Northern Ireland Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Domestic Abuse and Family Proceedings Bill: Amendments

12 November 2020

NORTHERN IRELAND ASSEMBLY

Committee for Justice

Domestic Abuse and Family Proceedings Bill: Amendments

12 November 2020

Members present for all or part of the proceedings:
Mr Paul Givan (Chairperson)
Ms Linda Dillon (Deputy Chairperson)
Mr Doug Beattie
Ms Sinéad Bradley
Ms Jemma Dolan
Mr Gordon Dunne
Mr Paul Frew
Ms Emma Rogan
Miss Rachel Woods

Witnesses:

Mrs Long	Minister of Justice
Dr Veronica Holland	Department of Justice

The Chairperson (Mr Givan): Given that Consideration Stage of the Domestic Abuse and Family Proceedings Bill was postponed on Tuesday and will now take place on 17 November, as requested in her letter of 9 November, arrangements have been made for the Minister of Justice to attend today's meeting via StarLeaf to discuss her amendments to clauses 9, 11 and 17 of the Domestic Abuse and Family Proceedings Bill and her position on the Committee's six amendments.

Members, the relevant correspondence is in your meeting pack. It includes a letter from the Northern Ireland Commissioner for Children and Young People (NICCY) on the amendments to clause 9 that the Minister tabled. It also refers to the amendments that Ms Rachel Woods tabled and to the position on clauses 11 and 17. For ease of reference, the wording of the Committee amendments and the text of the Minister's alternative training amendment can be found in the tabled pack, which I hope that members have.

I welcome the Minister, Naomi Long, and Dr Veronica Holland, who is head of violence against the person branch in the Department of Justice. The meeting will be recorded by Hansard, and a transcript will be published in due course. First, we will ask the Minister to deal with her amendments, which relate to clauses 9, 11 and 17 of the Bill. Minister Long, you are very welcome to the meeting. I trust that you are making a speedy recovery. The Committee wishes you well in that respect.

Mrs Long (The Minister of Justice): Thank you, Chair. I hope that you are able to hear me. This is my first experience of StarLeaf. I have used pretty much every other online platform, but this one is new to me, so I hope that it is working and that I am able to be heard adequately.

Thank you to the Committee, ahead of the Consideration Stage, for being willing to listen to a presentation on these issues. As you said, I am accompanied by Veronica, who is head of violence against the person branch. I realise that we met two weeks ago. It seems that Committee meetings with the Minister are a bit like buses. There is none for six months and then two come along at once, so apologies for that.

As you are aware, owing to my having to self-isolate ahead of a negative COVID test result, the date for the Consideration Stage unfortunately had to be postponed for a short time, and we are now due to meet next Tuesday. The delay will not impact on the ability to complete the legislative process by Christmas recess, as Further Consideration Stage and Final Stage can hopefully happen on Monday 7 December and Tuesday 15 December respectively.

Before I begin, I take the opportunity to make two apologies to the Committee. The first is that I tweeted about my disappointment at the Bill's Consideration Stage being delayed before my letter had issued to the Committee formally. It was my understanding that the letter had been sent when I sent my tweet, so I apologise. No disrespect was intended to the Committee, but it was my error, and I apologise for it. The Committee should not have found out about serious and substantive business via Twitter, and I can only apologise for that.

I also want to apologise to Rachel Woods. I have issued correspondence to her in the past hour about a letter that she wrote to me about some of the amendments that we will discuss this afternoon. As you may appreciate, it has been a busy week, and I managed to clear that paper only in the last hour or so. I therefore do not know whether Rachel will have had an opportunity to consider its content, but I am happy to try to accommodate a further discussion with her, subsequent to her having the opportunity to do so.

Before I turn to the detail of the Committee amendments, we should, as the Chair suggested, start with the key issues around clauses 9, 11 and 17. I will begin with clause 9. I understand that there have been extensive discussions, and I note members' concerns about the stage at which the amendments were tabled. My officials could have agreed to that happening at an early point. I hope, however, that you will appreciate the quantum of engagement that has taken place on a detailed Bill, and, again, the delay was not in any way intended to frustrate the Committee in doing its business. What is important, however, is that the changes are being made to take account of the fact that some members remain concerned about those issues and felt that the reassurances that had been provided by the Department were not adequate.

Three changes are proposed to clause 9. The first is to make it explicit that any or all of the three elements of the child aggravator can apply. That is where behaviour is directed at a child or use is made of a child to direct behaviour at the victim; that a child saw, heard or was present for the abusive behaviour; or that a reasonable person would consider the behaviour to have an adverse impact, and where the child usually resides with the victim, the offender or both. Although it is considered that any or all of the aggravators could apply in the current draft of the Bill, my intention is to make it explicitly clear that that is the case and that a number of the aggravating aspects may apply at one time.

A further amendment to clause 9 provides that a child does not have to be aware of the abusive behaviour for there to be an adverse impact or for the aggravator to apply. Given that the first two aspects of the child aggravator turn on the facts that there is abusive behaviour directed at a child, that a child is used to direct behaviour at another or that a child saw, heard or was present, it could be argued that, again, the amendment is not needed. To take on board the Committee's concerns, we agreed that the Bill's explanatory and financial memorandum would make it clear that the involvement of a child could be unwitting or unwilling. On considering the matter further, however, I felt that that might not provide the necessary robust assurance that the Committee sought. Although the explanatory and financial memorandum sets out the thinking of the Department and the thinking behind the Bill, it does not form part of the Bill. The amendment therefore intends to provide the necessary reassurance to the Committee that the provision is as robust as possible.

Finally, having taken further account of the concerns raised by a number of members during earlier sessions, particularly Paul and Rachel, I have made provision for aggravation where a reasonable person would consider that abusive behaviour would adversely impact on a child. It provides that there does not need to be evidence that the child ever had any awareness of the accused's behaviour or any understanding of the nature of the accused's behaviour or that the child was adversely affected by the accused's behaviour. Again, although I concede that the amendment could have been tabled earlier, it is intended in the spirit of addressing Committee concerns before the legislation passes so that the provisions are as robust as possible and that we maximise consensus. It remains the position

that the child aggravator can apply simply by virtue of the fact that the child saw, heard or was present for the abuse; that that behaviour was directed at the child; or that use was made of the child to direct abusive behaviour at another person. That turns on the facts, with no conditions attached and no evidence of impact needed. The amendment in no way detracts from that.

On the reasonable person provision, I note the amendment tabled by Rachel Woods and the concern in her recent correspondence that my amendment is limited to cases in which the child lives with either parent or both parents. I realise that Rachel will not, in all likelihood, have had sight of my letter, or is only receiving it as we speak, but it is important to remember that the first two of the three child aggravators turn on the facts and on direct behaviour. In those cases, it is appropriate that there can be aggravation where any child is involved. The third aggravator — that of the reasonable person — considering that it would have an adverse impact, covers more indirect and less overt behaviour, where that is in the context of the wider familial home environment. It deals with incidents in which a child is in an abusive environment but is not directly involved as such. For example, it covers where a person is prevented from leaving the home to take a child to school or a medical appointment or where the abusive behaviour impacts on the child's well-being and development but does not necessarily directly involve the child.

Rachel's amendment mirrors my second and third amendments to clause 9. Broadly speaking, they have the same intent, albeit with a slightly different drafting approach. The key difference, however, relates to the fact that my amendment on the reasonable person provision is subject to the child having to live with the offender, the victim or both. It is intended to deal with incidents in which a child is in an abusive environment but is not directly involved as such. It also reflects the fact that living in an environment in which domestic abuse is carried out is what can most adversely affect a child. The very broad approach that is proposed in Rachel's amendment would capture indirect behaviour, regardless of the connection between individuals. Given that the reasonable person provision will potentially address the outworkings of abusive behaviour that is indirect, as opposed to direct, behaviour, I believe that Rachel's amendment would pose a risk of capturing incidents and give rise to increased sentencing where it is not appropriate. The approach that I and the Department have adopted reflects that which has been adopted in Scotland. I therefore do not support Rachel's amendment.

Finally, Rachel had also tabled an amendment to clause 9 to provide that the child aggravator would also apply if, at any time in the commission of the offence, the accused threatened to direct behaviour at a child. Although I consider that the threatening behaviour aspect would be captured by the offence, with the child aggravator then applying to it, that provision would make that aspect explicit. I am therefore content to support that amendment.

Chair, I do not know whether you wish for me to move on to clauses 11 and 17 or whether you wish to look at clause 9 now and move on to clauses 11 and 17 afterwards.

The Chairperson (Mr Givan): We will pick up on clause 9 and bring in some members who want to raise questions on it. I know that Rachel and Paul Frew have laboured in that area in previous months, so I offer either of them the opportunity to go first.

Mr Frew: By all means, Rachel, tear on.

Miss Woods: OK. Thank you, Minister, for that. I appreciate it.

I got your email five minutes ago. It was just sent to my account, so I obviously have not read it, but I will do so after the Committee meeting.

I am slightly baffled by the approach taken to clause 9. You will appreciate that we have been labouring the matter for a number of months, much to, I am sure, the annoyance of other members, but it is very important to get the clause right, given that we are today debating two sets of amendments when we were told that none was needed. At the outset, a number of organisations — Women's Aid, Action for Children, Barnardo's, the NSPCC, NICCY, the Human Rights Commission (HRC) and, specifically, the Bar — all raised legitimate concerns about clause 9 in evidence to the Committee. When did you become aware of the concerns raised by those organisations? Did you have any discussions with officials at that point to address the issues raised?

Mrs Long: Rachel, we have been having those discussions. First, as I said, I apologise for the letter. This week has been testing, and it has been difficult to turn things around with the speed at which I

normally operate. Yes, we had the discussion about clause 9. The issue is not whether I feel that the amendments are needed. My position remains, as does that of the Department, that they are not necessary in the outworking of the offence. We recognise, however, that genuine concerns are being expressed by the Committee, and, in the spirit of trying to reach consensus, we tabled amendments to clause 9 as a way in which to make explicit things that we believe are implicit because we had not convinced the Committee and others, as you said, that that was sufficiently clear. We felt that it is important that everyone has confidence in the Bill. Its purpose is not to set up a disagreement between the Committee and the Department or between the Department and the sector; it is to get as much consensus as possible and the best-possible outcome. If, by making those issues explicit, rather than implicit, we can reassure people that the clause is more robust, I am willing to table the amendments, regardless of whether I believe them to be necessary. That is the position that I have come to after having considered all the information in the round and the fact that a number of members, you and Paul included, have been particularly concerned about the issue.

I have listened and responded as the Bill has been drafted and taken through, and I have the opportunity at Consideration Stage to make decisions about how we want to proceed. I decided that, on balance, it was better at this stage to make those things explicit rather than to leave them implicit in the legislation. We had discussions on putting the clarification in the explanatory and financial memorandum, which gave the Committee some degree of certainty at that stage. When I looked in more detail with my officials at doing that, I felt that it was not the way to proceed. I recognise *[Inaudible]* the explanatory and financial memorandum sets out the context in which the Department is framing the Bill. It therefore may be a material consideration if the nature of an offence is debated. It is not part of the law, however. It does not stand part of the Bill. On reflection, putting it in the Bill rather than in the explanatory and financial memorandum is therefore the right thing to do. It is on the basis of having reflected on the Committee's report and the discussions that we have had to date that I will move the amendments to clause 9.

Miss Woods: Thank you. I am trying to figure out the timeline. It was after the Committee's report was published. I am aware that, at that time, the only person to vote against clause 9 as it stood was me. I appreciate that I am taking up a significant chunk of the Committee's time on amendments that I, as an individual MLA, have issues with. I believe that another Committee member has added his name to the amendment so that it can be published. I apologise to the Committee for having taken that time up as an individual MLA, but it was not the Committee's position at the time that there were issues with clause 9: it was my position. It is now Mr Frew's as well. I am trying to piece together when the decision was made. Was it made following reflection on the chat that we had in Committee about putting details into the explanatory memorandum rather than accept my tabled amendments? Was that when the decision was made on the set of amendments to clause 9 that you tabled?

Mrs Long: Although the timeline is fascinating, it will not, frankly, make any difference to the people who will be affected by the legislation. Getting this right is more important than the point at which decisions were taken.

A number of discussions on clause 9, including with you, took place at the Committee over a protracted period. At different stages, we had *[Inaudible]* various resolutions to the issue, with which we were then proceeding. For example, in the case of the explanatory and financial memorandum offer that we had made, when it came to the point at which we were in the process of bringing that forward, having also listened to the rest of the discussion on it, I considered, in the round, that we could go further and put it in the legislation, as that would give the Committee the more robust reassurance that was required.

I am not sure whether the point that you are trying to make is about whether I am simply responding to your amendments with alternative amendments. I would simply say this: it is not unusual for an MLA, or an MP for that matter, to table amendments to Government legislation, either to probe an issue or to try to push an issue back on to the agenda. That is part of the process. It is unusual for such an amendment from a Back-Bench MLA or MP to end up in the legislation, simply because the Department's drafting capacity of greater. It is therefore usual for a Minister who feels that a Member has raised a valid point, either in the discussions or at the amendment stage, that needs to be addressed then to capture those issues in a departmental amendment and have the benefit of Office of the Legislative Counsel (OLC) drafting to ensure that it is as watertight as possible.

Proposing changes and amendments to those issues is not to disparage the work that has been done by the Committee or to undermine the process. It is simply recognition that the Department's drafting capacity means that better legislation can be produced as a result, and it is a reflection of a willingness

on my part to try to accommodate, insofar as I can, without undermining the principles and intent of the Bill, the wishes of the Committee.

Miss Woods: OK. Thank you, Minister. During Committee deliberations, departmental officials apologised for the error of providing incorrect advice to the Committee and for misinterpreting Scottish law, which may have meant that they did not understand at an earlier stage what some of us were trying to do to strengthen the clause. After that was acknowledged, officials made it clear that they still did not need to see changes to the Bill. I appreciate that your position remains that the amendment is unnecessary. When did you become aware that the officials' rejection of members' suggestions was based on the fact that they did not understand the provisions in the Scottish legislation? At that point, did you see any need to strengthen clause 9?

Mrs Long: This is an ongoing conversation. To be clear, when my officials come to the Committee, they are briefing the Committee on my behalf. They are not on a solo run, making decisions on their own. We are having conversations on an ongoing basis. There is no point at which I become aware of what my officials are saying. I get a weekly read-out of the Committee meeting. I am aware, if not instantaneously, fairly soon afterwards of what has been said and what they are doing. I am also aware and briefed before they come to Committee. There is no issue of my not being aware of what was discussed.

The issue here is simply that we felt that it was already implicit in the legislation and that the clause was sufficiently robust. We have now reflected, on the basis of the strength of feeling of members, if not the whole Committee, on those issues, and have decided that, in order to accommodate that strength of feeling and acknowledge it, we are willing to make those changes. That is the way in which we ought to do business. Having spent most of my time in the Assembly as a Back-Bench Member, I would hope that Ministers respond when amendments are tabled, be they probing amendments or amendments about issues that Members hope to see in the Bill, and try to incorporate those issues, because that is the best chance for us to try to produce good legislation: legislation in which everyone has a stake and that all of us want to see delivered.

My officials are not acting outwith the discussions that they have had with me, nor are they keeping me in the dark about what is being said in Committee. I am across that. What I am saying is that, on reflection, at this stage of the Bill — every stage of the Bill is a point of reflection — I decided that we should proceed to put this and make it explicit.

Miss Woods: Thank you, Minister, and I appreciate your answers so far. One further point, before I let other members in. Can you outline the conversations that have been had with Scotland with regard to clause 9?

Mrs Long: I have not personally engaged in a conversation so I will pass to Veronica to answer specifically on the advice that the officials have taken and the discussions that they have had with Scotland on clause 9. I am happy for Veronica to answer on that point.

Dr Veronica Holland (Department of Justice): Thank you, Minister. We have ongoing discussions on this policy or even more generally, in relation not only to the Bill but to other matters, with colleagues in Scotland and our counterparts in the Home Office. There are a range of discussions that take place with them from time to time on a wide range of policy matters. We engaged with Scottish officials when their legislation was going through and on the provisions that we have been taking forward more generally in terms of what their experience has been in relation to their offence where it has been operating in practice and to try to get a sense of some of the issues that we need to take account of.

Miss Woods: OK. Sorry, what I was trying to get at was how many conversations have been had with Scotland, who those conversions have been with and anything recently based on the amendments and the understanding of the Bill at the moment. My basic point — I will reiterate this on Tuesday — is that the Scottish legislation is fundamentally different to ours. The meaning of a connected person is fundamentally different from ours. A and B can only be partners and ex-partners, therefore I do not see any need for the residency bar that has been put in. I wonder what, if any, conversations have been had with the Scottish Government, or the chief prosecutors, or a range of prosecutors, on the implementation of clause 9 in Scotland and its effectiveness?

Dr Holland: As part of this process, we have had discussions with officials in the Scottish Government and with prosecutorial colleagues. We have not had any discussions in that underpinning sense in

relation to the differential in the scope of the two offences. The position that has been adopted on why we consider that there is no need for anything different in relation to that is simply by virtue of the fact that our offence covers familial as well as intimate partner relationships, due to that breakdown in the aspects between the limbs of the aggravator. As the Minister has noted, the first two relate to direct behaviour against a child or involving a child. The third reasonable person aspect is considered to relate more to indirect or less overt behaviours, and largely focuses in on — certainly, this is something that was covered in the Scottish evidence while their Bill was going through — and is intended to cover the home environment in which a child may be living. For others, where the child is a victim of the offence or a victim of domestic abuse more generally, and they are captured by the domestic abuse offence, that direct behaviour would be picked up through that. It is really that distinction between direct and indirect abusive behaviour that is being captured by these elements, and therefore the distinction between the first two applying to any child, because, again, it is that direct experience where the child is present, behaviour has been directed at them, or a use has been made of them to direct that behaviour. The reasonable person aspect is very much about indirect behaviour and the wider environment that a child may be experiencing.

Miss Woods: I will leave it there, because I do not agree. That is my interpretation, and that is why the amendments have been tabled in the way that they have been. I will make my case again on Tuesday.

Mrs Long: I am conscious of two things. First, we are now halfway through the hour that I have before the Executive reconvene this afternoon. Secondly, we have the other clauses to discuss. Obviously, you have not had the benefit of going through my letter in detail. If you and any other Committee members are interested in this issue — I know that Paul Frew has also been particular interested in clause 9 — I am happy to meet you at some point tomorrow just to have a fuller discussion. As things stand, I am conscious that we have the rest of these to go through. I am keen, as far as is possible, to reach consensus on this rather than not. I think that that would be helpful for the Committee, the Department and the sector, and, ultimately, better for the Bill.

If you are open to that, I am happy to make that offer, Mr Chairman, if that helps us to move on to the next clauses.

The Chairperson (Mr Givan): No, Minister, it does not actually help. I appreciate that there is Executive business, but we have cleared our agenda and taken business off the agenda today to facilitate this. You have been persistent in asking for a Committee meeting. That has been facilitated. I have Paul Frew, Linda Dillon and Sinéad Bradley wanting to ask questions on clause 9. I have deliberately not engaged on it to allow members to do that. We have still not got to the other two clauses and your position on the Committee amendments. I appreciate the pressures that you are under, but the Committee has gone out of its way to facilitate your persistent requests. If you are not going to be able to accommodate that, then that is a decision for you, but I want to make sure that members get their opportunity to deal with their concerns around clause 9, so Paul Frew —

Mrs Long: Chairman, I am in your hands in terms of how the meeting goes forward. I am happy to accommodate until the point when the Executive reconvene, but, as you know, the protocol is that Executive business has to take priority over the business of Committees. That is simply the rule.

The Chairperson (Mr Givan): That is a decision for you to take, but, in terms of the Committee —

Mrs Long: No, that is the protocol.

The Chairperson (Mr Givan): It may well be the protocol, but the Committee has its protocols. The Committee has been in your diary now for days. I know that the Executive have been meeting consistently for the past three and a half days, but the Committee cleared its agenda to facilitate your requests to come before it. If you are going to pull out of it, it will be for you to decide if you are going to do that or whether other arrangements can be made for you at the Executive.

Paul Frew has indicated that he wants to speak, and I will bring him in.

Mr Frew: Minister, I will be as concise as I can to get as many members in as possible, because clause 9 is important. Before I reverse you through clause 9, let me hit on the point that Rachel touched on. Clause 9(2)(a)(i) and (ii) are not directed behaviour. Read your own explanatory and financial memorandum:

"Subsection (2)(a)(i) provides that the aggravation applies where it is shown that, at any time in commissioning the offence, the accused directed behaviour at a child. This could include the accused threatening violence towards a child to control or frighten the partner/connected person or being abusive towards the child."

That is not directed behaviour; that is indirect behaviour. I get the reason why, and you have every right, Minister —. Sorry, I will end it there and ask you to address that point, because the directed behaviour at the child is not directed behaviour as in your memorandum.

Mrs Long: I am not following the point that you are making, Paul. I apologise.

Mr Frew: I am reading your memorandum. It says that —.

Mrs Long: Yes, I realise that, but I am not clear about the point.

Mr Frew: The memorandum states:

"This could include the accused threatening violence towards a child to control or frighten the partner/connected person".

That is not a directed behaviour. That is not, as you have described, these two limbs being directed behaviour, and then you have needed that new amendment to create the new offence, which, quite frankly, does damage to clause 9. I hope that I am coming across right and have expressed myself correctly. If you can threaten violence towards a child to control or frighten the connected person or partner, you are not directing that violence at the child. That is not directed behaviour.

Mrs Long: To clarify, I have said that, with respect to the amendment to clause 9, the child aggravator would apply if, at any time in the commission of the offence, the accused threatened to direct behaviour at a child. The threatening behaviour aspect would be captured by the offence, and the child aggravator then applying to that. The provision that is suggested in Rachel's amendment would make that explicit, and I am content to support it.

Mr Frew: No. You missed my point about the two limbs being directed behaviour and the need, then, for the strengthening of it. I will move on, Minister.

You have every right to make amendments, as every Member has, to your Bill at any time, but if you have done so in the knowledge that it is not necessary and it is only to provide consensus, why would you damage your clause when you know that it would have the reverse effect in the Committee and, most probably, on the Floor of the Assembly? I will tell you what I mean by that. You have copied and pasted the residency order from Scotland. They are two totally different Bills. Your officials have told us that they are two completely different Bills and two different styles of Bill. Because of that different style, you have also added descriptors and been explicit when, all along, you have told us that the secret of this Bill is to not be explicit. Amendment No 5 talks about the adverse effect on a child:

"including likely to cause the child to suffer fear, alarm or distress".

Why is that there, Minister?

Dr Holland: Paul, that bit about "fear, alarm or distress" is to try to make it clear that that can be encapsulated within that. The 9(2) provision, as you say, is about directing behaviour at the child, making use of the child or the child seeing, hearing or being present. We view those very much as direct behaviour in relation to the child, but in that bit about adversely affecting the child, that reference to "fear, alarm or distress" is just to make clear that that could be captured within harm against that individual child. It is to try to provide clarity on what that can encapsulate.

Mr Frew: But for so long, Veronica, you have been telling us that it is not required, and now the Minister is saying that she does not even deem these amendments to be necessary. I can tell you — so can Rachel and, I suspect, other members of the Committee — that, given that we only caveated this support for clause 9 on the changes to the memorandum, this does not create consensus. It has the opposite effect, and you are actually doing damage to your own Bill. The Committee is telling you this: you are doing damage to your own Bill. The fact that you needed two goes at this and the fact that you needed amendment Nos 5 and 6 tells me everything that I need to know. Rachel Woods gets

it, and that is why she can do it in one amendment. Why do you need to do this if you do not deem it necessary? It puzzles me.

Mrs Long: The point that I am making is that we are making explicit what we believed to be implicit. It was an endeavour on our part to capture the concerns that had been raised about the lack of explicitness in this. That is the purpose and intention of what we have tried to do. I have said that I am content with the second amendment, but the wider issue is about what offences we can capture. You make the point, Paul, that it is a very different offence to the Scottish offence. In fairness, it is a different offence, but not a different structure of offence. Ours is different in that it is wider than the Scottish offence so that it captures other familial relationships, but it is based around the same broad structures as the Scottish structure, whereas, for example, in England, the structure of the offence is entirely different, and therefore comparison between the two would be entirely specious. It needs to be taken into account that they are not the same offence.

Mr Frew: You make my point for me, Minister, because, by adding the residency, you rule out the niece, the nephew, the best friend's daughter and the next-door neighbour's son or daughter.

Dr Holland: That is where we are trying to make that distinction. Those would be captured by the others limbs of the offence with regard to where that individual child is present, where they are used to direct behaviour or where behaviour is towards them. This additional part is really to try and encapsulate that less obvious, less overt behaviour that happens — the impact of living in an environment where domestic violence is being carried out. We are of the view, with regard to the niece and nephew scenario, that those will be captured by the other aspects of the provisions in the Bill.

Mr Frew: That is why you include the reasonable person test, and that is fine. However, there is absolutely no need for you to add residency in this limb of clause 9 when you have not been consistent throughout clause 9, or even the Bill, around this aspect. You are being explicit in this part of the Bill when you have not been explicit in any of the other parts of the Bill, and that does damage to the style and contents of the Bill, as I have tried to demonstrate to you, Veronica, and the Minister. This damages your Bill and destroys consensus in this place. I just cannot see for the life of me why these two clauses cannot be removed, and, if the Minister still feels strongly enough, then they can be put back in again at Further Consideration Stage, as is her right.

Ms Dillon: I want to establish a bit more about the actual clause. First, I understand what the Minister is saying around acknowledging and trying to address the concerns of the Committee, but, to be fair, there actually was consensus at the Committee. I know that Rachel put in an amendment, but it was her amendment rather than the Committee's amendment. The Committee had reached a consensus that the explanatory and financial memorandum (EFM) would address it. I accept that there is now an acknowledgement that perhaps it does not. I have spoken to the organisations that raised these concerns, and they have said that — every member will be aware of this, and there is a letter in the Committee — they support both the Minister's and Rachel's amendments. I am concerned about both amendments for different aspects, but I will get an opportunity to question Rachel in the Committee. I understand that the Chair is going to give us some time to do that, and I appreciate that, because I have some questions about Rachel's amendment. That is not to say that I do not support it, but I have questions that I want to ask, just as I want to ask questions about this one.

I have the same concerns about the residency one. You have answered some of it to be fair, Veronica, but my concern is actually —. I accept that the adverse impact is not going to be the same on a child who is in visiting, who lives up the road and who happens to be there when something happens, and they run home and say, "I do not know what is going on up in that house, but it is nothing to do with me", as would be experienced by the child who lives in that house and experiences it day and daily. Where I am concerned with the residency matter is where a child is potentially resident with, for example, grandparents because of what is going on in the home, but there is contact and the child spends two or three nights a week overnight within that home. There is also where the couple are separated and the child is living with some other member of the family, and the abusive partner has a new partner, and when the child is staying with them then they are abusive to that other partner. I still think that it would have the same impact; that is still your mummy or your daddy, regardless of whether the other person is not connected to you.

It is probably for that reason that I am concerned around the residency part, and for that reason I probably would struggle and, at this stage, cannot support the amendment because I am so concerned about that issue. I accept everything that Rachel and Paul have said around that, but my concerns actually go a wee bit further than that. I accept that you cannot capture everybody in every

part of this Bill, and there are parts of it that are very specific to those children who are going to be worst impacted, and I think that that is a fair approach to take. However, that stipulation around residency creates a real issue for me, and, as I have said, I will query the issues in relation to Rachel's amendment. If I was picking, at this point in time, between the two amendments, then it is going to be to support Rachel's amendment. We, as a Committee, are not going to take a position with regard to this. We are going to go as our parties and in our individual approach as MLAs. I am just telling the Department where I am sitting at this stage, and I will know better where I sit on Rachel's amendment after I have had the conversation with her. However, at this moment in time, that need to reside just goes too far for me. Some of the other issues that Paula has already raised are also a concern for me. There is no value in me going over them particularly and taking up other people's time; I know that Sinéad wants in. Thank you.

Mrs Long: On that, Linda, I appreciate the point that you are making, and the way that you have put it is helpful. There is a context here, in that we are dealing with domestic abuse. The definition of domestic abuse is based on residency. We have not added in familial connections and so on, where there is not an element of residency to this. There is something here about having these relationships in a domestic, home environment. That is the first thing.

I take your point about the child of a couple, for example, where it is a parent-child relationship. I understand the concern that you are expressing. The difficulty is that, in order to capture that in the way you suggest, it would also capture children who essentially have no relationship to the household in question. As you said, it could capture other children who just see, hear or are present. That is the area that Veronica tried to express the concern that we are talking here about a particular course of action that has to be —. I am trying to thing how best to clarify the position. It is that is not just any child; it has to be a child who is directly impacted. That is the point that I am trying to make about what we are doing. The amendment was, as I said, an attempt to try to get it. I accept that Rachel's amendment was not a Committee amendment, but I am also aware that there have been lengthy discussions.

The financial memorandum does not stand part of the Bill. It says that clearly on it. That was what raised my concerns about that being seen as, if you like, a sop to the wider concern, because it would not ultimately provide the Committee with the level of clarity and robustness it appeared to be seeking. That is why putting it in the Bill rather than in the explanatory memorandum, to me, seemed a more appropriate reflection. If the Committee does not feel that that is appropriate, then obviously I will take that on board. I am listening carefully to what is being said today, because, as I said, this is an ongoing process; we are not at the end of the road. I will take that on board, but that was the purpose of moving it from the EFM to it being in the Bill.

Mr Frew: And we support that.

Ms S Bradley: To be fair, a lot of it has been gone over. For me, it is about there still being a real disconnect between the definition of connected person and the breadth of relationships that we are trying to bring into this Bill. The notion of residency jars with that. I do not see any consistency or flow in that. Minister, you said that there is always that residency notion in the background because this is domestic and is referring to units and relationships, but I am not sure that it is there. This addition of residency does not really flow through this Bill. I do not see it in other parts, and I remain to be convinced that it fits. I can see how it fitted in the Scottish legislation because their parameters were much tighter and smaller in terms of who the connected persons could be, but I remain to be convinced. I do not know if there is anything more that you could say to me at this point that would throw more light on that.

Dr Holland: Sinéad, is it helpful if I try to give some further explanation in relation to that residency aspect, building on what the Minister has said?

As you will be aware, in the other elements relating to the aggravator there is not a condition of the individuals living together. Essentially, as we said, those are intended very much for situations where the child is in the house and sees the behaviour. The "reasonable person" aspect is very much intended to try to deal with the wider environmental impact and how the relations between two individuals bear out on a child.

There would be concern if we did not have the residency impact. Take the scenario where individuals live in two terraced properties, and there is argy-bargy in the property next door every night. It could be argued that that abusive behaviour has an adverse impact on a child, albeit that they are not in that

household. Our concern is that we need to try to ensure that we are dealing with the behaviour that impacts most on a child. We do not want to have a situation where any indirect behaviours between individuals where there is some connection to a child could be brought to bear in a person having increased sentencing for that offence. So, as I say, the focus of the reasonable person aspect is very much to try to reflect where it is indirect behaviour in the environment within which they are being brought up that adversely impacts on a child. Does that provide some further clarity on the thinking on that?

Ms S Bradley: Thank you. It does, but it requires a bit more investigation on my part.

The Chairperson (Mr Givan): There was a comment that this offence needs to occur in a domestic setting. Where does that exist in the Bill? Indeed, at clause 10, the Bill makes provision for these offences occurring outside the United Kingdom, which is an issue that we had to get legal advice on. Minister, you said that this offence takes place in a domestic setting: where is that?

Mrs Long: I did not say that. What I am saying here is that the context of domestic abuse, by virtue of its name, means that there is an element of domestic and familial relationship. That is the scope of the offence that we are creating. It is not explicit in the Bill because we accept that that abuse can take place in other settings. To be domestic abuse, it does not have to happen in a house. That is the first thing to clarify. That is not what I was implying. I was simply implying that there has to be this familial relationship and that it is not just general abuse of another individual. That is the scope of the Bill. Otherwise, we would be capturing things that are not domestic abuse. Whilst those may be inappropriate or even criminal behaviours, they would not fall under the scope of the Bill. If it helps to clarify, it is not my intention to suggest that people need to be present in a particular premises for this to apply.

The Chairperson (Mr Givan): We appreciate that. That goes to the issue, then, as to why this amendment has residency attached to it, because that is not reflected anywhere in the Bill.

Mrs Long: Yes, I understand. That point has been made today, I will reflect on it with officials. Veronica has tried to set out the rationale for that, whereby lower-impact offences could carry quite a heavy sentence as a result of the child aggravator element and so on being applied, where someone is non-resident and witness to something that is happening or present at something that is happening but not as a course of action. We will reflect on what the Committee has said. That was the purpose of my seeking this meeting today. I want to understand better exactly where the particular issues with this are, so that is helpful to me.

The Chairperson (Mr Givan): I am now just repeating what Linda said. The Committee reached a position on this. We did not accept Rachel's amendment at the time. We had consensus outside of Rachel's position. However, the information on which that decision was based has now changed because of the doubt that has been raised by your intervention. As such, it becomes an individual decision for political parties. The Committee is no longer bound to a Committee decision on that basis. Just to be clear, even if you remove your amendment, it is past the post of a Committee position being able to be taken.

Mrs Long: I understand that. As I say, Chairman, the issue was particularly in respect of the explanatory and financial memorandum. It simply would not have provided the reassurance that we had indicated to the Committee that it might. On reflection, given the importance that the Committee had placed on that particular issue, I did not feel that it was an appropriate vehicle to resolve the issue.

The Chairperson (Mr Givan): OK. There are no other comments from members on clause 9. Minister, do you want to take us through clause 11?

Mrs Long: I will take clauses 11 and 17 together. I know that the Committee wishes to discuss them, and they are linked to the new clause that deals with the child cruelty offence.

The Chairperson (Mr Givan): OK. Sure.

Mrs Long: As members are aware, the evidence received by the Committee during its deliberations highlighted concerns that non-physical abusive treatment of a child by someone with parental responsibility for them was not captured by the current child protection provisions. To respond to that, an amendment will be made to the child cruelty offence in section 20 of the Children and Young

Persons Act (Northern Ireland) 1968 to make it clear that non-physical abusive treatment of a child by someone with parental responsibility for them is an offence. That offence applies to those under the age of 16. As a result of that, amendments have also been tabled to clauses 11 and 17.

As it stands, clause 11 provides that the domestic abuse offence does not apply where a person has parental responsibility for someone under 18 years of age. I have tabled an amendment to that clause that will change the age from under 18 years of age to under 16 years of age. That will ensure that non-physical abusive behaviour against 16- to 18-year-olds by someone with parental responsibility is captured by the new offence. That is necessary, given that, assuming that the amendment passes, section 20 of 1968 Act's capturing of non-physical abusive treatment of a child by someone with parental responsibility for them will only apply to persons under 16 years of age. To do otherwise would mean that those aged 16 to 17 would not be protected from non-physical abusive behaviour. The amendment to clause 17 has been tabled for the same reason.

Although the ill treatment or abuse of a child or young person falls in the child protection arena, it is important to ensure that the necessary protections are afforded to all young people. We can debate whether the child cruelty offence should have a threshold or under 18 or under 16, but we cannot provide for that in the Bill. My focus is on ensuring that abusive behaviour against children can be dealt with through whichever means are available. For that reason, I have tabled amendments to make it explicit that the child cruelty offence covers both physical and non-physical ill treatment of those under 16 and to extend the domestic abuse offence to those aged 16 and 17. Without those changes, there would be no protections for those who are 16 and 17.

We have liaised with Department of Health officials on that, and I have liaised with Robin Swann on those particular elements, as they impinge on his responsibilities for child protection. He has responded positively and said that he supports our approach.

The Chairperson (Mr Givan): All right. Does any member wish to raise questions about the 18/16 issue? We discussed that issue, but we did not have sight of the amendments at that time. If members need any more clarity about that issue, they should feel free to ask.

Ms S Bradley: I followed what the Minister said, but does she have any concerns about the sentencing not being equal in that regard? It would direct a group to a different legislative avenue, and the sentencing available may be distinctly different.

Mrs Long: I understand the point about the penalties. What is important is that the necessary protections and safeguards are in place to address non-physical abusive behaviour against children. That is the priority. That is provided through the amendments to the child cruelty offence, as well as the lowering of the threshold for the parental responsibility exclusion.

Children under 16 are dealt with under Health's child protection legislation, in which the maximum penalty of 10 years' imprisonment has been in place for some time. I understand your point, Sinéad, but, as Justice Minister, I cannot alter that, and any changes would have wider ramifications for the Department of Health, which has primary policy responsibility in that area. It would be for the Minister of Health to bring forward any change in the penalty for the domestic abuse offence provisions. That could cover not only physically abusive behaviour but serious violent and sexual assaults, which is why the reflected penalty is 14 years. That reflects, if you like, the current sentencing structures that apply to similar offences in the justice sphere.

The difficulty with this is that, because we are having to use two legislative vehicles — there is no alternative, unfortunately, that would enable us to do this by one, simple means — we would, essentially, not be able to change the penalties under Health's child protection legislation. That is the fundamental issue, and it may well be that the Committee will want to write to the Committee for Health to see whether the Minister of Health might want to look at and review the penalties within his Department's framework. I am happy to assist the Minister of Health with that, if he wants to do that, but I cannot do that on his behalf, because it is beyond the scope of my Department and this Bill.

Ms S Bradley: I appreciate that, Minister. Thank you.

The Chairperson (Mr Givan): If there is no more clarity needed on those areas, do you want to move on, Minister, to addressing the Committee amendments?

Mrs Long: Yes, Chairman. First, as you are aware, I am content with the Committee's amendment on the guidance around data collection. I intend to table an amendment at Further Consideration Stage because there are some issues around the organisation names referenced in the provision that the Committee has tabled through its amendment. They will be pretty minor technical changes, and we will share those with the Committee as soon as we have them available to us. That is all on data collection.

We are in agreement that there is considerable merit in provision being made that will enable information to be shared with schools for the purpose of the Operation Encompass approach. As, I think, has been noted, I have withdrawn my amendment, and we believe that provision can be made at Further Consideration Stage for some of the concerns that I had in that regard. I want to stress that my amendment was intended to build on and enhance the Committee amendment through providing increased clarity and certainty on what the regulations will contain and to ensure that the provisions are as robust as possible. Banded enabling powers would be more targeted, being explicit *[Inaudible]* can set out who information can be shared with and, secondly, what is deemed to be a school or a college; who are pupils or students; what a domestic abuse incident is and the circumstances in which information can be shared; and what constitutes unauthorised disclosure and the offences associated with it. I want to ensure that the necessary scope and authority is provided to take forward the detail of the regulations more clearly, setting out what will be provided for in the regulations with who, what, why and when.

There is also the issue of the vires to take forward some aspects of the regulations without this signposting, for example to enable colleges to be captured and also to be able to provide for offences and penalties associated with the provisions, for example where there is a breach and there is unauthorised disclosure.

In the absence of this, there might be a question about whether it is within the Assembly's legislative competence, so *[Inaudible]* also needed of any infringement of article 8 of the Convention on Human Rights, the right to respect for private and family life. Again, my amendment would seek to address these issues, build upon and strengthen the provisions and minimise the risk of the enabling provision not being sufficient for *[Inaudible.]* I am hopeful that the Committee will welcome this, and, therefore, I hope that, when it comes to Further Consideration Stage, we will be able to reach an agreed position on Operation Encompass.

On the issue of reporting requirements, which is dealt with by amendment No 21, again, *[Inaudible]* agreement that there is merit in reporting on the operation of the Bill. As noted, I have withdrawn my amendment, but I consider that there should be some amendment at Further Consideration Stage. Again, the intention here is to build on and strengthen the Committee amendment to change it primarily to refine some the language around criminal proceedings so that it more closely aligns with practice. The amendment at Further Consideration Stage would technically *[Inaudible]* quite different, given that there will be a substantive Committee provision in place. *[Inaudible]* starting from *[Inaudible]* sheet. We have withdrawn our amendment, and it will not come back in the same form. However, the intent will be the same as that in my previous amendment No 21. I hope that that makes sense.

Members will also wish to note that additional provisions on recording police offences is with *[Inaudible]* in cases prosecuted by the Public Prosecution Service. I note that Rachel Woods's suggestion of recording offences by police district is helpful, so, I intend, if the Committee is minded to do so, to support that at Consideration Stage next week. I also agree that there is merit in, for clarity, stating the number of offences that have been aggravated and have been proved as such.

As regards the provisions on the experience of witnesses and the arrangements of business in court, I think that those would be more appropriately considered, in terms of the three categories of offence as a whole, rather than by the individual categories.

On the guidance aspect, my amendment reflects that *[Inaudible]* provisions commencing, the guidance will have been finalised and published. Therefore, the focus is on review and revision.

The wording around the time period for reporting is designed to reflect the fact that, for officials to *[Inaudible]* publications, those typically require around six months from the chosen end date.

Finally, I have some concern about the requirement that there be ongoing reporting on a long-term basis. That has not been done for any other offence, and it could set a resource-intensive precedent for other areas with material offences coming forward, so I question the benefit of that once the offence has bedded in.

Chair, I am not sure whether you wish me to continue with the remaining bits of Rachel's amendment No 27 that deal with section 75 information on victims and offenders or whether you wish to *[Inaudible]* the point that I just covered on the agreed Committee position.

The Chairperson (Mr Givan): For my benefit, can you pick up on Rachel Woods's amendment on breaking down the numbers by district and that kind of information? I appreciate that there is likely to be an amendment on the reporting of that at Further Consideration Stage to cover a number of those points. What I want to know is why, at this stage, you are supporting Rachel Woods's amendment on that aspect to do with policing, just so that I know. I knew what my position was going to be next week, but that might change, if you can give me a good reason.

Mrs Long: My reasoning was that I did not *[Inaudible]* resisting an amendment that I was going to subsequently provide for. There is no harm, if you like, caused by accepting the amendment that Rachel has composed on recording offences by police district. It is a helpful recommendation, so I am happy to accept that amendment at Consideration Stage next week. I also think that there is merit in, for clarity, stating numbers *[Inaudible]* and so on. It is simply that I do not wish to resist amendments if I believe that there is merit in them. What I am trying to do, at this stage, is get those in at Consideration Stage, where possible, and then refine them at Further Consideration Stage. I am not sure whether that answers your question, but we certainly see merit in that amendment and therefore do not wish to resist it.

The Chairperson (Mr Givan): That is OK. This is not a Committee position, because we did not take a Committee position.

Mrs Long: Of course.

The Chairperson (Mr Givan): I was leaning towards being against the amendment. However, I had a mark against it, given that there will be a wider tidying-up exercise at Further Consideration Stage. That was the preliminary approach that I was thinking about. There is maybe a broader point about —.

Mrs Long: Obviously, the remaining aspects of amendment No 27 deal with section 75 information and so on. On that aspect, I am not convinced, so I do not support the second part of amendment No 27. I can set out my reasons for that, if that is helpful. On the specifics of that element of reporting by district, I *[Inaudible]* that *[Inaudible.]*

The Chairperson (Mr Givan): Sorry, I think that our signal might be on the blink a little bit, Minister.

Mrs Long: Apologies.

The Chairperson (Mr Givan): You are OK.

Mrs Long: It is just to say that I do not support the remaining aspect of Rachel's amendment No 27, which deals with section 75 information, and I will run through the reasons for that. The first part of it is about reporting by police district, and I am happy with that and content to accept it. The remaining part is about dealing with section 75 information on victims and offenders, and I am unclear what some of it *[Inaudible]* and, indeed, I am concerned that it might undermine confidence in the justice system if it in some way appears to profile people. I fear that there is a risk of collating data at that level — for example, you are dealing with a small cohort of individuals in Northern Ireland — and then reporting on that basis.

While organisations have looked at how reporting on section 75 information can be improved, operational partners have indicated to us that they simply cannot deliver on what is recommended and that it would require a complete overhaul of their IT systems, so even for them *[Inaudible]* they wish to do, will, from their perspective, require an overhaul the IT systems right across the criminal justice system, the operational and financial ramifications of which, I think you will appreciate, are fairly significant. By imposing additional requirements, not all of which will necessarily benefit victims materially, we would end up expending resources that will not be available for measures that can substantially help them. To clarify, I do not support the second part of amendment No 27.

The Chairperson (Mr Givan): That is helpful for my information. Linda wants to ask about amendment No 28, I think.

Ms Dillon: I have a very quick question, Minister. Have you had a conversation with the PSNI about whether you can record the number of offences in each police district? If it can be done, that is potentially a positive move, but has there been a conversation with the PSNI? I assume that it will have to do this.

Mrs Long: We have spoken to operational partners about what statistics they can and cannot deliver in terms of the reporting requirements, and we have liaised with them on the proposals in the Bill and the amendments that have been tabled. Veronica has, as you know, had discussions on section 75 reporting, and the feedback that we have received directly from our partners is that they cannot do that because they do not have the capacity in their reporting systems and computer systems to record that level of data without major changes to the system. For example, reporting offences by police district is operationally more manageable and therefore it could be helpful in getting additional information *[Inaudible]* on particular issues.

Veronica, do you want to talk a little bit about the discussions that you have had at official level with the partner organisations?

Dr Holland: Yes, that is no problem. We had a meeting with the organisations this morning as part our domestic abuse operationalisation task and finish group. That meets on a three-weekly basis at the moment, and it is an ad hoc group to look at the data-collection issues more generally. Certainly, the indication that we are getting, as the Minister said, is that it should be possible to provide that information on a district basis. A range of information is currently provided in that sense. As the Minister said, we have shared the amendments and the provisions with our criminal justice partners generally to take their views on what is or is not doable.

On the section 75 aspect, my understanding is that, broadly speaking, information tends to be collected on a suspect basis. There is some information on victims, but it would be quite difficult for the likes of the courts and the PPS, in particular, because they do not collect that information on victims at present, and they certainly do not collect the range of information that would be required in relation to that section 75 provision. My understanding is that conversations and discussions are ongoing on how that situation can be improved, and *[Inaudible]* appear to be at a more advanced stage on that.

Ms Dillon: May I ask a quick question? A straightforward answer would be appreciated. Previously, on the Policing Board, we asked for section 75 to be included for the same reasons that Rachel is asking for it here, to be fair: without statistics, how do you resource things and direct resources? We are always asked for statistics. In fairness to the PSNI, it said that some of it would be very simple. For example, you may easily be able to see that somebody has a physical disability or is coloured or from an Asian background and things like that. However, unless somebody gave you the information, how would you establish whether someone is gay or bisexual or has a mental health issue or a communication disability such as Asperger's or autism? All of those things are not obvious. I am not arguing against what Rachel said; I just wonder whether a way around that has been found. If it has, I would like to know about it because I would like to share it with my colleagues on the Policing Board and for it to be used in a wider sense.

Mrs Long: To be clear, Linda, we do not accept that part of the amendment, because we do not believe that the section 75 issues can be collated in the way in which Rachel has asked.

Ms Dillon: That is fair enough. I just wanted to clarify that. Thank you.

Ms S Bradley: That sort of clarifies my question: am I right that the Department does not support amendment No 27?

Dr Holland: We are content with the first aspect of it, which is around the aggravation, but not the section 75 aspect. As the Minister said, we are content with the first bit but not the second half.

Ms S Bradley: Will that be presented as one amendment — amendment No 27?

Dr Holland: We do not support amendment No 27 in its entirety because we do not support that second part. We want to bring that first element into the provisions that we will bring forward at Further Consideration Stage about the aggravation and it being proven.

Ms S Bradley: That is fine. I understand that. Thank you.

Mr Frew: Thank you, Minister and Veronica, for your time. Your amendments around the contact orders and court proceedings are a very thick read, and I have not got through them all. One of the big aspects that the Committee was dealing with was the way in which perpetrators can use court proceedings as a weapon. Amendment No 29 concerns factors relevant to residence and contact orders. Will you give us a basic explanation of what that does on the tin? Will you also give commentary around amendment No 14 from Rachel Woods, which concerns the requirement for civil legal aid? One of the reasons why perpetrators use the court as a weapon is to run down the resources of the victim. What is the Department's commentary around amendment No 14 in Rachel Woods's name? How do you see that working out?

Mrs Long: Chairman, before we do that, I suggest that we finish dealing with the Committee amendments. I think that it is important that we complete that. There is also an element of training and a further element in terms of *[Inaudible]* Committee amendments. I want to discuss our approach to those. I am happy for Veronica to come back then on the two points that Paul raised, if that is OK.

Mr Frew: That is fine. Sorry about that, Minister.

The Chairperson (Mr Givan): You took the words out of my mouth. Paul has important questions, but I know that you were midway through addressing the Committee amendments. If you would address the rest of them, that would be great.

Mrs Long: Thank you. I do not mean to take over your position as Chair; apologies. I am just conscious that I would not want to leave those hanging.

We are in agreement with the Committee that training is key for those involved in the operationalisation of that offence. I hope that you are reassured that work is being progressed by the police and the PPS, in conjunction with voluntary and community sector partners, in developing training programmes around the issue. I do not disagree with the importance of this. However, as you will be aware, I have serious concerns about a duty being placed on my Department in relation to operationally independent organisations and the precedent that that would set for not only any future Justice Minister but for other Ministers by placing legislative *[Inaudible]* on areas that are, effectively, outside their remit.

The Committee amendment places a duty on my Department for the training of independent entities over which I have no control. Indeed, *[Inaudible]* to the Public Prosecution Service would, subject to the view of the Speaker, require a cross-community vote at that stage because it interferes with the independence of the director of the Public Prosecution Service.

The appropriate locus is for the organisations themselves to determine precisely what is needed for operational requirements. I would welcome the Committee's agreement that we should place the onus on the organisations rather than on my Department, because you place me in an invidious position where you are asking me to direct bodies that I am also in law required to *[Inaudible]* respect their independence. My amendment places a duty on the police, the Public Prosecution Service and the Northern Ireland Courts and Tribunals Service to provide training as they consider appropriate under Part 1 of the Act. That would cover the organisations with the key responsibility for criminal proceedings on the domestic abuse offence. I question the merit of going beyond that in the scope of the training provided, though it would not preclude other parts of the criminal justice system from having further training.

The reference to "mandatory" in the Committee's amendment seems unnecessary as the duty required by the provision would be mandatory. More importantly, the amendment may seriously jeopardise the Committee's intent. There is a risk that by including long-term recurring annual training requirements, and due to the onerous burden that that will place on organisations, that could, inadvertently, become an across-the-board tick-box exercise rather than the *[Inaudible]* and focused training that we all agree is needed and that, for example, the Director of Public Prosecutions and the police are currently trying to scope out with the third-sector partners.

Furthermore, operational partners have indicated that the obligation in the Committee amendment poses significant problems from a capacity and resourcing perspective. I understand that for the Public Prosecution Service that could, potentially, amount to a full-time post, taking resources away from

other training requirements. For the PSNI, it could have a wider impact on capacity in terms of operational policing, taking finite resources away from other key areas.

I understand that, at present, the PSNI does not undertake annually recurring training in any area. With that in mind, my Department aims to ensure that there is an obligation for training to be undertaken but as considered appropriate by the organisation and targeted at the appropriate areas that need it most.

For the reasons set out, I also have concerns about imposing annual training on an ongoing basis. It seems disproportionate and not *[Inaudible]* how a new offence would generally be embedded, and it would be very resource-intensive in setting a precedent for future offences.

I am keen to provide more flexibility to the operational organisations themselves to determine the appropriate level of training whilst retaining the need to undertake it. I would be interested to hear members' views on this, because I am concerned that, inadvertently, this could potentially undermine the purpose of the Committee's amendment. If the intent of the amendment is that people are properly trained and fully aware of the legislation and are properly supported in being able to enable and pursue it, that is a point on which we are agreed.

Tied in with that is an amendment from Rachel on the provision of resources. Again, my Department in unable to dictate to operationally independent bodies how their budgets are distributed. It is not about whether or not I provide the resource; I cannot ring-fence the resource of that provision in how it will be spent. It is not possible for me to do that. Indeed, as for the wider implications of that and, more importantly, whether it would entail significant and potentially open-ended financial demands for my Department, the Executive have indicated that additional funds will not be provided, which means that services would be adversely impacted. Therefore, I cannot support Rachel's amendment.

Furthermore, to be clear: my Department does not fund the Public Prosecution Service at any level. It is funded as a non-ministerial department by the Department of Finance directly in order for it to be completely independent of oversight by my Department even though it is part of the justice system.

The Chairperson (Mr Givan): OK. Thank you. I will bring in Doug Beattie.

Mr Beattie: Thanks, Minister. That was very clear. For us, training is incredibly important, because, if we do not ensure that the people at the coalface who deal with domestic abuse understand the issues, the whole legislation, in many ways, starts to crumble. I absolutely do have sympathy with what you have said with regard to subsection 1 of the clause — about your Department being responsible for that training — although I do see where it could have a degree of oversight.

My real concern is that I think that it is important to include "annually" there. The police do annual training. They do annual force protection training, firearms training, and training where they have to interface with the public on certain issues. The annual training is really important. I do not think that that places a huge burden, because it is annual training that could be linked into other annual training. It would be only for certain people, as subsection 3 dictates. I guess that the word "mandatory" really sets down a marker to make sure that the training has been done. If I am really honest, my concern with your amendment is that it looks a little weaker. It does not give me the sense that the training will actually hit what we want it to hit. I would be happy to look at subsection 1 at Further Consideration Stage. Even subsection 4, I think, is probably not workable. The annual piece is absolutely fundamental. The word "mandatory" needs to stay there. It is an important marker. Your amendment is a little weaker in the way in which it has been produced, although I am sure that we could cut and paste from both to create what we actually want to achieve.

Mrs Long: That is helpful, Doug. I appreciate that. The first thing is that, depending on how the Committee feels at the end of the session, I am happy to work on that with the Committee. However, it is important to note that we cannot make lesser provisions at Further Consideration Stage. For example, we would not be able to amend some of the issues that you have raised if it gets to that stage. Therefore, once it says "mandatory" and "annually", that cannot be diminished.

I will just point out that, strictly speaking, what you said was not accurate. This would create an obligation for the police to do mandatory training right across the entire force. It is not that only those officers who, for example, have particular roles or are domestic-abuse response officers would be trained in that or anything like that; it would be for every single officer from Chief Constable right down to new recruit. What the Police Service and, indeed, other services are talking about is that initial

training would be rolled out across the sector and would then be embedded in the regular training that goes into training new recruits, and so on. I understand that it looks weaker. However, that is the normal way in which training regulations are put into legislation.

The wording that we got from the Office of the Legislative Counsel ensures that it takes account of the needs of the business areas in those organisations, without requiring other parts to have it. For example, is it entirely necessary for somebody who works in the PSNI's organised crime section to be trained annually on domestic abuse? Perhaps so, perhaps not, but the best person to make those decisions is the person in charge of operational policing and training; not, frankly, either me as Minister or yourselves as the Justice Committee. It is also a matter that, at the Policing Board, your colleagues have oversight of in looking at the training regime that is applicable.

I understand that it looks like weakening it. We are concerned that, if we do not address that issue about the training being annual and so on, we will end up placing a responsibility on those bodies that, essentially, they cannot fulfil in the meaningful manner that the Committee and *[Inaudible]* would wish. We could end up with, for example, people doing a 15-minute online training programme on domestic abuse. I do not think that that is what any of us would have anticipated that this might look like. However, unfortunately, if they feel that that is the only way that they can afford to deliver the training and have capacity to deliver the training that is mandated, it could be reduced to that. I am fearful that, if we overstretch on what we ask for and place it in the legislation, we will under-deliver in the actuality of training.

I am not trying to dispute the importance of training or the requirement that it should be robust and properly delivered. I am recognising that these are independent bodies with their own oversight structures and their own operational demands. Preferably, I do not want us to go down the route of tying this down too tightly at Consideration Stage. I want to find the right form of words in order that we can perhaps move an amendment at Further Consideration Stage; that could come from the Committee or me, and we would be happy to assist with the drafting. That would allow us to get sufficient robustness without running that risk. That is essentially the proposition that I am putting forward. I am in entirely the same place as the Committee when it comes to training, but I am concerned about the impact of the detail that is included in the amendment.

Mr Beattie: I accept that, Minister. Thanks for that full answer. You are kind of right in much of what you are saying. However, I have been a trainer all my life. I understand — and you are right in saying — that every single person in the Police Service, from the Chief Constable down to the newest recruit, needs to get this training. That is not the issue. They have to get that training. If that is general awareness training that they need to get and it is 30 minutes of online training, that is the 30-minute online session. That should be normal practice. What we are really talking about here is what would be classed as tier 2 training; the step-up training for the people who have interactions on this issue on a day-to-day basis. The Chief Constable, for example, would not necessarily have that, but somebody else would.

Mrs Long: Of course.

Mr Beattie: My fear is this, Minister: if you leave it as, "They must do training", they will have a training cycle within recruit training and that will be it; nothing more. Their personnel file will say, "Domestic abuse trained at recruit training", and that is it. That is my concern. I am not trying to dictate what the annual training would be. I am just trying to say that there needs to be a focus of training whereby everyone gets a reminder every year, but those people who are at the busy, in-your-face coalface get that tier 2 level training, as the police deem necessary.

Mrs Long: That is the issue. You said "as the police deem necessary", but this will mandate that it is for all officers. As a result, the kind of resource that is required for the more intensive training may not actually emerge and we may end up with a suboptimal outcome. That is my concern. It is not to say that the police should not be trained. With respect, it is a matter for the Policing Board to hold the police to account with respect to how they train the officers, where they train them, and how they invest in that training. Putting this in statute makes it difficult for the police to exercise the discretion that you acknowledge that there needs to be. It is not a difference of view on the importance of training. It is simply a difference of view on how we can best deliver it.

I do not know what scope there is. The Committee has obviously tabled its amendment. You do not have to move the amendment. I have withdrawn some of mine. I am considering withdrawing a number of others; I will do that over the weekend. If the Committee were not to move this amendment,

it could still be tabled at Further Consideration Stage. That would give us time to further explore this issue and perhaps draft an amendment with the Department that better reflects what the Committee is actually trying to achieve, which is that those front-line officers who deal with this offence day and daily are fully across the detail but that there is wider awareness training across the police and the justice sector more generally and that it is dictated by the needs of the organisations. There is agreement on this, by and large. I do not think that this is about trying to duck out of responsibilities, by any means. It is also, fundamentally, about ensuring that the responsibility lies with the right organisation. I will leave it to the Committee to consider whether there is scope to do that. I am happy to do that, if we can, in order to make it robust training in the Bill but also in practice.

Mr Beattie: Thank you.

Dr Holland: Chair, it may be helpful if I make a suggestion in regard to —.

The Chairperson (Mr Givan): Just one second, Veronica. The Minister has outlined a position that is already reflected in our amendment. I draw attention specifically to amendment No 21, which is new clause 25A. It relates to what Doug outlined. There is the tier 1-type training that is universally applicable. Then, there is the tier 2 training for those who are specifically involved in the relevant business area. New clause 25A(3) states:

> *"Training is mandatory for all those involved in the disposal of domestic abuse cases in policing and criminal justice agencies, including but not limited to the agencies listed in subsection (1)."*

New clause 25A(4) then states:

> *"Having identified the relevant staff in subsection (3) at the beginning of an annual reporting period, the Department must publish the uptake of training by each relevant organisation".*

So, our amendment already accommodates the approach that you have outlined, Minister. I have some sympathy on where the duty lies, and we can look at that, once the Committee's amendment is approved by the Assembly, at Further Consideration Stage. However, this is not an amendment that makes the same type of training universally applicable to every single member of staff of every single criminal justice agency. The Committee was alert to these very points and deliberated on them for a long period.

Dr Holland: Of course.

Ms Dillon: May I come in before Veronica, as well? It is only a quick point, and it is similar to Paul's. I agree with what Paul said. I have a lot of sympathy with the Minister's position as to who gives the training. I also understand where the Minister is coming from as regards ensuring that appropriate training is given. That is vital, and what you say is absolutely right. However, that is why we have put it in the format that we have. The Minister is right that our colleagues on the Policing Board will hold the police to account on this; they will. However, it will be much easier for the Policing Board to do so if there is something in legislation for it to hold the police to account on. I have to say, in fairness, that a lot of good work is being done within policing. Things have improved immensely in terms of accountability and the police actually listening to the Policing Board. In many cases, the police are a step ahead now, which is brilliant to see. However, we still need to have that wee bit of reassurance. If it is in the legislation, the Policing Board can hold the police to account and there is no wriggle room; it is there.

I accept that, as has been outlined by Committee members, there will be those for whom it will simply be an online thing because they do not deal with this issue directly. Even for those who are dealing with it directly, if it is annual, it may just be a refresher. It may be something very simple and straightforward. However, the Policing Board will be able to ensure that the appropriate training is being given because it has something against which to hold the police to account. It will be for the Policing Board to decide, along with the PSNI, whether what the police are doing is appropriate. The Policing Board will have something against which to hold them to account. That is where we are trying to get to. I understand where the Minister is coming from, but, as was outlined by Doug and Paul — it was also very much Rachel's stipulation throughout our conversations as a Committee — we need to have something that allows us to hold people to account.

Mrs Long: I understand entirely. I do not think that the gap between us is huge on that. On that basis, we will reflect again at the end of the session and see whether that gap can be bridged at Further Consideration Stage, if not before.

There are two more Committee amendments that I wish to discuss. Then, I am afraid, I will have to conclude my participation in the session. The Executive meeting has been deferred until I can rejoin and, as you will be aware, there is significant public interest in the decisions that are about to be taken and significant responsibility on us all for the public and on protecting our economy. I do not want to shirk those responsibilities, at any level, nor do I want to disrespect the Committee, but I want to get through the amendments. If it is acceptable, I will cover the next two amendments and then, perhaps, Veronica could answer the more detailed points on the other departmental amendments.

I discussed the issue of the independent oversight function with the Chairs on Friday. Again, we all agree that oversight and scrutiny on the effect of the new provisions are key, but I think that best use could be made of the current scrutiny and oversight functions without providing for that as a new and distinct legislative requirement.

In our discussions, I was encouraged by the potential for that independent oversight to be placed on, for example, Criminal Justice Inspection Northern Ireland (CJINI). That is something that we have been trying to scope out as a Department, but, as you will be aware, my concern about doing that stems from two aspects. The oversight function is important. My concern is about creating an additional duty in statute when that is not needed, and we have identified that there are other options for oversight. I also set out to the Chair and Deputy Chair that I have some concerns about the ongoing nature of the provision on other offences. I believe that biannual reporting for a more limited time may be more appropriate and would welcome the Committee's views on that prior to Further Consideration Stage.

That will all require a considerable staff resource to support at a time when the Department still has a significant agenda of work to progress on new initiatives in the domestic abuse space that will have a material benefit for those who are affected by domestic abuse. You will also be aware that it is my intention to proceed on creating a victims of crime commissioner, and that person could have special responsibilities for vulnerable victims of crime and particularly *[Inaudible]* domestic abuse. In that regard, I believe that that person may be best placed to fulfil that role.

Again, I would welcome the Committee's views on a more time-limited period, with biannual reporting, and the role potentially being given to CJINI, which is one body that was considered, or a new victims of crime commissioner. In that, we will need to ensure that there is no issue with the timeliness of being able to do that because we will be unable to put that role in a statutory format before the next mandate. However, we hope to have an interim commissioner in place. I seek the Committee's views on that before Further Consideration Stage.

The final issue is protection for victims. I understand that the Committee has concerns that the necessary legislation has not been introduced to provide for that. I have already indicated to the Executive my intent on the scope and content of the miscellaneous provisions Bill. In that, I have indicated that we would enable the detail of the provisions for the domestic abuse protection notices (DAPN) and domestic abuse protection orders (DAPO) to be set out in primary legislation, as well as the necessary consultation to be undertaken ahead of that.

Given the interest in notices and orders, the Assembly should have the details set out in primary legislation rather than in regulations or secondary legislation and the opportunity to scrutinise those provisions. I am happy to ensure that the Committee is sighted on the relevant proposed provisions as those are being developed, recognising that we will not be in a position to introduce those, other than as amendments.

There are three elements of the miscellaneous provisions Bill that are coming forward more slowly due to pressures on the OLC. That is one of them, and two others will be brought forward subsequently as amendments to the Bill, which will be referred to the Committee for consideration. However, I would be happy to work with the Committee on the design of those provisions so that, if you like, the scrutiny opportunities for the Committee are not restricted.

I do not think that it is therefore appropriate to regulate to secondary legislation an issue that takes the form of about 35 clauses in the Westminster legislation, which is, in effect, a medium-sized Bill in itself. I think that the House should be aware of the intent of the provisions and to seek its authority for what we intend to do. In addition to that, given that there is at least a two-year time frame for the

introduction of an untested policy that has not been subject to public consultation, I think that that would expose the Department to a successful judicial review and unnecessary levels of risk.

If you are content, Chair, I will conclude my remarks, other than to say that, if we progress both routes, which I know has been considered, there would be significant resource implications, because it would require the Department to consider progressing both primary and secondary legislation in the same area at the same time. I would not be willing to do that, given the time pressures and pressures on staff at the minute, not least given the pandemic.

With respect to the interim protections for victims, again, I do not believe that this is a difference in intent, desire or where we want to be. I simply think that it is a difference in approach in how we get there. I hope that we are able to reach some agreement on that. Again, the risk is that we end up expending resource and detracting from the work that we can do in the domestic abuse space. There is still a lot of non-legislative work that needs to be taken forward quickly, urgently and as a priority. I am afraid that my team is my team. I am not going to have an army of people coming in order to take all the additional pieces forward, including two parallel procedures in relation to the same legislation.

The Chairperson (Mr Givan): OK. Thank you. I appreciate your comments earlier. The Committee amendments have been addressed. Obviously, I will get members to focus on the two areas of the independent oversight and the DAPOs. I heard what you said, Minister: you will need to go once you have addressed members on those two areas, and then members can, with Veronica, pick up on the other amendments on which they may have questions.

Mr Frew: Minister, I will be quick. Why are you comparing a commissioner for victims of crime with the independent oversight?

Mrs Long: Pardon?

Mr Frew: Why are comparing a commissioner for victims of crime, which you hope to bring in, with the independent oversight, given that the they are two different things?

Mrs Long: I am not comparing them. I am saying that one of the roles that the commissioner could have is, for example, to make progress on the operationalisation of the offence, and that would allow them to report on the specific issues in relation to vulnerable groups of victims. That is the purpose. I am not saying *[Inaudible]* but I am saying that a commissioner for victims of crime, with special responsibility for domestic abuse, could be one mechanism for delivering oversight. I just wanted to take the Committee's views on that as we proceed.

Mr Frew: You will know that most of the groups that have given evidence are disappointed that we have fallen short of creating a commissioner for domestic abuse. I understand that, but surely a commissioner for victims of crime will have enough on their plate with Part 1 of the Domestic Abuse and Family Proceedings Bill. That commissioner will have a more wide-ranging remit than just the integral parts and the outworkings of the Bill. Is that not the case?

Mrs Long: The purpose of the victims of crime commissioner is, first, to avoid the need for duplication and multiplication of commissioners, given the expense of commissions and the back-office staff and so on that are required. I do not believe that that is justifiable, because it would drain resources away from front-line service provision. However, it would be within the capacity of any commissioner either to be asked to do bespoke work on oversight or to take it under their own responsibilities and decide to do that oversight.

With respect, Paul, there will be no difference between the capacity of the commissioner in that regard and the capacity of Criminal Justice Inspection Northern Ireland. It, too, has limited resources, and it gives attention to different aspects of the criminal justice system and carries out oversight at different times. I anticipate that the victims of crime commissioner will have the same ability to respond to issues that are raised but also to initiate scrutiny and oversight where it is believed that there is a need to do so, and that may be, for example, the operationalisation period of this offence.

Mr Frew: This is my final question. Minister, the Committee recognises, given our amendment, that in the context of this new cutting-edge Bill and this new offence that we are creating, everyone has been struggling over the last decade to get their heads around coercive control and how it will play out in the courts, with the police force and the PPS. Is it not right that we include dedicated, independent

oversight to get this off the ground in the right space so that it will make your job and your Department's job easier in the years to come and allow you to know where the standard is set for oversight? That, in itself, gives confidence to the victims and the population out there that we have got this right and that it is performing in the way that it should.

Mrs Long: I am not disputing that. With respect, I am asking: who will do that work? *[Inaudible]* and, I have to say, the Chair communicated to me when we met on this issue, because my concern was that what was anticipated here *[Inaudible]* for a fixed period under a different name. I was very reassured by the discussion that I had with the Chair and the Deputy Chair that that was not their intention and that the intention of the Committee was that there would be an independent oversight function, not the creation of an independent overseer along with an office, staff and everything that has to go with that. In that space, it is then about who will exercise that independent oversight function. In my previous correspondence to the Committee, I suggested the Criminal Justice Inspection *[Inaudible]* future commissioner *[Inaudible]* as well as the role itself. The oversight function was my understanding, having spoken to the Chair and Deputy Chair. You now seem to be suggesting that you want an independent overseer, which is not *[Inaudible]* and was why I asked for the views of the Committee on different proposals as part of the discussion.

Mr Frew: Minister, someone has to oversee it, whether that be a victims of crime commissioner or whether —

Mrs Long: I am seeking the Committee's views this afternoon.

Mr Frew: You are breaking up, Minister.

Mrs Long: Apologies. I am seeking the Committee's views this afternoon on that matter. It is not particularly ahead of the discussion for next week, but it is an opportunity to clarify that the expectation of the Committee is that it *[Inaudible]* one that we are about to bring into being will do this additional oversight body.

Mr Frew: I think that this will have to play out in the Chamber at the plenary sitting next week to get confidence into the system around this, because, obviously, the Department will have a massive role in implementing this amendment if it is passed. There may need to be some tidying up at Further Consideration Stage to get it tight. Thank you for your answers, Minister.

Ms Dillon: I have a very quick question on the DAPOs and the notices. I accept what you are saying about primary and secondary legislation, and I accept that I may be missing something. I do not see anything in the amendment that says that what you are bringing forward in the miscellaneous provisions Bill would not suffice to meet the requirements of that amendment. We are not asking for something separate to be brought forward, and maybe it looks like we are. Maybe there is something that I am missing that we have asked for. I am not sure. I am a wee bit confused around that one.

Mrs Long: I can clarify. It is giving the Department the power to do it by regulation — by secondary legislation. It is also placing a time limit on when that can be achieved. Essentially, that is to allow for the risk of our having failed to deliver, for whatever reason, and being open to judicial review. If there has ever been a time when we understand that circumstances are often beyond our control, even with the best will in the world, it is now. If there were any delay in that legislation being passed as primary legislation, we would fail to *[Inaudible]* and it could be open to review. That places an onus on us to develop this as secondary legislation and to take it forward on that basis in order that it does not have to go through full scrutiny powers and full Committee Stage and all of the rest to ensure that it can go through in the two-year time frame. The difficulty with that is that, first, I do not think that it is appropriate for something so complex, and, secondly, we have not done the development work that is required on consultation and policy development. I also do not think that it is appropriate that there would not be the adequate scrutiny at the Committee, but, when you put a stop *[Inaudible]* and say *[Inaudible]* and I cannot *[Inaudible]* Chamber *[Inaudible]* the miscellaneous provisions Bill. We could go through *[Inaudible.]*

The Chairperson (Mr Givan): I think that we have just lost the signal to the Minister.

Mr Frew: It is all on you, Veronica.

The Chairperson (Mr Givan): While the Minister tries to reconnect, I will bring in Veronica. Is it not my understanding that the Department wrote to the Committee to say that you were not bringing forward the DAPOs in the miscellaneous provisions Bill but that you were going to do it by way of an amendment?

Dr Holland: That was to indicate that, given the stage that we are at with the current workload, it will be provided for in the miscellaneous provisions Bill but will not be in the Bill on introduction. We hope to go out to consultation shortly on that. Obviously, we will want to work closely with the Committee on the shape of those provisions, and we will want to be able to have ongoing discussions with the Committee on the nature of them. I think that the Minister's key point is around ensuring that those provisions are in primary legislation rather than being relegated to secondary legislation.

The Chairperson (Mr Givan): It is about having the provisions in the Bill as introduced, because, if it is not there, we cannot conduct Committee Stage, which is why the Minister is arguing against our approach to allow all that to happen. It would not happen through a departmental amendment.

Dr Holland: If it is of any reassurance, I fully appreciate the fact that it will not be there for Committee Stage. I think that the Minister will be keen to work closely with the Committee and to bring forward the amendments to the Committee for consideration as the process goes forward, albeit the amendments would not be in place as part of the formal Committee Stage.

The Chairperson (Mr Givan): OK. Do members want to ask questions on the independent oversight and other aspects of the two Committee amendments? No.

Maybe I am being unfair to Rachel — it is her amendment — but, Veronica, has the Department had an opportunity to look at the amendment on civil legal aid and its implications?

Dr Holland: That is not my area. Paul's query is not my area either. However, I am more than happy to try to address that as best as I can with the knowledge that I have. My understanding is that the civil legal aid change stems from a concern about proceedings being taken forward on contact orders and the financial implications for individuals. From a departmental perspective, the amendment puts it in primary legislation, but I have been advised that there are already provisions in secondary legislation that would enable that to be taken forward. If a decision were made and the Department accepted it, there would be no need for primary legislation to be changed. The key issue is the associated cost factor. I am not aware of the specific figure, but my understanding is that the civil legal aid amendment would involve significant sums of money. It could be in double-figure millions, and the quantum could be uncapped. The Minister will touch on the issue in the debate next week. As I said, this is not my area so I am unable to give a detailed answer, but that is my understanding. If the Department were so minded, there is already a provision that would allow this to be taken forward without changing primary legislation, but the major issue is the considerable quantum of moneys involved, given that it is a wide power.

Mr Frew: For clarity: in civil legal aid cases in court proceedings, this would give a judge discretion to allow it to happen. I know that this is not your area of expertise, Veronica, but what evidence are you reading from about the tens of millions of pounds, because it strikes me as being very high?

Dr Holland: Further work needs to be done, but the sense that I am getting from legal aid colleagues is that those could be the associated costs. Rather than referring to tens of millions of pounds, they refer to an uncapped cost. As you said, although it is a discretionary power, the previous experience has been that, very quickly, legal challenges would limit the extent to which there is discretion — if that makes sense. While technically there a discretionary power, successful legal challenges would end up meaning that it would effectively be granted. As I said, the Minister will want to discuss that in more detail next week, but that is my understanding about that provision.

The Chairperson (Mr Givan): I would appreciate it if broadcasting could bring the Minister back in from the audience.

Mrs Long: Thank you, Chair. My apologies. My internet connection went down, and, unfortunately, I fell off the call. I will have to leave because the Executive started nine minutes ago, and I am conscious that difficult decisions will have to be taken today. I apologise. There was no disrespect; it was due to internet problems. However, I will have to leave. First, thank you for being willing to listen to the case today. I appreciate members' time. Hopefully, I will see you in the Chamber next Tuesday,

and we will move the Bill forward. I would like, if at all possible, to look at Further Consideration Stage amendments as quickly as we can get them drafted in order to have the Committee's view on them before we move to that stage.

The Chairperson (Mr Givan): Thank you, Minister. I appreciate your time and wish you well in the Executive meeting.

Mrs Long: Thank you.

Mr Frew: We will meet on Saturday for a coffee, Minister.

The Chairperson (Mr Givan): All right. Thanks.

Sorry, Paul. You wanted to pick up that on issue.

Mr Frew: If the figure is millions, that illustrates that it is now a massive problem. If we are saying that this could tip the balance of the cost of legal aid, that tells me straight away that massive abuse is going on, whereby perpetrators are using the courts to push victims through court process after court process. Of course, the more court processes there are, the more cost there is. What you are saying is that, yes, it is a massive problem, but it is just too costly to solve, if you know what I mean.

Dr Holland: I get where you are coming from, Paul. Unfortunately, it really is beyond the boundaries of my knowledge and expertise, but that is definitely what legal aid colleagues indicated might be the situation with regard to the amendment. There is also concern about the linkage with domestic abuse in the Bill per se and about how, if that were passed, it might be used by perpetrators to try to avail themselves of free legal aid, for want of a better phrase.

Mr Frew: Yes, and we must guard against that. There is no doubt about that. There are dangers of it being open to abuse. If we are talking about tens of millions of pounds, that represents a large number of victims who might be on minimum wage or, for example, on a nurse's or hairdresser's salary. That clocks up a large number of victims who are currently going through a court process and have to use dwindling resources. It is scary, actually, if we are talking about figures in that field.

The Chairperson (Mr Givan): Thank you. I will bring in Linda.

Ms Dillon: Thank you, Chair, I appreciate that. I know that it is not your area of expertise, Veronica, as you outlined, so, to be fair, I will not ask you for any answers on that. I will just make the same point that Paul made, which relates to the kind of money that you are talking about. I have dealt with a number of cases, and a number of witnesses wanted us to include parental alienation in the legislation, which we resisted because we were fearful that there would be unintended consequences. I think that this is, potentially, the way in which to deal with some of their concerns, because that is exactly what was happening: victims were repeatedly being taken back to court with regard to contact orders. There was abuse of the court system and abuse of them financially. Very often, it is the people whom Paul mentioned: the working poor, who are on low incomes and entitled to nothing: no benefits, help with their kids, free school meals or help with buying uniforms — nothing. Then, they have to fight constantly, with very penny that they earn or by going into constant debt, to try to protect their children. It is an indictment of us that we are not doing something about that.

Dr Holland: Linda, what we are looking at possibly doing in that area — again, as I say, it is not my area and is not for me to decide — is that, if something were to be taken forward in that field, we would want to have all the necessary evidence, look at what the costings might be and go through that policy development and decision-making process to ensure that it was as robust as possible before any changes were introduced. The concern with the amendment, as it is at the moment, is that the work on what it might look like and what protections and safeguards could be put in place has not been undertaken.

Ms Dillon: I understand what you are saying, Veronica. You are 100% right: it has not been done. It has not been taken forward. We have no guarantee that it will be done unless we put something in the Bill. Putting it in the Bill would not prevent a later overall review having an impact on it. To be honest, I would much prefer this to be dealt with as part of an overall review that could get into the nitty-gritty of it.

We all know that there is a serious issue here. I do not think that any member of the Committee has not dealt with people in these circumstances. Can I say that I will let them keep swinging in the wind because a piece of work has not been done by the Department or the Assembly? We are all responsible, so, at this point, we need to take a bit of responsibility and start looking after these people. I get everything that you are saying, and I am not opposed to what you are saying. All your points are well made. However, that is my position, and, to be fair to you, I do not think that anything that you say will change my mind.

There is nothing to stop the Department from bringing forward an amendment to this amendment, if it can improve it by not allowing that abuse or by not allowing it to become something that swallows the Department's budget and has implications for other areas. This area is too important. It is about protecting people who are trying to protect their children, and that is what this Bill is about: people trying to protect themselves and their families.

Thank you, Veronica. I appreciate your comments.

Miss Woods: Thank you, Veronica. I appreciate that this is not your area. Reflecting on Paul's point, I, too, would like to ask where double-figure millions came from. If it came from the Legal Services Agency, we have a massive problem on our hands, which we completely ignored in previous years. If legal aid is in double-figure millions — wow — that is really serious. I would welcome information on where that figure came from: the Legal Services Agency or elsewhere in the Department.

The safeguards are already in place. This is a very complex area of the criminal justice system. I found it very difficult to get my head around it when researching this amendment, which took many forms before it got to this point. This already happens for non-molestation orders. It is the same process. There are so many checks and balances. I am more than happy to have a discussion with anybody on what the amendment does and does not do. This is a discretionary power. I would love more information on whether there would be a challenge to the discretionary power because it exists for non-molestation orders. Are there continuous challenges to non-molestation orders? How many non-molestation orders have been challenged on the basis of the discretionary power of the director? That is why it is discretionary and why amendment No 14 is worded the way it is. The checks and balances are there: that process already exists. In my research, I did not come across double-figure millions. Even if that is accurate, we need to address it. That is even more pressing.

Ms Dillon: On Rachel's point about the risk of a legal challenge being discretionary, the very point that we are trying to address is that these people cannot afford to take legal cases. The chances of their taking a case that they do not know that they will win, and which is no longer about protecting them and their families, are pretty slim. I know people who have been really badly done by in non-molestation orders. I raised that issue at the very beginning of our consideration of the Bill, and it is one of my biggest concerns. They are in no position to take any case relating to the discretionary power.

The Chairperson (Mr Givan): Veronica, I think that you said that the Bill, should the Assembly pass it, might not cover every victim of domestic abuse. Is it the Department's view — I will ask Rachel for her view later — that this will be applicable to victims of domestic abuse only when the perpetrator has been convicted under the new legislation? Is that what this will apply to? Are there other aspects of physical domestic abuse that will not be included in this?

Dr Holland: Sorry, Chair. My apologies if I was not clear on that. There is concern that, because the "link in", for want of a better phrase, would simply be a reference to there being domestic abuse, there is the potential to open the floodgates in the way in which this is used. There may be unintended consequences, in that, for those faced with a significant legal bill, there may be benefit in indicating that there was domestic abuse in that relationship in order to avail themselves of the provisions at hand.

The Chairperson (Mr Givan): OK. Rachel, maybe you can help me on this one.

Miss Woods: My understanding is that it has been worded in such a way that where the client is a victim of domestic abuse in accordance with the Domestic Abuse and Family Proceedings Bill Northern Ireland 2020, it would be confined to when the client applying for the legal aid waiver from the director was a victim under the Bill. Therefore, it would not open the floodgates to anybody who alleges domestic abuse; it would have to be proven.

Dr Holland: OK. Essentially, you propose that this is for a case relating to a domestic abuse offence or an aggregated offence, and it could be looked at during the drafting stage.

Miss Woods: To be honest, I was surprised that this amendment met the scope of the Bill and surprised to see it on the Marshalled List. This has been deliberately put into the Domestic Abuse and Family Proceedings Bill. If the client who is applying for eligibility for civil legal aid in the Magistrates' Court or lower courts, the process for contact orders is to be exactly the same as the process for non-molestation orders. If they have been found to be a victim — if they are B in the A and B relationship in the Domestic Abuse and Family Proceedings Bill — they or their solicitor can make that application. If they earn a pound more than the financial eligibility allows, they cannot apply traditionally, but they can make an application in exactly the same way as it works for non-molestation orders. The Child Support (Northern Ireland) Order 1995 includes a prescriptive list of offences that can be applied to the waiving of financial eligibility by the director. This adds the Domestic Abuse and Family Proceedings Bill to that list.

Dr Holland: Thank you.

The Chairperson (Mr Givan): My apologies for you putting you on the spot, Rachel. If the victim/client is person B, does that require A to have been convicted?

Miss Woods: From my reading of this, yes.

The Chairperson (Mr Givan): As a layman, that was my understanding.

Miss Woods: Yes. To widen that out would require changes of wider scope to the legal aid services regulations to meet the requirements.

The Chairperson (Mr Givan): That is fair enough.

Miss Woods: A friend of mine has been dragged through the courts for the last 10 years by a convicted person who has bled her dry of money through contact orders. Had he been convicted under this new Bill, she could have applied for that waiver because he had been convicted, and she had been proven to be B. A has been convicted, and B has proven to be the victim. The Bill is not prescriptive about who is the victim. There is no description of who the victim is; it is all about the actions, the perpetrator and the main personal connection, because we do not have that. It is trying to protect future Bs.

The Chairperson (Mr Givan): You have made clear what the intent is. In all of this, there is a Further Consideration Stage should the amendment need to be more specific to ensure that that intent is delivered. That is why Further Consideration Stage exists.

Miss Woods: I would welcome the expertise of the Departmental Solicitor's Office. If there is something that I have missed or that needs to go in, I would welcome any detail or additional clauses or parts to that amendment so that it does what I intend.

Dr Holland: Would you have an issue if the provision referred to the fact that there had to have been a conviction in relation to a particular case? In the example that you gave, the case would have concluded, and the individual would be a victim. The offence would have gone through the courts and been dealt with.

Miss Woods: I understood that I could not do that because of the requirement for it to be within the context of the Bill. If that can be extended so that there does not need to be a conviction for B to apply or get a discretionary decision, I would welcome that, absolutely. Not every B will come forward to try to get a conviction. That does not mean that abuse has not happened.

The Chairperson (Mr Givan): I think that Veronica is asking whether you would be opposed to an amendment at Further Consideration Stage that required that case to be made and made it explicit that you were entitled to that on the basis of a conviction, rather than —

Miss Woods: — the other way round *[Laughter.]* I would need more information on that. To whom would that apply? The two terms of "client" and "victim" are quite broad already. I can go through that

in more detail on Tuesday, and I intend to, but I would certainly welcome further clarification and information on what that would look like and whether that narrowed the scope even further.

Dr Holland: That would be in the context of ensuring the types of cases for which that would be utilised. If there had been a decision in a case, it would be clear that there had been a conviction and that someone in that instance was guilty of a domestic abuse or another aggravated offence, such as criminal damage aggravated by domestic abuse.

The Chairperson (Mr Givan): Sinéad Bradley is next. Will the broadcasting people bring Sinéad in from the audience, please?

Ms S Bradley: Thank you. That line seems to work each time, Chair.

My reading of it was that it was a conviction. Maybe that was incorrect. The behavioural change that this amendment has to the power to bring about should not be overlooked. Rachel and I have had that conversation. For example, we talked about coercive behaviour and how perpetrators can almost weaponise everything around them, including the law, to break the victim further.

I understood that the definition of "victim" was established after a conviction had been made. Therefore, I do not know how the projections to which the Department refers could have been made. All of that would be subject to how effective the Bill was. How we project the numbers would depend on all the things that we have talked about, such as training and making sure that people recognise what is domestic abuse and that they are empowered to come forward. I suggest that any projections on how it might look would have to be taken very loosely at this stage. We cannot possibly know how many people will engage with the new offence, come out the other side and be a victim of that repetitive behaviour in which the perpetrator tries to break them by using the court system.

That said, one of the points that I raised was that, while we want the Bill to be effective and for there to be engagement with it, we would still hope that the number of people who are subjected to that would be altered by the mere fact that the legislation was in place. Perpetrators would find that that was no longer a tool that could be weaponised. It would have an effect without there having to be huge financial implications. That is my understanding.

Dr Holland: Sinéad, that is helpful by way of clarification. May I provide further clarification on the assumptions that we were making and the discussions that were held? It was more in the context of, effectively, this applying where there had been abusive behaviour. That is a very different quantum from the numbers where there has been a conviction. If the thrust of it was in relation to there having been a conviction under the legislation, by way of the domestic abuse offence or an aggravated offence, that, possibly, is quite different.

The Chairperson (Mr Givan): Have members any other questions for Veronica?

Dr Holland: Chair, I think that Paul had a query about some of the provisions on the family side. As I said, it is not my area, but I emailed my colleague Jane Maguire, who previously appeared with me before the Committee. Paul, I think that your query related to the first of the amendments, A26, on family proceedings.

Mr Frew: Yes. It was amendment No 29 on the old Marshalled List.

Dr Holland: Jane has come back to say that it amends the Children Order (Northern Ireland) 1995 to require a court hearing an application for residence or contact to consider any conviction of the party applying for the order, to take into account the new domestic abuse offence where the child aggravator has been applied by reason of the offence involving the child.

She also mentioned that the provision is to correct an anomaly that would otherwise arise because a court considering an application for residence or contact is already required to consider harm caused to a child through seeing or hearing domestic violence. As I said, my understanding is that it is really to ensure that, going forward, account is taken of the fact that the domestic abuse offence is coming into play and that it is looked at in the context of those provisions.

Mr Frew: That is very helpful. I will try to digest that as I speak. Does it do something with the same intent as we are trying to achieve with regard to people using the court as a weapon? Does it, if you

like, allow the judge to have regard to the conviction of a person for domestic violence abuse when that person goes to court to acquire a contact or residence order?

Dr Holland: I am not sure to what extent it might deal with that issue in relation to that abuse of process, as such. Jane has indicated to me that, basically, it requires the court, when hearing applications for residence or contact orders, to consider any convictions for the new domestic abuse offence where the child aggravator has applied. The court should really be taking that into account in the decision that it arrives at. Possibly, it does not address the context of abusing the court process as much. I repeat that this is not my area. However, it appears to ensure that the court takes into account a conviction for the domestic abuse offence when deliberating on a residence or contact order more generally. It would be an added factor in the court arriving at its decision.

Mr Frew: Yes. For me, that is important because the child's safety is at the heart of this. Not only that, but it might indirectly stop, discourage or prevent someone going to court with nothing to lose and then running through the system, if they knew that the court could have regard to their previous conviction for domestic abuse, which, to my eyes, is a very serious conviction, especially when the offence involves a child. You can see the problem that the Committee, and Rachel, through her amendment, is trying to fix. We are trying to protect people. This might be how you could help to do so indirectly, which then could actually reduce the Bill and the consequence of Rachel's amendment, if it was aligned like that. If the stars align, you could be doing something really useful and really good.

Dr Holland: I am sure that Jane would be happy — obviously, it would not be in a Committee context — to have a chat with you to talk about that provision in more detail and ensure that what I have said is correct and in case you had any further queries.

Mr Frew: That would be helpful. I have no doubt that what you say is correct; whether I am picking it up right is the problem. If what I have just articulated to you is its design or if something can be tweaked to have that impact and effect, that could be very useful for victims.

Dr Holland: Jane's email seems to say that, basically, when a court is hearing applications for those orders, it must, as part of that process, consider that there has been a conviction.

Mr Frew: Of course, the safety of the child is at the heart of that.

Dr Holland: You would imagine that the result of that would be a beneficial impact where a risk is posed to the child.

Mr Frew: Yes, absolutely.

The Chairperson (Mr Givan): Veronica, thank you very much for taking time to be with the Committee again today. It is much appreciated.

Dr Holland: Thank you, Chair. It is much appreciated. Bye.