented sector. I think especially of the university. There are areas that are already under pressure. I am thinking of lower north Belfast and the likes of Tiger's Bay, the Limestone Road and New Lodge, which are already under pressure and could fall foul of the HMO developers if we do not put protections in for what are probably the oldest communities in Belfast.

There needs to be proper legislation brought in to deal with HMOs, the conditions that exist and the number of people in each of the houses. Can you tell us how long it will be before this runs through the procedure and comes to the Committee? When you were drawing up the initial Bill, did you speak to any organisations or people to give you an idea of what they believe should be in the Bill? I am talking about councils, housing providers and housing organisations.

**Mr Martin:** In terms of a timetable, we are working hard to make sure that the Bill goes to the Executive in the next couple of weeks and, if it is approved, is introduced and has its Second Stage before the summer. That will then give the Committee the opportunity to do its consultation before Committee Stage, hopefully in the autumn, subject to your other timetabling arrangements. As David said, it is really important that we make sure that councils are ready to implement the legislation if it is passed, so we have been talking to the two councils most affected, where there are concentrations of HMOs. Those are Belfast and — probably slightly less, but we still had some conversations — Causeway Coast and Glens. We are re-engaging with them to make sure that we are lined up.

On the point of whom we have spoken to, we did the consultation in 2012-13. We had 53 responses, and since then we have engaged with planning, the Fire Service, councils and the kind of key agencies that we needed to engage with to draft the Bill. We have had engagement, but we would like to do more, and we will do more before Committee Stage, hopefully in the autumn.

On the points that Mr McCann raised, fundamental among the key planks of the Bill is, first, making sure that it is clear what a HMO is. We have learned from the experiences of Scotland and England. Ronan and David have been in Scotland and England talking to colleagues there. The Scottish local authorities have been really helpful in identifying what has worked well and what has not in Scotland, because they have had a licensing system for quite a while, so definition was key.

The second thing is making sure that there is a proper licensing system and that councils have powers to enforce. On the fixed penalty notices, the courts have been a bit lenient when matters have been brought to them, so having fixed penalty notices available to councils acts as a more immediate deterrent, which is really important. It is absolutely critical that planning, building control and environmental health are joined up. There are powers in the Bill to make sure that information can be shared. Basically, we are trying to make it clear what an HMO is; to have a proper licensing system;

to minimise and reduce the gaps that can be exploited; and to join up the dots more effectively to provide better protections for people.

**Mr F McCann:** Do we have any idea how many HMOs there are in total?

**Mr Martin:** The Housing Executive is the HMO regulator. It believes that the figure of 5,500 that it has provided is low, but it is unable to provide us with the number of HMOs that are acting outside the law at the minute.

**Mr F McCann:** I remember that there were serious problems with HMOs in and around Dungannon and places like that.

The fixed penalties have to be severe enough to ensure that you get a reaction. That was the problem with the fines in courts: people just took it on the chin and walked away. A number of years ago, regulations were brought in that raised the age of housing benefit claimants from 25 to 35 and put in a shared room allowance. Where does that fit with HMOs? Some houses with shared rooms may have five people living there.

**Mr Martin:** That is one of the key points of the Bill: making sure that there is provision to share information. If the Housing Executive has information on housing benefit, it should be able to share that with councils to provide for the proper enforcement of HMO legislation, because that information exists. The Housing Executive knows that, if five housing benefit claims are going into one house, it will be an HMO.

**Mr F McCann:** When there is a shared room allowance for people under 35 when they move into a house, is that then classified as an HMO? I cannot remember at the time whether it was, and it fell under [*Inaudible.*] I cannot remember.

**Mr Grimley:** That depends on the number of people in the house. Under the new definition that we are introducing in the Bill, if three or more persons are sharing facilities or amenities, that will be classified as an HMO. That is pretty similar to the current arrangements. It is more stringent and robust in the new Bill. A lot of the new statutory legislation is to make sure that the management facilities in HMOs will be regulated properly and that health and safety issues are covered.

**Mr F McCann:** What are you doing with the fixed penalties?

**Mr Martin:** I do not think that the level of fine has been set yet, but, under the powers that councils currently have for the private rental sector, fixed penalties are generally around £500. In implementing that system, councils have, to date, tended to try to use an encouraging approach with landlords. They have tried to encourage them rather than issue a fixed penalty, but some councils are starting to do that so there is a progressive approach. There is encouragement, and if landlords do not act, there is a fixed penalty. If, after that, they do not act, they are taken to court, so at least there is a sequence and more powers for councils to act early, because it can take up to two years to get to court by the time it works through the system, so that is not a sufficient deterrent.

**Mr Grimley:** When a landlord has been taken to court, the average fine this year was around £292. The introduction of fixed penalties will at least mean that they can be dealt with more quickly. Using fixed penalties is better value for money. Fixed penalty notices are already in place under landlord registration and tenancy deposit schemes, so it fits in well with what the councils are already doing.

**Mr F McCann:** Do we have the number of people who were fined? You were able to quote £290.

**Mr Grimley:** That is an average figure based on the number of people who were fined.

**Mr Martin:** We can provide figures and information on the number of court cases on HMOs.

**Mr Ronan Murphy (Department for Social Development):** I will expand on that slightly, as I have been involved in the drafting process of the Bill. There is a staggered approach to offences. Obviously, more serious penalties are associated with more serious offences, so our fixed penalty notices — this is still at drafting stage — are in line with current criminal penalties. That means that the maximum fine for an unlicensed HMO under the current registration system is £20,000, which we

are carrying forward to the new Bill. It also monitors other jurisdictions, so we think that that amount is fair enough, although the court action has not resulted in that. Our fixed penalty notices for those sorts of offences will be £5,000, which is not as much as the statutory maximum for a criminal offence but is still significantly more than has been received through the court action at the minute. It is a quick fix in that it will deal with a problem immediately. It will ensure that, if there is something untoward about a property, a tenant will get the work done. It also ensures compliance through the owner and the manager of the property.

**Mr Wilson:** I will start with your last point. Will the same condition be attached to fixed penalty notices as to the revocation of a licence? In other words, will a reasonable time be given to remedy any defects for which a fixed penalty notice will be applied?

**Mr Murphy:** The councils have discretion as to which of these actions to use, and we hope that they will use that discretion and treat every case individually. They have the ability to set the time period, so if it is a more serious issue and requires more serious work to be carried out, they will have the opportunity to do so through that.

**Mr Wilson:** Will it be up to a council to deem what a reasonable time is? I cannot understand why a licence would be given if serious structural issues had to be addressed. In such a situation, however, someone would require more time than, say, a problem with antisocial behaviour by tenants. The Department will not specify that in regulations or anything else, but it will be up to the councils to make a decision.

**Mr Martin:** The councils have used discretion with landlord registration and tenancy deposits. Generally, they have given landlords an opportunity to remedy a situation. Only if a landlord has not remedied it within a reasonable period have they taken a fixed penalty notice approach. We expect them to do the same.

**Mr Wilson:** Fixed penalty notices seem to be a great idea until you hear about all the qualifications that are attached to it. If a council sets quite a long time limit, you could find that people are still living in the same conditions or that neighbours are having to put up with unreasonable behaviour. For the revocation of a licence, the court process is really not the answer, is it?

This power is transferring from the Housing Executive to the councils. I think that that is probably an admission of failure of the Housing Executive on yet another of its functions. Costs were involved. Will the Housing Executive budget be adjusted to make the resources that are attached to it available to the councils? How will you decide to apportion those resources? Three councils are probably most affected: Londonderry, Causeway Coast and Glens and Belfast. How will that be determined?

**Mr Martin:** A due diligence exercise has been carried out as part of the reform of the local government process, which has identified the resources currently expended in the Housing Executive. That is our starting point. We then need to have a discussion, and we are starting to have that with the councils and NILGA on what a reasonable apportionment is. In the longer term, our aspiration is that the licensing fee will cover the totality of the cost of administering HMOs, but, for the first few years, that will not be the case. The Housing Executive is grant-aided to deliver that function, so that grant aid plus the licence fee plus any fixed penalties will be available to the councils. We will go through a dialogue process with them to make sure that it is apportioned fairly. We will adjust as necessary in the first few years.

**Mr Wilson:** I was going to ask about that. Is it the resources that the Housing Executive currently decides to put into it, which are clearly inadequate because they do not enforce the legislation properly, or was a fixed amount given to the Housing Executive? You are saying that the Housing Executive was given a fixed amount of money, which it will no longer be given, and it will be given to the councils instead.

**Mr Martin:** Yes. The money that was used for HMO regulation will transfer to the councils plus any licensing fees and fees for fixed penalty notices. There may be a gap that we will need to discuss with the councils.

**Mr Wilson:** The Housing Executive does not spend any, or very little, money on it. That is evident by its lack of action. If the function is to be transferred, it will probably spend even less money. Is that how you will determine how much money will go to the councils?

**Mr Martin:** That will be the basis for it, but we are keen to get into dialogue with the councils about what they think they will need. We can then identify whether there is any gap and look to plug that gap.

**Mr Wilson:** That is an important issue, Mr Chairman. It is not just the money. We know that the Housing Executive does not do the job properly, and I suspect that it never put the required resources into it, which is one reason why it has such a poor record. Councils should not be penalised because the Housing Executive has decided not to spend any money on it, and a deflated figure should not be handed over to the councils. I hope that the Department makes an assessment of what should have been spent on it, adjust the Housing Executive's budget accordingly and make sure that the councils are properly resourced. Otherwise, you will get the same thing all over again, and the councils will either be pushed to find the money, or the job will not be done properly.

I want to ask you about one point in your briefing. You have suggested that licences will be for five years but might be given for a shorter time. I must say that I was struck by the reason for that. Your briefing states:

*"Such a justification might relate to the standards of the living accommodation e.g. where it is considered suitable for occupation ... at the time the application is granted, but is unlikely to remain suitable for an extended period".*

Are you really saying that councils will be permitted to give licences for accommodation that is so dodgy that, within a year, it might no longer qualify?

**Mr Grimley:** They might have to restrict it. One reason for that may be that the licensee is not a fit and proper person. Another reason may be the result of the findings of an inspection. That would have to be taken forward with the councils and would be at their discretion. That appears to be the case in Scotland. Licences are granted there for five years, but, if the authorities feel that there is a possibility that the HMO licence is required for a certain type of accommodation, they can give it for a lesser period. We have looked at that and taken it on board, but we would have to talk —

**Mr Wilson:** Can you give us an example of a house that might qualify today —

**Mr Murphy:** If I could expand on that. Another reason for drawing on the Scottish legislation is that it is well known that quite a lot of student accommodation will be built in different areas with Ulster University moving into Belfast. The logic behind that was that, if the introduction of the Bill comes before that point, people may be in the position to accommodate those people in HMOs. However, knowing that the student accommodation will follow, you might not want to over-saturate the area so would grant a licence for three years, by which time the student accommodation will be available, and they will be able to renew it. That was the logic. It was to make it flexible for the councils to use as well so that they are not tying people down to a longer term and creating problems further down the line. It is not really to do with the structure of the property or there being dodgy properties as we thought. It is more that there will be quite a few cultural changes in Belfast and the wider Northern Ireland area in the next few years.

**Mr Wilson:** Your briefing note says that it might relate to the standards of the living accommodation. I cannot think of any living accommodation for which a licence would be granted on fairly flimsy grounds or that would deteriorate so badly within a year, but that is the example that has been given. I take the example that you have given, and it seems reasonable. However, this seems to be almost a charter for saying that we might do it on a year-to-year basis, but we will not be all that tight about the standard of accommodation. I thought that the licensing system was meant to address that.

**Mr Martin:** We will look at that point again and reflect on Mr Wilson's views.

**The Chairperson (Mr Maskey):** Thank you for that.

**Mr Wilson:** David, I think that you mentioned that, when it comes to the fit and proper test, the council shall "have regard to", and you then provided a list of things. Those do not necessarily prevent someone from being granted a licence. The council simply has to have regard to them. Is that right?

**Mr Grimley:** There will be statutory criteria for a fit and proper person. It will be up to a council to make a decision using the sharing-of-information clauses with other public bodies to determine whether that person should be declared as fit and proper to manage an HMO.

**Mr Wilson:** If, for example, somebody had defrauded tenants in the past, that would not necessarily prevent him or her from getting a licence, because all you have to do is have regard to the circumstances.

**Mr Grimley:** We would have to leave it to the discretion of a council, because a lot of information will be available to the councils, and it will be for them to make a decision as to whether they thought that the person was fit and proper to manage the HMO.

**Mr Martin:** I will come in on that. The fundamental issue is that we cannot fetter the discretion of councils to make judgements in individual cases, because we would be running counter to human rights, such as right to property and so on. We have to give councils enough discretion to make decisions based on individual cases. We have tried to strike a balance. If the Committee feels that we have not got the balance right, we can look at it again, but we are trying to strike a balance between giving councils enough direction about what is expected without fettering their discretion to make decisions on individual cases, based on individual situations.

**Mr Wilson:** I can understand that. However, if somebody had got into a fight and had a conviction for GBH that was a one-off and had happened some time ago, should that prevent him or her from being a landlord? On the other hand, and having regard to whatever the offence is, if someone has a record of beating up tenants who do not pay their rent, that is a totally different thing. Are you happy that that phrase is sufficient to allow councils to make that distinction, or is it challengeable if it is as woolly as that?

**Mr Murphy:** When we were drafting the Bill, there was a decision-making process. We want the councils to have discretion, because, when you are drafting legislation, you cannot think of every scenario. As you rightly said, some offences are more serious than others. If instead of "have regard to", we had put in that councils "must" class these people as not fit and proper, those with spent convictions, people who had done things some time in the past and who had shown that they had reformed their character or those with lesser offences would be ruled out of being a fit and proper person. That is not necessarily what we want to do either. We have to leave it to the judgement of the councils at the time. As you say, if there is a record of defrauding, intimidation or something like that that is recurring, you would think that those people would be ruled out automatically. Councils will have to make that decision on the ground.

**Mr Wilson:** I do not know enough about the law, but all I want to do is to make sure that it is not left so that people who are refused a licence to be a landlord can turn to the legislation and say that a council had been far too hard on them and for the courts to uphold the right. If you are happy that the language prevents that, that is fine, but —

**Mr Grimley:** The current set criteria for fit and proper person is operated in Scotland. We looked at best practice across jurisdictions, and there was no issue with it, but it still has to be down to whoever is the administrator of the system. They have to have the discretion to make that decision.

**Mr Martin:** We can check with our legal advisers whether there is any scope to go a bit further without breaching human rights. In advance of Committee Stage, we can re-engage with our Scottish colleagues to see whether we can provide examples of how they have applied fit and proper person criteria. We have very much drawn on the Scottish model.

**The Chairperson (Mr Maskey):** Sammy, are you happy enough that you have your note in Hansard before you perhaps move off to other places?

**Mr Wilson:** Yes.

**Mr Campbell:** It is obvious from the previous questions that some of us are concerned about the ability to circumvent under the new Bill. Taking that into account, you said that approximately 500 HMOs are not registered, yet you have been able to identify where you expect them to be, which is probably common knowledge: the Holylands in Belfast and Coleraine uni. What steps were taken under the current system to identify the number of HMOs and to see what could be done about them?

**Mr Grimley:** That was part of the fundamental review that was carried out in 2012-13. We knew that the regulatory system was not sufficient to regulate HMOs, and we could see the problems that were arising in various areas, particularly in the Holylands. That is why we are now at the stage of the Bill introducing changes, a lot of which are taken from best practice in other jurisdictions.

**Mr Campbell:** Are you confident that, given the 500 HMOs that are not registered and the issues that may arise as a result of the demographic changes that you are understandably anticipating with Ulster University in Belfast, there will not be as much of a loophole, which is approximately 10%? That looks to me like a very round figure. You have approximately 30,000 people, and approximately 500 HMOs are not registered, which leaves some 10% of people not registered under the current system. Given the additional difficulties, how confident are you that the percentage of 10% will not get worse?

**Mr Martin:** Part of the problem at the minute is that it is not illegal to operate an HMO without being registered, and that is a weakness. The Housing Executive has a registration plan. You can be operating an HMO perfectly legally and not be registered. There is a process. You do not have to be registered before operating. The licensing system will mean that you will be acting illegally if you are not licensed before you begin to operate an HMO. That is a fundamental change. It changes the whole dynamic. We found that, with landlord registration, there was a sense that many landlords would not register, but we are fairly confident that the vast majority of landlords have registered and abided by the law. Part of the difficulty is that the definition of HMOs is a bit woolly. The Bill will make it much clearer what an HMO is and will require those landlords to register before they operate an HMO. That should address a lot of the issues. If people still evade the law while knowing that they should be registered, there are proper enforcement powers for councils to challenge them.

**Mr Campbell:** You mentioned the graduated response from a fixed penalty notice to going to court. Most people look at the current average fine of less than £300 as relatively derisory. Have you taken account of that as well as of the Scottish experience? What have you taken account of to allow for any fixed penalty element to be sufficiently punitive to try to ensure that you will not have a whole raft of cases to pursue through the courts?

**Mr Murphy:** I mentioned only the more serious offences, but they are graduated and are all on the standard scale, which is a legislative term for penalties and fines. We have a four-tier approach, with the lowest being failure to comply with information, for example, and you will be subject, on conviction in court, to a £500 fine, whereas the fixed penalty notice for that is £250.

**Mr Campbell:** Is that £500 or up to £500?

**Mr Murphy:** Sorry — up to £500.

**Mr Campbell:** However, the current fine is up to £20,000, and the average has been £290.

**Mr Murphy:** Those fines could be for one of the more serious offences. That is the lower tier. We are going up to a maximum of £20,000 in court. With our fixed penalty notice, if an inspector went out to a property and found something untoward, he or she could serve a fixed penalty notice of £5,000 on that day.

**Mr Martin:** One other thing that is worth saying is that a fixed penalty notice that is issued to someone who is acting in an unlicensed way is for £5,000, so it would be quite difficult for a court to give a lower fine. In a way, this will help to act as a guide for judges to say that it is the legislature's expectation that this will almost become a kind of guide for them as well so that, if cases get to court —

**Mr Campbell:** It is a sort of benchmark.

**Mr Martin:** Yes, it should act that way.

**Mr Murphy:** To come back to your previous point about the unregistered HMOs, the public and maybe some unscrupulous landlords may perceive that the law is fairly toothless at the minute and that there are no real penalties for not registering. However, with this more robust system, they will know straight away that that sort of stuff will not be tolerated any more and that there will not be the flexibility for them to get away with it. As Stephen mentioned, given that they have to be licensed before operating, rather than after, that means that all the terms have to be set out at the outset. I know that, really, there is no room for manoeuvre. Everybody has to adhere to the same rules.

**Mr Dickson:** Can I raise a few issues with you about the fit and proper persons? Before I do that, let me say that you made reference to Belfast City Council and the Causeway council. There is perhaps a changing dynamic, but Antrim and Newtownabbey Borough Council and Mid and East Antrim Borough Council will have a number of properties in multiple occupation, primarily because of the Jordanstown location. That also affects Carrickfergus. I think that it is important that you recognise that other councils are dealing with that at the moment.

Where fit and proper persons are concerned, the sort of standard thing that happens is that, if the landlord is not a fit and proper person, they will put the business or property in the name of their wife or partner or vice versa. How will the legislation deal with that? Are we really going to get to what a fit and proper person is, or are they just going to be able to duck and dive and dodge around that as a result of this?

I have a couple of other points. The public's mind can quite often be concentrated on antisocial behaviour and other things, but one other problem that occupies it regularly are health and safety issues, particularly where gas appliances are concerned. We have seen a number of incredible tragedies because of that. If some of these HMOs will be for young people, particularly students, those tragedies can be multiplied by the number of people in a property.

To what extent will the local authority be required to do additional checks prior to occupation of the property and to ensure that appropriate statutory checks are then followed through? In other words, will they be required to have the gas checked? Tenants can sometimes leave a property not in an appropriate order, so will there be an obligation on the landlord to ensure that, on a tenancy change, all those checks are re-envisaged?

The other thing that I wanted to ask you about was about the joined-up aspect. I welcome that this will be a local authority responsibility, but I have some concern that there needs to be some direction to ensure that health and safety, inspection and planning are joined up in the local authorities so that they are not operating in silos. We are in the extremely early days of the new local authorities, and one of the great fears and realities of public bodies is that they tend to operate in silos and there is no cross-cooperation. We need to ensure that that is protected, that there is a requirement to have a crossflow of information and that there is a paper or electronic trail that demonstrates that one bit has spoken to the other and that the documentation has been moved between them all.

Are you also satisfied that tenant rights are covered in this, or are they covered separately for the people who are occupying the property? This is all about the property owners. Is there any cross referencing to ensure that the owner provides appropriate tenant rights for the people in the property?

Finally, in the note that we have, you state:

*"whether the person has been found guilty of unlawful discrimination on grounds of sex, colour, race, ethnic or national origins".*

You do not say "sex or sexual orientation", is that implied?

**Mr Martin:** I will start with the question about join-up, and then I will bring my colleagues in.

We are trying to do two things with join-up. We cannot mandate it in law that a council joins up; that is about discussion and management. We are keen to talk to councils about how they plan to administer this function. That is the conversation that we started to have with Belfast, and I take the point that we need to have it with others. We will also share our experiences from Scotland, where, similarly, councils have responsibility for planning etc. We will offer to bring over somebody from Scotland to share experiences with the councils. It will be about sharing experiences and good practice, but, ultimately, it will be up to the councils to decide how they administer it. However, we will certainly try to point them in the right direction.

David, do you want to pick up on some of the other questions?

**Mr Grimley:** Your first question asked about a fit and proper person, so any person who would be carrying out a managing role for that HMO would be required to undertake a fit and proper person test. It could be anyone who is taking the money, organising the tenancy agreement or whatever and is in contact with the tenants in the accommodation.

**Mr Dickson:** Do you understand that the person whom you check as being a fit and proper person may not actually be the person who, on a day-to-day basis, is the person who relates to the tenant?

**Mr Grimley:** We envisage that there will be an application form, and the form for a licence will entail the landlord's name and any other managing agents that may have contact. If it is found that a person is working as a managing agent, that is a breach of the licence. That would fall to prosecution or to a fixed penalty.

You asked another question about —

**Mr Allister:** The licensee could still be the wife of the person with the relevant conviction.

**Mr Grimley:** If that person was carrying out a management role, they would have to be named on the application form and would have to undergo a fit and proper person test.

**Mr Allister:** They could be the licensee and effectively take no part in the business.

**Mr Grimley:** Yes.

**Mr Martin:** I think that David is saying that, if that were the case and a council found that somebody who was not named on the fit and proper person process was having a management role in an HMO, that would be an offence.

**Mr Allister:** That is the opposite end of the proposition. If someone is the licensee for the purpose of getting the licence but takes no part in the business, they have ticked the box as being a fit person.

**Mr Martin:** As David said, anybody involved in the HMO's management needs to be named on the application and to go through the process. If anybody is found to be involved in the management but has not been named in that process and has therefore not been checked, that is a breach of the licensing conditions.

**Mr Allister:** Yes, but it would not be a breach, because you have a clean record and you can be the paper licensee and take nothing to do with the business whatsoever. It could carry on in your notional name.

**Mr Martin:** The way that we set up the system is this: I could be the licensee, and Ronan and David could be involved in the HMO's management. If they are not named on the certificate but are involved in the management, I will have been checked and they will have been checked. However, if, for example, Ronan is not named and is not deemed a fit and proper person and is involved in the management, an offence is created because he is involved in the management of the HMO but is not —

**Mr Wilson:** You lose the licence because you have not named him: is that what you are saying?

**Mr Martin:** Yes. You would be acting in breach, so you could lose your licence.

**Mr Dickson:** How far do you drill down to managing a property? A property can be managed at a range of levels, right down to the person who cuts the grass. Do they have to be a fit and proper person if the tenant goes to them and says, "You haven't cut my grass for six weeks" and this guy says, "We're not doing it", or they get into an argument and then a complaint is made? Is that person part of the management structure if they are perhaps the son or daughter or in-laws or out-laws of somebody who is the owner of the property?

**Mr Murphy:** We looked at the other jurisdictions. England, Wales and Scotland have the term "fit and proper person" as standard for HMOs.

**Mr Dickson:** That is just the front.

**Mr Murphy:** I understand. Obviously, we think we are slightly behind the ball in that respect. A fit and proper person is looked at in the current registration scheme, but it is not in the legislation, so it is not really enforceable.

The concept behind the term "fit and proper person" is to get somebody who you are confident will run and maintain a property and stick to the regulations. You have to bring it in and make it flexible enough but still protect the housing market, in that there are HMOs that offer a valuable source of housing. When we looked at it we found that we did not want to take away from the current housing market. We do not know how many people who are current HMO landlords might not pass the fit and proper person test.

We had to build in something so that they could have an agent who would manage the property on their behalf if they did not pass the test. If something goes wrong in the duration of their licence and there is a breach of the licence or something else, the owner and agent will be subject to offences and penalties.

It is a two-pronged approach. We are trying to get around the scenario that you described of a person not passing a fit and proper person test and maybe giving the property to their wife, who has no running of it. If that property falls into disrepair or there is something that the tenants do not do, the agent, who is the wife, will be subject to penalties, as will the owner, because they knowingly allowed that to happen.

**Mr Dickson:** I think that we will monitor that when it comes back to us. Sorry; go on.

**Mr Grimley:** You also asked about statutory checks for HMOs. The Bill will introduce new standards and management checks. A lot of that will be dealt with in the regulations coming outside the Bill. Of course, that will follow on with guidance for landlords and tenants.

**Mr Dickson:** Will that come with a change of tenancy or tenants, for example?

**Mr Grimley:** It will, because if there was a change in owner, the new owner would have to apply for a licence. If there was a change of tenants, there would be ways and means of getting literature out there to make tenants aware of the situation. That can be done particularly through universities and things such as newsletters and whatever that we publish.

**Mr Murphy:** We have a code of practice in the primary legislation, so the detail of it will be in the regulations. As you mentioned, the gas and carbon monoxide aspects will play a big part in that. We will obviously have to drill down into the detail of that.

You asked what tenants will get out of this. Part of the management conditions for the landlord or owner of a HMO will be an occupancy agreement. That will lay out exactly what a landlord has to do in respect of a tenant and vice versa. We could not build a lot of antisocial behaviour aspects into this because our powers are limited. At the same time, if a tenant does something that results in a breach of the licence, that could also be a breach of the occupancy agreement. The same applies in normal private rented accommodation. Basically, it means that tenants and landlords will know their rights and responsibilities at the outset of any occupancy being taken up.

**Mr Martin:** There is one final point about sexual orientation. I think that that was drawn from equality legislation. We can double-check, but I assume that sexual orientation is not part of equality legislation in the letting of properties. However, we will check on that and come back to the Committee.

**Mr Beggs:** You indicated in your briefing that, whilst the maximum current fine is £20,000 for failures, there have been only 97 prosecutions, and the average fine imposed by the court is £292, which is a long way off the maximum. Yet we all know that there have been fairly serious situations. Have you made any representations in the review process to the justice system that the bench should be reflecting on the level of fines in this area?

**Mr Martin:** The judiciary, quite rightly, guards its independence very carefully. We normally include the Lord Chief Justice as part of our consultation arrangements, but we have no authority to direct the Lord Chief Justice. I think that the important thing is that, if the Bill is passed and the subsequent regulations set out the fixed penalty notices and the expectations, that is the system's legislative expectation, so that will help to inform it. However, we have no authority to direct the judiciary.

**Mr Beggs:** Yet if there is public concern about the level of fines in any particular area, there are mechanisms of making the judiciary aware of that. That may not be in individual cases but just in the overall run of things. I ask you to perhaps consider pursuing that.

In principle, I am supportive of a fixed penalty, having come across an issue where there has been huge expense to police and the local authority. It was to do with an ASBO, and I ended up being a prosecution witness. There was huge expense to the police and to local government. In fact, there was an original case and then an appeal, which then got abandoned halfway through. There were three court cases, all paid for by public expense because of an individual's unreasonable behaviour. That was costing a huge amount of money and huge public resources. If there are better mechanisms, we should be looking at them. I am generally supportive of the concept. How will we ensure that they will not be abused, that common sense will be applied and that they will be used in a sensible manner?

**Mr Martin:** Councils have shown that already. They operate a range of fixed penalty systems in the private rented sector for dog fouling and a range of offences. I think that they have demonstrated that they act in a responsible and proportionate manner, so we have no concerns about how they might operate that system. We agree with you that it is likely to be a very useful incentive or deterrent for poor behaviour.

**Mr Beggs:** It will also be useful for getting speedy results, which is in the tenant's interest.

Your briefing indicates that:

*"Buildings or parts of buildings which are considered not HMOs are listed in a schedule".*

In that, you include owner-occupied buildings. Does that mean that, if an owner is in a building that is vastly overcrowded, he could be excluded from HMO guidance?

**Mr Martin:** The key thing that we are trying to do is to focus on risk. The key risks are in rented housing, because that is where there is no head of household and, therefore, the risk tends to be greater, particularly in safety. Some of the documented cases from the past have been exactly that, so the answer is no. Our view is that it would not be appropriate to apply the same level of regulation, because there is not the same level of risk in owner-occupied properties. That is the basis on which we drafted the Bill.

**Mr Beggs:** My concern is that the unscrupulous person that your legislation is designed to keep out of the system might say that they live in the building, which is overcrowded, is not maintained right and has a gas boiler that has not been serviced. Local government would have no role in having an impact on that.

**Mr Martin:** They would be caught, because they would be renting parts of the building. Those issues would be addressed. Somebody trying to masquerade as an owner in that situation would be subject to the legislation.

**Mr Grimley:** We envisage that the council would carry out its checks, and, if it had reason to believe that an owner was perhaps living in that accommodation, it could use the shared information services to check. Perhaps they would be able to find whether that was the case.

**Mr Martin:** If that was the case in that scenario, that house could be subject to HMO regulation.

**Mr Beggs:** The other exclusion that you have given is if it is:

*"occupied by persons who form two households".*

Will you explain why you want that as an exclusion? There could be serious overcrowding in one part of the building, and there could perhaps even be a separate boiler system — who knows? Why are you using that as an exclusion?

**Mr Murphy:** Sorry, what was the exclusion?

**Mr Beggs:** It is if it is:

*"occupied by persons who form two households".*

**Mr Murphy:** That is carried forward from the current legislation. We looked at two aspects within the definition. The first is that the person has to occupy a building or part of a building as their main residence. That is the physical structure. We also looked at the make-up of the people in the building. We wanted to capture whether there were multiple people in the property who were unrelated to one another. That is what that really means. A family would obviously be classed as one household, whereas three students would be classed as three separate households, even though there may be fewer people in the building.

**Mr Beggs:** You are excluding the possibility of there being two households. There could be two families, one in a nice bit of the building and another in —

**Mr Wilson:** Say your mother-in-law was living with you.

**Mr Beggs:** That is part of the same family. She has. That could be part of the same family.

**The Chairperson (Mr Maskey):** You would need very stringent regulation on that. *[Laughter.]*

**Mr Grimley:** It goes back to what Stephen said: it is about identifying the risk, where the risk is and the types of houses involved. Looking at the definition, it seems that the greatest risk comes with the greatest volume of people living at the address and not having a head of household. If you look at it as the equivalent of the owner-occupier that we talked about, you see that an individual is taking responsibility. With two families, you still have a head of household.

**Mr Beggs:** I am conscious about some media stories about severe overcrowding and perhaps two families being in a very small house. They could be excluded.

**Mr Murphy:** As I said, that has been brought through from the current legislation. The rationale behind it is that we want to capture the same sort of houses, taking into account the Northern Ireland breakdown of HMOs.

If there are two households in one house, even if that is not a HMO by definition, the council could issue other notices on public health grounds that would maybe deal with overcrowding.

**Mr Beggs:** You said "maybe": would they deal with it?

**Mr Murphy:** There are notices. It would depend. I am not au fait with the overcrowding —

**Mr Martin:** We will check the situation out. As with all things, we are trying to strike a balance and to focus on areas of greatest risk. About eight or nine years ago, we were taken to judicial review on the definition, and those exact issues were raised. The judge reasonably said that the law should not be trying to interfere in somebody's right to the peaceful enjoyment of their property and challenged us on the issues of owner-occupation and the number of families.

We have tried to strike a balance to focus the legislation on where people are at risk and to leave people who are at a much lower risk, such as owner-occupiers and so on, to enjoy their homes peacefully. If we have not got that balance right, we will obviously look at it, but that is what we tried to do. We strived to strike that balance.

**Mr Beggs:** OK. That is a reasonable explanation. Thank you.

**The Chairperson (Mr Maskey):** Stewart, did you want back in?

**Mr Dickson:** I have one very brief question. Will a fee be charged for the fit and proper person application?

**Mr Martin:** There will be a fee for licensing. In the initial period, our intention is to keep it the same as the HMO registration, which I think is £500.

**Mr Grimley:** It is £25 per person

**Mr Martin:** It is £25 per person per year. We are keeping it at the same level, but it will be a fee for licensing, rather than a separate fee for a fit and proper person.

**Mr Dickson:** Will that fee be paid to the local authority?

**Mr Martin:** Yes, and it will retain it.

**Mr Dickson:** Will it have the power to change the fee?

**Mr Martin:** That power will be set in regulations. It will remain with us to change that fee through regulations.

**Mr Dickson:** It is clearly not a cost recovery fee.

**Mr Martin:** It pays for some of the administration of the scheme, but not the totality. Over time, our aim is to increase it so that it covers the *[Inaudible.]*

**The Chairperson (Mr Maskey):** Jim, before I bring you in, I have two further queries: one from Roy and one from Fra.

**Mr Beggs:** Very briefly, will councils be able to retain the fixed penalty notice fees to keep the overall costs of administering the scheme down?

**Mr Martin:** Yes.

**Mr F McCann:** My point is about the charge for the licence. How does that match the fee for the private rented sector, which was brought in under the registration scheme?

**Mr Martin:** The registration scheme has a one-off fee of £70, which lasts for three years. There is a formula for calculating the fee for HMOs. It is calculated per tenant.

**Mr Grimley:** It is £25 per tenant.

**Mr Martin:** The aim of both in theory is that the cost of running the scheme is self-funding. For landlord registration, that is the case, which is why we set the fee at £70. For HMOs, there is a lot more intense work, because there is the inspection process and so on. In theory, the fee should fund the scheme, but it does not, which is why over time we want to increase the fee. It is slightly different from landlord registration.

**Mr F McCann:** Was this lifted from what occurs in other jurisdictions?

**Mr Martin:** Do you mean the HMO fee?

**Mr F McCann:** Yes.

**Mr Martin:** I think that it has just developed over time. We keep an eye on what happens in other jurisdictions. Unlike Scotland, England and Wales, we do not have a licensing system; we have a registration system.

**The Chairperson (Mr Maskey):** If I understand what you said, the fee in England and Wales varies from council to council. Some councils have a much more significant role in all this.

**Mr Allister:** I have a couple of quick points to make arising from paragraph 20 of your briefing. In deciding whether someone is a fit and proper person, you say talk about:

*"any previous convictions relating to violence, sexual offences, drugs and fraud".*

Is that how it will be expressed in the Bill? Will that be the limit of the offending?

**Mr Murphy:** The Bill will say that a council must give regard to whether the person has committed any offence involving fraud or other dishonesty, violence or drugs, or a firearms offence within the meaning of the Firearms (Northern Ireland) Order 2004 or an offence listed in schedule 3 to the Sexual Offences Act 2003. It must also give regard to whether a person has practised unlawful discrimination in, or in connection with, the carrying on of any business, has contravened any provision of the law relating to housing or of landlord and tenant law or has acted otherwise than in accordance with any code of practice approved under section 63, which is to be —

**Mr Allister:** Would that include gangmastering, of which there was a case not so long ago? Would it include people-smuggling?

**Mr Martin:** We will obviously need to check the detail of those issues, and we will get back to the Committee on them both.

**Mr Murphy:** They were certainly taken into account, because we have built the term "gangmaster" into the information sharing, taking into account migrant workforces that may find themselves in this sort of accommodation. We think that that is very important. We have also had dealings with Immigration Enforcement to try —

**Mr Allister:** You would probably need to include immigration offences.

**Mr Murphy:** That may well be in there in the legislative language, but I cannot see it.

**Mr Allister:** I have two more points. If a company is running the premises, will the fit and proper person test be applied to the company directors?

**Mr Martin:** Yes. That is the short answer to that.

**Mr Allister:** I missed the answer when Sammy was asking you about spent convictions; I got distracted. Is it any previous conviction, or is it any unspent previous conviction?

**Mr Murphy:** The legislation has termed it "any offence".

**Mr Allister:** Is it a conviction at any time for any offence of that nature?

**Mr Murphy:** Once again, the words are "has regard to"; it is not —

**Mr Allister:** Yes.

**Mr Martin:** Councils have flexibility to take that into account. We looked at the Scottish experience. Somebody who committed a serious sexual offence 20 years ago is very different to somebody who committed a shoplifting offence 20 years ago. We are trying to give councils enough discretion to take account of those varying circumstances. There could be a spent conviction that is actually more —

**Mr Allister:** Stewart is talking about the Rehabilitation of Offenders Order, under which any offence for which the penalty was less than 30 months can become spent. Are you not referring to that at all?

**Mr Martin:** No, we are not in this case. That is because we have drawn this power from Scotland, and they have taken the same approach. Generally, in the application in Scotland, there are not that many people who fall foul of this because councils are able to use their discretion. They apply, quite reasonably, the nature of the offence to the nature of the activity. If it is a fairly minor offence and is spent, they are obviously not going to take it into account. If it was a spent activity around, for example, drug activity, that might be much more relevant and they would want to take reasonable consideration of that.

**The Chairperson (Mr Maskey):** OK, members? Thank you, Stephen and your colleagues. No other members have indicated that they wish to speak. You have taken a lot of issues on board, and you have responded extensively to some of them. You are going to take back some of the questions for further consideration or clarity. If you are happy enough that there is nothing else that you need to say this morning and you have taken on board the matters that have been raised by members, we will look forward to the outworking of your deliberations. Thank you very much.