



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

First-day Brief: Department of Justice

15 February 2024



representative and that, often daily, you are dealing with more granular details of our portfolio than we are. That is why there is a two-way sharing of information.

Over the coming weeks, you will hear directly from each director in the Department, who will go into considerable detail. In my overview comments, I will skim the surface. There will be time at the end for a bit of dialogue and conversation. The Committee will also speak to the Minister. At this stage, in the second week of restoration, the Minister and I have not had the long conversation about setting out strategic and legislative priorities. That work by the Minister is ongoing, and I think that she will want to talk to you directly about it.

We have provided the Committee with a copy of the first-day brief. I am happy to go through it. It sets out an organisation chart with some summary information and a breakdown of how the Department is structured. To give an overview, the Department has five key areas: access to justice; safer communities; reducing offending; justice delivery; and the Northern Ireland Courts and Tribunals Service (NICTS). We then have five executive agencies. In total, we have about 3,200 staff across the core Department and agencies, and they include about 1,300 Prison Service operational staff. Some 62% of staff work between the Prison Service and the Courts and Tribunals Service. That is where the big numbers of those 3,200 staff are. We are also responsible for eight non-departmental public bodies. They have a range of functions, but the size and scale of that is dominated by the Police Service, which is by far the largest.

I thought that it would be helpful for me to give a few high-level points on the budget in particular. I am conscious that an Executive meeting this morning has helpfully tweaked it a bit. We started the current financial year, 2023-24, with an opening budget of just over £1 billion — £1,157 million — and a capital budget of £129 million. As I said, the PSNI dominates that; it accounts for 65% of our budget. What I would call the critical service delivery components of the justice sector — prisons, police, the Courts and Tribunals Service and legal aid — consume in total about 90% of our budget. The consequence of that is that, when we get into savings, if we want to prioritise the police, very little is left outside the police and prisons, as critical areas, that we can prioritise away from. Also, we are very much a people organisation: staffing accounts for 69% of our total spend.

The difficulties of achieving financial balance this year have been well documented. When I woke up this morning, the latest overspend figure was about £35 million. I think that the Executive meeting today has helped to change that for the better. Still, this far out, it has been a difficult year. Lots of savings have had to be made. We started the year with a forecast overspend in the region of £149 million. That was brought down to £39 million through slowing spend across the sector. We suspended and paused police officer recruitment. We did not increase prison officer numbers, despite the growing prisoner population. The prisoner population at the moment sits at in and around 1,900, and the funded complement of staff is about 1,450. I took up this job in April 2022. My predecessor tells me that he used to get sleepless nights when the prison population hit 1,600. Now we are at 1,900, and, in the course of this year, we will reach 2,000. That is a very difficult challenge.

The main issue for us in prisons is that a fixed cohort of operational staff and a growing prisoner population really squeeze the rehabilitation work that is of fundamental importance in the prison sector. We are absolutely committed to treating all those in our care with dignity and respect and to providing education, training and rehabilitation opportunities. The financial squeeze makes that all the more difficult.

Our opening capital budget was £129 million. That contributes to important projects such as the maintenance of an ageing prison estate, in particular, and some very important digital projects in the Courts and Tribunals Service. Some £37 million of our opening budget was returned during the year due to some slippage with programmes. The biggest component of that was £30 million for the Police College. That does not mean that those projects will not go ahead; they have just slipped down the line a little.

One very important point is that — I am sure that some, if not all, of you have heard us say this before — since the devolution of justice to the Assembly, the Northern Ireland block grant has increased by around 43%. In the same period, the Department of Justice budget has increased by 3%; the Department of Health budget has increased by just over 70%; and the Department of Education budget has grown by about 45%. Of course, we would say that we are victims of our own success: we have demonstrated efficiency and a capacity to deliver, but we think that we have now crossed the line of where we can go. Just by way of illustration, if, over that period since the devolution of justice, the Department's budget had only kept pace with inflation, we would have just over £400 million a year more than we currently do. You will appreciate that that would be absolutely transformative for some

of the issues that we are trying to address. Looking into 2024-25, the Executive will clearly be starting to wrestle with the Budget for that year. Given the difficulty of the position as a planning assumption, if we assume a flat-cash budget, which may indeed turn out to be more positive than the reality, that will crystallise our estimation pressures of just over £429 million, or 37% of our baseline. That is just to stand still. That figure would not make any inroads into re-establishing policing numbers. Policing numbers, at the moment, are on target to be just over 6,300 by March 2024. That number would not allow that to grow back. There is a piece of work needed — Chair, you will be more familiar with this than I am, probably — to establish the absolute optimum number for uniformed colleagues in the police. That analysis is ongoing in the PSNI, but I can say, without any shadow of a doubt, that it is considerably higher than 6,300.

Of that £429 million, about £200 million is due to a range of factors. For example: the increasing prison population; legal aid, which is a demand-led service, continues to grow; additional demand on courts and police services; and pay and pension issues. About another £227 million is for exceptional issues outside the control of the Department. Those are such things as the cost of the PSNI data breach, legal settlements on holiday pay and the McCloud injury to feelings ruling. Those are one-off costs, but they still need to be met. As I have emphasised, the majority of the costs that we face are demand-led and inescapable. To give a crude indication, we have no control over the number of cases that proceed through the courts, the volume of legal aid required for people to litigate cases, the volume of compensation claims or, indeed, the numbers committed to prisons.

It is not for me to speak for the Chief Constable, but he is very much on the record as saying that the financial squeeze means that policing becomes more of a reactive service. The real sweet spot for policing, like any service, is in preventative work: it is far better to prevent crime than to detect it. That is true of every service that we provide, not just in the justice sector but across all public services. One of our aspirations is to work collaboratively across sectors. I have talked about the prison population. We recently established a prison population oversight group. We have brought in colleagues from the health sector, and we intend, in due course, to bring in colleagues from the Housing Executive. That is about looking at trying to establish some innovative ways to work on a cross-sector basis, both to reduce people going into prison and to ease their pathway out of prison at the end, and to make sure that when they come out, they stay out. That is a really exciting piece of work, Chair, and we will want to spend considerable time on the detail of it as we move forward.

Where I want to take our spending — I talked about the reactive element of policing — is that I really want to invest money in the Probation Service and the Youth Justice Agency because they are critical in catching people before they pass the point of no return and in reshaping and improving lives. Finding money for that is always difficult when you are in a financial crisis and can only deal with the reactive element.

That was a short, if somewhat gloomy, overview of the budget position. As I said, the Minister will come to the Committee to talk about the forward look. On the backward look, Chair, we have provided the Committee with a list of all decisions that were taken during the period of suspension. I just want to emphasise to all members that every one of those decisions was taken in the context of a public interest test around whether it was necessary to take a decision in the absence of Ministers. I believe that it was. As the Committee works through that, I am more than happy to come back and talk through the details of any of those issues if that would be helpful.

That is all that I wanted to say as an overview. I hope that it has been helpful to the Committee, and I am happy to have whatever conversation you would like to have now.

**The Chairperson (Ms Bunting):** That is great. Thank you very much, Richard, we appreciate that. Some of the figures that you have highlighted are absolutely stark. For example, £429 million could make such a significant difference to the entire system, which is under massive pressure. I will open the floor to members.

**Mr Easton:** One of my big concerns is the lack of PSNI recruitment. Exactly how many officers short are you? What would be the cost of getting the number up to what it should be? What discussions have you had about trying to do that?

**Mr Pengelly:** It is a challenging area for us because of the strict operational independence of the Chief Constable, whose prime line of accountability is to the Policing Board. Recruitment issues are a matter for him. That having been said —

**Mr Easton:** The money comes from you.

**Mr Pengelly:** The money comes from us. It is important that I do not stray into the Chief Constable's territory, but it is also important that we work with the Committee to give members as much information as we can. As I mentioned in my opening remarks, to understand what the deficit is, you need to understand what the optimum number is. A piece of work is ongoing in the PSNI to determine the optimum number. In the New Decade, New Approach (NDNA) agreement, an aspiration of 7,500 was talked about. A previous analysis talked about a figure in the region of 7,200 or 7,300. A piece of work is needed in order to get more granular detail, but my instincts are that it is in that sort of space. At the moment, for March 2024, we are on a trajectory to be at about 6,350, which is way below.

Moving forward, the financial position is that there is no money for police recruitment, but the Chief Constable — again, I am not speaking for him but reflecting on comments that he has made publicly — is at the point at which he is starting to think that his prime responsibility must be to deliver a safe policing service and to keep the community safe. There is clearly a number below which he will feel uncomfortable about being able to do that. I am not sure whether he is at that number, but the sense is that he is probably getting very close to it. Recruitment is therefore needed. That needs to be considered in context.

The other issue is that there is a limiting factor, because, from memory, with previous recruitments, there was a merit list of about 1,000 individuals on which the PSNI could draw for putting people through training. Given the current capacity of the police college, something of the order of 300 to 350 people a year could be trained, and natural attrition is of the order of 200 to 300, so, even if money were available, there would not be a rapid escalation in police numbers. Those are critical challenges that we need to look at, but the issue needs to be taken forward in that difficult financial environment.

**Mr Easton:** It is a major worry that the numbers are getting worse and worse.

**The Chairperson (Ms Bunting):** There are issues with public expectations of what the police can do when it has the lowest numbers that the service has had in its history. It significantly increases risk. There is no question about that.

**Mr Beattie:** Richard, thank you for your briefing. Finance is always stark. You never come with good news when we are talking about finances. You said that the Department of Justice has about £35 million in pressures in its budgets. Those are all to do with policing, according to the brief.

**Mr Pengelly:** Yes. I hope that they do not exist after today.

**Mr Beattie:** I get it that things may be better after today, but the Chief Constable has said that, regardless, he will give his officers a 7% pay rise. Has that been factored into those pressures, or is it factored in for the next financial year? When I look at the next financial year, 2024-25, I see pressures of £307 million. That is a huge amount of money. Is the 7% pay rise factored in there?

**Mr Pengelly:** I will try not to make this overly complex. There are two components to pay: contractual pay and non-contractual pay. Contractual pay is the one-step pay progression every year. That element is factored into the £35 million. The non-contractual bit, which we call the revalorisation, is the percentage uplift on the back of a pay review body recommendation. That was an issue, and trying to secure additional funding for that was part of the Executive discussion today. It was therefore not in the £35 million, but the Executive are attuned to the need to provide pay awards to a range of public-sector workers. I think that the nub of your question is this: even if that works out exactly as we want it to today, that will give us the funding to implement this year's pay award. It does not provide a baseline increase. A pay award this year will need to be paid next year and the year after. That deepens the financial challenges next year in sustaining that pay award, because the pay award will be made in perpetuity to the individuals. It will not be a one-off payment. That deepens the financial challenges for us.

**Mr Beattie:** Part of it is about asking that question about support to the Chief Constable, who has gone to his officers and said, "You are getting a 7% pay rise". He is standing over that. I wonder whether the Department will stand over him in regard to that.

**Mr Pengelly:** The Minister is very clear that she will have due regard to the obligations and responsibilities on her. One of her absolute obligations and responsibilities is to live within the

allocations that the Executive and Assembly agree for her. The Chief Constable is absolutely clear and unapologetic about his desire to properly reward his officers, and nobody would criticise him for that —

**Mr Beattie:** Indeed not.

**Mr Pengelly:** — but there needs to be proper process. The funds need to be secured, and the payment of any pay award needs to be subject to approval by the Finance Minister and to sit in an Executive pay policy. That has to be the case before the pay award can be implemented and paid.

**Mr Beattie:** Absolutely. You are right. That is linked to the whole recruitment piece as well, which is starting without the funds in place. We are haemorrhaging more out than we are getting in.

My other question is about one of the big issues, and you mentioned it. We talk about the prison population being at 1,900 and about how we are going to hit 2,000; that is getting beyond capacity in many ways, if it has not already reached capacity. I know that they are opening up some buildings that they had closed down and were not intending to open again. I think that the proportion of individuals on remand is sitting at about 36%. Are there plans to alleviate that pressure by having a process of releasing people who are there on remand to try to bring that number down again?

**Mr Pengelly:** There was an early release scheme during COVID, for example, but, to be clear, we have no plans at this stage to activate an early release scheme. However, it remains an issue that we will keep under consideration. There are definitive plans. We established a working group to look particularly at remand, and the prison population oversight piece of work, which I talked about earlier, will look at it on a collaborative basis. That will involve working with colleagues across the Probation Board and in other sectors. It will look at whether we can make better use of technology, whether we are fully utilising electronic monitoring or the tagging of individuals as an alternative to remand, and other safeguards that can be put in place.

The other issue is that 28% of our sentenced population are serving short sentences of 12 months or less. Apart from the fact that there is an alternative to prison for those individuals, when it comes to what happens next in their lives, given that they have access to about 50% remission of their sentence and consideration of the time served on remand, there is very limited opportunity to do any rehabilitative work with those individuals. That rehabilitative work can be better done in the community with an alternative to short-term sentences. We will look at all parts of that continuum.

**Mr Beattie:** That is a fair point. You probably will not be able to answer this, but do you have a ceiling? Is there a tipping point that means you cannot go above 2,000 or 2,100?

**Mr Pengelly:** We have not sought to quantify it, but when you are heading towards 2,000, you will reach capacity. When we opened Davis House in Maghaberry prison, the intention was to demolish some of the old square houses. Mercifully, they were not demolished. They have been recommissioned, but we have only one left. We will reach the point at which we physically start to run out of capacity.

In Maghaberry prison, we routinely have 400 to 500 individuals doubling up. Throughout COVID, we had nobody doubling up. That was one of the key factors in the success that the Prison Service delivered during COVID — no prisoners in Northern Ireland were hospitalised during COVID. Now, however, having 500 individuals who are doubling up is a really uncomfortable position. It raises the temperature and leads to more incidents in the prison estate.

**Mr Beattie:** Thank you, Richard.

**Miss Hargey:** Thanks very much for that, Richard. It will be good to get an early indication of how the budget situation for the current year and next year changes after the announcement today on public-sector pay and the impact that that will have. There is a huge issue with not just the immediate budget but next year's budget-setting process and the impact that that will have, as you mentioned. A Fiscal Council report that was published today refers to a potential "cliff edge" in the next couple of years.

On the breakdown of spend, you said that over 90% of the budget goes to police, prisons, courts and legal aid. A key aspect of the Department's work is around access to justice and reducing reoffending. Will you give me a sense of how budgets are managed at the moment, the areas of spending that

have been cut or reduced and the impact of that? The particular pressure around staff is one that you cannot avoid. It is about the impact of those pressures and how they are felt elsewhere, particularly around that prevention piece that you talked about. Will you indicate what the Department has been doing? In what areas have there been budget reductions? Is this a consistent pressure that we will feel in the next period? Will you provide an update on the staff in the system and the arm's-length bodies, such as police and prisons?

You said that, when it comes to reducing offending, you would prefer to do that in the community. Are there budgetary impacts for the organisations in the community that are funded by the Department? A large part of that prevention work takes place in the community and voluntary sector. Will you give me an indication of the budgetary pressures that are being felt there?

**Mr Pengelly:** I will speak at a general level. The starting position for 2023-24 was a 1.7% reduction. That was broadly applied across all areas. As of this morning, we had a £35 million forecast overspend. That was primarily in policing, and it was primarily because the police started with a much bigger overspend forecast. They took measures, such as pausing recruitment, and rowed back on some other issues. The £35 million overspend was because the view in policing was that they could not identify any further areas in which to reduce spend and that they had to spend the money from a safety perspective. Most other areas are on target to come in on budget.

I said that 69% of the budget is for staffing. Mostly, that pressure has been addressed by not filling vacancies. We carry a very high vacancy load at the moment; I think that it is in the region of 300 or so across the Department and its bodies. That means that the pace of work slows down. The Minister is getting back into the Department and reading her way in, but she has commented to me that things just feel a little more fraught than they were back in October 2022 when she left, just because of the vacancies. We, as a Department, are not taking forward policy development work. That may not manifest itself immediately as an issue, but it will undermine our long-term policy work.

You made a really important point about some of our partners, particularly in the voluntary and community sector. When the Civil Service gets into financial crisis, one of the first things that we do is reduce funding to the voluntary and community sector. I have always felt a bit uncomfortable about that tendency. The reality is that, for every pound that you put into the voluntary and community sector, you get approaching £10-worth of value and public service. That area has been squeezed, but we need to look really closely at that, and I know that the Minister is deeply concerned about the issue. I was out a couple of weeks ago with one of our victims' groups. The work that it is doing with victims is of critical importance to the sector. We need to try to find a way through that. Everyone is being squeezed. Voluntary and community sector organisations are regularly putting people on protective notice because they have no certainty beyond, at best, a few months away. Those are the sorts of critical issues that we need to get a grip on. We are well past the point where we can say, "We have a financial pressure. Let's salami-slice that pressure and ask every business area to absorb the same". We are into territory where we will need to identify some areas in which we just cease work. I cannot point to any areas that I would label as low priority that we could stop without there being a high service impact. That is really worrying for us.

**Miss Hargey:** We will probably get into that over the next couple of weeks as we get into the detail of each of the directorate areas. I am concerned that the community and voluntary sector is often seen as the low-hanging fruit. It is cut first, which has a huge impact out on the ground.

You said that Naomi will come to the Committee with her areas of priority, but could we, as a Committee, get an indication of what the priorities will be? When are we likely to see those and the legislative programme, particularly the primary legislation that may be coming forward? It would be useful to get an indication of that as early as possible.

You touched on other stuff to do with cross-departmental work, particularly on health and housing, which are critical. As we get into our work, we will be keen to get more information. In a previous role in the previous mandate, I was aware of issues as simple as securing addresses after leaving prison, and the disjoint that there was between the housing authorities and the Department of Justice. That had a huge impact on reducing the risk of individuals reoffending. I am keen to get an update from the Department on such areas in order to make sure that you are outward-looking in engaging with other Departments. We will want those other Departments to do the same.

Bail and remand are mentioned in the brief. It is concerning that there are figures — I think that they are from January 2024 — that show that 36% of the in-prison population is unsentenced. The speed of justice and the speed at which the process is moving are concerns, as is the question of how the

budgetary pressures will impact on those statistics. We have some correspondence from the Justice Department, which we are going to look at later, on the Youth Justice Agency, so I am glad that you have mentioned it as being a priority. It would be helpful to get feedback on the implications of vacancies, and it would be useful to get an update on where vacancies are and the impact that that issue is going to have on the prioritisation of your work.

The Queen's University report on particular groupings of those who find themselves in the youth justice system raises concerns for me about the levels of people from certain community backgrounds and about what we can do to reduce the figures. We will be looking forward to that and to an update from your youth justice services directorate on what you are going to be doing. That will be useful as well.

**Mr Pengelly:** I will take a lot of that away.

**Miss Hargey:** There is a lot there.

**Mr Pengelly:** No, it is really helpful, because I can take that away.

You were talking about people coming out of prison, so I wanted to point to the work that we are doing with the oversight group. One of the potentially very low, if not minimal, cost options is to get to a position in which we do not release people from prison on a Friday or on the day before a public holiday. We know that that can often put them into crisis situations. That is a no-cost option, so that is the space at which we are looking.

On prioritisation, the Minister will give some thought to her own legislative priorities. I would say that, at a very high level, and subject to the Minister's wanting to make this more granular, it is fundamentally about keeping people safe. A lot of our demand-led services are about that. The big issue that bleeds across a lot of our work, however, is speeding up justice. That has to be a strategic priority. There is lots of work ongoing, and we are working with the Criminal Justice Board. We have five work streams, including a digital agenda, committal reform and early engagement. My early observation, since coming into the justice sector, is that it is a sector but that that sector is made up of a number of organisations, which all fiercely guard their operational independence. The big problems and the opportunities for improvement do not lie in any of the organisations as much as they lie at the boundary between them. It is therefore about taking a holistic view through the Criminal Justice Board, and that is a priority for us.

That is a really helpful overview, and I will take that away and come back to you with answers.

**Mr McNulty:** What is the Department's approach to monitoring the implementation, impact and unintended consequences of justice Acts that were passed in the previous mandate? How has the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 at Westminster impacted on the ability of two of your directorates, namely access to justice and justice delivery, to fulfil their role?

**Mr Pengelly:** Taking the last point, the Legacy Bill is Westminster legislation and the granular detail of that has not been worked out yet. I noticed some of the comments across the water yesterday about the pace of the legacy work. We are trying to engage and get what information we can. There is a May deadline, but we are working as normal in taking cases forward.

Everything is captured in the context of the overall financial squeeze. We have an absolute obligation to live within budget. One of the very few measures available to us is not filling vacancies, because there is no mechanism to downsize the Department. That has an impact on the access to justice, justice delivery and reducing offending directorates. Every area feels that squeeze. People are under pressure and working as fast as they can, but there is a squeeze. It is not having a particular impact on one place and not on others; the pace of everything has come down a little bit.

On monitoring the overall implications of that, there are the particular obligations under section 75, and we are looking at those. We are working closely with the Equality Commission, which commented on those recently. We hope to re-engage with the Equality Commission in looking at the 2024-25 crystallisation of the budget process and on a methodology for it to monitor that. We applied screening processes in all those areas. As we cascaded the 2023-24 position, we identified those areas and, where appropriate, put in place mitigating actions.



On your question, the rubber hits the road in a specific area in a specific place, as opposed to the general issue. The general issue is that everything is getting a bit tight, slowing down and getting difficult, but my colleagues can talk about specific issues that they are dealing with at directorate level.

**Mr McNulty:** Can you speak to the unintended consequences of the legislation passed in the previous mandate, if there are any?

**Mr Pengelly:** I am not seeing any direct unintended consequences. This point was made yesterday: is there an unintended consequence in that, where there is a cliff edge and a deadline, work does not proceed? The Minister very much noticed that comment. She is very concerned about it, because, as far as she is concerned, it is not acceptable for there to be any diminution in the pace of work. She has asked for further information and wants to dive into it. I am not seeing any evidence of that, but if someone else has evidence, we ask them to provide it, and we will certainly look into it and seek to address that.

**Ms Ennis:** Thanks, Richard. You mentioned prison staff in your opening gambit. Obviously, that will have a knock-on effect on the prisoners. My concern is around rehabilitation and the programmes that we are able to offer inside prisons. We will debate a motion on the mental health of the prison population in the Chamber next week. Not having effective numbers of prison staff would greatly impact on those programmes. There will be a knock-on effect on the mental health of the prison population if they are confined to their cells more and there is no time for extracurricular work. Will you give us a wee update on the current situation with that provision inside prisons? Is there a plan to address that? There was a recruitment drive for prison officers recently, but I am not sure how successful that was. What is the plan to address that issue?

**Mr Pengelly:** There was some recruitment, but that was more to back-fill the posts of colleagues who had left the Prison Service as opposed to growing the number. Our operational numbers are still in and around those that were in place when we had a prison population of 1,450 as opposed to the current population. Where and when we can do additional recruitment to grow those numbers, we will do so. Again, that takes you on a straight trajectory back to the financial position.

Some fantastic work has happened within various prisons in collaboration with the education sector. There is some amazing work, in particular at Hydebank in collaboration with Belfast Met. We are trying to do as much of that sort of work as we can — getting prisoners out of their cells and doing some real development work — but it is constrained by a growing population and a declining operational cohort.

There is another issue that takes us back to the cross-sectoral nature of this. I am conscious that, at times, I used to say this when I was in Health, but we are the service of last resort, where the health service cannot cope with a mental health crisis. I cannot give you details and names, obviously, but there are undoubtedly individuals who are currently in a prison establishment but should be in a mental health facility. However, those facilities are not available, and we are making do with that. That cannot be right. It is certainly not sustainable, and it is not in the best interests of those individuals. At this stage, unfortunately, the best that I can say to you is that we are aware that that is a problem, we are deeply uncomfortable and we are actively trying to find a way to fix it. I do not have the golden key that will unlock that problem at the moment, but it is something that should concern us all at societal level, because the longer that exists, the more it ripples back throughout society. It will do so very quickly, and it will mean more problems for policing, the education sector, the wider health sector and housing.

That is the point that the Minister is very attuned to and the point on which she wants to engage with the Executive. I will not rehearse all the numbers on the significant growth in the Health budget and the Education budget and the very limited growth in the Justice budget. Given the differential scale of, for instance, Health and Justice, to grow the Justice budget at a healthy rate would not require a big bite to be taken out of Health, but we could do an awful lot of things that would really help the health service and the education sector. That is the debate that the Minister wants to have with the Executive.

**Ms Ennis:** I do not think that there has been a recognition of that. Everybody is protective of their own budgets and what they need — that is understandable — but it is about seeing the mutual benefits of that cross-departmental working for society and for both Departments, if you want to look at it in that crude way. That is fine. I am sure that we will look at it in our forward work programme. Thank you.

**Ms Ferguson:** Welcome, Richard. I have a quick question that follows on from the points made by Doug and Sinéad. Given the current pressures on, in particular, staffing and resources and the move to new technology in the Prison Service, have any issues been raised about the use of new technology such as body scanners? I am not familiar with whether you use agency staff in the Prison Service. Staff should not only have the resources but know when to use it, when it is most appropriate to use it and under what kinds of procedures and legislation it is to be used. When they use the machine, do they understand what to do if they find something or do not find something? If that is not done properly, it can have a negative impact on an individual who is then put into isolation. In the past 24 hours, such situations in both prisons have come to my attention from solicitors and families contacting me. Have the pressures that we have talked about around staffing, resources and staff training been raised as having a negative impact? Are there other pressures that are having a negative impact on the prisons and their population?

**Mr Pengelly:** I will deal briefly with the general point on digital before I get to the specific one. I talked about our aspirations on speeding up justice and our workstreams: one of those workstreams is the digital agenda. There is a mine that has not been fully tapped across the justice sector where we can better embrace new and emerging digital technology. I have a bit of a concern that, at times, the digital agenda seems to be a question of how we automate our processes, whereas the point that you make is that the digital agenda needs to be a question of how we embrace new technology to completely and fundamentally redesign our processes to make them more efficient and more effective. There is a big, general workstream that will cut across the whole justice sector. I have not heard any concerns about body scanners. All the points that have been made to me about body scanners have been positive. As I understand it, training on the utilisation and reading of the scan is done in collaboration with colleagues from the health sector, who, obviously, have much more experience in that area. The only problem with body scanners that has come to light has been the limit on the number of scans that an individual can be exposed to: I think that it is 50 scans a year. If an individual is on remand and will be going for a protracted trial, they will be subjected to the body scanner when going in and out of court, so it is possible to reach that limit. The only negative comments have been in cases where someone is approaching the limit and may have to go back to having a body search as distinct from a scan. If there are other issues, I can pick them up separately with you.

**Ms Ferguson:** That would be useful. They are more about the use of the scanners.

**Mr Pengelly:** It is an illustration of a new technology that is more effective and, from the perspective of the people in our care, less invasive than the body search. There are myriad examples, but, as a sector, we need to find the art of the possible in the digital space.

**Ms Ferguson:** It would be useful to get more detail on that. Thank you.

**The Chairperson (Ms Bunting):** Is that you, Ciara?

**Ms Ferguson:** Yes.

**The Chairperson (Ms Bunting):** Richard, I have a few things to ask about, if I may. Shocker. First, I thank you for your candour and your expression of willingness to work constructively with the Committee. That is important to all of us: we are all eager that the justice system works as well and as smoothly as it can to the benefit of people in Northern Ireland and society as a whole. So it is good to have that assurance from you at the start.

I am excited to hear that the Housing Executive is being brought in to deal with some of the issues for prisoners who are leaving prison. That is a massive issue, and we have heard about the practicalities, such as people not being released on a Friday because they have nowhere to go, or being sent up to Londonderry with a prescription that needs to be filled in Belfast, meaning that they have to come back and forth every day. There is no question that that sends people into a downward spiral. There is some work to be done on whether hostels are the best places to put people when there is no wraparound care available, and whether that situation exacerbates a descent into old habits. It is welcome to hear that progress is ongoing and that the Housing Executive is going to be involved in some of those conversations. We all look forward to hearing more information about that when the time comes.

On the rehab situation for those on remand, I wonder what conversations there have been in the sector and with the legal profession. In some respects, it is not in a prisoner's interest to engage in rehabilitation while on remand because doing so can be perceived as an admission of guilt. Are there

conversations taking place to remove that element so that everyone can avail themselves of rehabilitation without its being detrimental to their prospects in court?

**Mr Pengelly:** I can chase that up for you. I am not sure on the granular detail of whether those conversations are happening. The point that you make is the point that has been made to me: while individuals are on remand, they cannot be compelled to undertake any form of rehabilitation work. The sense that I get is that the situation is nearly left at that, with the prisoner being told, "You do not need to come out of the cell if you do not want to". Your point is that we should find a way to coax them out that has no adverse implications for the progress of their trial.

**The Chairperson (Ms Bunting):** Let us find a workaround.

**Mr Pengelly:** That is a very strong point, and I will take it back.

**The Chairperson (Ms Bunting):** Thank you. In some of the papers that we have sitting in front of us today, there is mention of the Minister bringing forward legislation on bail for children. Is anything being done about adult bail and the issues around it, such as its effectiveness and its enforcement? Will consideration be given to adult bail?

**Mr Pengelly:** We have not yet had a conversation with the Minister about the priorities in her legislative programme, so we will need to come to that. The bail conversation is part of conversations that are happening in the Department about management of the prison population and the remand group, but whether that crystallises into potential legislative changes is something that we will need to pick up with the Minister.

**The Chairperson (Ms Bunting):** Forgive me, but I was at a different Committee meeting this morning, so I have not seen what arose at the Executive today, apart from a brief statement from the Minister of Finance that has just been released, indicating that the allocation for pay awards is just over £100 million higher than the £584 million that was provided specifically for pay in the financial package. Are you aware of how that might impact on your Department?

**Mr Pengelly:** Do you mean the £100 million increase or the totality of the allocation?

**The Chairperson (Ms Bunting):** What shortfall might that still leave you with? What will be the impact on the DOJ? Where are you now, essentially?

**Mr Pengelly:** If we deal just with 2023-24, I have everything crossed that there will not be a shortfall and that the package that we get will be fully funded. However, as Doug said, that does nothing for 2024-25 and future years, which is a real issue of concern for us.

**The Chairperson (Ms Bunting):** I have a couple more questions and then I am done with you.

I sit on the political advisory board of the tackling paramilitarism programme. The programme sought to find the number of strategies in Northern Ireland that impact on tackling paramilitarism, and I was astonished to learn that there were over 60. However, more than that, there was no central place where all those strategies could be found. It also highlighted the extent of duplication in Northern Ireland. It is important for the Executive Office, going forward, to address any duplication of work or funding. The thing that shocked me was that although we have moved to an outcomes-based agreement model, there is no central place for that work and silo working continues. I presume that that matter will be raised at the Executive, and I ask that the Minister does that and highlights that, despite tackling paramilitarism impacting on almost every Department, every Department appears to be working on strategies alone rather than working corporately, with agreed outcomes for the benefit of society.

**Mr Pengelly:** I cannot disagree with anything that you said. From our perspective, Adele Brown and colleagues in the Executive programme identified that work. Like you, when I saw it, I was somewhat taken aback. We thought that the best approach would be to immediately take that, as a product, to the Executive Office, because I did not want it to be pigeonholed as being an issue about the tackling paramilitarism programme. It is a broader issue of concern for the Executive. Maybe I should not repeat this, but, in the strapline, a quote was attributed to an unnamed official who said, "In Northern Ireland, we used to launch ships. We now launch strategies". That is a concern.

Strategies have always been a bit of a hobby horse of mine. For me, a strategy is incomplete unless it is costed and contains an action plan, because it has to be a strategy for a purpose. In the past, some of our strategies have been well-intentioned statements of aspiration, but they need to contain a pathway to get you to that ultimate outcome. It is only when you do that sort of mapping exercise that you really get a sense of the golden opportunities for collaboration and cross-sectoral working.

It is important that we do not spend all our time talking about the financial crisis. We have to start talking about opportunities, and I think that there is a big opportunity there. Yes, that will require money, but I suspect that, in many places, three or four different organisations are spending money on a particular cohort or sector. If that money was brought together, it could have a much more powerful impact. However, TEO is the right place to lead that work.

**The Chairperson (Ms Bunting):** I absolutely agree with you, but I am keen that, in the justice sector, the Minister highlights the issue in that room, because it is shocking that Departments are not pulling in one direction.

I have two more questions. You made a point about finance following function, and I will take up Justin's point about legislation that has been passed. During my tour around various aspects of the justice system, it has struck me that finance has not followed function. For example, the laws that cover stalking, upskirting and downblousing and things like Operation Encompass are all really worthy and valuable. Operation Encompass is absolutely marvellous: where there is domestic abuse in a home, the school will be notified and will provide the child with what he or she needs. However, all of that was done without the cost implications for the relevant body — in those cases, the PSNI — being addressed. For the Committee, as a scrutiny body, it will be important that, where that happens, an important element of scrutinising the legislation will be the cost of implementing it. I suppose that I just want to put that on record.

**Mr Pengelly:** It goes back to my previous comment. Legislation is really how we put policy into practice. The policy comes from a strategy. At the early stage, it is not enough to have a strategy and a statement of aspiration; there needs to be a costed action plan. I have seen — not in the justice sector but in others that I have been in — instances where one organisation has felt that its role is policy, it develops a strategy and a policy, and then, when that is finished, it is lobbed over the fence to another organisation to implement it. Inevitably, what you get is that that organisation comes back and says, "We cannot afford to implement this" or "It is just unimplementable". The development of strategy and policy and turning that into legislation needs to be done by the policy colleagues plus the delivery colleagues — the likes of the PSNI — and they need to develop a costed action plan.

I would go further and say that, finally, maybe as the icing and the cherry on the cake, there needs to be a set of metrics that, two years from now, you can look at to judge whether it has been successfully implemented. It is not just about what success feels like; it is about what the demonstrable metrics are that allow us to judge that. That whole package needs to be put together and be part of the discussion with the Committee at the embryonic stage, before we turn that into legislation and give effect to it.

**The Chairperson (Ms Bunting):** Most of us would be 100% with you on that. Certainly, in those circumstances, the PSNI has had to absorb those costs, which we are now seeing being borne out. It is another element of pressure on it.

**Mr Pengelly:** That may have been doable at a point in time when there were no financial challenges; when the police had a budget of £0.75 billion, and, if you lobbed something else in, it could be absorbed somewhere. It is way past that point now.

**The Chairperson (Ms Bunting):** Yes, it is. It is good to see that the Department recognises that.

Lastly, I suppose that the major point that I have is that, as I have engaged with Justice, what has been frightening to me is something that you referred to earlier, which is the extent to which people who should not be anywhere near the justice system are engaged in it, people who are in police cells overnight because they are in a mental health crisis and there is nowhere safe for them to be or people who are in prison but should be in a care facility. It is all those aspects and the links between people's mental health and well-being and their ending up in the justice system when it is the wrong place for them. It goes back to that business of the right place, the right people and the right care. It seems that there is immense cost to the justice system of those people who should not be in the system.

Bearing in mind your predecessor's previous post and your previous post, you will be entirely familiar with the issue. It seems that the justice system is picking up the slack where others are unable to fulfil their functions. What conversations are under way to examine those issues and put responsibility back where it should be in order that people who should not be part of the justice system do not end up in it?

**Mr Pengelly:** Those conversations have started. Certainly, there have been conversations involving the Department of Justice, the PSNI and the Department of Health. It even gets down to quite small issues, such as how many times a police officer is the first responder because an ambulance is not available and, routinely, on a Saturday evening, how many police officers are held in an emergency department because they are with someone who is potentially violent and they cannot leave? I suspect that, if you went into the likes of the Ulster Hospital or the Royal Victoria Hospital, you would probably see half a dozen uniformed officers. That is a desperately bad use of police resources, and — I think back to my previous role — given the volume of frail elderly people who have to go to emergency departments, it is a frightening prospect for them, when they are feeling particularly vulnerable and unwell, to see uniformed and armed officers around. That cannot be conducive to their recovery.

There is a myriad of reasons why those conversations need to happen. They are starting to happen, but I try to be pragmatic about it. At the moment, the health service has a massive job to address the problem of waiting lists and emergency departments generally. If that is not going to be at the top of their agenda in the short term — I can understand why they might feel it — the alternative has to be additional resources in the justice sector to properly look after individuals in cases where we are the safety net, until we get a longer-term optimum solution. It cannot be a case of, "We can't afford to fix it now, so we will just let them flap in the breeze"; that is not sustainable for anyone.

**The Chairperson (Ms Bunting):** That is absolutely right. That is my fear. More often than not, the justice system is the first resort. People phone the police, although it is not the role of the police. The other side of that is that, once the police are involved, should something go awry, they have to deal with being investigated at every turn by the ombudsman in circumstances where the Health Department does not. I am not suggesting that they do not have their own sorrows to seek, but my concern is for the justice system and people who should not have to face prison and hostels and so on when those are not the best places for them and it is not in the interests of their health to be there.

Does anyone have anything else?

**Miss Hargey:** On that point, in the previous mandate — it would have been in October 2022 — the three Ministers met to start working on a Housing First model around chronic homelessness and issues such as addiction, the Prison Service and how the three Departments work. Can we get an update on how that has been progressing, if it has progressed? If it has not, can we get an update on what engagement the Minister will have with the Department for Communities and the Department of Health about those key issues?

Richard, you raised the issue that the Department of Health will be looking at treating the symptoms at the other end, and that is a concern, if you are just going to do that in isolation from all of the preventative measures that we have been discussing and raising concerns about. An update on that programme and whether there are other programmes would be useful.

**Mr Pengelly:** I will chase that up for you.

**Ms Ennis:** I am glad that you mentioned Operation Encompass. I think that that was initially piloted in the South Down area. It would be useful to get an update on it. Has it been rolled out across the North, or is it still in the pilot stage?

**Mr Pengelly:** I am not sure whether it has been completely rolled out everywhere yet. We will check that and get a fuller update for you.

**Ms Ennis:** Thank you.

**The Chairperson (Ms Bunting):** The Clerk has advised me that they have made a list of the issues that the Committee has raised and that, if the Committee is agreed, it can write to seek an update from the permanent secretary. That will save you having to write that down and remember it, Richard.

**Mr Pengelly:** My colleagues will be able go through Hansard but whatever is easiest for you, Chair. That would be really helpful, if you can do so.

**The Chairperson (Ms Bunting):** We will write to you, I think. Is everybody content with that?

*Members indicated assent.*

**The Chairperson (Ms Bunting):** Does anybody have any further questions for the permanent secretary? No. On that basis, Richard, I thank you very much for your candour and your time. We look forward to seeing you with the Minister at the end of our induction.

**Mr Pengelly:** Thank you.