



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Key Issues:
Mrs Naomi Long MLA, Minister of Justice

19 January 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Ms Linda Dillon (Deputy Chairperson)
Mr Doug Beattie
Ms Jemma Dolan
Mr Gordon Dunne
Mr Paul Frew
Ms Emma Rogan
Miss Rachel Woods

Witnesses:

Mrs Long	Minister of Justice
Mr Peter May	Department of Justice

The Chairperson (Mr Givan): Let me formally welcome to the meeting the Minister of Justice, Naomi Long, and Peter May, the permanent secretary of the Department of Justice. They join us via the StarLeaf facility. You are both very welcome. The session will be reported by Hansard, and a transcript will be published on the Committee web page in due course.

Members, we intend to cover each of the issues in the order that has been outlined. The Minister will make brief remarks at the beginning of each of those issues, and then I will open it up to members to ask some questions.

The first issue that we will discuss with the Minister is an update on the Department's legislative programme. The relevant papers for members are from pages 7 to 10 of the meeting pack. Minister, I hand over to you at this stage. You are welcome to the Justice Committee. Thank you.

Mrs Long (The Minister of Justice): Thank you very much, Chairman and Committee members. I am appreciative of the opportunity to update the Committee today.

On taking up the role of Justice Minister, I brought forward quite an ambitious legislative plan for the remainder of the mandate in areas where there was widespread political agreement on the need for new legislative provisions. I am pleased that, as a result of our collaborative efforts, the first of the planned Bills — the Domestic Abuse and Family Proceedings Bill — reached its Final Stage yesterday and should receive Royal Assent in the coming weeks. The Criminal Justice (Committal Reform) Bill was introduced on 2 November and is now at Committee Stage. I am pleased to confirm that the Protection from Stalking Bill was introduced in the Assembly yesterday, with its Second Stage likely to take place in early February. We are due to discuss the next Bill in my planned programme — the

personal injury discount rate Bill — as part of today's conversation, so I do not propose to say anything further on that at this stage.

That leaves, then, the justice (miscellaneous provisions) Bill, the drafting of which is ongoing. Subject to the necessary Executive approvals, I intend to introduce the Bill to the Assembly in the spring. The Bill will increase public safety by legislating to deliver aspects of the Gillen review of serious sexual offences cases; the outcome of a review of child sexual exploitation, including a new offence of upskirting and "down blousing"; provisions relating to bail and remand arrangements for children and young people; and a number of stand-alone provisions that will help to create a more effective and efficient justice system. Introduction of the Bill in spring 2021 should ensure that it can complete its Assembly scrutiny and passage before the House rises in March 2022 for the next local elections.

The Chairperson (Mr Givan): Hopefully, we will not be dealing with that in March, because we will probably be slightly distracted with election campaigning. If you had a red, amber and green system, would you red-flag or amber-flag any of that legislation, or, at this stage, are you still confident that that legislative programme will be achieved, subject, of course, to the Committee working with you constructively, which, I am sure, it will?

Mrs Long: We are still operating within the time frames that were planned, and that gives me a certain degree of confidence. Of course, as you rightly say, it will depend on good collaborative and cooperative working between the Committee and the Department. Given our experience of trying to manage changes to the Domestic Abuse and Civil Proceedings Bill in a constructive way, it would be helpful, particularly for the miscellaneous provisions Bill, if members or, indeed, the Committee could flag up as quickly as possible any areas that they would like to see included in the Bill, so that the Department can see what drafting and policy support can be provided for that. I am conscious that, if the Bill becomes unwieldy, it may be difficult for it to make its full passage through the Assembly. I recognise, as does the Committee, the need for us to have proper scrutiny and robust policy to back up legislative change. Provided that we work cooperatively and try to identify early areas in which members may have a particular interest, there is still the opportunity for that to be delivered. It is, nevertheless, quite a demanding programme of work. If we manage to make it through to the end of that, we can all be suitably proud of our contribution.

The Chairperson (Mr Givan): OK. Thank you, Minister.

Ms Dillon: I know that the Minister said that we will address the personal injury discount rate Bill later in the meeting, but, on the legislative programme, if the Bill were not given accelerated passage — the Committee will take its responsibility seriously and do what it has to do — would the Department be able to manage all that is left without accelerated passage?

Mrs Long: Our reasons for seeking accelerated passage — we will come to this — are not capacity issues in the Department, because the same amount of work would still be required; in fact, that work would have to be condensed over a shorter period, so it is not an issue of capacity. It is not even about capacity in the Committee. That is a matter for the Committee, not me, to manage. The reason for seeking accelerated passage in that case is that there is urgency in the legislative change that we are trying to make and it is our belief that it is necessary in order for outstanding cases to be settled and for us to reach a steady state, if you want to describe it as such, rather than a position that will be subject to further change, which is not in anyone's interest. To answer the question directly, it is not a capacity issue. It may impinge on the Committee's capacity, but that is a judgement for you, rather than me, to make.

Ms Dillon: I thank the Minister for clarifying that. There was some concern that it would impinge on the miscellaneous provisions Bill, but, if there is an assurance that that will not be the case, I appreciate that clarity.

Mrs Long: Certainly not from a departmental point of view. The drafting of all those different elements are, as you know, separate and are being dealt with separately. However, as you will be aware, there will be three Bills in front of you for scrutiny, and then a fourth will arrive, so there may be issues that you wish to consider in respect of capacity. From a departmental perspective, it would make no tangible difference.

Ms Dillon: OK. Thank you.

The Chairperson (Mr Givan): Listen, we have pivoted on to that issue, so we may as well, for completeness, just deal with the personal injury discount rate. Minister, I was not going to labour that one today, because we got an update. I know that members will not have received it; it came in an hour ago. That will be on the agenda for Thursday's meeting to allow the Committee to consider it and provide a response. I do not intend to cover it now in any real detail, as I had anticipated doing, but, if you want to make some brief comments on that, Naomi, we will park it so that the Committee can consider the letter that it received earlier today.

Mrs Long: Of course. On the update on the personal injury discount rate, the Committee wrote to the Department to ask whether the permanent secretary intended to review his decision not to set the personal injury discount rate until a new legal framework was in place. That was in light of legal proceedings on the decision. I can confirm that the Department is defending the applications for a judicial review (JR) of that decision. Given that the matter is now before the courts, I am not able to say anything further on that. However, we recognise that there is an urgency. The matter has been an issue for some time. Therefore, we are keen to get a final position on how the personal injury discount rate will be set in future. There is a degree of urgency to that. Members will be aware that there is an urgency in settling the particular cases and claims that fall under its remit. I will pass over to the permanent secretary to talk about his role in that regard. That may be helpful, if members have any questions.

Mr Peter May (Department of Justice): I am happy to respond to questions from members. The decision not to review it at this stage is based on the fact that we are still seeking to move forward to the timescales that I had envisaged when I took the decision last autumn. If there were to be a material change to those timescales, obviously, we would need to look again at whether a review is needed. That is without prejudice to the outcome of that review.

The Chairperson (Mr Givan): For clarity, Peter, the last time that you were here, the Department indicated that there were four pre-action protocol letters: is that still the number that has translated into the JR action, or has it increased?

Mr May: It is still four.

The Chairperson (Mr Givan): Has any date been set for a court hearing in respect of that?

Mr May: No, there is no specific date, although we think that there may be a hearing in February.

The Chairperson (Mr Givan): OK. I will not labour it. We will put the substantive letter that has been received on the agenda for Thursday's meeting. Do any other members want to ask questions on the personal injury discount rate issue or the legislative programme, or are you happy for us to move on to the next issue, which is the COVID-19 regulations?

We will move on. Minister, do you want to give a briefing on the aspects of the COVID-19 regulations around enforcement? We were particularly keen to get an update from the permanent secretary on the task force that he is leading on this issue.

Mrs Long: Regarding enforcement of COVID restrictions, Committee members will be aware that the regulations now make it an offence for someone to leave the place that they normally live without reasonable excuse. The PSNI also have the power to direct people to return to their home, as was the case in the week starting on Boxing Day, for the curfew period. The PSNI will continue to use the four Es of engagement, education and encouragement, in the initial stages, and enforcement as a last resort to ensure adherence with the regulations as their main approach. We will not judge the success of the regulations by how many people receive fines. That would be the wrong way to approach the issue. However, where there are blatant breaches of the regulations, the PSNI will ensure that enforcement activity is rigorous. Other statutory organisations, such as councils, also have responsibility for compliance and enforcement. They, too, will play their part and are playing their part.

The updated regulations mean that, if you are away from home without reasonable excuse, you can be subject to a £200 fixed penalty notice or a fine of up to £5,000 if your case goes to court. While there is anecdotal evidence and media coverage of specific examples of non-compliance, PSNI colleagues report high levels of adherence, and their engagement with the public remains very positive on those issues.

The COVID task force is being led by the Executive Office, and it reports directly to the Executive Office Committee on the work of the task force, but, as you have referenced, Peter is here today to respond to specific questions that you might have on the adherence work stream, which he is leading on behalf of the Executive Office as opposed to on behalf of the Department of Justice.

The Chairperson (Mr Givan): OK, thank you. Peter, do you want to provide an update on that work stream that you are involved in leading?

Mr May: Yes, certainly. I have drawn together a group of people from across different organisations to assist with the work. That includes the police, the Public Health Agency, the Department for Communities, the Executive Office, the Department of Health, representatives of local government through the Society of Local Authority Chief Executives (SOLACE), and we have just brought on the Department of Finance innovation lab because it has some behavioural science support. The work that we are doing has a number of different elements. We are looking to develop an evidence base that identifies experiences on the ground and, in particular, the biggest challenges around adherence. We are also looking to see whether there is learning from elsewhere in the world, particularly comparable democracies to see what has been effective.

We have been asked specifically by the Chief Scientific Adviser to look at two specific issues, one of which is self-isolation. It is widely recognised that the levels of compliance with or adherence to self-isolation rules are low. Secondly, we will look at the question of whether we could develop more community champions to help spread the message. We are also working on how the message comes across and how we can create social norms as to the way in which people approach adherence. As the Minister referenced, if there is a focus almost exclusively on the very small numbers of people who are not adhering, that almost feels as if it is the norm, and people then think, "Well, if other people are not doing it, why would I?". However, the reality is that we have really high levels of adherence at the moment, and we need to recognise that and build on that.

Overall, while there is a lot of work going on, I do not think that one big measure will somehow transform this. I think that we will look to take a lot of small steps incrementally to try to make a difference. Obviously, as the pandemic takes its course, the challenges with adherence are likely to change over time, and we will need to be agile enough to react to that. That is a bit of an update.

The Chairperson (Mr Givan): Thank you. I would be interested in hearing about aspects of that around the behavioural analysis and what works and what does not work, particularly across other democracies, because it is important that we do the right thing and are not just seen to be doing something. Sometimes, actions can be counterproductive, albeit with the right intent, but, if the evidence shows that it is being counterproductive, people will need to recalibrate and adjust. There are definitely aspects of that on which I would be keen to get more information, once that work has concluded.

I will bring up two brief issues. One is the ongoing discussion around power of entry for police officers to people's homes to check whether they have been complying. Will you touch on that? The other issue that has been quite topical has been the 10-mile travel restriction being a matter of guidance. What consideration is being made for that to be a legislative requirement? To be fair, that is not something that I personally support, but I am just asking what the implications would be of making that enforceable.

Mrs Long: I will respond on the 10-mile issue first. As I discussed when I appeared at the Ad Hoc Committee, there are obviously pros and cons. We looked at a number of ways that travel could be restricted in regulations, but most of them involved an impact on people's personal freedoms that was out of proportion to the risk. That is always the key balance that needs to be made with health regulations. We already have quite intrusive powers in the health regulations and the coronavirus regulations, but it is important that we are able to demonstrate that further restrictions are required and proportionate.

With respect to the 10-mile travel guidance, that was really there to assist people who were asking, "What do you mean by 'local'? What sort of restrictions do you expect me to follow?". People who genuinely want to follow the rules seek that kind of advice. The 10-mile advice was to give people some indication of what we deemed to be a reasonable distance to travel for exercise.

As you know, there has been quite a debate around travel for exercise. Initially, it was exercise from your front door, but we know that that can create genuine challenges for people who live in rural

communities, people who, perhaps, have disabilities or mobility issues or people who have sensory impairment or autism spectrum disorders that may mean that they are used to exercising in a particular place and would not be comfortable doing so elsewhere.

For a host of reasons, we believe that providing people with flexibility to exercise as often and as much as they can in places that will bring them some degree of pleasure and comfort was important. However, the overarching guidance restricts large gatherings, so people should not remain somewhere where it is extremely busy, congested and where there are a lot of other people because of the risk of social distancing breaking down. Obviously, the closer to home you stay, the less risk there is of you having contact, so the guidance is important.

We looked at options around potential restrictions, such as saying that you could not move outside your county boundary, but that would lead to all sorts of anomalies. As somebody who lives just across the County Antrim line in Belfast, I would not be able to go to the city centre but would be able to go to Newry, which seems slightly perverse, given that one is three miles away and the other is considerably further. Anomalies like that made us think that perhaps that was not the best way forward, and we would be better to look at something that gave people a degree of flexibility.

The difficulty with putting the 10 miles in regulations is that there could be circumstances where the nearest safest place for someone to walk with someone else who is part of their bubble might be 12 miles away. You start to get into very intrusive policing around those issues rather than trying to get people to adhere. To date, the Executive have not asked for it to be placed in regulation. As you know, we will review all the regulations at the Executive on Thursday, and I would not want to pre-judge the outcome of that. However, we recognise that there are challenges around how to take those things forward.

On the issue of powers of entry, we have been advised very strongly that powers of entry are available to the police to allow them to enforce the regulations. They are health regulations, and the powers of entry are based on, I think, the Public Health Act (Northern Ireland) 1967. My understanding and the advice that we have received is that the police can enforce that. Moreover, the police have received the same advice. I know that there has been a degree of public discourse about it, but we are confident that the information that we have received is accurate.

Mr May: Perhaps I could add to what the Minister has said. My understanding is that there is now a legal challenge to the powers of entry. That is a challenge to the PSNI and the Department of Health in the first instance, and we are a notice party to those proceedings. That legal challenge will be defended robustly.

The Chairperson (Mr Givan): Peter, do we know from where that legal challenge emanated?

Mr May: I have not seen the notice of the challenge. I know anecdotally, but I do not have the evidence to state that publicly at this stage.

The Chairperson (Mr Givan): OK. Minister, on the guidance issue, I agree with your balanced assessment of what has to be considered and weighed up. Lisburn is split right down the town centre between Counties Antrim and Down. A county-based restriction just would not be possible. If you are familiar with Lisburn, you will know that, as you come in off the motorway and cross over the Union Bridge, you cross the county boundary. We also have County Armagh towards the Moira/Maghaberry side of the constituency. Let me bring in members.

Mr Dunne: Thanks for your presentation, Minister. We covered the wearing of face coverings in detail at the Ad Hoc Committee on the COVID-19 Response, and we welcome the initiative that has been taken by the supermarkets. I do not know what your opinion is of that, and I would be interested to hear what feedback you have had about it, but that has certainly exercised a lot of constituents. People have gone into supermarkets and customers, in the main, were wearing masks, but an element among them did not, and no one seemed to be doing much about it. I understand that the supermarkets now have a responsibility to enforce or, at least, encourage the wearing of masks. Do they have any further powers? We welcome the progress that has been made on that.

The other point is the Chair's point about right of entry. I am aware of house parties that happened in north Down in the earlier phases of the lockdown. Is there any evidence of house parties continuing? I know that the police were proactive and, to be fair to them, reactive on house parties, but they are a concern and a risk area. We need to do all that we can to discourage them.

Mrs Long: I agree with the Member on both points. First, on face masks, you will know that it has always been my contention that retailers can take responsibility for that in much the same way as they do when it comes to policing things like the laws on smoking indoors. If someone were to light a cigarette in the aisle of a supermarket, they would be removed from the store and told not to return until they had either extinguished their cigarette or smoked it outside. Only if that person became difficult, obstreperous or assaulted a member of staff would it lead to the police having to be called.

The reason why it has become such a totemic issue is that it is a very visible sign of people breaking the rules. When you see people out walking, you do not know whether they are family, so it is hard to know whether they are adequately socially distanced and so on. When you see people in shops, you do not know whether what they are purchasing is essential and so forth. However, when you see large numbers of people without masks inside supermarkets, it suggests that there is a widespread lack of adherence. In supermarkets, even over the last number of months, we have seen a marked increase in the number of people wearing face coverings, and that is for the good. The supermarkets are now stepping in and making it clear that they will do it, and I have noticed that a number of smaller retail venues in my constituency now have signage outside asking people to put on a mask. You notice people nipping back to the car to get one. It is often that people have forgotten to take their mask with them and they go back to get their mask and go in.

All those things are really helpful and are preferable to heavy-handed enforcement, because the difficulty with enforcement is that you end up with police stopping people who have a genuine reason. Whilst there are only a small number of genuine reasons why someone would not wear a mask, you would not want somebody, for example, with sensory issues being questioned by the police about why they are not wearing a mask because of the problems that that could create. If people adhere to the guidance and if retailers support that, that is a much better solution, and it is one that I firmly welcome.

On rights of entry and the issue of house parties in particular, there has been an ongoing issue with gatherings in people's homes, and that remains an area of concern. Particularly in the run-up to Christmas and in the new year, the police gave that a lot of attention and focus and will continue to do so. They are engaged in preparatory work, for example, for St Patrick's Day and things like that. House parties are particularly difficult to police given that they are in people's homes. They are also a particularly high-risk activity, because there are large numbers of people, a lack of social distancing and a confined space where the transmission of the virus is more likely than in other, better-ventilated situations.

For all those reasons, it is important that house parties are dealt with. The member is correct: the police have been very active on the issue of house parties and have issued a significant number of notices to those who have organised house parties and those who have been in attendance. I know that they will continue to keep that under review, because it is one of the areas that, we are concerned, is a major spreader and can create those superspreader events.

Mr Dunne: OK, thank you, Minister.

The Chairperson (Mr Givan): Are there any other members who wish to contribute to this issue? Are members content to move on? OK, Minister, we will go on to the EU exit and justice-related issues.

Mrs Long: Thank you. The trade and cooperation agreement reached between the UK and the EU on 24 December includes provisions for law enforcement and judicial cooperation in criminal matters. The agreement on justice and security is perhaps better than what might have been anticipated at the beginning of the negotiations. It provides for fast-tracked warrant-based extradition, the sharing of criminal records and biometric data on DNA, fingerprints and, in future, vehicle registration details. It also allows for the continued transfer of passenger name records for inter-EU flights and continued participation by the UK in Europol and Eurojust. The agreement includes improved timescales for access to mutual legal assistance using the Council of Europe convention and supports cooperation on asset freezing, money laundering and cybercrime.

The most noticeable downside of the agreement is that the UK will no longer have access to the Schengen Information System (SIS) II that allowed for real-time sharing of data on wanted and missing persons. Bearing in mind that the Irish were just about to come on board with Schengen, that is a particular frustration. However, there is provision in the agreement to allow the UK to enter into bilateral agreements with individual EU states to develop similar functionality. The agreement also allows for the continued transfer of personal data for criminal justice purposes for a period of up to six months, during which time a data adequacy agreement should be agreed, and we remain hopeful that

that will be the case. I spoke with the Lord Chancellor, Robert Buckland, and he is optimistic on the issue of getting a data adequacy agreement.

In summary, the agreement ensures continued cooperation with the EU on key areas and allows for bilateral agreements to plug gaps and to enhance the current arrangements. That will be particularly important in ensuring continued cooperation with the rest of Ireland. That is something that we want the UK Government to take up as a priority when it comes to bilateral agreements. I accept the current reality that we are no longer part of the EU and the justice and security deal that has been agreed. It is a comprehensive deal, and it allows for key EU justice measures to continue, albeit in a different form. The new arrangements regarding IT and processes are bedding in, and partner organisations, including the PSNI and the Public Prosecution Service (PPS), in Northern Ireland report no significant issues. That is a notable achievement considering the time that was available in which to introduce the new arrangements, and credit has to go to local criminal justice organisations and to colleagues in the Home Office for their support.

Civil and family judicial cooperation does not feature in the trade and cooperation agreement. The UK has applied to rejoin the Lugano convention in its own right. We await the decision on that application. I have been in correspondence with Robert Buckland regarding Northern Ireland having access to that as part of the overall deal.

The Chairperson (Mr Givan): Thank you. Rachel Woods, I will bring you in at this point.

Miss Woods: Thank you, and thank you, Minister. I wanted to raise this before Christmas, before we knew anything about a deal, which, obviously, is welcome. In the Chamber yesterday, questions were asked about the EU exit and bids for finance. I noted one of your responses to, I think, Dr Archibald. You said that the PSNI had made bids for additional resource, the Department had not put in any bids around Brexit and you were waiting for the Treasury to come back. Will you give more detail on the role of the Treasury? Are you making a bid for Westminster funding for Brexit for the PSNI?

Mrs Long: No. The point that I was making was that the PSNI got additional funding for Brexit but the initial indications are that that will not be continued into the new financial year. That would have a significant impact on policing, particularly on police numbers, because that funding funded just over 300 new officers. They were able to increase the size of the police force by using some of that Brexit funding. We have made representations to the Department of Finance, which, in turn, is discussing with Treasury the need for that money to continue into next year. Although Brexit, in its initial phase, has happened and we are out of the transition period, there will still be challenges going forward as the new rules bed in, and there will be new opportunities for those involved in organised crime and others to exploit as the various derogations that will exist for the first three months, the first six months and so on start to disappear. It is, therefore, important that the PSNI continues to be adequately resourced to deal with those challenges. That is the money from Treasury to which I referred. It comes through the Department of Finance, but it does not come from the normal block grant.

Miss Woods: If the money is not forthcoming from Westminster, will a bid be made for the Department of Finance here to fund the officers and the PSNI?

Mrs Long: We will have to discuss that with the Department of Finance. You will be aware of the Budget statement that was made yesterday afternoon and the limited finances that are available to the Department of Finance. We would have to go through the normal processes that we go through with every other bid. The Chief Constable would also have to look at the resources that he has available to him and to make a decision as to what his priorities might be within whatever budget is able to be achieved. We would have those conversations once we were clearer about what was happening with Treasury regarding Brexit funding.

Miss Woods: Could we be looking at a situation in which there will be a reduction in officers or where we are not meeting the New Decade, New Approach commitment regarding an increase of officer numbers?

Mrs Long: As you are aware, the New Decade, New Approach commitment had no date attached, so there was no date by which it had to be achieved. We continue to work with the PSNI on the outline and strategic business cases on that matter. The demand for new officers and additional officers stems from the Chief Constable. I am really following his lead when it comes to that, and he will, obviously, want to balance for himself what the priorities are, for example between that and the digitisation processes that he is looking at for the PSNI and some of the plans that he has more widely

for new estate. Once he gets to an agreement on that, we will work with him and the Department of Finance to ensure that he has the resources that he needs.

Members need to be aware that it is a very challenging budget settlement. Unless there are significant changes to it, we are likely to face, at best, a flat cash situation in all Departments. That will be challenging in what we are able to achieve by way of additional funding for policing or, indeed, any of the other agencies that sit within the Department of Justice's remit.

Miss Woods: Let us hope that funding is forthcoming from Westminster in that case.

My final question is about the data adequacy agreement. Is there a timescale that we are looking for on that? You said that you have been in contact with Westminster about that. What role, if any, does the Department of Justice have in that agreement?

Mrs Long: We have no role whatever. That is an international agreement and therefore remains a reserved matter for Westminster to negotiate. However, the Ministry of Justice has kept us involved and informed at all stages to ensure that the priorities of the Executive and the Department of Justice are reflected in the negotiating position of the UK Government. That has been reflected well in the outcome of the future security partnership. That was a lot easier to negotiate than the trade agreement because it was in everyone's interests and was widely recognised to be in everyone's interests for that cooperation internationally to continue.

With respect to the time frame, the transfer of personal data is allowed to continue for up to six months, so the data adequacy agreement needs to take place during that six-month period. Although it is a complex area, that is achievable. The Lord Chancellor has indicated that, given that all the other issues have largely been addressed and there is a deal in place, it will be simpler, in many ways, to focus on the issues of data adequacy and move those forward more rapidly. It was simply something that, given the time constraints and its complexity, could not be got over the line ahead of 24 December.

Miss Woods: Thank you, Minister.

The Chairperson (Mr Givan): Members, does anyone else want to ask about these subjects? No.

We will go on to the legacy issues. Minister, if you want to, will you pick up on legacy, and, then, Linda Dillon has asked to speak on the issue?

Mrs Long: Thank you, Chair. Turning to legacy, I remain seriously concerned that the Government's move to distance themselves from the Stormont House Agreement and its proposed institutions leaves the justice system here seriously exposed. The Department has not been funded for legacy investigations, and resources have had to be diverted from front-line services to deal with the significant backlog of outstanding cases. In the absence of any meaningful engagement on the way forward, the justice system continues to bear the burden of outstanding legacy investigations.

My Department is, simply, not funded to progress the volume of legacy investigations that are queueing for attention. The current work on legacy is being progressed by diverting funding from front-line policing and other services. That is neither acceptable nor sustainable. We have put some resources into legacy investigations through increased funding for the Office of the Police Ombudsman for Northern Ireland (OPONI) and for legacy inquests. We are now progressing the Lord Chief Justice's legacy inquest programme to clear the backlog of cases over a six-year period. That work is supported by earmarked funding from within my Department and through our budget allocation.

I have written to the Secretary of State for Northern Ireland to seek more clarity on his intentions and to ask whether, during this hiatus, we could draw down some of the funding earmarked by HM Treasury for legacy investigation pressures. He has yet to respond formally to that request. When I met him recently on other matters, I pressed again for clarity on that point, and he made clear his view that the pressures that my Department was facing were a matter for the Executive and that we needed to make tough decisions about how we allocated the block grant.

I do not believe that it is in the interests of justice simply to park those cases. I have therefore written to my Executive colleagues to seek a discussion on legacy funding and have stressed the need for us to take collective decisions about transitional funding to sustain the present-day arrangements. I also

made clear that I will not seek — nor is it practicable — to create the equivalent of a Historical Investigations Unit (HIU) within the PSNI. We have been very clear about that.

The Chairperson (Mr Givan): OK.

Mrs Long: Mr Chairman, I am not sure whether you wish me to go on and look specifically at Police Ombudsman funding, which was a separate item on the agenda, or wish me to wait until we have talked about the more general legacy issues.

The Chairperson (Mr Givan): Linda asked to talk about both of those, so, if you want to cover the Police Ombudsman, I will then bring Linda in. Linda, you can cover both of those issues.

Mrs Long: Perfect. First, I should explain that funding pressures in relation to legacy are not unique to the ombudsman. As I have already made clear, the Department is not resourced to meet the full costs of legacy, and I am seeking to address that with Executive colleagues.

Last year, the Police Ombudsman's office submitted a business case relating to historical investigations outlining a funding need of £10.6 million over three years. The Department is currently engaged with the Police Ombudsman on that. In the meantime, members will note that the ombudsman's office budget has consistently been one of the most protected by the Department of Justice. In 2020-21, OPONI was provided with an operating resource budget uplift of 11% to fund pressures that included funding towards pressures related to disclosure and the significant cases team. Funding towards legacy inquest pressures has also been allocated to OPONI. Around £275,000 was allocated in this financial year, and £18,000 was allocated in the last financial year.

I have a bid with the Department of Finance for historical investigations funding, and, as you know, those budget discussions continue as things stand. However, Executive colleagues recognise that more needs to be done on the legacy area, so I continue to work with them to ensure that, in the hiatus in which we find ourselves, we are at least able to make some progress in this space. However, it is a difficult space in which to operate without an overarching commitment from the UK Government on funding and, indeed, on structures.

Ms Dillon: I thank the Minister for her detail on the issues. The first thing to point out is that the derogation of duty that has been meted out by the Secretary of State not only on general legacy but on the funding of the pensions scheme is absolutely disgraceful. For the British Government to say that they have no responsibility for the funding of these issues is absolutely disgraceful. The Minister will probably agree with me on that in general.

Funding is one issue with historical investigations, certainly with the Police Ombudsman's office, but it is not the only issue for the PSNI, because it has the challenge of the fact that it cannot carry out an article 2 and human rights-compliant investigation. That is the bottom line, and that is the real difficulty for the PSNI at the moment. Some of these questions may well be more for the Chief Constable, but, in your view, Minister, can you outline where, you think, the PSNI can go on this? The Chief Constable has outlined that the PSNI is very limited in how it can carry out these investigations. Obviously, Jon Butcher has carried out a number, and they have gone to other policing organisations in England and in Scotland. Those organisations have been clear that there are limitations in this because there are big, outstanding legacy cases across the water that they have to deal with, so they will not have the capacity to help us out with legacy investigations. Without an HIU and without that kind of a process, where do we go with legacy investigations and making them article 2-compliant?

Mrs Long: You have outlined well the challenges that we face in how we proceed with legacy. Political agreement can be difficult in this space, but the more challenging issue is the practicalities. The Operation Kenova model is not one that is scalable, and that has been made clear when we look at that model. Whilst it has worked well, it is not a scalable model, because the difficulty, of course, is that getting sufficiently robust and experienced investigators is not easy when you have other police forces that are also working at capacity. The idea that there is a storehouse somewhere full of experienced investigators who can take on those roles is just not real, and we need to be serious about that. As you say, there are challenges for the PSNI's ability to undertake legacy investigations. What we find now instead is that the police are in receipt of a lot of legacy litigation. Whilst the ombudsman's office has a role in dealing with legacy, its chief role is to oversee current policing, and it was never designed simply to look at historical matters.

All those issues are challenging, not least the cost, but the bigger issue for me and for all of us as elected representatives is the impact on the victims who still await some kind of process that will allow them to, hopefully, receive justice or truth, at the very least. They continue to be denied that, and they are an ageing cohort of people. They have waited a long time, and it is right that there should be a process in place. That will not be a perfect process; I have always accepted that whatever process comes forward will have flaws. It will be criticised by some; that is the inevitable consequence of our past, and it is part of our legacy. It is important that we, at least, make an effort to have a reasonable process with a reasonable prospect of bringing those cases to conclusion in a time frame that will then mark a point in history where we can say that we have dealt with those cases adequately and can then move forward. *[Inaudible]* on the justice system at present and that people's confidence in justice is being impacted by the ability of the modern-day justice system to cope with the stresses of legacy investigations for which it was not designed. That is an unfortunate outworking of not having a separate structure in place.

I have not given up hope of a separate structure being implemented. That remains the best way forward and, I believe, the only practical way forward in resolving historical cases and allowing people access to justice, whilst acknowledging from the outset that, at this remove from some of the events, getting any kind of clarity or justice will be incredibly difficult. At least, in an organised and properly funded process, people will have the opportunity to explore to what degree justice is available and, perhaps, can receive some sense of closure that their cases have been adequately dealt with and investigated that, perhaps, they do not have at the moment. It is hugely important that we move on that not just for protecting budgets but, more importantly, for protecting community cohesion and confidence in the current justice system.

Ms Dillon: Thank you for your answer, Minister. I appreciate that you have not given up hope on a separate structure. As do many families, though not all, I absolutely believe that there needs to be a separate structure. It is important that that structure is the HIU. We cannot just accept that there will be a separate structure; it has to be the HIU. That is what was consulted on and is what families responded to in the consultation. There were over 17,500 responses: not many consultations get that many responses.

Many families found it difficult to respond to that consultation, because it did not meet all their requirements; you are right about that. For some of them, it was a real challenge, but they got an opportunity to respond and to highlight the issues of concern for them. Now, we find that the British Government are trying to move further away from it. It is important that the parties in the Assembly do not follow their light and move away from it. This was agreed by all the parties and the two Governments, and it is disgraceful that the British Government are trying to move away from it. I certainly would expect that the parties that agreed to it in the Assembly would stick to what they agreed, which was then put out to families and all those who were affected across the board — not just in one section of the community or the other. It was out there for everybody to respond to, and everybody got that opportunity. Moving forward in any other manner with something that has not been agreed or consulted on with the families would be a disgraceful action.

Mrs Long: As you, Linda, and members will be aware, when the NIO published proposals for legacy arrangements in March 2020, it was clear that the emphasis was moving away from justice and investigation to reconciliation and information recovery. Neither my officials nor I were consulted about that change in direction, and we did not have notice of the proposals until immediately before publication; in fact, we had no meaningful contact with the NIO on matters since 'New Decade, New Approach' was published. Up until that time, we had been working solely on the basis that the HIU was the only game in town; we were working in preparation for the HIU to be set up and were assisting, at least in part, with it being the responsibility of the Department of Justice, given that it falls within the justice remit. Things went quiet, and then suddenly we had that change of direction.

I have made clear my objections and concerns to the Secretary of State in writing and in follow-up telephone conversations. I have also said that it should not be assumed that my Department will take the lead in implementing any new proposals. They are a clear departure from that justice-based approach and the article 2-compliant requirement. Something that meets the needs of families, the requirements of article 2 and is justice-based would reside in the Department, but something that is reconciliation and information recovery does not naturally sit in Justice. I have been clear with him about that. I have also continued to press him during recent discussions about greater clarity on proposals, which, as you will appreciate, has been lacking, and on the associated funding because, as you know, money was set aside for us to bring about the HIU. That funding is still, apparently, awaiting to be drawn down, but there are no structures in which to draw it down. Again, we have no detail on that. We need to find a better way to deal with this for victims and their families.

The Stormont House Agreement was an uneasy compromise. All of us recognise that no party went away from the Stormont House proposals feeling that they had achieved everything that they wanted or that the proposals were ideal. There is always some compromise with those issues, and it is always difficult. When you get to a point at which parties, at least tacitly, accept that it is the best of the options available, it is unwise to interfere with that rather delicate ecology of agreement. However, the damage has now been done. That, of course, has meant that people have reopened a lot of the debates that we had in the run-up to Stormont House that were never fully resolved. That is an inevitable consequence of the uncertainty.

I hope that the Secretary of State will come back to the original proposals and look at what is in them and the opportunities that are still to be delivered. I suspect that, by now, he will have found that trying to get complete agreement on any new proposals is something of a mountain to climb, given how long we spent on the issue of legacy. It may well be that, by this stage, he realises that, however imperfect the Stormont House Agreement might have been, trying to achieve anything better may be beyond reach. I am still hopeful that we will get to a point at which we can get Stormont House. If we can do better than Stormont House in some areas, if it can be refined and improved, I do not think that any of us would want to resist that. However, we still need to focus on the issues of how we get article 2-compliant investigations for families and allow people to receive what justice may be available to them and move beyond the current position. The uncertainty around it is causing an enormous amount of distress.

Ms Dillon: Thank you, Minister. I appreciate your answers.

You talked about some of the funding issues in relation to the Office of the Police Ombudsman. Are there ongoing conversations about the potential for increased funding? I accept everything that you said; it was not set up to deal with all our legacy issues — it cannot do that — but many families see it as the only thing that can be done to help them in some way. Funding for that body, in the absence of the HIU, is extremely important.

Mrs Long: I continue to work with my Executive colleagues and, as I said, the Budget settlement is unlikely to bring much comfort to any of us in any sector. However, we will continue to look for where there is an opportunity or scope to meet additional stresses in each organisation in the Department's remit. However, we need to be realistic and take a cross-Executive approach, because, on a flat cash basis, there is not much scope in the Department to reallocate funding.

Members of the Executive are generally sympathetic to the need for additional funding for the office. Therefore, we continue in constructive discussions on that, and, hopefully, we will reach a constructive conclusion, although it may not fully meet all the demands that any organisation might make.

Mr Beattie: Minister, thank you for what you have given us so far in regard to legacy. I will be honest with you: I did not intend to speak on the issue. It can be incredibly emotive and can quickly degenerate into something that we do not want. However, I need to be absolutely clear and put it on record that we do not support the Stormont House Agreement legacy mechanisms and, in particular, the HIU. I am getting a little bored with people saying that we do.

We have good reasons for not supporting the agreement. Our good reasons include the fact that the HIU proposes that those who have had a Historical Enquiries Team (HET) desktop review will not get an investigation. The injured — the limbless, the blind, the burned, the psychologically damaged — do not get an investigation if there was no fatality. It is geographically fixed so that, if you were kidnapped in Northern Ireland, taken across the border into the Irish Republic and murdered, you do not get an investigation. The issue about information is that the British Government say that they will give every item of information before an investigation and redact it only after investigation, before it goes to family reports, whereas the Irish Government will redact it before investigation. How do we stand in front of the Kingsmills families and tell them that they will not get the information to give them justice? Therefore, there are very real reasons why we do not support this, Minister. It is important that people understand that. We do not withhold our support other than for good reasons.

May I raise this with you? You said something really important, and you are absolutely right: Op Kenova is a good model. It has been seen as good and has given huge confidence, but you are right that you cannot upscale it. You cannot just make it larger and say, "That is your legacy mechanism". If we cannot upscale Operation Kenova to 300 investigators, how do we upscale an HIU, separate from the PSNI, to 300 investigators?

Mrs Long: You raise a number of issues, Doug. The first thing is that we all understand your reasons for objecting to the Stormont House Agreement. You highlighted exactly what I said: it was an imperfect agreement that did not cover everything that we would wish it to. That will inevitably be the case with anything that is brought forward. There is no perfect solution. While I completely accept that your points are valid, unless we can find a way to deal with those issues — I would prefer that we deal with them as addendums to Stormont House rather than through an entirely new process — we will not make the progress that we need to make. None of the issues that you raised would find any resistance from other parties that helped, along with yours, to negotiate the Stormont House position. The parties can continue to progress those issues with the Secretary of State and the Irish Government. I do not think that they preclude the Stormont House structures in the overall and overarching approach.

There is the issue of operational independence and whether people who had worked in the PSNI would be able to work in the HIU. The structures provided were to ensure that there was operational independence. That was the key issue. The organisational independence was the key element that allowed the HIU to function. Of course, there will be challenges about those structures and about being able to bring forward appropriate staffing, which is why there was a set-up period to allow for all that. I am disappointed that that has been rumbling along for a long time, yet we have not even started that process.

There are challenges, Doug, and I do not think that any of us would say that it is simple, that the Stormont House Agreement solved all the problems or that there would not be further groups of individuals who needed attention or needed their cases looked at and so on. That would be untrue. What we could have said and what I would say still is that the Stormont House Agreement was by far the best stab that we had at it. Unfortunately, if you follow your logic, it would mean that no one would get that information or an investigation because certain categories of people were not included in the Stormont House Agreement. I would much rather implement Stormont House and then try to adjust it so that those additional cases could be considered, rather than denying everybody the opportunities that the Stormont House Agreement presented while waiting to make it perfect. Again, it is a case of making perfection the enemy of the good. However, I have a lot of sympathy for your concerns and know that they are strongly felt. It is not just a way of dismissing agreement or being contrary, because I know that that is not the space that you are in on victims' issues. I would approach it slightly differently, but I have sympathy for the fundamental points that you raise.

As I said, the structural separation of the HIU from the PSNI was the key issue in allowing it to be article 2-compliant. We need to work through that. As you know, the reason that questions have been asked about the compliance of the PSNI around article 2 is its role as a successor body to the RUC as opposed to the PSNI in and of itself. That will be a very complex issue if people then suggest that anyone who comes from the successor body is incapable of bringing forward such investigations. That would clearly throw up major sustainability issues.

Mr Beattie: May I jump in on that? Minister, thanks for that. I do not want to go down that rabbit hole, but I want to make sure that it is on record that there are good reasons that people do not support it. When you look at the delivery of justice for the people of Northern Ireland, regardless of what happened in our past or what community people come from, we see that what we propose will leave tens of thousands of people without justice. I do not want to go down that rabbit hole.

I want to ask you another quick question; I am conscious of time. I want to ask about the Troubles permanent disablement payment scheme — I am trying to use the proper title instead of the "victims' pension scheme", which gives a completely wrong understanding of what it is for. The figure of £800 million is being used as a stamp of how much it will cost. I do not think that that is accurate. That might have been an initial stab at it, but I do not think that it is as accurate as it could be. Have we managed to do any work to get a more accurate figure than the £800 million that is being used to scream for money?

Mrs Long: There are two things, Doug. The figure of £800 million is, as I said at the time, the absolute upper limit of what we could expect the Troubles permanent disablement payment scheme to cover. We had a range of appropriate figures based on trying to scale up from the more accurate original estimates of around £165 million. Those related to the cost for serious physical disability only. We scaled up for some of the changes in the threshold and on the basis of the likely number of people who could claim under psychological injury. The figure of £800 million was, if you like, an outer limit. As I said at the time, I would expect the actual figure to land somewhere between the two.

Government work has been ongoing with TEO. My responsibility is the delivery of the scheme, but it resides with TEO to assess the injured and to support victims. It has continued to do work, including with the Government Actuary's Department (GAD), to get a more accurate estimate of what the scheme will cost. It will always be an estimate. It will be a demand-led scheme, and, until we open for applications, we will not know how many people will apply. We will not know how many of those people will be eligible and to what degree they will be compensated until they are assessed. Many of those issues will be out of my hands, but, furthermore, many of them will be very much led by the application process. Work is being done with the Government Actuary's Department, TEO and others to get a firmer figure so that we can have those conversations — conversations that we desperately want and need to have at this stage with government, but which, unfortunately, we find difficult to secure.

Mr Beattie: Thank you, Minister. I look forward to that work, because it is important. People are using the £800 million as a whip with which to beat other people, and it is slightly unedifying that anybody would argue about this when trying to make sure that our victims get the money that they absolutely deserve. Thank you very much.

Ms Rogan: Chair, can you hear me?

The Chairperson (Mr Givan): Yes, we can.

Ms Rogan: Thanks, Minister, for your update. I have a comment on the pension for victims rather than a question. We must be mindful that it has to be victim-centred. You need to keep victims at the heart of anything that happens around the victims' pension. Victims need to be included in the conversation when you are in discussions with TEO, the British Government or any other body. Victims to whom I have spoken, including victims in my family, say that sometimes they are a second thought. They need to be centre stage; they need to know what is going on.

Mrs Long: That is a very important point. I have made it clear that victims are at the heart of what we are doing in the Department of Justice. The team that is taking this forward is very conscious of that vulnerability. As a result, we have been engaging directly with the forum and listening carefully to its views. I have also had regular meetings with victims' organisations and groups, and I have encouraged victims who may not be part of any of the organisations or groups to register with the Department so that they can be kept updated. We have done that via meetings and regular written correspondence with victims' organisations, which are published on the website. That enables people to keep abreast of what is happening and be reassured about how this is being taken forward.

At this stage, considerable progress has been made. We are still on target for an early March opening for applications, but Doug and others have raised a key issue regarding funding. I want the fund to be open for applications in March, and I want to see the processes working well, but I want to know that, if people apply, there is money there to pay them. I know from conversations with Executive colleagues that they are committed to ensuring that this will be paid and that the money will be there. We are working with the UK Government as best we can to ensure that they take up their portion of responsibility in all this. Nobody in the Executive wants to let the victims down at this late stage, given the good progress that has been made since the Department was designated to take on the issue. If it is helpful to members, we will be happy to provide you with an update on the pension scheme — maybe with a short letter to update you on where we stand.

Mr Dunne: Minister, we welcome the progress that has been made and your assurance on what has been done in the processes and procedures for the pension scheme. That is good. We welcome your drive and determination on the issue; it is most welcome. Last evening, the funding issue came up again in the Chamber when the Budget was being discussed. The matter is being kicked around again and is back with our Government on the mainland. It is important to get the issue resolved; the points have been well made. It is disappointing that, to date, we do not have a commitment on funding. We will use all our influence within the Executive to get that moving. Will you give us an assurance that all levers will be pulled to get this over the line in good time for the innocent victims who are long overdue this support?

Mrs Long: I can give you an assurance that I will leave no stone unturned in trying to get a resolution, and the sooner the better, because the ongoing debate in the public arena causes distress and anxiety to many of the victims who hope to benefit from the scheme. The last thing that I want is for them to have to go knocking on doors and campaigning and begging for what is theirs of right. That is neither fitting nor appropriate after it has taken us such a long time to get this far.

The First Minister raised the issue when we discussed the Budget. As you know, the funding would go initially to the Executive Office, which has responsibility for bidding for it. It would then be transferred for the Department of Justice to disburse under the scheme. The issue was raised by the First Minister and deputy First Minister during the discussions on the Budget, and, as you know, I have been working very closely with them because, although ultimately it is their responsibility to find the money, I, as a member of the Executive, feel very much that it is my duty to assist them in doing that. This is a matter of joint cooperation from all the parties. We have all committed to wanting to do this, and we all have a role in making representations to government.

I know that there are others outside of the Executive and the Assembly, including people in Westminster, who have taken a genuine interest in the issue. Peter Hain and Margaret Ritchie are just two examples, and there are a number of MPs and so on. The shadow Secretary of State for Northern Ireland, Louise Haigh, with whom I will speak later today, has taken a particular interest in the funding. If we can work together with the Secretary of State, the Treasury and the Department of Finance and the Executive Office, it is not beyond our capability to find a way forward. If we do so sooner rather than later, it would put at rest the minds of many victims and their families who may be very nervous at this stage about whether or not the scheme will be delivered. We have the capacity to deliver it and now need the funding to do so. It is not beyond our capacity to get the funding in place either.

Mr Dunne: Good. Thank you. Many people are concerned about the appeal process. Is that now being developed, and can it be run once the scheme is put in place?

Mrs Long: Do you mean a regular appeal against a decision or the appeal that the Secretary of State talked about?

Mr Dunne: I mean appeals on individual decisions.

Mrs Long: All those things are in progress in the Department. Our key focus is to get the system ready so that we can deal with applications, and work is ongoing on how those applications will be processed. As you know, the interim president of the Victims' Payments Board is now in place, and the Northern Ireland Judicial Appointments Commission (NIJAC) is completing the panel appointments, so we should be in a position to have the board in place. It will then be up to the board to shape many of those issues and how it takes them forward.

I had a briefing this morning about delivery. If I were to give it a red/amber/green (RAG) rating, it would be amber, in that we are on target, but, as you know, it is a high-risk, high-pressure programme. We need to focus to make sure that we get it over the line in good time. From our perspective, that is key, but, even when the scheme opens for applications, a lot of work will need to be done behind the scenes to ensure that all the applications can be processed and that we can deal with any appeals. All that is in hand, and we are working to a schedule that, hopefully, will deliver. The key to public confidence is our being able to open the scheme in early March. That is what we promised and committed to, and, if we can meet that deadline and have the funding in place, it would be a major win in victims feeling confident about the scheme and its delivery. It would prove to people that we can deliver on these complex issues when we have the determination and really want to make things happen. That will all be resolved in good time.

Mr Dunne: Good. Thank you very much for your reassurance, Minister.

The Chairperson (Mr Givan): Rachel has asked that we deal with two more issues, and we have only 10 minutes left. Minister, will you pick up on the Police Ombudsman's report on the police handling of protests and the review of care and supervision units (CSUs)? I will bring Rachel in, and, if we have time, I will allow other members to come back in.

Mrs Long: Thanks, Chair. I will try to be as quick as I can without losing any of the detail. The reports by the Police Ombudsman and the Policing Board both draw out the complexities of policing in a context where there are unprecedented laws restricting personal freedoms, leading to a clear expectation on the part of the public that the police will act to tackle any non-compliance. Yet, there are important human rights issues for individuals too. Both reports highlight important learning for the PSNI, and I note that the Chief Constable has taken those findings seriously. It is also important to be fair to the PSNI when assessing the reports. I note that the Policing Board assessed the PSNI's overall performance as good, and the ombudsman concluded that, while there was unfairness in how protests were policed, it was unintentional and not based on the race or ethnicity of those who attended the Black Lives Matter (BLM) events.

We should all acknowledge the vital job that police officers have been doing and continue to do throughout the pandemic and the complex decisions that they need to make in real time, balancing the need to be seen to enforce the law against the human rights challenges that individuals face. It is a complex environment, and I am glad that both reports recognise that in their findings.

The Prison Service takes its responsibilities for the safety and well-being of all the people in its care seriously. Care and supervision units play an important role in each of our prisons as places where individuals can be kept apart from the general population in the interests of good order and discipline or for their own protection. The work of the Prison Service is regularly and robustly scrutinised by Criminal Justice Inspection Northern Ireland (CJINI) and by Her Majesty's Inspectorate of Prisons, as well as the Prisoner Ombudsman. All three prisons have been subject to unannounced inspection in the last three years, and that included the CSUs. I visited the CSU at Maghaberry before Christmas, and I was really impressed with the staff whom I met and the work that they do. They are dedicated, professional and completely focused on the very specialised role that they play in supporting people who are often very vulnerable and volatile.

The Prison Service is open and transparent. I wanted to provide the highest levels of assurance to the wider community, and that is why I invited the chief inspector of Criminal Justice Inspection in Northern Ireland to carry out a thorough review of CSUs across our prisons. The terms of reference for the review have been published by CJINI. I signed off on sharing those with the Committee earlier this week, so, hopefully, you will receive those shortly.

Work has already commenced, and the Northern Ireland Prison Service is working closely with inspectors to supply them with all the information necessary and to make the arrangements for fieldwork in the context of COVID-19. It is anticipated that the review will be completed and the report published in June.

Miss Woods: Thank you, I appreciate that. I will be quick, as we have only a few minutes left. I have certain specific questions. I note that the report on the Black Lives Matter protests came out on 22 December, when people's minds were elsewhere. In light of the report, the Chief Constable issued an apology over the handling of the protest. What, if any, mechanism exists in the health protection regulations to rescind fixed penalty notices?

Mrs Long: There are none. I do not want to go off-piste, but my understanding from the legal advice that was sought by another body and which I happen to be aware of is that the only way that any of the actions that were taken on the day can be rescinded is through the Public Prosecution Service. I would need to seek clarity on that to be absolutely sure, but that is my understanding.

Miss Woods: Thank you, Minister. I appreciate that. I have written to the Chief Constable asking whether the police have any such power. However, it is good to know that there is the potential for the PPS to do that. Does the Department have any role or powers in the enforcement of fixed penalty notices?

Mrs Long: The enforcement of fixed penalty notices enters the Department's role only when someone fails to pay their fixed penalty, and that would be a matter for the courts to take forward because it becomes a criminal issue. There is no role for the Department in giving people fixed penalty notices, rescinding them or dealing with people who have not paid them. There is no appeal process within the Justice Department or the Health Department for dealing with those. They are health regulations as opposed to justice regulations. Therefore, if any powers to appeal were to be included, it is likely that they would be under the remit of the Department of Health rather than that of the Department of Justice.

Miss Woods: OK, thank you. Finally, with regard to the outcomes of both reports — I know that one is a Policing Board report — what are the next steps for the Department in light of the reports?

Mrs Long: The majority of recommendations were directed towards the police, and the oversight of policing is a matter for the Policing Board. Of course, you will be aware from previous reports of the Police Ombudsman that there are issues about how the Police Ombudsman is kept abreast of what the Police Service does in response to such reports. There is no duty to report to the Police Ombudsman, and that is one of the areas that the ombudsman is keen for us to address. However, the Policing Board receives those reports as well, so it is then able to hold the police to account on implementation.

The key takeaway for all of us from the recommendations in relation to the regulations is the need, first, for the regulations that are introduced to be human rights-compliant, proportionate and necessary, which we have taken seriously from the outset. Another key takeaway is for the regulations to be clear and well understood, and we are constantly trying to improve on that. This has been a difficult period with regard to the Executive and the speed with which we have had to legislate. You will appreciate that, normally, it can take quite a few months for regulations to come forward. This is not the usual pace for producing regulations, and there are challenges attendant on that. Therefore, it is really important that we learn from any errors or misjudgements that we have made. However, as I said, a key takeaway was the need for clear communication, clear regulations and making sure that people know exactly what is expected of them. The issue of striking a balance between the enforcement of the regulations and human rights challenges lies primarily with the Chief Constable because it is an operational matter rather than one that relates to the regulations. That is other than the fact that, of course, we, as an Executive, in all cases, look at their human rights implications when introducing them.

Miss Woods: Thank you, Minister. I appreciate the difficulties of making the regulations so quickly, as well as the timing difficulty, given that the Assembly gets to debate them after they have been introduced or, sometimes, when they have lapsed, which is certainly not the ideal situation. However, we certainly need absolutely clear and consistent communication so that people understand what is going on.

I will move on to the CSUs. Last Monday, I saw the terms of reference for their review on the CJINI website. Did the director of CJINI write those?

Mrs Long: Yes.

Miss Woods: OK. Obviously, there are the realities of COVID-19 and its effects on the Prison Service: the placement of prisoners, staff and so on. I note that those realities are taken into account in the terms of reference. However, will the final report include an assessment of what happened in CSUs before COVID-19 as well as the effect that it has had on prisons?

Mrs Long: You would have to ask the head of Criminal Justice Inspection about that. I do not want to prejudge what she may decide to include in the final report. With COVID, the specific issue relates to arrangements necessary for fieldwork. When bringing people in to inspect and observe, there are additional complications in making sure that prisons are COVID-secure. I do not think that it would in any way hamper the ability to observe and assess what happens within the units; it is simply that the arrangements might be more complex and onerous. However, it would be best to raise directly with Criminal Justice Inspection what might be included in the final report. It would not be appropriate for me to second-guess what it may or may not reference in its final report.

Miss Woods: Was an instruction given to CJINI on whether stays of over 15 days would be in breach of the UN's Nelson Mandela rules? Was that part of the terms of reference or instruction given to CJINI?

Mrs Long: The Nelson Mandela rules apply to solitary confinement. A CSU is not solitary confinement, so the rules are not a relevant consideration. I did not give instruction to CJINI. I asked it to inspect the CSUs, and it drafted the terms of reference. I did not tell it what to include or exclude.

Miss Woods: The Independent Monitoring Board (IMB) has a huge role in rule 32 and a number of other rules with regard to the isolation, segregation and separation of prisoners and the use of CSUs. What is its role in the review?

Mrs Long: Again, that is a matter for Criminal Justice Inspection. I tasked CJINI to look at the CSUs. It is up to CJINI whom it engages with as it does that job. It has experience of routine and unannounced inspections of prisons and CSUs, and it will be aware of all the individuals, groups and organisations with which it may want to interface to make sure that its investigation is complete. Again, I would not wish to direct it on that. It is for CJINI to carry out an independent investigation, and it should be clear that it is independent.

The Chairperson (Mr Givan): I need to be in the Chamber for Question Time, which started two minutes ago. Linda wants to ask a question on this matter, so I am happy for her to take over as Chair. I need to leave.

Mrs Long: Good luck with Question Time.

The Chairperson (Mr Givan): Yes. I know that other members will have to leave, too, so, Linda, perhaps you will wrap up your questions, and, if members want to continue, I will let you chair the meeting. I need to go.

(The Deputy Chairperson [Ms Dillon] in the Chair)

The Deputy Chairperson (Ms Dillon): No problem, Chair. Thank you. Minister, can you hear me OK?

Mrs Long: Yes, I can, thanks, Linda.

The Deputy Chairperson (Ms Dillon): Minister, some of the questions that I had have been covered, so I will not go back over those. Maybe the Committee Clerk should write to CJINI on those questions. We will probably have the chief inspector of CJINI here with us at some stage anyway. She is very open to coming before the Committee.

There is some disagreement on whether a CSU is or is not solitary confinement. From the description of it that you laid out, I do not think that you would agree that it is. Maybe that could be addressed by the review, and we could raise it with Criminal Justice Inspection. It has been described by a number of organisations, particularly human rights organisations, and by a previous Prisoner Ombudsman as solitary confinement. Just so that there is clarity on that, I would appreciate an answer.

Mrs Long: I will be clear: people in a CSU are not in solitary confinement in the way that it would be defined in international law. Yes, they are separated from other prisoners for their safety and the safety of other prisoners, but they are engaged throughout the day by prison officers and staff. They are engaged throughout their time by others who work with them, whether they are members from the health trust or from other bodies there in support of them.

The purpose of a CSU is to do exactly what its name implies: to care for and supervise prisoners in a different setting because of behavioural issues or risks attendant to those prisoners, so it would not be categorised as solitary confinement. When I visited, I was able to see the exercise yard where people had the opportunity to exercise. People can be taken for walks by prison officers. Prison officers spend time with each prisoner.

I spoke to officers who work in the unit. Over a period, they spend time with each prisoner in order to engage with them, find out what their needs are and ensure that, if there are issues of concern or stress, they are properly managed. Much work has been done to ensure that any activities in which prisoners were involved before coming into a CSU, such as an education programme, are charted and recorded. Then, when they leave the CSU, they can pick those up again and re-enter the main population as soon and as seamlessly as possible.

A CSU is not solitary confinement. If you look at the definition of solitary confinement, you see that it involves people being on their own for long periods. In a CSU, they are constantly engaged throughout the day by prison officers and other members of the prison staff team. It is somewhere where they get care and supervision as opposed to simply being left to their own devices. The work that goes on in CSUs is a genuine attempt to deal with the particular issues that individuals have faced, and which led them to be there, and to try to resolve those issues as quickly as possible and return them to the main population.

I am aware that people have spoken out about this. However, some of those people will not have visited a CSU. There is a particular issue with that, in that they will not have seen what happens there. I have seen the accommodation. It is really no different from that which you find in other parts of the prison, other than that, for reasons that relate to drugs and so on, there are a number of dry cells. Apart from that, it is a pretty standard set-up with regard to the standard of prison accommodation. The idea that it is, in some way, substandard, subhuman accommodation is an insult to the Prison Service. People's dignity when in a CSU is just as valuable and just as big a priority for the Prison Service and me as when they are in the main prison population. It is important that we treat people with dignity, regardless of their conduct or behaviour, when they are in prison because the first step in rehabilitation is treating people with dignity and respect. After that, it is about trying to instil in them some sense of self-worth that will allow them to rehabilitate successfully when they leave the prison.

It is a complex area and a difficult job. However, I have to say that I met officers who work in the CSU, and they take great pride in the work that they do there. They are glad to see prisoners who have come through the unit being rehabilitated successfully into the main population. Of course, all members of the Committee recognise that prison deals with a microcosm of many of the problems that we face in society. Often, we are dealing with people with complex needs, people who are incredibly volatile and people who can be incredibly violent. There is a complex mix. However, look back to the period when prisons — particularly Maghaberry, but others as well — had a fairly bad reputation as unsafe places to be. Now, when we look at wider prisoner safety and stability, as a result of CSUs being managed in a very different way and being utilised to deal with those behavioural problems in a constructive way, the contrast is significant.

It is worth bearing in mind that we have a duty not only to the prisoners in the CSU but to the wider population in the prison, who deserve to be able to serve their sentence in peace, as undisturbed as possible and without the threat of violence or disruption. It is hugely important to the Prison Service that, for the safety of other prisoners and, indeed, prison officers, that can happen. Therefore, CSUs are necessary. However, it is also important that we learn from whatever recommendations CJINI might choose to bring forward on how we improve what we do in CSUs. The one thing that I have found in working with the Prison Service is that it is always open to improvement. That is the best kind of organisation to work with.

The Deputy Chairperson (Ms Dillon): I appreciate that, Minister. I am sure that there can be improvement for both prisoners and staff. I am hopeful that CJINI will, in order to be fair, look at both sides

I have a quick final point. Minister, you offered to keep us updated on the pension scheme. I really appreciate being kept updated on what is happening with that. You are right: the people out there who are waiting for it and have been waiting and campaigning for many years really want to know what is happening. They are anxious and nervous, and I totally understand where they are coming from. I feel the same anxiety because I am concerned about where the funding is coming from. That is why I outlined at the outset of that part of our meeting my real concern at the derogation of duty by the British Secretary of State and, indeed, the British Government. Their messing about on this has been disgraceful and was done with no thought for the victims or those who are waiting for this and looking for it to be resolved.

I appreciate you and the permanent secretary coming to the meeting today. Thank you for responding on all of the issues. I am sure that we will see you back before us again soon. Thank you to the Committee members for attending.

Mrs Long: Thank you to the Committee, and I thank you and the Chairman for managing to get through what was a fairly weighty list of issues in reasonably good time. Of course, I am happy to come back to the Committee as and when that is required or requested. I appreciate the questions. Thank you.