



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

Access to Justice Directorate:  
Department of Justice

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than words involves identifying and tackling the challenges across a complex justice machinery, the major elements of which are both independent and interdependent.

What are the key challenges that we will look at? First, speeding up justice is one of the biggest challenges facing the justice system and is a priority for the Department. As criminal justice partners and the Criminal Justice Board know, the speed that cases progress matters to victims, witnesses, their families and, of course, to the accused. It can help offenders to better understand the implications of their actions. Reducing the time it takes to complete criminal cases is a challenging and complex issue, and it takes time for reforms to embed and for their impacts to be seen. A Speeding up Justice programme involving all the key justice organisations is taking that forward under four strands: performance reporting; working in partnership; legislation; and research and analysis. Reforming the committal process is an important element of improving the speed of the system, and it is specifically noted in the New Decade, New Approach deal. A draft committal reform Bill, with provisions to make a further attempt to abolish all evidence at committal, in line with the Fresh Start panel's recommendations, is at an advanced stage, and we plan to engage with you shortly to take that forward.

Another key area of business is the implementation of Sir John Gillen's review of law and procedures in serious sexual offences. We have established a team to take that forward, along with a cross-agency strategic justice sexual harm group, to provide governance in this area and to ensure that there is a coherent and coordinated approach to addressing sexual violence across all justice bodies in Northern Ireland. On that implementation, we have been working with stakeholders to consider the 253 recommendations and 16 key recommendations. We are developing an implementation plan that highlights key work streams and priorities to take that work forward. We are committed to a victim-centred approach and to improving people's experiences of the criminal justice system in serious sexual violence cases.

In the criminal justice space, we also expect to bring forward up to four Bills in the two remaining years of the mandate to deal with particular areas of concern to the Minister: domestic violence and stalking legislation; committal reform, which I have mentioned; and we would also like to progress a miscellaneous provisions Bill to bring in necessary legislative housekeeping changes that have been building up during the absence of the Assembly. Further, a major review of sentencing policy in Northern Ireland will complete its public consultation stage next month and is likely to generate new legislation in the next mandate. We have also been working across the Department on policy relating to legacy. We have been closely involved with shaping the Department's contribution to the several rounds of political talks on legacy, and we have contributed to the rounds of discussions on legislation covering the form and function of the justice-related Stormont House Agreement institutions.

The Department has been championing problem-solving justice for some time. As you may be aware, it is a new approach aimed at tackling the root causes of offending behaviour, reducing harm and addressing vulnerabilities within families and the community. The Department, in partnership with other Departments and agencies and the voluntary and community sector, has developed a portfolio of problem-solving justice projects. They include, for example, support hubs, the substance misuse court and the enhanced combination orders or "ECOs", as they are often referred to.

The Committee may also be interested to know that, over the past few months, we have been developing a digital justice strategy. That is due for completion at the end of March this year.

Regarding civil justice, as the Committee may know, the substantive civil law, such as divorce and property law, is the responsibility of the Department of Finance. The Department of Justice is, however, responsible for policy on the structure and jurisdiction of the civil and family courts and tribunals. At least as many people come into contact with the justice system through civil and family disputes as through the criminal justice system. It is essential, therefore, that we have an effective civil and family justice system that is cost-effective, proportionate and efficient and in which citizens have confidence. Many of the civil and family justice initiatives that we are taking forward are informed by Lord Justice Gillen's review of civil and family justice systems, on which he reported in September 2017, with almost 400 recommendations. Specific policies on which we have been working include legislation to prohibit the victim or alleged victims of domestic abuse from being directly cross-examined by the alleged perpetrator of the abuse in a family court. We have also been working on a consultation on the general jurisdiction of the County Court. Currently, the County Court can hear a case in which the amount claimed is up to £30,000. Lord Justice Gillen's review of civil justice recommended that the limit be increased to £60,000, and there may be a case for going even higher, perhaps up to £100,000. We are also looking at the settlement of claims involving minors where no

legal proceedings have issued in a single family court. We expect to work up proposals on those issues during the current Assembly mandate.

Civil justice colleagues will also lead on the justice aspects of the Mental Capacity Act (Northern Ireland) 2016, some of which has now been commenced and on which, going forward, we will work with colleagues in the Department of Health.

Finally, it would be more than remiss of me not to say something about Brexit. As the Committee will be aware, the UK's exit from the EU poses particular challenges for justice. Preparation for the exit on a no-deal footing were well developed and can be revived, should that prove necessary. Otherwise, our focus is on ensuring that the UK Government's planning for negotiations on the future security partnership takes proper account of Northern Ireland's requirements and our devolution settlement. Key challenges in the coming months will be the ability to secure successor measures to the EU justice and home affairs tools, especially as this is set against the UK Government's intention not to extend the implementation period. Of particular importance to us will be ensuring that effective extradition and data-sharing arrangements are secured to enable continued, effective daily cooperation between the PSNI and an Garda Síochána. The practical implementation of the NI protocol will also have implications for justice and security. I am happy to tell the Committee that our access to and engagement with the Home Office, which leads on most of the justice issues, has been positive. We are also closely engaged with justice colleagues in Dublin, and our regular discussions on cross-border issues are very productive.

It is difficult in a short space of time to do justice to the breadth and depth of the work that we are taking forward and, in particular, the challenges in some cases, but, no doubt, the Committee will have plenty of questions. At that point, I hand over to you.

**The Chairperson (Mr Givan):** Thank you, Anthony, for taking us briefly through the general areas of responsibility that you have in your directorate. I have a couple of quick questions, for clarity. The Minister made an announcement on domestic abuse legislation, which I welcomed. What is the time frame for putting that through the Executive and, subsequently, bringing it to the Assembly?

**Mr Harbinson:** We want to ensure that the legislation deals with those affected by violent and non-violent abuse behaviour and that they are all afforded protection. The planned timescale is that we anticipate that the Bill could be introduced to the Assembly by April or May this year. We hope that it will gain Royal Assent by April or May 2021. Then, given the time needed to put it into operation, it would be operational in around April or May 2022.

**The Chairperson (Mr Givan):** OK. I just want clarity on the stalking legislation. Will that be separate legislation?

**Mr Harbinson:** Yes.

**The Chairperson (Mr Givan):** It will be.

**Mr Harbinson:** Yes.

**The Chairperson (Mr Givan):** Similarly, then, what is the planned time frame for that coming to the Assembly?

**Mr Harbinson:** We have done the consultation work on that. The drafting and finalising of the Bill is expected to be completed around June or July this year, and it will, hopefully, be brought to the Assembly in the autumn.

**The Chairperson (Mr Givan):** The other Bills that you mentioned were the committal reform Bill and the miscellaneous provisions Bill. Given the opportunity for a considerable number of amendments to be proposed within the scope of the miscellaneous provisions Bill, what is the time frame for its introduction?

**Mr Harbinson:** We are still trying to work out exactly what we will put into that Bill, but, by May this year, we hope to begin drafting it. We hope to have that ready by the end of this year and to bring it forward next year.

**The Chairperson (Mr Givan):** Bearing in mind that we do not have a lot of time in this mandate —

**Mr Harbinson:** We do not.

**The Chairperson (Mr Givan):** — getting through four pieces of legislation, one of which will be broad in nature, will be challenging.

**Mr Harbinson:** It will. We fully understand that and hope to work closely with the Committee to shorten as many stages as possible to take it through, but the Bill's passage will depend on the work of the Committee, and it will go at the speed that you wish it to go at. We want to use the next two years as much as we can to push through that legislation.

**The Chairperson (Mr Givan):** The sooner we get it, the sooner we are able to start work on our side, which, I am sure, we will do in as timely a fashion as possible.

In terms of legacy — I asked the permanent secretary about this last week — have we any further update on what the provisions in New Decade, New Approach mean by way of the consenting mechanism of the Assembly?

**Mr Harbinson:** Unfortunately not. We still have not heard anything directly from the NIO on that.

**The Chairperson (Mr Givan):** Has there been any engagement with Westminster on legacy and the legislation that is due to be introduced within 100 days as of a number of weeks ago?

**Mr Harbinson:** There has been no update since the permanent secretary's discussions with you last week.

**The Chairperson (Mr Givan):** What progress has been made in establishing the historical institutional abuse redress board? The head of the Civil Service mentioned this at a meeting of the Committee for the Executive Office. Are we on course to get that up and running as soon as possible?

**Mr Harbinson:** Yes. Peter Luney, who also falls within the command, will be before you, I think, next week, and he can explain that in some detail. The presiding judge has been appointed. The County Court judges have been identified. The Department of Health is filling the gaps with the lay and medical representation. I believe that the hope is that the process will begin in April, with the first cases being heard in May.

**The Chairperson (Mr Givan):** Is the Department of Justice the lead department on this?

**Mr Harbinson:** We are the lead for the operation of the board, but the policy intent sits with the Executive Office (TEO).

**The Chairperson (Mr Givan):** OK, thank you.

**Ms Dillon:** I have a number of questions. A question on HIA was one of the first, but that has been dealt with.

Justice Gillen's recommendations fall within your remit. Rather than ask you to go for quite a number of recommendations — they are not all for you; some are for the PSNI and other bodies — is it possible for us to get some type of report? I think that a report was to have been given to the parties prior to Christmas, but, with the election, that did not happen. I would like to know where each recommendation is — "Has it been implemented? Does it require policy or legislative change?" or "Is it not doable?" for whatever reason — just so that we can get a grasp of where we are with all those recommendations.

**Ms Linda Hamilton (Department of Justice):** What might be helpful for the Committee— I am happy to take that forward — is to look at how we propose to implement it. Perhaps, the way forward is not necessarily to look at it recommendation by recommendation, because Sir John will talk about the totality of that, how complex the system is and how these things are interrelated. Without going through a recommendation-by-recommendation approach, I have tried, since I took up post, to make sure that we prioritise those big multi-agency bits, which will have the greatest impact on those going

through the system. Some of those will be practical processes that operational partners will take forward — I am sure that you will speak to them about that — but some will be legislative and some will require a bit of thought as to how to phase them. For example, Sir John talks about pre-recorded cross-examination and the ability of complainants to give evidence before a trial in a safe and supportive environment: in order to do that, there is a need to focus on some stages before that to make sure that things like disclosure are in the place that they need to be to and then to roll that out. I am happy to give the Committee a sense of where we are with that implementation, which will become more detailed as the work progresses, if that would be helpful.

**Ms Dillon:** That would be perfect. It is just to get an idea of where it is and what is happening.

You said that you were doing work on the County Court. What stage is that at? Is it likely to happen any time soon? Obviously, a review is ongoing.

**Ms Laurene McAlpine (Department of Justice):** We have a well advanced draft consultation paper. We will probably want to wash that through the shadow civil justice council to stress-test and fact-check it before we put it up to the Minister or, at least, before we bring it to the Committee. I hope to get that out for publication before the summer.

**Ms Dillon:** My last question relates to legacy mechanisms and the HIU. I understand where the Chair is coming from about what is happening with it and the NIO. There were discussions with the Justice Department about preparatory work. I know that, at one stage, the ombudsman's office had offered to train staff. I do not know whether that offer still stands; obviously, we have a new ombudsman. It will take a number of years to get the HIU up and running, even when the legislation is implemented. That work would also help to get the workload that is sitting in the ombudsman's office moved on, so that, when the HIU comes into existence, it will not have that backlog. Has any preparatory work been done to ensure that, if the legislation comes through, we are ready to go and have, at least, some people trained and able to start?

**Mr Harbinson:** In my previous role as head of safer communities, I had begun that work, because, if the HIU is established, it will be more on the policing side of the house, and we will be dealing with it there. That is why I began the groundwork to see what would be needed in areas such as IT, HR, premises, IT systems, as well as staff numbers and stuff like that. We hired a professional adviser to start looking at those areas and talking to them. Work has progressed in certain areas, but, without the legislation, it is very difficult to know where the boundaries are, the number of cases that we would review and how long that would take. Certainly, the groundwork, which, I think, will save considerable time at the start-up, has been commenced.

**Ms Dillon:** I understand that, Anthony, but the fact is that the most difficult thing will be recruiting people to carry out the investigations.

**Mr Harbinson:** It will.

**Ms Dillon:** That will take the most time. Finding premises and all that has to be done — I understand that — but getting the people will be the biggest difficulty. The ombudsman's office made that offer. Is there any thinking in the Justice Department that that is worth taking up? There is a massive backlog in the ombudsman's office, even without the HIU. That would be of assistance.

**Mr Harbinson:** We had been hoping and waiting for the release of the initial £150 million that was ring-fenced under the Stormont House Agreement. We have not had access to that, so it is difficult to move forward with recruiting and hiring, especially as we do not know how many, when they would start or when the HIU would become operational. When money is made available and we have some targets, we will look at all options to move forward quickly, but we are in a bit of a vacuum until we get that.

**Mr Frew:** Thank you very much for your attendance today. It is great to see you round a Committee table again. I have been aware of the work that you guys have been doing in the lean period and the work stress that you have been under without a Minister in place. I appreciate the work that all of you have been doing. I know, Linda, you are new in post.

**Ms Hamilton:** I cannot take credit for that work.

**Mr Frew:** It was good to meet you at the all-party working group, and I wish you all the best in your role. I may be confused and I do not want to trip anyone up, but are you in the right place in the structure? It seems that you are on the list under "safer communities", not "access to justice"?

**Mr Harbinson:** No, it is access to justice. If it says anything else, it is a mistake. We will have that corrected.

**Mr Frew:** OK. You are also partly charged with EU exit. Laurene, you have responsibility for the legal aspects of Brexit. What is the difference?

**Ms McAlpine:** No. Well, I had some responsibility for the no-deal Brexit legislation. That has concluded now. I have some ongoing interest in the civil aspects of Brexit because there are implications for the enforcement of cross-border civil judgements and family cases, but Linda has the lion's share of the Brexit work.

**Mr Frew:** Those are two meaty subjects, Linda, so I wish you all the best on that.

My main focus in questions today will be on the domestic violence legislation. Anthony, you know my form on this over the years. It strikes me that your target dates may be slightly unambitious. Surely the Department knew what we were going to do before Stormont fell. The legislation was good to go then, we thought. Why can we not just pick that up again? Although we have a time difference now, the situation and the subject have not changed.

**Mr Harbinson:** Is this about domestic violence?

**Mr Frew:** Sorry, the domestic violence Bill. Why do we have to wait until April/May, I think you said, before its First Reading?

**Mr Harbinson:** The Bill was pretty much good to go three years ago, but a lot has changed in three years, and things have moved forward.

**Mr Frew:** Like what?

**Mr Harbinson:** Like developments in other jurisdictions, where we have looked and said, "Maybe that is a better idea or a better way of doing that", and like the various orders that can be put in place to prevent an accused perpetrator from making contact with the family and from getting involved with the individual. We put a lot of time and effort into working on transferring or at least making sure that the UK Bill would have fitted with Northern Ireland. In the original legislation that we had, for example, we did not have a definition of coercive control in the same way; we were not making the offence. We are now moving all that forward. We are now looking at the work that we have put into the English Bill and making sure that we put that firmly into what we have. We hope to do it quickly, but we are working with draftsmen and all the rest of it to make that happen. Obviously, every Department is back at once, and everybody is trying to do the same with their legislation.

**Mr Frew:** That is what scares me, hence my question. Is there a danger that, although we had a bit of a Bill ready to go, we could now be somewhere along the queue for Assembly business and may well lose time that way?

**Mr Harbinson:** No, I do not think so. I have just talked to the head of the Office of the Legislative Counsel (OLC) — Brenda — on the way out, and she said that we are good to go with the Bills, and she is happy to work with us. She wants them quickly, and we are trying to bring them to her as quickly as possible.

**Mr Frew:** You say April/May this year for First Reading and then Royal Assent —

**Mr Harbinson:** Next year.

**Mr Frew:** — next year in April/May. That is a full year.

**Mr Harbinson:** That is the normal process. If we can do it more quickly with the Committee and the Assembly, so much the better. That is just the normal timescale.

**Mr Frew:** Then a further year for operation.

**Mr Harbinson:** We have to make sure that, whatever we legislate for, we have the systems in place to make it work, but there will be money, and processes and systems will need to be put in place.

**Mr Frew:** What systems do you foresee? I struggle to see how the police would not be geared up for this.

**Mr Harbinson:** The police would not necessarily be geared up to have specifically trained officers. They do, of course, have specifically trained domestic violence teams, but there will be new prevention orders coming through. They will need to be understood and rolled out to all police officers: how they work, how they are administered and how to engage with people when they go to a domestic incident and are trying to work out where people should be or not be at any point in time.

**Mr Frew:** That will take a year after Royal Assent and two years after First Reading.

**Mr Harbinson:** As I say, that is the initial timescale. We hope to do everything much more quickly than that, but that is the general view at the moment on rolling them out. It involves having things like helplines in place and working with the community and voluntary sector for some bits. Some things will be in place from day one and will be much quicker, but other things will take more time to put into operation.

**Mr Frew:** It is just that the stakeholders' and victims groups' dilemma over the last number of weeks has been, "Well, if we go to Westminster, we get it quicker". Time is a massive factor for them. Of course, we believe that it should go through the Assembly so that we can shape it to what, we think, best suits Northern Ireland, but victims groups just want to see results. For them, time is a massive issue. I would push you on that, so that we see that as soon as possible.

**Mr Harbinson:** I will work with the team directly. They are not in my area — the policy area sits in safer communities — but I will certainly look to see how we can do that.

**Mr Frew:** My final question is this: you say you, as a Department, are responsible for the operation of the redress board. The policy sits with the Executive Office. Who pays for it?

**Mr Harbinson:** The Executive Office.

**Mr Frew:** Even the operational costs?

**Mr Harbinson:** Yes. Well, there will be a transfer to us for running it, in the same way as we run other tribunals. There would normally be a transfer of money for that as well.

**Mr Frew:** Does that work smoothly?

**Mr Harbinson:** Well, I hope it does. I do not expect the Department of Justice to pick up the costs from existing budgets. It would have to come with new resources that would come through the policy side.

**Mr Frew:** You know what it has been like in the past.

**Mr Harbinson:** I do, but I have been reassured that that money is not in question and will come.

**Mr Frew:** That worries me. A shared burden or a Department relying on some other Department to control its destiny really worries me. That is something we need to keep an eye on.

**The Chairperson (Mr Givan):** Linda wanted to pick up on domestic abuse, for completeness.

**Ms Dillon:** Yes, this is just a quick question that ties in with what Paul was saying. I understand that it will take time for the PSNI to get a grasp of this, but the Department needs to look at whether the PSNI even uses effectively the powers it currently has. That is the concern that I get from stakeholders and victims groups. They do not believe that the PSNI properly or effectively uses the powers that it

has. I do not know whether it is that officers are not being trained correctly, getting the right information or there is a misunderstanding of how the law as it stands works, but there is an issue in that the PSNI is not using effectively what is already at its disposal. When we bring the legislation through, we need to be certain that it will be used effectively. All that hard work will be to no avail if it is not effectively used. There needs to be a bit of preparation work done with the PSNI and the Chief Constable on that.

**The Chairperson (Mr Givan):** Before I move on to the next area, does anyone else want to comment on the domestic abuse piece, just to wrap that up? If not, Rachel Woods.

**Miss Woods:** Thank you very much for coming to the Committee. I have a couple of questions. With regard to the sentencing policy review, I note that a number of public engagement events have taken place and a number are planned for January. Can you tell me what they look like, who they are with and where they are taking place?

**Mr Harbinson:** If I can find the piece of paper on that, I certainly can. The consultation on the Department's review of sentencing will close on 3 February. As you know, individual sentencing cases are a matter for the judiciary. However, the Department is responsible for the provision of an appropriate framework

On the specific questions, the review team has met academics, a retired judge and senior members of Victim Support, the Probation Board for Northern Ireland (PBNI) and NIACRO. Those are all the groups of experts we have been dealing with. It has been a significant review, and the board that is doing it is made up of senior officials. A number of preconsultation events were held during the development phase. They focused on specific elements of the review, and we brought in the specific stakeholders who, we thought, were relevant at that time. We also met individually political representatives, victims and offenders, and we have attended the stakeholder meetings. We have redesigned the crime survey to get more meaningful questions on the issue.

The consultation is seeking views on the purpose and principles of sentencing and the public perceptions; our approach to sentencing guidance; tariff setting; and the arrangements for challenging unduly lenient sentences, which, as you will know, is probably one of the biggest issues. There are a number of areas where the public has raised concerns, such as death by dangerous driving, attacks on elderly people and blue-light services, and, of course, hate crime. We have a review of hate crime under way. The six public engagement events have taken place. After the consultation closes on 3 February, the Minister's team will analyse the responses and provide the Minister and Committee with the report on those responses. Any proposed changes will be discussed with the Committee at that point, and we will take it forward from there.

**Miss Woods:** Thank you very much. My second question is on the Mental Capacity Act (Northern Ireland) 2016. There is a suggestion in the Act that there would be matters relating to powers for police officers to take an individual to a "place of safety" if they appear to be:

*"in immediate need of care or control".*

What does that look like?

**Mr Harbinson:** I will let Laurene take that one.

**Ms McAlpine:** It is there to deal with the situation where a member of the public is maybe behaving in an extremely dangerous way in a public place, such as Shaftesbury Square, and is perhaps holding a knife or weapon. It is there to allow police officers to detain that person and take them to a place of safety, which would be a hospital or possibly a police station.

**Mr Harbinson:** It is really there to deal with the idea that the person might be of harm to themselves or to others but more usually to themselves. It is about trying to get them to a place of safety, as opposed to taking them into a police custody cell. It is much more about trying to get them the right treatment at the right time.

**Miss Woods:** Whose assessment will that be? Will a police officer on the ground make that decision?

**Mr Harbinson:** Yes, it is an operational decision, and I do not think they would be looking for somebody working in the back office to second-guess what is happening on the street.

**Miss Woods:** OK. Thank you. Finally, I want to ask a question about the Stormont House Agreement; I know it has been brought up a few times today. I note it was mentioned that political parties will be engaged with on the outcome of the consultation and the key concerns that have been raised. Do you have any idea what those key concerns are, and can you confirm that all political parties will be engaged in the process?

**Mr Harbinson:** My understanding is that the NIO is taking this forward and it has been engaging with all the political parties. We fed in to it as the political parties were asking us for updates on what, we thought, the implications might be for the devolved institutions, but, really, I do not have any further insight into that.

**Miss Woods:** Thank you.

**Mr Beattie:** Anthony, thank you for that. It is clear that you have some chunky and sizeable pieces of work to do: speeding up justice, the Gillen review, domestic violence and sentencing. There are huge pieces of work there. For me, all this stems from the speeding up justice piece. If we do not speed up justice, all the other pieces will be left in the quagmire and people will not get justice in a timely manner. Glyn, how are we getting on with speeding up justice and the committal process, and when will we see the fruits of your labour?

**Mr Glyn Capper (Department of Justice):** As Anthony said, it is a really important issue for victims, witnesses and many folk. It is also a really complex issue, but it is a priority for the Department and the Criminal Justice Board. The relevant justice organisations are working collaboratively to take this forward.

We have done a lot of work over the past couple of years. We have established a new team to give us a new focus, and we have put more resources into it. I can give you some examples of the things we have tried to do to speed up the system, and then I will talk about some of the numbers. We have put a lot of effort into improving our performance reporting, so we are able to drill down into specific types of cases and specific areas of the process in order that we can target where we need to fix.

In 2017, we introduced the indictable cases process, which is a new way to handle cases to get a more effective and efficient investigation and prosecutorial process. We are starting to see the fruits of that. We are just about to publish an evaluation of that. I think that will show that those cases are going about 25% quicker than similar cases, so there is progress there.

There are lots of examples of people working together. For example, we have established what we are calling "Crown Court cases performance groups", which are judicially chaired groups in various regions of the country. They bring together judges, police, prosecution and defence lawyers to work out the particular localised problems in different areas. There is lots going on.

We publish internal management information every quarter. That is provisional until the statisticians formally publish the information. For example, up to the end of December, on our provisional management information, the average time taken to complete a case from the police stage until disposal at court was sitting at 153 days. That is the quickest average speed we have seen since about mid-2016. Hopefully, we are progressing in the right direction. We know, however, that there are particular types of cases that are not going in the right direction. We need to target them.

To sum all that up, lots of effort has gone into this, and continuing effort is going into it, but we are starting to see that the average speed of cases, in general, is moving in the right direction.

**Mr Beattie:** It is incredibly important. It nearly underpins everything. If you look at the figures for our prison population, you see that there are so many on remand. I guess we are on a bit of a catch-up with that as well. I suppose we all want to see fewer prisoners on remand for less time and get them through the system quickly. For me, it is incredibly important.

I want to register my slight concern, Anthony, about the domestic violence legislation not being operational until 2022. I think that is a bit of a stretch-out, I have to say. I understand your reasons why, but I am a little concerned about that. I think stakeholders will be concerned. It just needs to be registered, and I think you explained that very well.

Anthony, over the past three years, we have continued to engage. I know you were responsible for the action plan on tackling paramilitarism, organised crime and criminality. That is still going on as we speak. Is there any way of getting a back brief for those on the Committee who may not have sat on some of the subgroups we have had over the past three years on how that is progressing?

**Mr Harbinson:** Yes. I am no longer responsible for that —

**Mr Beattie:** I know that.

**Mr Harbinson:** — but I am sure that Julie Harrison, who has taken up that role, will be more than happy to provide it. I will ask her, and we will arrange for that to be given out to all Committee members.

**Mr Beattie:** I have two more questions, actually, because I am really interested in the Mental Capacity Act, which is coming in. We talked about a police officer being able to take an individual to a place of safety. I am really interested in the process. If we are saying that that place of safety is a hospital, will a handover procedure be put in place whereby hospital staff take over that vulnerable person, or do the police then have to stay with that vulnerable person there? You probably know I am referring to the case of the Cawderly double murder, where that is exactly what happened: the police left the individual, who then left and murdered two people. When we look at this Mental Capacity Act and taking an individual to a place of safety, will there be safeguards in it that protect the health workers who may have to take the person on, and the police, who cannot just stay with them?

**Ms McAlpine:** I am absolutely sure there must be, and there will be medical involvement in that process, but I cannot give you the detail on that this afternoon. I am happy to write to the Committee with more on how it actually works, to say that, when someone is detained under these safety powers, what the next steps are for that person.

**Mr Beattie:** Let us have a little bit of detail for a better understanding. I am sure it is covered, but that would give me a better understanding.

I have one last point. Anthony, you talked about the groundwork on the HIU. I fully understand why you have to do that groundwork, but I think Linda made a really good point about people. We know that qualified homicide investigators may not be as readily available as we probably think to allow this to happen. Has the Department, which will be responsible for recruitment, looked at where it will get the volume of qualified homicide investigators for any HIU?

**Mr Harbinson:** We have looked at the range of people you will need. Not everyone will be a homicide investigator. There will be researchers, investigators and people who will look through back records and take all that forward. There will be a complete range of individuals, as well as those who have warranted powers, to take people in, question them, and do all that.

Yes, we have been looking at the different categories of staff you will need. We have not moved forward, and cannot really, in the absence of HIU legislation. We are really waiting to see — the 100 days — what policy comes out, what the time frame is, what the number of cases will be, and who has determination over that. Will it be the director or someone else? We do not know at this point in time.

**Mr Beattie:** I can see the catch-22 position you are in with this, Anthony, because you have to wait for the legislation to come out. They could bring out legislation, but you might then say, "I cannot meet that because I cannot get qualified staff". Is there not that two-way flow where you could say, "Look, to investigate a murder, you have to have that qualification"? I know there are others who help with that, such as collators and office staff — I get that — but to investigate a killing, you have to be a homicide-qualified investigator. If we are saying we cannot get 300, surely that should be informing the NIO.

**Mr Harbinson:** We have explained some of the operational difficulties, both to the political parties in our briefing and to the NIO, on the capacity to find investigators as well as others. But yes, we have been making sure that people understand that setting them up will not be a quick process. However, it depends how quickly you want to be operational; you could be operational with a small number of teams quite quickly and build up more as you work your way through. Those are real, genuine concerns, but until we see the legislation it is hard for us to go much further than we already have.

**Mr McCartney:** I have a couple of questions around the Mental Capacity Act. The first is a general question. I was on the Committee that scrutinised the legislation before it passed through the House. I see from the Committee papers that it was partially commenced on 2 December 2019. Was that an inordinate length of time, or is that just a — ?

**Ms McAlpine:** No, I do not think so. It was commenced in respect of deprivation-of-liberty applications. There is a significant part of the Act that remains to be commenced, and, as you know, it was part of a joint enterprise with the Health Department, and the Department of Finance also has an interest in some aspects of it. So, we need to agree a timetable for the commencement of the rest of the Act. Getting the DoLS provisions in place was a something of a priority, and we achieved that relatively quickly by giving the training that was involved for trust staff, which was a matter for Health, and by extending the jurisdiction of the Mental Health Review Tribunal to take on the additional appeals.

**Mr Harbinson:** There was an extremely large training programme. We had hoped to do it before Christmas — we were hoping for September — but we had to delay it because it also involved GPs, care home workers and others. There is quite a family of people who have to be trained.

**Mr McCartney:** There is list of provisions that have yet to be commenced. Is that because of finance, or is there a technical reason? For example:

*"powers for police officers to take an individual to a place of safety".*

It does not seem to be a complex piece of legislation to enact.

**Ms McAlpine:** It is a huge Act, so we want to approach in a strategic way which bits are commenced first. It is interlinked, so there might be some pieces that need to be commenced before the place of safety bit can be commenced. We need to work very closely with Health on that, and we have a meeting arranged for next month to work out how best we can structure the commencement. It is not a cheap Act to commence.

**Mr McCartney:** I appreciate that. That was a big feature of it. I say this in ignorance —.

**Ms McAlpine:** There is also a huge amount of subordinate legislation that will be required to support the primary legislation.

**Mr McCartney:** I do not see the cost correlation with, for example, giving police officers the power to take someone to a place of safety.

**Ms McAlpine:** That is probably linked to other bits of the Act that relate to maybe determining a person's capacity.

**Mr McCartney:** Yes. Is there any particular reason why the initiation of a lasting power of attorney is involved in that? There is another procedure — is it the enduring power of attorney?— that —.

**Ms McAlpine:** Yes, which is still available. That is not a Justice matter; that is a Health and a Department of Finance matter because it is part of the substantive law. That would also require support from subordinate legislation, and I am not sure if that could even have been done by negative procedure.

**Mr McCartney:** The power of the DOJ to transfer prisoners to healthcare facilities; again, what is the breakdown there?

**Ms McAlpine:** That would be quite a major thing for prisons, especially if they were to go outside Northern Ireland, maybe to a high-security facility in Scotland. That would need to be operationalised, and we may need legislation in England, Wales and Scotland to be amended, which would have to be done by an Order in Council in the UK. Unfortunately, it is a lot more complicated than it might appear. There may be some bits of the Act that can be relatively easily cherry-picked and commenced, but it is drafted in such a way as it is all interlinked and hangs together.

**Mr Dunne:** Thanks very much for your presentation today. As a new member, I am very much on a learning curve in here. Is the cost of legal aid something you can answer on today?

**Mr Harbinson:** That falls in Deborah Brown's area, which is justice delivery, but, certainly, if there is an issue, I can —.

**Mr Dunne:** Do you have any idea of the cost of legal aid, say, last year, 2018-19?

**Mr Harbinson:** Off the top of my head, I do not, but Glyn —.

**Mr Capper:** I would not like to give that number without having the facts in front of me. It is probably better, if you are content, if we take that one away for Deborah and her team.

**Mr Dunne:** Yes. I have the review of legal aid report of 2016 here. Obviously, there has been a bit of a gap; we have not been here for a long time. There were certainly a number of recommendations in that report. I take it that you are aware of that report? There are recommendations in it I am sure you have been working on since then.

**Mr Harbinson:** Yes. There are a lot of new developments in legal aid; the legal aid management system (LAMS), for example, which automates payments and puts them online. All those processes have now been put in place and are operational. There are other bits that I am not sure have been completed. As I said, it is not my area of work, so I cannot say with any authority whether those have been completed.

**Mr Dunne:** Two issues were highlighted at that time.

**The Chairperson (Mr Givan):** To be fair, Gordon, it is Deborah who deals with that, so —.

**Mr Dunne:** Yes. I will just make the points. A control needed to be put on the use of expert witnesses, and internal controls were seen to be inadequate to prevent and detect fraud.

**Mr Harbinson:** An awful lot of work has been developed in those areas, particularly the fraud area. Part of that is down to the new LAMS, which has much clearer reporting and can do much more search and retrieval of information so that those things can be identified and taken forward. That was done in conjunction with the Northern Ireland Audit Office, our internal auditors and others. They were briefed at each step along the way.

**Mr Dunne:** So, significant progress has been made since 2016?

**Mr Harbinson:** Yes, it has.

**Mr Dunne:** Thank you.

**Mr McGlone:** Just to get back to the Mental Capacity Act, I, like Raymond, sat through a good part of that. I know we will get a full presentation of the glitches, good bits or things in it that maybe are unintended consequences. I see the Attorney General here; I am sure he is well aware of those with the trusts and the like. At the time, we heard evidence that there were a number of places of safety. Have additional places of safety been added? I know that some hospitals already had those places of safety. Maybe you do not know off the top of your head today —

**Ms McAlpine:** That sounds like a —.

**Mr McGlone:** — but it would be interesting to hear, following on from that legislation, where those places of safety are and whether police or health trusts, in particular, have added to those places of safety as a consequence of the Mental Capacity Act.

The other thing is the lasting power of attorney. I want to get back to that. Why has that still not commenced? I would have thought it is not that hugely extensive for the legislation, or is it one of those that is waiting for a Minister to take a decision on, without pre-empting your —?

**Ms McAlpine:** It is not a matter for the Department of Justice.

**Mr Harbinson:** It is the Department of Finance.

**Ms McAlpine:** It is between Health and Finance.

**Mr McGlone:** Whether it is Justice or Health, what is the hold-up with it? I am trying to find out what the hold-up is.

**Ms McAlpine:** I know that Health, like us, has been involved in doing the deprivation of liberty provisions —.

**Mr McGlone:** All right. Sorry; maybe it is unfair to ask you that, but perhaps —.

**Ms McAlpine:** I know that regulations would be required to support the new lasting power of attorney provisions. I do not know whether those could be done by negative resolution. I do not honestly know where the other Departments are on that aspect of the Act.

**Mr McGlone:** I appreciate that. Perhaps, Chair, that could be added to the list when we get the more extensive briefing on the Mental Capacity Act. That would be helpful.

**The Chairperson (Mr Givan):** Linda, did you want to follow up?

**Ms Dillon:** I have two quick points. First, there is a pilot programme around custody suites. The performance committee of the Policing Board is the only one I was not on, and I know there was a visit to custody suites, but I am not 100% sure where it was. Is that part of this?

**Mr Harbinson:** No.

**Ms Dillon:** Could they be considered to be that place of safety, because, obviously, the person is in custody and a healthcare professional is there who is specifically trained to deal with people who have mental health issues?

**Mr Harbinson:** There is a pilot for nurse-led custody suites that is running in Musgrave going forward. The introduction of that has proven very successful, with very few people having to be referred on to A&E, but those tend to be for people who are a subject of an offence. I am not sure if those would be designated as a place of safety. My gut feeling is that a place of safety would be designated by the Department of Health more than by the police, but I cannot answer, as I do not know the detail.

**Ms Dillon:** That is fair enough. As a point of information and in response to the point Doug brought up about the homicide officers, the PSNI is moving forward on legacy cases using paralegals and researchers because it said that was a gap. It does not know, whenever it is looking through legacy cases, how to research properly and how to look for what it needs to look for whenever it is going through the massive amounts of paperwork. It has said that the HIU will probably be made up of quite a mix of those kinds of people rather than homicide investigators. Obviously, you will need a number of those, but, because you are going through past papers, it is more about knowing what you are looking for, and paralegals are probably going to play a big part in that.

**The Chairperson (Mr Givan):** I have a couple of questions to follow up. Speeding up justice has been an item in the Department from when devolution was formed, so, obviously, it is an ongoing issue and probably will continue to be there. The average time that it has taken from 152 —. Is that where we are at the minute?

**Mr Capper:** The provisional information is 153. That is for all cases.

**The Chairperson (Mr Givan):** So, it continued to get worse right through to 2016. Is that right?

**Mr Capper:** Roughly. If you were to draw the graph, you would see that it increased.

**The Chairperson (Mr Givan):** So, when we were speeding up justice in 2010, it continued to slow down for six years.

**Mr Harbinson:** There were two legal aid strikes as well that caused backlogs, and those created issues of their own going forward. There was also an increase in workload throughout that period. Up until about 2011, I think there was a downward trend in crime.

**The Chairperson (Mr Givan):** What is the average in GB?

**Mr Harbinson:** I do not have that. I am not sure if Glyn has that.

**Mr Capper:** If you are content, I will come back with that detail.

**The Chairperson (Mr Givan):** What is the main obstacle? Obviously, there is something that is incentivising the system to slow down and do this slowly.

**Mr Capper:** I am in this post about a year or so, Chair, and having looked at it and having developed some of the detailed performance information, I think it is very difficult to say what the big one or two key issues are. The criminal justice system is very complex. When you break it down between Crown Courts, Magistrates' Courts and Youth Courts, then break that down between charge cases and summons cases and then take into account the number of stages involved in taking a case through, you see that it is very complex. The suite of the speeding up justice programme we have seeks to look at specific issues for specific problems. There is no magic answer to this. It is looking across the piece at a range of solutions for the specific problems, and we are trying to tackle it on those different fronts.

**Mr Harbinson:** The one thing I will say, though, is that we will not solve this by legislation. Although committal will have an impact on it, most of this will be working at the operational level and sorting out operational issues. It will not require legislation, and we are doing those reviews and taking that forward as best we can.

**The Chairperson (Mr Givan):** I am sure we will, in due course, look into that.

Finally, on the criminal law on child sexual exploitation, in 2015, the then Committee tabled amendments to David Ford's Justice Bill that would have dealt with those issues. Here we are in 2020 and the Department still has not released the consultation findings and is indicating that it will need to be further consulted on before legislating. It is not included in your list of legislation to be brought in in the next two years. Law that we wanted to see introduced in 2015 has, seven years later, still not been introduced by the Department. I want to find out why there has not been action, because the then Committee withdrew the amendments on the basis of a commitment by the Minister that they would be taken forward by the Department. Why is the legislation still not here?

**Mr Harbinson:** I am sorry. I do not have that information before me today. I will be happy to come back to you on that one.

**The Chairperson (Mr Givan):** I know that it is Brian's area in your directorate. There is a miscellaneous provisions Bill coming. I will just say that I am putting the Department on notice that we will take the amendments that were to be tabled in 2015 and table them ourselves if the Department does not do so. If there is then a request made to defer doing that, once bitten, twice shy.

**Ms Hamilton:** It might be helpful to say that work is being done in Brian's area to scope out what could be inserted into the miscellaneous provisions Bill. There is terminology around child prostitution that's hugely unhelpful, and we can make sure that that term is no longer used. We can feed back your comments and update the Committee further when we know what is happening with the Bill.

**Mr Harbinson:** You have certainly made it plain that that will be a priority, and we will have a look at the issue and take it forward.

**The Chairperson (Mr Givan):** Thank you very much for coming to the Committee.

**Mr Harbinson:** No problem.

**The Chairperson (Mr Givan):** We appreciate your time, and I have no doubt that we will work together closely in the months ahead.