



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Domestic Abuse and Family Proceedings Bill
Civil Legal Aid Provisions:
Women's Aid Federation Northern Ireland

8 December 2020

believe that it has reached this point, and they welcome that. Many people whom I spoke to said that they are willing and happy to wait to get the Bill right, and we have to listen to victims and survivors.

Everyone has talked about the impact. I have numerous case studies here on the impact not only of financial abuse post separation but of retraumatisation. One woman lost her job because she was in and out of court so often. There is childcare and all those issues to consider. We cannot overstate that. It goes on for a long time. In relation to child contact, until a child is of a certain age, you will be in and out of the court system.

As an organisation, we welcome this. I know that there is an issue with the commencement date. There are a lot of questions on the costings that have not been answered. I do not understand all the things because I am not a legislator, but I am trying to keep up with it all the best I can. Generally, however, we support the amendment as originally presented by Rachel and Sinéad.

Legal aid in Northern Ireland needs a review. The Minister discussed it being abused by perpetrators: it is already being abused by perpetrators. As I said, we have a number of case studies; I have about eight of them. In every one of them, the woman is paying her legal costs, but the perpetrator is in receipt of legal aid. Of course you will bring someone in and out of court if you are in receipt of legal aid. We see further post-separation financial abuse all the time when someone has lost control. That is the position of the organisation and of the women who come through the services.

The Chairperson (Mr Givan): We had been trying to get information and clarity on the cost of such legal cases, and it took a long time to get figures, albeit estimates. I have been struck by the figure of £14 million, which, the Department estimates, clause 27, as voted through the Assembly, could cost. Is that indicative of the financial costs that victims of domestic abuse face in legal cases on contact orders?

Ms McMullan: I have a number of cases. People have applied for a non-molestation order, an ex parte and then another order, perhaps. There are also contact cases, divorce cases and breach of non-molestation orders. There are numerous types, not just one. The first one here is £4,500, but it is ongoing. The total cost for another woman is £3,000. That was for a non-molestation order and an occupation order. She has had to set up a direct debit with a barrister for £150 a month to cover her costs. When I spoke to one woman last night, she said that this could be a tangible product that could come out the other end of the Bill. She said that it would be important and that, to her, it would mean how much oil she could put in her tank and how much food she could put on the table for her children. That is the reality.

We have long talked about the cost of protection. The previous Justice Minister, David Ford, brought in the means-tested waiver for non-molestation orders. However, it is not widely taken up, and we have concerns about the very low threshold. There should not be a cost to protection. We are supportive of the new order that a police officer will have powers to take responsibility out of the hands of the victim, and there will not be that cost. Why should you have to pay for protection? There are also many women who represent themselves. That leaves a vulnerability when you are trying to represent yourself in a court of law.

The Chairperson (Mr Givan): A lot of the evidence that I heard — all members heard — related to the fact that the promise of legal aid reform has been going on for years, and these problems have been identified for years, but reform has still not happened. Members can speak for themselves. This was not a Justice Committee amendment; it was tabled by Rachel Woods. Sinéad and Paul have sought to table other amendments on legal aid, and the Assembly can vote on them.

It is now in the Bill. However, the concern is that, if it is not to be commenced, it may not happen. I know that commitments and promises have been made that that will not be the case. That is where members are trying to come to a view. Should we continue to seek for this to be commenced? Or do we remove the commencement provision on the basis that it is going to be taken forward without having a legal effect to it? Is that what you meant when you said that people are prepared to wait?

Ms McMullan: We fear that commencement may never happen. That is the reality. It is here, being discussed at the Justice Committee, and we have come a long way to get this far. As you said, we have been talking about legal aid and provisions of legal aid. The Minister has said that they are looking at a policy review in relation to legal aid provision in Northern Ireland, and we have seen that it has narrowed and gone down.

The average rate for a family lawyer is about £58 an hour, I think. That has stayed the same for many years. Many solicitors and barristers are very good about allowing people to pay their legal fees. There is a lot of goodwill. However, we fear that this will not be commenced. There seems to be a real haste, and a lot of things are going through the Department of Justice at the moment with regard to strangulation and the rough sex consultation. The consultation on the orders came out yesterday as well. A lot of Women's Aid work time is spent on the consultations that are coming through and the work on guidance and task-and-finish groups. We are, as you know, the only part of the UK and Ireland that does not have coercive control legislation in place. That, of course, is because of not having the Assembly. We know all about that historically. We are willing to wait to make sure that we get the Bill right. We talk about a gold star Bill, and that is what we want. I have worked in Women's Aid for a long time, and it was over 20 years ago that we had the most recent change to legislation, through the Family Homes and Domestic Violence (Northern Ireland) Order 1998. Such opportunities therefore do not come around often, and it could be another 20-plus years before we have the opportunity again.

The Westminster Bill has so many other provisions that we had wanted, around housing and secure tenancies, a review of the family court, a Domestic Abuse Commissioner and all those things. Funding and resourcing the Bill is our great concern as well, because we have heard the Minister say now on a couple of occasions that there is no money attached to the Bill. What is the point in bringing in legislation if there is no money for it? Sinéad mentioned that when talking about training and development. We need resources to be attached to the Bill to make it work. We need investment in domestic violence services in order to make changes. We see the highest number of domestic violence cases in the latest PSNI annual trends. The numbers are going up year-on-year, and we need to invest in services if we are going to change any of that. It is about early intervention and prevention: all the things that we already know. We are not reinventing the wheel. We know that good practice is out there, but we just need investment in services. We also have a strategy that has no money attached to it either. That is not good enough, as it will not have any teeth if it does not have any money attached to it.

The Chairperson (Mr Givan): As a result of Further Consideration Stage not being moved yesterday, the Bill cannot proceed to Final Stage and receive Royal Assent before the end of the year. That opportunity is now gone. Even if Further Consideration Stage takes place next week, Final Stage will not be until the third week of January at the earliest. There is no commitment that that is even the case, but that is the earliest that Final Stage can happen. I have asked the Minister how quickly due diligence can be done to address the concerns about the repercussive nature of the amendment for what may happen in England with the Treasury book. She was not able to give a very clear timeline.

I know that I am putting you in a slightly difficult position, but we are legislators, so we need to take that decision ourselves. Are you saying that, if you were in my position, rather than move forward with Further Consideration Stage next week on the basis that the commencement provision is removed, it would be better to wait until the new year to have Further Consideration Stage to allow the Department to carry out its due diligence, which will, hopefully, deal with that concern? We could then proceed with Further Consideration Stage and retain the commencement aspect so that we know that it will definitely happen.

Ms McMullan: Yes, that would be Women's Aid's position. There are too many unanswered questions at the moment, and we would welcome consultation and advice being taken and for the Minister then to come back on those points.

Ms Dillon: I am glad that the Chair has clarified that. I just want to clarify a few things. I understand where you are coming from. We deal with the legislative process daily and weekly, and it is a complex issue, but that is why we have worked in the way in which we have on it. We really are trying to get the legislation right. I also understand where you are coming from when you say that you are happy to wait. For me, access to legal aid for victims is important. I deal with the issue all the time in my office and have assisted friends and people who are close to me with it.

There are a couple of things that I am going to ask you. The repercussiveness that will affect England and Wales is one element for the Minister to consider around commencement. She has outlined the potential repercussiveness here as another issue, so we could be talking about a significant delay. I am flagging that up, because I am not sure about it. I want to ensure that every bit of advice that we are given — particularly from you, because, to be honest any advice from Women's Aid is going to have an impact — is given a good hearing. We need to be clear that there could be a significant delay

in getting the Domestic Abuse and Family Proceedings Bill passed if we tie commencement to legal aid.

I accept entirely everything that you are saying about people being repeatedly brought back to court, particularly around that issue. Sinéad and I understood that Rachel's original amendment was about respondents, because it is about continually being brought back to court, whereas, as an applicant, that is your choice to a certain extent, although not entirely, and I get that.

I am sure that you will be able to give us examples — I would appreciate them — of where an applicant would need access to legal aid. To me, it would be helpful to look at that. When we are talking about delay, the length of time is important for me. We are not talking about until just after Christmas. It would be disingenuous of the Committee to lead you to believe that, because I do not think that that will be the case if we tie commencement to the legal aid issue.

We may have Further Consideration Stage after Christmas, but when the legislation commences is a different matter, and that will be in the hands of the Department. There is nothing that we can do about that, as far as I am aware. If we withdraw the amendment, we need to put faith in the Minister that she will commence. She and the permanent secretary outlined that she is legally obliged to commence if she can — if repercussiveness is not an issue — and the Committee can hold her to account on that, as I outlined.

I want to get some sense of the type of delay. What is your thinking on how long it could be delayed for? We need to be mindful that next year we are moving into the final year of the mandate. I would not be content coming out of this mandate and leaving this Committee not having put this legislation on the statute book. That is not my decision to make, however. The decision will be taken by the entire Committee, and we will be guided by stakeholders, because it is important that we hear those views.

You talked about domestic abuse protection orders (DAPOs) and domestic abuse protection notices (DAPNs) and the low uptake of non-molestation orders. That is one of the first things that I raised. It is a massive concern for me that they are not used, because the protection of victims is vital. Not putting that on the statute book removes that protection, although we have been told that it will be brought forward in the miscellaneous provisions Bill. Again, I am concerned that, if we push this back, are we pushing back the miscellaneous provisions Bill?

The Committee has a really good opportunity to deliver on so many pieces of legislation and to do what we are supposed to do in this place, which we have not done anywhere near enough of, and nobody knows that better than you. For all the victims out there and the sector, we have certainly not delivered anywhere near the amount of legislation that we should and could have delivered. The Committee is now trying to deliver legislation that is going to make a real difference for victims. There is quite a bit of Gillen in the miscellaneous provisions Bill, and that is going to be massively important for tackling domestic violence, and sexual violence of a wider nature.

I am just flagging that up. I am looking for a steer from you. There are two things that I am looking for: a steer on that issue and examples of applicants taking a case. I am clear around respondents. I absolutely think that respondents need to have access, because I have mostly had to deal with those cases. I cannot recall a case in which I have had a victim of domestic abuse who was the applicant, but I am not dealing with anywhere near the number of cases that you deal with, so you are more likely to have such examples. It would be helpful to me to have an understanding of that, Sonya.

Ms McMullan: The mandate is a real concern for us. On this never happening and never coming back again, however, we would be looking at it from the other viewpoint. From listening to you today, at the moment, I think that it is a case of, "How long is a piece of string?". Nobody knows. As you said, we do not have the answers about the delay.

Ms Dillon: My concern is about nothing happening. It is one thing for one part of it, albeit a very important part, not to happen, but what if the entire Domestic Abuse Bill were not to happen? I would be lying to you if I said that I thought that that was going to happen, but what if it did? I get that we want to get it perfect. I would much prefer that, but no legislation will ever be perfect. We will always be coming back to it, and that is what we should do. Are we prepared to say that we would rather have none of it than having it without that? Is that where you are?

Ms McMullan: We have a Bill that has no money attached to it anyway. Its roll-out is therefore a huge concern. A huge amount of training is needed for the police, social services and court officers to

ensure that this is really good, working legislation for all victims. There is no indication that any of that training will happen. That is really concerning, because, when —.

Ms Dillon: Apologies for cutting across you. There are provisions in the Bill on training. If the Bill is passed, training will be mandatory. There is no suggestion of any amendment to that: training will have to happen. The PSNI has given a commitment, although it has said that it will take a year. I do not know whether it will take a full year. I have said at the Committee before that I do not care whether it takes nine months to a year, as long as it is right. It absolutely has to be right. I agree with you that training is vital. You have outlined that before, and you are 100% right. The legislative —.

Ms McMullan: There is a commitment for the PSNI, the Probation Board and the Courts and Tribunals Service in the Bill, but if you look at it as that relates to the family courts, you will see that there is a whole piece around social services and social workers. There is no money or provision for training there, which is a concern. There has been very substantial investment in training for police services in other parts of the UK over the past number of years, but our PSNI has not done that. You know that well, Linda, as we have spoken about it before. There seems to be a real pattern of underinvestment in services in Northern Ireland.

I really would welcome answers on the delay in the research piece that the Minister and the Department are going to come back with and then return to Further Consideration Stage at the start of next year with those answers. The issue came up only last night. I saw it for the first time in a tweet. I then started to research the case in England and Wales to find out what it was about. It is therefore really difficult to get your head around all the intricacies of it when you have only just been presented with the issue. It seems to be very complex and a case of, "What if?". My understanding is probably limited, but, from listening in next door, it is that any case could be brought up and challenged here.

I know from speaking to women last night that legal aid is so contentious. It is already being abused, as I have said previously, by so many perpetrators. I would love the Legal Services Agency (LSA) to look at 20 of the cases of the women whom we are dealing with to see what the legal aid fees of the perpetrators add up to. That is what we are dealing with at the moment. It is a system that is already subject to abuse. If anything, it is really good that the Committee has highlighted that. It has brought the matter to the fore and created public awareness of all the issues.

We are in support of the applicant and the respondent. In one of the cases here, for example, a woman who was seen as a flight risk was brought to court for a prohibited steps order. The partner was in prison at the time. The solicitor went to three different courts and got the prohibited steps order in the third court, where he was unknown to it. The partner was in full receipt of legal aid. It was all based on her going to college at night to learn another language. He thought that she was going to move to that country. She had to make an application to the court to appeal that. There therefore are cases, but the Bill narrows the eligibility criteria. It is what the Department is trying to do to reduce money and costs, but we would like to see legal aid made available as widely as possible. The eligibility criteria need more discussion, and I know that the Department is working on that.

Ms Dillon: The Department has said that it will limit the eligibility criteria. I wanted to get that clear and on the record to know where we are at, because we can make decisions based only on information.

Ms McMullan: Absolutely.

Ms Dillon: The Department has said that it will limit the eligibility criteria if we put in legal aid for respondents and applicants. Where do you stand on that? I know that is not an easy answer, because I want the eligibility criteria widened out, and I want applicants and respondents included, but we are not going to get both. That is clear. What is your advice on that?

Ms McMullan: There seems to be this choice that you have to pick one or the other, and I do not want to be put in that position. The voices of victims are in my head, and I need to have them front and centre in this room today. I know that women will be both applicants and respondents in cases, and the legislation is narrowing eligibility. There is a conversation to be had about that eligibility and those who have only got a prosecution. Our attrition rates in Northern Ireland are so low, and that really would reduce the number of people coming through as well.

Ms Dillon: I absolutely accept that you are speaking for everybody, and so you should, but which is the greater risk? If you narrow the eligibility criteria so much that —.

Ms McMullan: If we look at cases going through, statistically, there is a higher percentage of respondents.

Ms Dillon: Thank you. I appreciate your giving those answers.

Ms S Bradley: It is coming up on my computer that the network is unstable, so I hope that you can hear me OK. Sonya, thank you not just for being here today in the midst of our dilemma but for everything that you have brought to the Committee. You have been most helpful with the resource that you have brought. It is perhaps a little unfair to bring you here, because we have engaged with a lot of stakeholders, and it is impossible to get back to everybody within this window. We therefore do not expect you to speak for all organisations, but we appreciate your being here for those people whom you do represent.

I will not get into the piece about the amendments, and perhaps we do not have time to go into the reason for where I am on that. On the dilemma that the Committee faces today, however, you mentioned that the victims or survivors of abuse whom you spoke to were happy to wait. I will follow on from Linda's point, which is important. To be fair, the conversation that you will have had last night with those people will be different from the one that you are having today, because the Minister has spoken at the Committee, so we have heard more information in that time. When those victims or survivors said that they were willing to wait, however, do you think that they realised that the wait could be extensive? The wait would mean us not creating the offence that is domestic abuse and waiting for what could be some considerable time and then still having to deal with the legal aid issues because that repercussive thing has been flagged up. We have seen it and heard it. It does not go away, and it will have to be dealt with.

Alternatively, was it their opinion that it would be a shorter wait and it is therefore worth getting it all across the line at the same time and that the delay meaning that there would not be a domestic abuse offence in place for that period would not be that significant? When I retrace my steps through the Bill, the substantive piece is that there will be an offence that is domestic abuse. There are plenty of things that we wanted in the Bill, one of which was a provision on a legal aid, and I am quite pleased to see that in there. I took comfort from not just the Minister's intention but the fact that I sought advice on it and found that the Minister has a legal duty to commence the provision. We are talking only about linking the timing of the commencement. The Minister has a legal duty, under the commencement clause in the Bill, to commence that provision. On that basis, do you feel that the people whom you represent are aware that the delay could be prolonged and that the risk from that is that there would not be an offence of domestic abuse in that time?

Ms McMullan: In Northern Ireland, we are used to waiting, especially for domestic violence legislation. We have waited so long for it. The conversations that I had last night were about the fact that we have waited long enough. We do not know what the timeline is, and none of you knows, today, what the timeline is either. Ultimately, it is up to the Justice Committee, not me, to make those decisions. I am just putting a position out there after having had conversations with our members and some of the women who gave testimonies to the Justice Committee.

The whole thing is just exhausting, to be honest. We seem to be the last part of the UK and Ireland to get an awful lot of things, and we are used to that, as I said. We do not know how long the delay will be. I feel that asking me to try to answer that on behalf of other people is putting me in an unfair position. I do not know what their answer to me would be about what the Minister has stated in the past hour. I do not feel that I can speak on behalf of everyone. Sorry, Sinéad.

Ms S Bradley: I appreciate that. The dilemma here is that there is not really a window of time in which to conduct research, but we have to ask ourselves the question. The substantive Bill being passed and domestic abuse becoming an offence, in my mind, lifts a lot of the weight off our energies and efforts. We can then hold the Minister to account, drill down into all the detail and really focus on clause 27A, which looks to go even further by creating a bespoke package of care for victims. The conversation would move on very quickly to that more lucrative piece that really is about helping victims. I understand that that is quite complex and that it is a lot to throw out within such a short window, but I just wanted to make you aware that that is what has been presented to the Committee at this stage. That keeps you informed of where we are at, as much as anything else. It is unfair, but, Sonya, I appreciate your being here. Thank you.

Ms McMullan: Thank you, Sinéad.

The Chairperson (Mr Givan): I know that members will have the discussion whenever *[Inaudible]* Sonya here. I have my own views. On the House of Lords court ruling, I have to say that I am not comfortable at all with leaving the action to be actioned. Based on that court ruling, a judicial review would be required to call on a Minister to action something that has not been actioned. We can have a discussion about what the Minister said and how much credence members wish to give to that when the Committee deliberates on it. I have a number of views on some of the arguments that the Minister presented on the issue. I know of other Ministers who were under a duty to implement the will of the Assembly but never did so. They got legal advice that said that they did not have to, so they did not commence the relevant provisions. It is a moral duty, in my view, more than a legal duty that is actionable, but it is not fair to drag Sonya into my interpretation of all of this.

Miss Woods: Thank you, Sonya, for coming along, and thank you for your engagement so far, especially in the past couple of months. I am sorry that I missed the start of the meeting: I was at Question Time. I am not too sure whether my questions have already been asked, so I apologise. I will not ask you about anything that was discussed today with the Minister, because that is a decision for us to take and is not for you to say either way. It would be very unfair to put you in that position.

Please interrupt me if this has already been asked. It is about the eligibility criteria in the Minister's amendment No 3, which is a replacement clause 27. The Department is putting a duty on itself to create eligibility criteria to assess victims or alleged victims of domestic abuse. Are you willing to engage with the Department on that and bring some expertise to how perpetrators who allege to be victims might be — it is a crude term — weeded out? The concern expressed in last night's press release is that, under the Committee's amendment, there is scope for others, including those who perpetrated the violence, to get legal aid. That is not in the amendment, because perpetrators can get legal aid if they meet the criteria for legal aid under financial eligibility. Neither that amendment nor any of the other three that I have tabled do that. Indeed, with Sinéad Bradley, I have tabled an amendment to the Minister's amendment. Given your experience with Women's Aid, can you help with the eligibility criteria? That is where I see the fundamental problems that are being brought to us by the Department being addressed: in the Department's own amendment.

Ms McMullan: We need a full review of legal aid, because, as I have said on several occasions this afternoon, the system is already being used and abused by perpetrators of domestic violence. Is there a risk of this causing more cost and leading to more perpetrators using it? Of course there is. We would call for a full review. I know that the Minister is talking about a policy review of legal aid, but, if we are to meet in the middle anywhere, can the Department look at having a review of legal aid and where that sits? It is just not fit for purpose at the moment. It really is not.

We have looked at the eligibility criteria. We have looked at how multi-agency risk assessment conferences (MARACs) and different things would sit with eligibility, but that does not cover everyone. It is high-risk. It is a very difficult one, but, of course, we are willing to engage on looking at that.

Miss Woods: Thank you. I appreciate that. I get that eligibility criteria are not the perfect answer. You will always get people who fall outside of the criteria because they do not deal with sector organisations or support services or because they do not go to their GP. Part of the Bill is about encouraging people to reach out. It is about criminalisation of an offence and their being involved in the justice system, if that is what they need to do, but it is also about not being in damaging and abusive relationships. We know that we have a lot of wider work to do, but, in tabling my amendments to the Minister's amendment No 3, I see that as being where the Department can weed out abuse as a first step. Then, under new clause 27A, there can be a wider review in a couple of years' time. I appreciate that you have said that you are willing to engage, and it is absolutely crucial for you to do so, given the vast experience that you have.

I will not go on any longer, Chair, because everything that needs covered was covered today with the Minister. Thank you, Sonya, for being here.

Mr Frew: Thank you for all your work over the past number of years. It feels like decades, I suppose.

Ms McMullan: It has been.

Mr Frew: I have one thing to say on Sonya's point. The commencement clause states:

"The other provisions of this Act come into operation on such day or days as the Department of Justice may by order appoint."

That is the only real leverage that there is, and there is no leverage there because the Department of Justice orders and appoints the day and hour that it brings in any commencement, other than the commencement contained in clause 38. I have real concerns because, right through the process, it was clear that the Department and Minister did not want to touch legal aid in the Bill. They just did not want to go there. That played out in the House. I get that. It is OK for the Minister to have that opinion. She has given commitments today, but she has come here with information but no proof or evidence. I have asked for that evidence with regard to the Department of Finance and the questions that it posed.

I just want to give you some concept of cost, because your big issue is cost and then roll-out and time; for us, it is time. What the Department has said is that — this all comes with a health warning — as it sits, the current clause inserted by Rachel will cost £14 million. That is good news, because, as far as I am concerned, that is £14 million that will be in the hands of victims. The Department's amendment, which really restricts that clause greatly, will reduce that bill or burden to £500,000. You can see a massive difference between clause 27 as it sits now, with a burden of £14 million, and the amended clause, if the Department gets its way, with a burden of £500,000. I could not read my own writing there. You can see the difference here and the difference and the impact that it will have on the ground. I am not sure, therefore, that the Department's amendment cuts it at all with regard to what we have achieved.

Make no mistake about it: I agree with what you say about legal aid. You can look at every clause in the Bill. The massive reaction that I received after Consideration Stage was all about civil legal aid. It was all about that issue of abuse in court. Nothing else: no other issue. Not the child aggravator, the offence itself, coercive control or parental alienation. It was about the court case and abuse in it, actually doing something about civil legal aid and balancing that playing field. It is a massive issue for victims out there. I am with you there. I have enough knowledge to know that that is the case. That is the burden.

The Minister also gave us the figure of £400 million to our block grant whereby, if we have a different system here to that of England and Wales, someone may well take a case in England and Wales on civil rights grounds or equality grounds on the basis that, because we have a better system here, they are being dealt a bad hand. That is what the Minister is saying. Sonya, have you any idea of any reports out there that give you an aspect of the differences between article 8 court proceedings in this jurisdiction compared with England and Wales with regard to differentials? Whilst the Minister says that someone could take some other jurisdiction to court because we have a certain system, this is about article 8. This is about victims of domestic violence going through article 8 proceedings. To me, that is a very neat definition and string of people. It is not a big, wide thing. Do you have any idea or concept of the differentials between our legal aid system on those issues and that of England?

Ms McMullan: We were in the office trying to research that this morning. We were ringing our partners in England and Wales, and we could not get anything. When we get that information, we will certainly be happy to bring it to the Committee as soon as we can. We tried to get it this morning but could not. The information that we were looking at this morning was equivalent Bills and what money was attached to them and that kind of thing. Hopefully, by the end of the week, we will have a little more information on that. We will be happy to report to the Committee with that. Sorry, Paul, that —.

Mr Frew: No, no: it will be quite impressive if you are able to report back by the end of the week.

Ms McMullan: Oh yeah, we are impressive *[Laughter.]*

Mr Frew: You are more impressive than the Minister as regards timings.

That puts me on to my next question. The Minister says that she should hear back from legal counsel with advice within weeks. I think that she said "before Christmas", so that is weeks. However, she could not give the Committee a time — this is the point that Linda makes — for when she will have assessed that advice. This is where the "How long is a piece of string?" issue comes in. What I would be interested in knowing, because she raised this as an example — I would like to know, if the Committee can find out, how long it took the Health Minister to do due diligence on the nurses' pay issue. I am sure that that was done in weeks or months. If we are talking about two months or three

months, that is a duration of time that we are able to afford the Minister. If it is six months, nine months or a year, that is a completely different scenario.

Ms McMullan: Absolutely.

Mr Frew: Would you be content with that timescale?

Ms McMullan: Yes. Last night, we were thinking that it was not going to be major delays, and obviously today has changed that. So, yes, that would be reasonable.

Mr Frew: Right, OK.

We did also probe the Minister on amending the amendment — the one that she has taken so much offence on, the commencement of clause 27. I have enough experience in this place to know that, when Ministers do not have a will to enact a Bill or a piece of legislation within a Bill, they will ignore it. I have seen that with the child protection disclosure scheme. I have also seen how organisations will ignore it and methodise and pilot it to death. There is no doubt that it happens out there. I worry that, if we do not have some sort of commencement, you and I could be sitting in a room in a number of years' time, or even a decade's time, discussing the same thing about our frustrations with nothing being done with civil legal aid. I have real concerns that the Minister would take so much offence at a commencement order. She can amend this amendment if she so wishes, but she has stated clearly today that she has no intention of trying to — in her words, I am sure — correct amendment No 15. She just does not want it anywhere near the face of the Bill; end of. I am aggrieved by that, especially when she comes here telling us that there is a problem but will not provide any evidence whatsoever.

If a commencement provision was put in the Bill that set a time frame which would afford the Minister time to assess the legal counsel that she is going to get this year, would your organisation be content with that? That would allow the rest of the Bill to carry on, the offence of domestic violence to come in and clause 27 to be enacted at a later stage. It might not just be a condition of time. There might be conditionality around the Barnett consequentials. If the legal advice comes back and says, "Yes, Minister. You were right to hold off because, if you do this, the risk is that the jurisdiction will be liable for a £400 million Barnett consequential", she will be right to hold off. Now, I do not see any evidence that that is the figure. I do not know how the Minister has arrived at that, other than that she has multiplied the population percentage of Northern Ireland compared to England and Wales. That is it, basically. So, in my eyes, the jury is still out. Would you contemplate supporting a commencement provision in that vein, where you have a time limit to afford the Minister time to assess, and also conditionality of, "If this is really as bad as you thought, Minister, you can cease"?

Ms McMullan: Yes, it is something that we would consider. However, from listening to the Minister earlier, I do not think that she is willing to move in that direction.

Mr Frew: That is clear. To be fair to her, she is not going there at all. However, that does not stop individual MLAs, or even the Committee, forming an opinion to amend an amendment or put in a fresh amendment. With the Minister not moving the Bill, we can now put in fresh amendments. Would you consider that acceptable in trying to move this forward? It would get the rest of the Bill commenced and also have this commitment to a commencement, in a conditional sense, on the face of the Bill.

Ms McMullan: Yes.

Mr Dunne: Thanks, Sonya, for your information today. Just a quick point. You talked about perpetrators getting legal aid, and obviously they in some form meet the criteria as they exist. I assume that, in a lot of cases, they have been the main income earner in the household and that the female partner, for example, was perhaps on a lesser income. I am making an assumption just for an example. Therefore, you would feel that they should get legal aid, but they were unable to get access to it, while he did, yet there was clear evidence that he had a much greater income. Is that right?

Ms McMullan: I have made reference to this, and, Linda, you talked about the working poor. A lot of the women whom we are dealing with are on the minimum wage. If you work 16 hours a week on the minimum wage, you still are not entitled to legal aid because of the current threshold. Many of the men were not working or, in fact, leave their job in order not to have to pay child maintenance. They may have to pay the minimum £3.50 a week. It is a win-win for them.

Mr Dunne: There are clear loopholes that they are able to get through.

Ms McMullan: Yes, there really are. As Rachel said, even if they are a known perpetrator, if they meet that threshold, it does not matter and they are still eligible. We have people who have got legal aid from prison. That is the reality. In one of the cases we have there, the prohibited steps example, he got legal aid from prison. That is what we are dealing with. If you take all of the perpetrators out, let us just not give them legal aid at all any more and then give it to all the victims who need it. That is it all sorted.

Mr Dunne: I agree with that.

Ms McMullan: If only.

Mr Dunne: Thanks very much.

The Chairperson (Mr Givan): It would be nice to change the balance.

Mr Frew: Just on that —.

The Chairperson (Mr Givan): Linda wanted to come in.

Ms Dillon: I am OK for Paul to come in.

Mr Frew: It is just on a wee quick issue that Rachel raised. You talk about the respondent piece, and it has not been dialogued in this session. In the scenario where the person who is in prison is getting legal aid and the victim is having to drain resources, even if they lose and then they take an appeal, they then become the applicant and they have to pay for that. That is one of the issues around the respondent piece that we need to be careful about.

Ms McMullan: That is the case in the lower courts as well for that provision around the appeal. A lot of domestic violence cases escalate too, so that is another point.

Ms Dillon: On the back of that point, to be clear, it is not that I do not want applicants to be able to get legal aid. I want everybody to. I agree with you that it should not be given to the perpetrators, and if only we could get to that point. That is why I keep saying that, while I understand that proposed clause 27A gives no commitments, I think that it is more important, because I want to see something much wider. I do not think that this goes anywhere near far enough in looking after people, and that is my big concern. Our job as a Committee and that of future Committees — of which I will hopefully be a member, but we will see — is to ensure that that happens. As you have already outlined, Sonya, there is a bigger piece of work.

Ms McMullan: That is a concern too for us because, as a Committee, you are working so well and are so victim-focused. Time is ticking away to the end of the mandate, and nobody can say that you are all going to be here as part of this Committee and have that real commitment.

Ms Dillon: I want to pick up on the point that Paul made about commencement. We can amend the commencement, but the Minister can still not bring the Bill forward. We are still back, then, to that position, or it can go ahead, have the commencement tied and not commence anything. I am still in that place where I am finding it really difficult. It is a conversation that we need to have. You are right that we have put questions to you that are unfair, but it is because we are trying to get to the right place for the victims. That is the truth of why we are asking, but you are right: it is unfair to put you in that position. As legislators, we will have to make the final decision. For the sake of the victims, I hope that whatever position we come to is the right one. I can guarantee, from my and my party's point of view, that this is not the end point. You are right. The review of legal aid as a whole has to be done. It is not about saving money. I truly and genuinely believe that, in the long term, you will save money when you do the right thing for victims; you will save it somewhere. That is the bottom line. You will save money if you do a proper review that actually looks at who you are giving legal aid to and how you assess eligibility criteria. There are bigger things, and we as a Committee will certainly engage with you further.

I thank you for coming today, at such short notice, and helping us to try to bottom out some of this stuff and, hopefully, get to a good place and a good decision for victims. You said yourself that this

Committee has worked well together because we care about the issue. I guarantee that, whatever place we get to, as with everything that has been done to date, it is with the right intention. It is absolutely with the intention of doing the right thing for the victims. Thanks a million for coming at short notice. We really appreciate it.

Miss Woods: On a point of clarity around what Paul said with regard to the respondents, it is inherently tied to the other amendment removing the lower courts, because appeals are heard at the higher courts, regardless of if it is a family care centre or the actual higher courts. Appeals are not heard at the Magistrates' Courts or lower. They are all inherently tied, which is why it is very important that it is not just respondents. You cannot take an appeal without being financially drained. It is just a point of clarity on that: they are all interconnected with regard to the three amendments in my name.

The Chairperson (Mr Givan): OK. Sonya, thank you. I asked you to come here, and I take full responsibility for that; it was my decision. Other groups will ask, "Why was it only Women's Aid and not others?": again, I take responsibility for that. The Chairman has that discretion. It was made for the right reasons, given the time limits. Sonya, you responded to that call from the Committee because you have played an important role in the evidence provided to the Committee. That does not diminish what other organisations have provided, but I take on that responsibility. If there is any criticism to come the Committee's way, it is for me to deal with it. Thank you, Sonya. I really appreciate it.

Ms McMullan: Thank you. Good luck with your deliberations.