

**Presentation by Ms Carol Moore, Department of Justice,
30th September 2010, Inn of Court, Belfast**

Introduction

I am grateful to the Chairman for the opportunity to speak to you.

I want to start by passing on the Minister's apologies. Unfortunately he is unable to be here today as he has been called to a joint meeting of the Assembly Health and Justice Committees this morning.

I know that he wanted to be here, and the date has been in his diary for some time, but he is looking forward to continuing to engage with the Commission.

Although the Commission was only established in 2007, it has already started to make its mark in reforming the law in Northern Ireland. And it has reached another important milestone today with the launch of a consultation document on the reform of bail law.

When the Criminal Justice Review team recommended that a Law Commission should be established, they recognised the need for a co-ordinated approach to law reform.

When David Ford set out his priorities in a speech on 7 June, he also emphasised the importance of reforming the justice system to meet the needs of the people of Northern Ireland.

If communities are to feel the tangible benefits of devolution then organisations like the Law Commission need to contribute to that reform process.

We have heard this morning something of the background to the Commission from the Lord Chief Justice - as he was closely involved in its establishment as its first Chairman. Many of you may already be aware that prior to his appointment as Lord Chief Justice, Sir Declan was a pioneer of law reform in Northern Ireland. Indeed, he has the honour of being the last Chairman of the Law Reform Advisory Committee,

the body that was the precursor to the Law Commission, as well as the first Chairman of the Law Commission.

I know too that he has continued to take a close interest in the work of the Commission since his elevation to Lord Chief Justice, in spite of his heavy workload.

I am sure that everyone here today would join with me in acknowledging Sir Declan's contribution to making the Law Commission a reality.

We are also grateful that Mr Justice McCloskey agreed to accept the position of Chairman following Sir Declan's appointment as Lord Chief Justice. And I know he is ably supported by the Commissioners, Chief Executive and Commission staff.

The Law Commission was established to keep the law of Northern Ireland under review and to promote its systematic reform. It is an Advisory body that sits at arms-length from Government and able to take a broad view of the law. It is sponsored by the Department of Justice and currently part funded by the Department of Finance and Personnel.

Because the Commission sits at arms-length from Government, it is an impartial body, and has the flexibility to consult freely with a wide range of interested parties in formulating its recommendations. This is important.

But it is also important that the work of the Commission is not simply an academic exercise. Although I have no doubt that the intellectual rigour invested in the projects, helps to ensure that its recommendations to reform the law are meaningful and practical.

If the Commission is to be effective it needs to build good relations with other bodies. This includes the sponsor Department for projects taken forward by the Commission. The Lord Chief Justice has spoken about the serious resources position

which we all face and the need to ensure that there is a clear output to match investment. Particularly in the climate of reducing resources, it is critical that projects are aligned with Departmental priorities.

It is good to see the scope of the Commission's engagement with a wide stakeholder base in preparation of the work programme and in promoting projects.

The out workings of the Commission have the potential to touch the lives of every citizen in Northern Ireland so that widespread engagement is very important and very necessary. This is in sharper focus since the devolution of policing and justice matters, which has increased accountability across the justice system.

Scrutiny committees have a particularly important role to play in examining new legislative proposals brought forward by Departments. So they should have the opportunity to comment early on new proposals emerging from the Commission.

To assist with that engagement process, it will be the Minister's intention to share the second work programme with the Justice Committee prior to giving his formal approval.

Bail project

I am, on behalf of the Department, particularly pleased that the Commission prioritised a review of the law on bail in criminal proceedings in their first work programme.

It is a study that we look forward to with keen anticipation on a number of levels - to the policy lessons we can learn; to the procedural improvements that might be possible; and to the opportunities to consolidate an area of law that has been spread far and wide across our statute book.

We currently have court bail in all court tiers; police bail - pre-charge, post-charge, "street bail"; bail in immigration and extradition matters; separate provisions for young people; and compassionate bail. So there is no doubt about the need for reform.

Bail has also been a topic of periodic and at times considerable public interest – mostly when things seem to go wrong. Headlines often feature in the newspapers about levels of offending on bail; who gets bail and in what circumstances; bail conditions and their compliance; even the length of time people are on bail.

I know that the Commission has done a lot of fieldwork to identify the issues of concern to practitioners and communities and it is not surprising that conflicting views emerge.

On the one hand, an individual has a right to bail, but on the other hand, communities often express surprise and concern that an individual who has been awarded bail, is perceived to be continuing to offend. Whilst these are all very valid concerns, they do tend to overshadow the value of bail as a process and the successes it delivers in very many situations - with the attachment of conditions and the right arrangements to back it up.

We need the balanced assessment of all those issues that I know will come from the Law Commission's work.

I am particularly pleased, for example, that there is recognition of victims and their concerns.

Procedures

There are also a number of process issues that could be reformed as differing powers can be exercised by differing people at differing stages.

For example, the police can grant bail before charge, at the police station, or on "street bail" as it has become known. They can also grant bail after charging.

When granting bail, courts can also apply different requirements. Personal recognisances, sureties, conduct conditions can be applied – as can the police in certain circumstances.

Then there are the various processes for dealing with breaches of bail. Court warrants, police powers of arrest – the fact that it is not an offence to breach bail conditions.

I could go on but I know the Commission is equally keen to explore how well the processes are provided for in law and how we might improve them. Again I look forward to the proposals.

Legislative consolidation

In an area of such apparent complexity – and forgive my simplicity in this – one issue stared me straight in the face.

When I ask my team, “so where is the law on bail?” I get a simple answer.

“Here there and everywhere”.

Turning to the law itself, the Commission’s work reflects that our legislation has developed in a somewhat piecemeal fashion over many years. Unlike other jurisdictions where there are consolidated statutes, that is just not the case in Northern Ireland.

And I have to confess that we in the Department are not without sin in this area.

We have police bail under the PACE 1989 Order – and we’ve even amended that by other statutes quite frequently.

We have Magistrates’ Court bail under the 1981 Magistrates’ Courts Order and have, in the past, had separate provisions for bail in scheduled cases.

We have even made efforts to take a more consolidated and consistent approach to bail law by way of our 2003 Criminal Justice Order.

Some principles were laid down about police and court bail – the duty to surrender and the offence of failure to do so. This was our attempt – all of seven, nearly eight

years ago – to start on the path of a single approach. So I think it is timely of the Commission to pose the question if we require a Bail Act.

Conclusion

I am aware that this is the Commission's first project in the area of criminal justice, and I am sure you will agree that it is an important area for the justice system. We are extremely pleased that the topic was chosen, and look forward to engaging in the consultation process.

On behalf of the Minister, I also want to thank the Commission for the work it has done to reach this important staging point in reforming the bail law. Some of the research into the laws in other jurisdictions – for example - has been excellent and I know that we in Northern Ireland will benefit from the work that has been completed.

The Department's representative on the Project Steering Group has been very impressed with the team and its work and has welcomed the opportunity to have been part of its development. It is that type of engagement with sponsor Departments that we are keen to support and promote.

Moving forward, I know that the Commission has already started the preparatory work on its next programme.

It is indicative of the planning timetable that you need to start thinking about your next projects before you complete the current ones. I look forward to seeing the outcome of the consultation on the Commission's second work programme.

I will conclude now but I thank you again for the opportunity to say a few words today on behalf of the Minister and wish you a successful day.