



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*
(OFFICIAL REPORT—*Unrevised*)

Order of Business	460
Minimum Custodial Periods upon Conviction for Murder Bill 2017: Second Stage (Resumed)	478
Business of Seanad	484
Minimum Custodial Periods upon Conviction for Murder Bill 2017: Second Stage (Resumed)	485
Business of Seanad	490
Tracker Mortgages: Statements	490
Judicial Council Bill 2017: Order for Second Stage	502
Judicial Council Bill 2017: Second Stage	503
Defence (Veterans Lapel Badge) Bill 2017: Second Stage	520
Councillors' Conditions: Statements (Resumed)	533
Justice Matters: Statements	544

SEANAD ÉIREANN

Dé Céadaoin, 22 Samhain 2017

Wednesday, 22 November 2017

Chuaigh an Cathaoirleach i gceannas ar 11.30 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Order of Business

Senator Jerry Buttimer: The Order of Business is No. 1, Minimum Custodial Periods upon Conviction for Murder Bill 2017 – Second Stage (resumed) to be taken at 12.45 p.m. and to conclude not later than 1.30 p.m.

Senator David Norris: How long will participants have on that Bill? How long can they speak for?

Senator Jerry Buttimer: It is the same under Standing Orders, eight minutes and five minutes.

An Cathaoirleach: It is set out in Standing Orders.

Senator Jerry Buttimer: Eight minutes and five minutes.

Senator David Norris: I thank the Senator.

Senator Jerry Buttimer: No. 2, statements on tracker mortgages to be taken at 1.30 p.m. and to conclude not later than 2.45 p.m., with the contributions of groups spokespersons not to exceed eight minutes, all other Senators not to exceed five minutes and the Minister to be given no less than five minutes to reply; No. 3, Judicial Council Bill 2017 – Order for Second Stage and Second Stage to be taken at 2.45 p.m. and to be adjourned no later than 4.45 p.m., with the contributions of groups spokespersons not to exceed ten minutes, all other Senators not to exceed six minutes; No. 4, Defence (Veterans Lapel Badge) Bill 2017 – Second Stage to be taken at 5 p.m. with the time allocated not to exceed two hours; No. 5, statements on councillors conditions (resumed) to be taken on conclusion of No. 4; and No. 5a, statements by An Tánaiste regarding justice matters, to be taken at 7 p.m., and to adjourn not later than 8 p.m., if not previously concluded, with the time allocated to group spokespersons not to exceed six minutes and other Senators not to exceed four minutes, and the Tánaiste to be given no less than five minutes to reply.

Senator Mark Daly: We welcome the fact that the Tánaiste, Deputy Fitzgerald, is coming before the House to address the issues that are so much in the public eye at the moment. Of course, she is well regarded and well respected in this House for her work as a Senator, a Deputy and a Minister, but there are questions to be answered. This matter goes to the fundamentals of justice in the State. That is, whether a person who acts in the public interest is protected or is persecuted by the State. The strategy of an Garda Síochána and those who were involved in Sergeant McCabe's case was to go after him. Their purpose was not to find the truth; they did not want the truth, they wanted to go after him. That was meant as a lesson to others who might speak up when there is wrongdoing in the force.

This gives rise to a problem for the State because if people who know the truth and who know that something is being done wrong and needs to be corrected do not speak out, then the wrong will continue. We have whistleblower legislation. Instead of protecting whistleblowers, it should be encouraging them. However, it does not do that. The message this affair sends from the State, the establishment and the permanent government is that people should not speak out. Those who do speak out will end up like Sergeant McCabe.

Hopefully, questions regarding the relevant email and who knew what and when will be answered, light will be shone upon this matter and we will find the truth. The fact that the Garda took an adversarial approach to the hearings, rather than trying to discover what actually happened to Sergeant McCabe, recalls the Spanish Inquisition. The Tánaiste stated in the Lower House that they were not adversarial hearings but were, rather, inquisitorial in nature. They were not. They were the equivalent of the Spanish Inquisition. A warped legal strategy was pursued by the Garda against Sergeant McCabe in order to silence him. That was wrong.

This is not just about Sergeant McCabe, however, it is also about people who know the truth. Unfortunately, when people do not speak out, issues such as those relating to the Irish Blood Transfusion Service arise. In that instance, 1,600 women were infected with hepatitis C. People knew what had happened but there were not consequences those who knew and did not act. For those who suppressed the truth and did not act, there were no consequences. If the Irish Blood Transfusion Service scandal happened today, nobody would go to prison. The Corporate Manslaughter Bill 2016, which would lead to people being put in prison and against which the Minister for Justice and Equality argued in this House, has still not been progressed. It is beyond belief that people who knew that women were being infected have not been prosecuted.

I am glad that the Tánaiste will be coming before the House later today. I have great respect for her. However, even the Taoiseach stated last night that Sergeant McCabe was wronged by the State on a number of occasions. The Taoiseach used the past tense. The email was only sent to the commission yesterday. This is ongoing persecution of a man who should be supported, protected - at the very least - and encouraged by the State. I thank the Leader of the House for organising the debate that will take place later. This matter goes to the fundamentals of how the State protects those who know the truth and speak out.

Senator Gerard P. Craughwell: I agree with much of what my colleague, Senator Mark Daly, said. We in this country have a tendency to try to bury the truth. If that fails, we go on a witch-hunt and pursue the wrongdoers. When it gets too close for comfort, the wrongdoers resign, take their pensions or go off and get an important job somewhere else. Everybody then sits back and it just rolls over and over. My office is dealing with a case whereby one particular agency that has done everything possible to stifle an investigation. I will not mention either the case or the State agency involved, other than to say that even the investigations of the Director

of Public Prosecutions and the Garda are being frustrated by it.

The approach that is always taken is to deny everything until it is necessary to make an admission and then go on a witch-hunt to try to find somebody to blame. If that person is somebody at the top, the attitude is to give him or her a pension, get him or her out of there quick and then matters return to where they stood before everything began.

Senator Norris spoke about freedom of speech yesterday. During the relevant debate, there was some discussion of social media. I spoke against former Senator Lorraine Higgins's Harmful and Malicious Electronic Communications Bill 2015, the purpose of which was to allow for the curtailment of social media, when she brought it before the previous Seanad. I have some regrets in that regard. It is no secret that I spend a fair amount of time on Twitter. I have been personally attacked by professional people and the most outrageous lies have been told about me. I asked for a debate on a particularly sensitive subject and I have been attacked by obstetricians, nurses and doctors, some of whom have very high public profiles. They say the most outrageous things simply because they can do so. They steer very close to libel, but never go over the line.

I agree with what was said yesterday. The organisations responsible for Twitter, Facebook, Instagram and similar platforms must start taking responsibility for what is published on their pages. I could not care less about what is said to me. If someone was of a weak disposition or had mental health issues, these people would drive him or her to jump into the ocean. They would drive a person to commit suicide because they can say whatever the hell they want. We need to discuss social media in this House. I am not sure exactly how we will bring Twitter, Facebook, etc., to heel. These are large employers and the fear is that if we try to curtail their operations, they might run out of the country. However, the public has a right to be protected from what goes on. To these faceless cowards and bullies on Twitter, I say, "Bring it on guys. I'm ready for you any time you want." I am quite willing to take these individuals on but not everybody is able to do that. Perhaps the Leader might consider inviting the Minister for Justice and Equality to come before the House in order that we might discuss this matter with him.

Senator Paul Gavan: I want to refer to the "RTÉ Investigates" programme, which, I am sure, all Senators watched last night. It just so happens that it was a neighbour of mine, Mary Comber from Scanlon Park in Castleconnell, who was featured. She is the poor lady who had to sell her jewellery in order to pay for a cataract operation that the State would not provide for her. I want to ask the question as to how we got here. Let us be very clear: we did not land in the situation whereby public patients are obliged to wait for years while private patients can skip queues and get the treatment they want by accident. This is the result of long-standing Government policy. It has been the policy of not just Fine Gael but also Fianna Fáil when in government. Both parties have always favoured private consultants and that is why we have a health system that is led by private consultants. The system should be delivered by these people but, instead, it is led by them.

I want to nail one particular argument that I have heard already this morning, namely, that it is just a small number of consultants who are taking advantage. It is much more than that. The HSE, for example, is completely remiss in not overseeing compliance. It stopped collating statistics on the percentage of work that is done by private consultants in 2014. Then we have the fundamental problem that the way hospitals are funded encourages them to get private consultants to do more work in order to make up the funding gaps that exist. Of course, for the consultants, it is money in their back pockets.

What this issue clearly demonstrates is the need to get the private sector out of our public hospital system. We should all ensure that the latter is our policy. We should also ensure that the shameful and long-standing situation whereby people have to wait and take second place because their wallets are not big enough no longer obtains. I would like to hear some contrition from Fine Gael and Fianna Fáil on this issue. This did not happen by accident. They have allowed a situation to arise whereby a woman had to sell her jewellery in order to fund an operation. It is time that Fine Gael in particular moved away from supporting the rich consultants and rediscovered a belief in public health care.

The second issue that I want to raise today, and I wanted to raise it yesterday, is the disgraceful treatment of an Irish soccer player called Cyrus Christie at the weekend. It is shocking that racism is still part of soccer in Ireland. I was fortunate enough to see a young Chris Hughton play soccer in Tottenham. In 1979, he became the first mixed-race player to represent the Republic of Ireland. He is still a great ambassador for our country and for sport in general.

Senator David Norris: Hear, hear.

Senator Paul Gavan: Yet here we are, in 2017, and there is still a cohort of racists and bigots in our soccer. The problem is also widespread in our society. I would go so far as to say that every political party in this country has members who hold racist views. I would like a debate on racism. It would afford us an opportunity to send a united message that people who abuse great men like Cyrus Christie have no place in sport or anywhere else in our society.

Senator Jerry Buttimer: Hear, hear.

Senator David Norris: Hear, hear.

Senator Kevin Humphreys: I wish to raise two issues on the Order of Business. The first issue concerns the Tánaiste and an email. There is no doubt in my mind that when the email arrived in the Department of Justice and Equality it should have raised a red flag. When I performed a quick search on my computer this morning I discovered that there were nearly 50 articles in the previous month about Garda Maurice McCabe. If the email did not raise a red flag then I do not know what would. We are quickly moving from a red flag situation to a red card for the Tánaiste.

Yesterday, we suggested that the Tánaiste should come to this House and I am glad to see that she will be here this evening. For a long time I have been dissatisfied with only having statements on these issues. I would much prefer if we adopted a question and answer format. I would like the group leaders to consider my suggestion but with the same time constraints.

Like my previous colleague, I want to refer to the “Prime Time” programme aired last night. Recently we have read in the newspapers that as many as 8,500 people await cataract surgery but in one case a consultant has worked just 13 hours per week in the public system, and this is at a time when most consultants are paid a salary of between €113,000 and €229,000. On a regular basis private consultants defraud the HSE by amounts ranging from €14,000 to €20,000. They are only a tiny minority but the number adds up.

In 2015, the head of the HSE said that the 80:20 split practice had become “a farce”. We have serious management issues within the HSE. I call on the Leader to invite the Minister for Health to this House for a proper debate, using a question and answer format, on the management of the HSE. I know of a case in Waterford where a GP regularly sends patients to the local

accident and emergency unit for tests because there is no access to consultants. That situation is duplicated across the country. We have a shortage in the number of consultants, doctors and nurses who work in our hospitals but we also have an enormous problem with HSE management. The number of management staff has increased in huge numbers and far beyond the number of additional doctors that have been recruited for the health service. We have a crisis in management but we have had it for a long time. Ever since the HSE monster was created the health service has deteriorated. I ask the Leader to arrange an urgent debate on HSE management and on how hospitals are managed in this country.

Senator Maria Byrne: I wish Senator Craughwell a happy birthday although I know he has left. I hope he has a nice day.

An Cathaoirleach: He does not look his age.

Senator Trevor Ó Clochartaigh: Let him eat cake.

Senator Maria Byrne: I rise today to raise the issue of pyrite. A number of people from an estate in Limerick have informed me that they have been told by an independent assessor that there is pyrite in their houses. When I contacted the Pyrite Resolution Board I was told that because their estate is not in the areas of Dún Laoghaire-Rathdown, Fingal, Kildare, Meath, Offaly or South Dublin, or Dublin City Council, it cannot fix the problem. The board's terms and conditions were set in 2013. Pyrite is a serious problem and occurs in houses located around the country. A number of houses in the estate in Limerick have been identified as having pyrite. Therefore, I believe the Act needs to be amended. I call on the Minister concerned to contact the board in order to expand its terms and conditions.

An Cathaoirleach: I thank the Senator for her usual brevity.

Senator Terry Leyden: I request the Leader of the House to arrange for the Minister for Finance and Public Expenditure and Reform to come to the House to discuss the reduction in the interest paid for prize bonds. The National Treasury Management Agency has decided to again reduce the prize pool available for prize bond owners. It reduced the number of chances to become a millionaire from six opportunities per year down to only four last year and to two commencing from August 2017. The interest to be paid on prize bonds was reduced from 0.85% to 0.5%. In 2016, it was 1.25%. At present there is €3 billion in prize bonds that is used by the State for essential services. A draw for a prize of €50,000 tax free takes place every week and only twice a year, in June and December, the prize is €1 million tax free. The draw should be brought into the public domain using television. As RTÉ has the national lottery, I believe TV3 should broadcast a public draw on a weekly basis.

Senator David Norris: Hear, hear.

Senator Victor Boyhan: Hear, hear.

Senator Terry Leyden: Broadcasting the draw would mean people would know who won the prize.

I wish to make a further suggestion. The yearly payout was €28 million but it is now €15.5 million and a prize bond costs about €25.

Senator David Norris: One is restricted in the number of prize bonds one can buy.

Senator Terry Leyden: Yes. We must all try to do something about the homeless situation. I suggest that prize bonds are renamed the housing prize bonds as it would encourage people to invest their money. People feel very helpless because as many as 3,000 children and their families are without a home in this capital. The National Treasury Management Agency has shown little innovation. Where has it looked outside of the box or been forward thinking?

I recommend that we have a savings bond as opposed to a prize bond that allows people to invest and earn a reasonable rate of interest. At present the banks nearly charge people for saving with them. I suggest that the NTMA creates a ten-year bond that pays 1.5% or more in interest or whatever is available.

There is goodwill and a lot of money in this country. Someone has claimed that people may have saved as much as €100 billion in different locations. We should get that money back in the economy and use it to solve homelessness by building social housing. The initiative would activate the construction industry. A great many people feel helpless but luckily people love to support charities such as the Peter McVerry fund. It would be great if people could invest their money in housing savings bonds and were paid a reasonable amount of interest. In fact, it has almost reached the stage where banks charge people for keeping their savings. Without doubt, we are a very wealthy country. Let those who have the money invest in either prize bonds or savings bonds that are dedicated to alleviating homelessness and building social housing.

Senator Victor Boyhan: I ask the Leader to extend, with the approval of the House, an invitation to An Taoiseach, Deputy Leo Varadkar. He would be very welcome here and it would be a great opportunity for the House to hear what he has to say and for him to engage with this important part of the Houses of the Oireachtas and, possibly, have an exchange of questions and answers. It would be great to see him-----

Senator David Norris: Hear, hear.

Senator Victor Boyhan: -----before the end of the year or, if he could not fit it into his schedule, very early in the new year. One must admire his communication skills and how he engages with social media, his weekly press releases to the nation and his statements from his office and from Europe, but it is also important that we do not forget the people within the Houses of the Oireachtas. Will the Leader extend, if it is acceptable to the House, an invitation to the Taoiseach? Depending on his busy diary, it would be great to see him by the end of this year and, if not, very early in the next session.

Senator Máire Devine: Cyberstalking and cybersafety, especially for children, have become extreme. They are hunted down and targeted, and many young children are distressed and upset by this. Several of them, including some as young as ten, have died by suicide. We are dealing with it to some extent at the committee on children and youth affairs.

I want to raise statements on statements, following the topic raised by Senator Humphreys. Last week, we had statements on health, but the Minister of State, Deputy Byrne, did not answer any questions posed on the recruitment and retention of staff in the health care sector. In her reply she said she would address all points raised via email or letter but this did not happen.

Last night, we debated Second Stage of legislation on health insurance and risk equalisation. Given the topical nature of this issue, with regard to the programme on RTÉ last night which I raised yesterday, it was surprising we had the Minister of State, Deputy Byrne. I know there are

issues with getting Ministers to the House but we do not get any answers to the questions raised.

I wished to table an amendment to the health insurance legislation but I needed to do so immediately because all Stages of the Bill are being taken this week. I asked the Minister of State to address the question regarding the levies to be introduced in the legislation and whether insurance companies are monitored with regard to hiking up premiums. I was told this would be dealt with by email, but I did not have the time to wait for an email because I needed to table the amendment. Will the Leader consider a discussion on the effectiveness and usefulness of statements on statements?

Senator Ned O’Sullivan: Will the Leader arrange for a debate in the House on tourism, in particular a discussion on how tourism is being affected by Brexit? Perhaps the Minister, Deputy Ross, might come in and outline what strategy, if any, he has to deal with the continual and worrying slide in visitor numbers from the UK to this country. The latest CSO figures confirm the bad news and the trend which has been ongoing for more than 12 months.

In the peak summer season, which is key for people in the tourism industry, British visitor numbers were down by more than 7.5%. I am glad to say this was somewhat offset by an increase in visitor numbers from the rest of Europe of approximately 2%, and a significant increase in North American visitors of more than 12%. None the less, British visitors represent a major percentage of our total visitor numbers, and studies have shown the spend of British visitors is larger in real terms than that of visitors from other countries.

British visitors tend to go to all parts of Ireland. They are quite intrepid and do not just focus on Kerry, Dublin or Kilkenny. They go along the Wild Atlantic Way and the interesting walks we have in Ireland. Almost 250,000 people work in our tourism sector. The Irish Tourism Industry Confederation has said the Minister would want to provide an emergency fund of €20 million to offset what has already taken place. It makes a very strong case. Will the Leader try to get a specific debate on tourism and the British angle specifically?

Senator David Norris: In recent days, two significant figures have indicated their intention to withdraw from public life, namely, Robert Mugabe and Deputy Gerry Adams. One has to respect Deputy Gerry Adams for the way in which he drew Provisional Sinn Féin away from the gun and violence, and in so doing he had the very difficult task of facing down the hard men in his own group.

Therefore, it was with some surprise and sadness I heard him refer to the late Martin McGuinness as a proud IRA man. There is nothing much to be proud of in the IRA’s record. My friends in Sinn Féin in this House are among the best contributors to debate in the Seanad. They are quite remarkable. They are very hard-working, very balanced and very left wing, which I like. For them, the future must be to distance themselves from the gun. They are clearly capable of change.

I was sentenced to death by Sinn Féin or the provisional movement many years ago. I ignored it. I went round and interviewed Mr. Joe Cahill in its headquarters. Nothing happened or, at least if it did, as Brendan Behan said, they carried out the death sentence *in absentia*. They can change. They were violently homophobic 30 or 40 years ago. They were terrible. They have changed and become among the most prominent promoters of gay rights and I salute them for this. In this new generation of leaders, whoever takes over-----

Senator Máire Devine: Will Senator Norris go for the leadership?

Senator David Norris: No, I would not join Sinn Féin but I would support its very positive contribution to public life in Ireland. I welcome it and it is terrific, but I would just say it needs to disinfect itself from the violence of the past. The Protestant side was just as bad if not worse, but that situation needs to be addressed.

An Cathaoirleach: I am sure our Sinn Féin colleagues will take the Senator's advice on board.

Senator Trevor Ó Clochartaigh: Gabhaim buíochas le Seanadóir Norris as a chomhairle. I am sure we will bring it to the next Ard Comhairle meeting for discussion.

Often, when we raise housing issues, the Leader lambastes us with figures of allocations from Rebuilding Ireland and all the moneys being made available for housing. No doubt he will probably come back today once I have finished my piece. For me, the facts and figures on housing are how many houses have actually been built and how many people are in them.

Reports yesterday show that since the start of 2016, local authorities have built just 430 properties, and new analysis shows that local authorities are using just a fraction of the land they own to build social housing. It is estimated that local authorities throughout the country own more than 1,200 ha of land with the potential for almost 38,000 homes. I am particularly perturbed that at the bottom of the league once again are Galway City Council and Galway County Council, which built zero houses in the city and county in that time, even though we have massive waiting lists and it is a big issue. Our neighbours in Mayo are a little bit better as they built one house in that time.

It defies logic that we have local authorities sitting on banks of serviced land with the potential to build houses. The Leader tells us buckets of money are available but the local authorities are just not building houses. We have people ringing our offices every day of the week distraught because they have no homes to live in and they are being put into homelessness. All the talk needs to stop and we need to see much more action. There is no point in Ministers shaking their heads. The Government is in charge here and needs to ensure these things happen.

I congratulate Galway Traveller Movement on organising an excellent presentation on Monday. It has started a new campaign on Traveller community accommodation, which is an absolute disgrace across the country. We had huge fanfare on 1 March when the then Taoiseach, Deputy Enda Kenny, recognised Traveller ethnicity and all the wonderful words around that. However, Monday's conference, which was attended by Peter McVerry, heard harrowing stories of the appalling conditions of Travellers in substandard illegal halting sites because of a lack of accommodation from local authorities, etc. I call for a debate on Traveller accommodation. I note only one politician bothered to attend that campaign launch and there are no prizes for guessing who that was.

Senator David Norris: Do tell us.

Senator Trevor Ó Clochartaigh: We need much more co-operation across the board on the matter and the general housing issue.

Senator Paul Daly: This morning, along with Senator Lombard and other members of the Oireachtas Joint Committee on Agriculture, Food and the Marine, we launched a report on the future of the tillage sector. As was rightly said at the launch, this document is a starting point for debate and discussion on a sector that is in severe crisis. I ask the Leader to invite the Min-

ister to the House so that we can initiate that debate by bringing the report before the House as soon as possible. As a number of speakers have said this morning, I would like on that occasion to have a debate as opposed to statements. I agree with what has been said; I do not believe we get the best value out of statements especially on issues of importance. It should be a question-and-answer session or a debate as opposed to statements.

The irony for the tillage industry is that, as we are all aware, the drinks industry has probably been the success story of the economy in the past ten years, yet the farmers who supply the malting barley for distilling and brewing are in major crisis. It is not that the sector is without money. It has the money, but it is not filtering down to the base supplier. Brexit is on the horizon, which gets plenty of air time in here, and inclement weather is very detrimental to the agriculture sector. Irrespective of Brexit and the inclement weather, however, this is a sector in crisis. Brexit will only compound that as has the weather over the past two years.

We need a debate on the matter and we need to look at the possibility of diversification. We need to look at fairness in the sector where the exorbitant amount of money made by the drinks industry is not filtering down to the suppliers. Climate change can also be incorporated into this sector. We have an ongoing debate on climate change. Farmers are prepared to produce grain on the island of Ireland if they can get a price for it. Rather than pay them the price, we are importing grain for feed and malt from as far away as Russia. One can only imagine the carbon footprint on a tonne of grain coming from Russia to Ireland even though our farmers are prepared to produce it if they can get a reasonable price for it.

Senator Paul Coghlan: I support my friend and colleague, Senator Ned O’Sullivan, in his call for a debate on tourism and particularly his concern regarding the British visitors about whom we are all concerned. Sadly, their numbers are down by about 6% at the moment. I believe the tourism authorities are very conscious of the issue. A few weeks ago, the Minister of State, Deputy Griffin, participated in a large-scale tourism promotion event in London with Niall Gibbons of Tourism Ireland and others. I believe it was very successful. It is good to hear that British visitors travel throughout the land because of connections through relatives and so on. Killarney has many connections. The Senator and I are familiar with Killarney House and its previous occupants, the Earls of Kenmare and Lord Castlerosse, who wrote the “Londoner’s Log” in *The Sunday Express*.

We have many strengths to play to as regards British visitors. I accept the Senator’s point that we need to use it more and we need to be seen to do more. I support the call for a debate in due course.

Senator Niall Ó Donnghaile: I thank my colleague, Senator Norris, for his lovely remarks. However, I must correct the record; it was actually Elisha McCallion, the MP for Foyle, who referred to Martin McGuinness as a proud IRA man. We are proud of Martin McGuinness in his entirety - all of him and everything he did in his lifetime. This building, Leinster House, has pictures depicting many proud IRA men and IRA women hanging on the walls. When we have a Fine Gael Taoiseach-----

Senator David Norris: They should be hanging from the walls.

Senator Niall Ó Donnghaile: When we have a Fine Gael Taoiseach, we have a proud IRA man in the Taoiseach’s office. When we have a Fianna Fáil Taoiseach, we have a proud IRA man hanging in the office.

Senator David Norris: All rubbish.

Senator Niall Ó Donnghaile: It is important to point out that the IRA left the stage in 2005, thankfully down to much of the work of Deputy Adams and Martin McGuinness.

Senator Jerry Buttimer: The Senator should be ashamed of that remark.

Senator Niall Ó Donnghaile: I am not even remotely ashamed.

An Cathaoirleach: The Leader will have an opportunity to respond.

Senator Niall Ó Donnghaile: I am merely making the point and highlighting the inconsistency.

Senator David Norris: Deputy Adams was never in the IRA. We all know that because he told us so and we have to believe every word of his.

An Cathaoirleach: I ask Senator Norris to respect the Chair and allow Senator Ó Donnghaile to make his contribution. If it touches raw nerves in some people, they should respect his right to contribute.

Senator Niall Ó Donnghaile: Thank you, a Chathaoirligh.

Yesterday, a Sinn Féin delegation met the British Prime Minister, Mrs. Theresa May, and told her that her government must bear the greater responsibility for the failure to reach agreement on the restoration of the institutions in the North. The provision of an Irish language Act, marriage equality, a bill of rights and funding for a legacy inquest are all British Government obligations. Progress is only possible if her government honours those commitments. The Sinn Féin delegation told her that direct rule is not an option and that she must look to the provisions of the Good Friday Agreement, voted for overwhelmingly by the people, for the establishment of an intergovernmental conference involving the Irish and British Governments.

The Leader accused me yesterday of condemning the Government. Let me today commend the remarks of an Taoiseach yesterday in taking a strong stance on this issue and the convening of such an intergovernmental conference.

I am sure the Leader will share my concern that the British Government intends to include a statute of limitations covering all Troubles-related incidents involving British crown forces in a new section in its consultation on the Stormont House Agreement. Such a proposition is no part of the Stormont House Agreement. Despite being involved for the past ten months in negotiations with British officials, Sinn Féin was never informed of this intention. We understand that the Irish Government was also not informed until we brought it to its attention yesterday. We told Mrs. May that this is an act of bad faith and I am sure the Leader will agree it is unacceptable.

The Minister for Foreign Affairs and Trade recently came to the House to discuss the North. It would be beneficial, and it would meet a call coming from victims' organisations, to have statements specifically related to the outstanding legacy issues in the North.

Senator Robbie Gallagher: I wish to raise the issue of CCTV systems. In April, the Minister for Justice and Equality launched a community-based CCTV system to help secure communities and assist the Garda in its work. Under the scheme, community groups can avail of

a grant of up to 60% of the total cost up to a maximum of €40,000. I am very disappointed to learn that only six applications were made in the entire country. To my mind, that tells us very clearly that the scheme as designed is not attractive to community groups. I have been told that the paperwork is so onerous that people are turning their backs on it.

We are all aware of the lack of gardaí in rural areas and unfortunately we are all aware of the blight of rural crime. I understand the Minister has voiced his disappointment at the uptake. He should look at the scheme again and relaunch it such that it is more attractive to and less onerous on community groups. As Members know very well, CCTV can be a very useful tool to help assist the Garda in its role and to secure communities. I ask the Leader to ask the Minister to address this issue as a matter of urgency in order that the plight of rural Ireland in terms of attacks and crime can be addressed.

Senator Tim Lombard: I commend Senator Daly's comments regarding the important report on the future of the tillage industry in Ireland, produced by the Joint Committee on Agriculture, Food and the Marine and published this morning. This is the start of a conversation to ensure that the tillage industry, which has suffered greatly over the last four or five years, can re-establish itself. Unfortunately, there has been a large decline in the acreage under tillage here, from almost 2,500 ha to an estimated 1,500 ha, which is a dramatic fall. If we do not move now to implement the proposals set out in this report the decrease will continue. The report comprises 35 recommendations. It is important we do our best to implement them so that the tillage industry can be maintained. It is more than appropriate that the Minister for Agriculture, Food and the Marine would come to the House to discuss the recommendations proposed in the report.

There is much debate in Ireland about our brand as a food nation. One of the frightening statistics of the report published today is that only 1% of a pint goes to the farmer and the remaining 99% is spread across a number of other areas. In other words, raw materials cover 1% and the remaining 99% goes to retailers and manufacturers. We are selling Ireland as a brand in the food and beverage industry and so we need to ensure our raw material is maintained. This will be a key issue for us going forward.

The report published today is the starting point. We need action on the core issues, be that low cost finance, Brexit, CAP requirements around farm maintenance, and so on. All of these issues are on the table for discussion. I believe this report is one of the most important produced by the Oireachtas in the last few years. I compliment my colleague, Senator Paul Daly, on his input in that regard. The report is an all-party report produced by the Joint Committee on Agriculture, Food and the Marine. Now is the appropriate time to have the Minister come to this Chamber to discuss the 35 recommendations therein so that we can progress this issue and, hopefully, stop the tide of people moving away from tillage.

Senator Aidan Davitt: As bitcoin pushes beyond the €8,000 mark this week I call on the Leader to liaise with the Department and Minister for Finance regarding their policy on bitcoin, of which I understand we currently have none. Today, bitcoin was the cause of two large American technology companies biting the dust. According to the Korean police, a bitcoin ponzi-type scheme recently in operation in Korea involved an estimated fraud of \$38 million. This is only one of a few such schemes. There are possibly 100 similar schemes in operation. Ireland is at the cutting edge of technology, social media and finance. It has all of the ingredients to become a hot bed of bitcoin farming and, unfortunately, fraud. We need to play our part and immediately introduce a policy on bitcoin and its use in Ireland by the technology companies

and as a method of payment throughout the country.

Senator Michelle Mulherin: This week is alcohol awareness week on an EU-wide basis. We spent many hours last week discussing the issue of binge drinking and alcohol abuse, and the terrible consequences of this for society. Last Sunday, an advertisement was placed in the *Sunday Independent* by one of Ireland's multiple retailers advertising the sale of 24 500 ml cans of Bulmers cider for €25. The cost to a publican in respect of the purchase of 24 cans of cider from C&C Gleeson, which owns Bulmers, is €39.89, plus VAT at 23%, bringing the total cost to approximately €49. What is indicated in the advertisement mentioned is below-cost selling. The advertisement also referenced Heineken and Guinness. This offer is also available online.

I do not propose to name the retailer because it does not need any help getting people through its doors to purchase below-cost alcohol. This is practically selling alcohol wholesale. We have been told by the experts that there is a direct correlation between the cost of a unit of alcohol and abuse of alcohol and that people who are abusing alcohol are more likely to buy cheap alcohol.

The Department of Health officials have been charged with finding a workable solution to accommodate small shops under the Public Health (Alcohol) Bill. We need to bear in mind where the real problem lies. How can the small shop or publican ever hope to compete with what the large multiples are doing? They cannot compete with it. For the multiples, below-cost selling is a means of getting customers through their doors because they collect their profits elsewhere. They will not incur any loss and ultimately they reclaim the VAT on the sales of such alcohol from the State. There is something seriously wrong with that. We have a very welcome provision in regard to minimum unit pricing in the Public Health (Alcohol) Bill. We need to stop below-cost selling for the sake of the health of our nation and for the sake of the small businesses and publicans who are selling responsibly and have a good track record. This is a reality check as we debate this important Bill.

Senator Catherine Noone: I agree with Senator Mulherin's comments in which she articulated the nub of the issue very well. It is the multiples that are happy with the Public Health (Alcohol) Bill and for good reason. The fact that the Minister is willing to compromise in regard to the lower percentage of sales is to be welcomed. These loss-leaders, which is effectively what they are, are drawing people in. They are treating alcohol like any other grocery in order to bring people into their stores. This is absolutely ludicrous.

I also welcome Senator Craughwell's comments on social media. As politicians, we need to stand up to that type of activity. In regard to the consultants, it is important that we bring some balance to bear in that debate. There are compliance and other issues that need to be addressed. This is a minority group. We need a balanced debate and should not get carried away in that regard. The majority of consultants are hard-working and committed to public service. This should be borne in mind during debate of the issue. As I said, this is about a minority group. I am not excusing that minority rather I am asking that we remain mindful that many consultants are hard-working.

Senator Rose Conway-Walsh: I commend RTÉ on its "RTÉ Investigates" programme last night. One wonders if it is RTÉ or the HSE that is running our health service. We owe a debt of gratitude to Una Smith. I agree that there are fantastic consultants in our hospital system. Many of them are doing a really good job but at the end of the day, 44,864 public patients were not seen because of what is happening in the system and that is a serious problem. There is a

serious question for an Taoiseach to answer too. Between 2014 and 2016, he was the Minister for Health. That was where the buck stopped. Why did he stop collection of data about the non-compliance of contracts and what was the reasoning behind it? Did he have that information or did he delegate the responsibility? It is fine if he delegated the responsibility but why did he suddenly stop it at that point? If this is to be fought legally with regard to breach of contracts with individual consultants or such, then having that data is absolutely necessary. He needs to explain that. What is happening within the system, and the way the funding system is set up with hospitals being reliant on private practice cannot continue. The National Treatment Purchase Fund that was advocated and championed by Fianna Fáil and Fine Gael is not working. It incentivises more of this carry-on where public patients lose out all the time when private patients can be seen. We need an absolute separation of public and private services rather than having public resources be used for private patients.

Senator Frank Feighan: I was here many years ago, when former Deputy Mary Harney was Minister for Health. We talked about the 2008 hospital consultant issues. At the time I asked who had the power to take on the consultants. Somebody always asked me what the difference between a consultant and God was and the answer was that God does not think he is a consultant. Consultants are powerful and make the difference between life and death. They have a powerful vested interest.

I was disappointed to see last night that we had not moved on. There was an agreement that consultants would take pay increases and would limit their private practice. I was shocked and horrified to see what was happening. I want the Minister for Health to come here and answer this. It is not just the Minister for Health but vested interests across the health sector. I saw it first-hand when dealing with it seven or eight years ago, with people who put their own careers ahead of patient safety and health. It is not right that people have to wait for an appointment and consultants are abusing their position.

I agree that not all consultants do so but some of them give a very bad name to something that should be their vested interest and a vocation. I will never be a consultant but there are vested interests in the public health service, not just among consultants. Unless any Government or Minister for Health can take them on, we will have the same problems in ten or 15 years. I was extremely disappointed and angry to see that, in 12 years, while we have moved on with many aspects, we have not moved on with this aspect. I congratulate “RTÉ Investigates” for the sterling work it has done.

Senator Jennifer Murnane O’Connor: I agree with the previous speakers after seeing, last night, what has happened in our hospitals. This is the start of what is going to happen. I have read in the newspaper that, as part of the measures to reduce emergency room numbers, my own hospital in Carlow-Kilkenny, St. Luke’s, and the hospitals in Wexford, south Tipperary and Portlaoise may be among a number of regional hospitals that will stop taking trauma patients. It is proposed that three Dublin hospitals will do the same. It has apparently been recommended that a new trauma unit be set up in two hospitals, one in Dublin and one in Cork. This is unacceptable.

We saw the issue in Waterford hospital with the cardiac unit, where one could have a heart attack from Monday to Friday but there was no cover for it at the weekends. There was a massive meeting in Portlaoise during the week relating to its hospital, to try to save its emergency department. This is unacceptable. There are many such instances. People are fighting to get appointments. People come into my clinics to mention waiting times and they are in pain. Now

we have this proposal. It is unacceptable for this to happen. The HSE is looking at having two massive trauma units in Cork and Dublin, regardless of St. Luke's hospital in Kilkenny or the hospitals in Wexford, south Tipperary and Portlaoise. The people in rural areas are disregarded. As usual, we are totally forgotten. It is unacceptable and I call on the Minister to come to the House today or tomorrow to clarify if this is true.

An Cathaoirleach: Before I call the Leader, I have been asked by a Member on the Government side to welcome to the public Gallery Noel Noonan, Pat Sheehan and Derry and Dolores O'Connor from Limerick. I ask the Leader to respond.

Senator Jerry Buttimer: I thank the 22 Members of the House who have participated in the Order of Business this morning.

Senators Mark Daly, Craughwell and Humphreys raised the issue of the Department of Justice and Equality and Sergeant Maurice McCabe. As I made clear, this side of the House has one interest only, which is to get to the truth, establish all the facts and to provide justice to the McCabe family.

Senator Lorraine Clifford-Lee: Tell that to the Tánaiste.

Senator Jerry Buttimer: It is okay, Senator. The Tánaiste is aware of the situation and it ill-behoves all of us to use it as a political football with that kind of remark.

An Cathaoirleach: Senators should not interrupt. The Leader was kind enough to facilitate the debate for an hour this evening at short notice. Those who wish to contribute should be present and listen to what the Tánaiste has to say. Whether questions are allowed or not is a matter for the Leader.

Senator Jerry Buttimer: I agree with Senator Daly that we all have a duty to protect and support whistleblowers in every sphere and, as Senator Craughwell mentioned about the ongoing case, we should protect, support and encourage whistleblowers. That is why we have new legislation.

The Cathaoirleach mentioned that we will have statements later. None of us wants or supports an adversarial approach by whoever is behind the strategy of An Garda Síochána. The tribunal will establish the facts and the truth. From my perspective, there should be and can be no witch hunt. The only objective can be for the whole truth to be found and put on public record. That is why we have a commission.

As I have said before in this House, there is a need for cultural change in An Garda Síochána. That can only come from within primarily, or be led from within. There is no conspiracy at all, Senator Clifford-Lee. Everybody wants justice for Mr. McCabe and his family. All of us who think and speak about this should reflect on how we feel and the ongoing nightmare and trauma that they have to endure. They deserve support from all of us.

The Tánaiste has said that she had no hand or part in any legal strategy pursued by the former Garda Commissioner. The Taoiseach spoke to Mr. McCabe last night and put on record again that Mr. McCabe is one of the bravest people he has met in public life, who has been wronged by the State on a number of occasions because of his bravery and willingness to shine a light into a dark place. The Taoiseach, the Head of the Government, made those remarks.

Senators Gavan, Humphreys, Noone, Feighan, Murnane O'Connor and Conway-Walsh

raised the issue of HSE contracts and compliance. The Minister for Health has commissioned an independent group chaired by Donal de Buitléir to examine the impact on the public hospital system. We all want to see accountability and compliance. I challenge some on the far left who criticise the amount of money being spent on our health system without recognising or acknowledging that the Minister for Health, Deputy Harris, has secured the biggest budget for the health system ever. I challenge Members from the Sinn Féin Party in particular to come in with their proposals. I have not heard any suggestion or proposal from them on anything.

Senator Trevor Ó Clochartaigh: We do that frequently.

Senator Jerry Buttimer: I have not heard one-----

Senator Rose Conway-Walsh: Does Senator Buttimer want us to read our policy document? This is ridiculous.

Senator Jerry Buttimer: I have not heard one proposal from Sinn Féin.

Senator Máire Devine: Will Senator Buttimer change home help hours from minutes to hours? There is a proposal.

Senator Jerry Buttimer: Senator Conway-Walsh should look at Sinn Féin's performance in the North of our country in government and the way it has treated the health system there.

Senator Máire Devine: Senator Buttimer is hearing that. We do this every day.

Senator Trevor Ó Clochartaigh: Senator Buttimer read the pre-budget submission.

Senator Jerry Buttimer: It is the reality.

Senator Trevor Ó Clochartaigh: Did he mislead the House? He told us he read our pre-budget submission.

Senator Jerry Buttimer: I did not mislead the House at all.

Senator Trevor Ó Clochartaigh: Senator Buttimer said he read the pre-budget submission. There were plenty of suggestions there.

An Cathaoirleach: Allow the Leader to respond.

Senator Jerry Buttimer: The Minister is committed-----

Senator Trevor Ó Clochartaigh: The Leader is misleading the House.

Senator Rose Conway-Walsh: The question I asked was-----

Senator Jerry Buttimer: The Minister is committed to improving access for public health patients-----

Senator Rose Conway-Walsh: -----if the Taoiseach would answer the question about the data.

Senator Jerry Buttimer: -----in hospital care.

An Cathaoirleach: I ask the Leader to hold on a second. If there is an issue which the

22 November 2017

Senator is not satisfied about she can raise it again tomorrow but I cannot allow Senators who have spoken, some for two and three minutes, to cut across.

Senator Rose Conway-Walsh: I just want the Leader to answer the question.

An Cathaoirleach: If the Senator is not happy with what the Leader is saying, she can challenge it tomorrow morning.

Senator Jerry Buttimer: If one was to listen to the Sinn Féin Party-----

Senator Máire Devine: Here we go again.

Senator Rose Conway-Walsh: The Leader never answers a question. I asked him why the Taoiseach stopped the data being-----

Senator David Norris: Does the Cathaoirleach find these constant interruptions as boring as I do?

Senator Trevor Ó Clochartaigh: Senator Norris should stop interrupting then.

Senator Rose Conway-Walsh: If the Leader answered the question, we would not interrupt.

Senator Jerry Buttimer: The line of thought followed by Sinn Féin would drive consultants out of the country. We want to have them here, to pay them properly and to have them work in a proper health system in which they can deliver for their patients. Senator Conway-Walsh has no proposal-----

Senator Rose Conway-Walsh: There are 600,000 people on the waiting list.

Senator Jerry Buttimer: None.

Senator Rose Conway-Walsh: Fair play to the Leader.

Senator Jerry Buttimer: Let us look at the example. First of all, none of us wants to see people waiting on a hospital waiting list for any procedure.

Senator Rose Conway-Walsh: The Leader should do something about it.

Senator Jerry Buttimer: The number of people on the waiting list for cataract treatment for more than 15 months has been reduced from 1,694 to 421. There has been a 16% reduction in the public waiting list.

Senator Rose Conway-Walsh: Wow. That is fantastic. I will tell that to the 600,000 people who are waiting.

Senator Jerry Buttimer: Perhaps the Senator can tell it to her head office and have the speech changed for tomorrow.

Senator Rose Conway-Walsh: Yes, that is what I will do.

Senator Jerry Buttimer: That National Treatment Purchase Fund-----

Senator Rose Conway-Walsh: The Leader might tell that to the hundreds of children who

are waiting for physiotherapy.

Senator Jerry Buttimer: The National Treatment Purchase Fund has offered treatment plans to 3,103 patients and half of those people have accepted them. The Minister and the Government are committed to reducing waiting times and to improving access. We all want to see compliance put in place. That is what the Government will do, and is doing, through the HSE.

Senators Craughwell and Devine referenced the issue of freedom of speech on social media. I hope that we can find unanimity and unity in trying to combat that growing issue. As Senator Devine said, it is affecting young people more and more and they may not necessarily have the coping skills or the mechanisms to deal with it. Our former colleague, Lorraine Higgins, had a Bill in this regard. It is important that we see how we can work to combat that issue. I would be very happy to work with the Senators on that.

I join with Senator Gavan in condemning the racism shown to Cyrus Christie. It has no place in Irish sport or in sport generally. In respect of the request for questions and answers, I remind Members that under Article 28.4.1° of the Constitution, the Government is responsible to the Dáil only. In this House we have statements. The precedent has always been to have statements in this House. To go back to the comments of Senator Marie-Louise O'Donnell about mirroring, apeing or following the Dáil-----

Senator Marie-Louise O'Donnell: I did not use that word.

Senator Jerry Buttimer: I am using that word myself. We do not have an obligation to do so and should not have to. We have statements. If the Senators want to have statements on statements, we can have a discussion about it, but our role is having the Minister into the House for statements. In terms of the legislation, I am not aware of the issue Senator Devine raised with respect to her amendments but the format or the agreement with regard to the schedule was agreed at a group meeting. If the Senator has an issue I would be happy to talk to her about it. I certainly have not tried to have the Senator or any other Member discommoded in terms of tabling amendments to Bills during my time as Leader. It is important that the Senator has an opportunity to do so.

Senator Maria Byrne raised the issue of pyrite, on which I would be happy to have the Minister come to the House. It is an important issue. I agree with Senator Leyden with regard to the issues around prize bonds and the NTMA. The process around who wins on the prize bonds and when the draws are made is a bit secretive. Perhaps a new regime should be introduced in respect of how it is publicised and communicated. We should all give consideration to the point the Senator made on the way in which prize bond money should be used. It is about benefitting people and wider society and the Senator's suggestion regarding homelessness and the building or improving of housing merits consideration. I would be happy to support the Senator in that.

Senator Terry Leyden: I thank the Leader very much.

Senator Jerry Buttimer: Senator Boyhan asked for the Taoiseach to come to the House. I have put that request to the Department of the Taoiseach. He is looking forward to coming to the House and having a debate with us on a variety of issues. I hope it will be possible to have him in the House before Christmas. We are endeavouring to confirm that and I will work through the offices of the Cathaoirleach and the Seanad in that regard.

Senators Ned O'Sullivan and Paul Coghlan raised the issue of tourism and particularly the

issue of the decline in visitor numbers from the UK. We need to see more marketing, visibility and encouragement in respect of our friends from the UK who, as Senator O'Sullivan said, visit the whole of the island. It is important that we work on that.

Senator Norris made reference to the departures of Mr. Mugabe and Mr. Adams. I think we all welcome the departure of Mr. Mugabe. I wish Deputy Adams well in his retirement. We will have another debate about his legacy, political leadership and so on, but I wish him well in his retirement. His family has made huge sacrifices, as do the families of all party leaders, and he had to make huge sacrifices himself. I commend him for his decision to step down and I wish him well on a personal level.

Senator Ó Clochartaigh raised the issue of housing. I agree with him. There is no excuse for local authorities to sit on land banks in any county or city. The housing need in our country has to be addressed. I will not give the Senator a whole list of figures because he will have another debate with me, but the land banks being sat on must be utilised.

With regard to the figures the Senator quoted on social housing, I want to give him one figure which I think is important. Senator Ó Clochartaigh and his colleagues in Sinn Féin sometimes put forward the narrative that no houses are being built and no money is being invested. Rebuilding Ireland has multi-annual funding for social housing and €116 million was allocated to homelessness in budget 2018. We are building 7,900 social houses, which will be built by the end of this year. That is the reality. That comprises 3,800 local authority builds, 600 private sector builds, 600 voids returned to use, 900 acquisitions and 2,000 long-term leases. That is action on housing. We all agree that it is not happening fast enough. There are people who are looking for housing today and we all want to see them housed. That is the reality.

Senator Trevor Ó Clochartaigh: Is the Leader saying the reports are wrong?

Senator Jerry Buttimer: Government has allocated €1.8 billion in the budget.

Senator Trevor Ó Clochartaigh: It can allocate away but it needs to build.

Senator Jerry Buttimer: I agree with the Senator, we do. I gave the Senator a figure last week but he did not like it. In the city of Cork, 634 units are being constructed as we speak.

Senator Trevor Ó Clochartaigh: There were zero houses built in Galway last year.

Senator Jerry Buttimer: Some €155 million is being invested in the city of Cork alone.

Senator Trevor Ó Clochartaigh: That is a fact.

Senator Jerry Buttimer: I commend the Senator on praising the Galway Traveller Movement for its work. As a former chair of Cork City Council's committee on Travellers, I believe it is important that we understand that Travellers have housing needs which must be met. There is an obligation and duty on all of us as political representatives to work to ensure that we house all our people, including Travellers. I commend the group on its work.

Senators Paul Daly and Tim Lombard raised the issue of tillage. I commend them on their work on the Joint Committee on Agriculture, Food and the Marine and on the final report which it published. I have not read it, as the Senators will understand, but I will be very happy to have the Minister, Deputy Creed, come to the House to debate the report. I am a strong advocate for committee reports being debated in the Houses of the Oireachtas and I would be very happy to

have that debate as soon as possible.

I will not have a debate with Senator Ó Donnghaile about the IRA in his absence. It has a legacy which needs to be examined and our language and what we say is important. I join with him in calling on all sides to see the Assembly re-established in the North of our country as a matter of urgency. There is a duty on everybody to avoid direct rule from Westminster. That is everybody, not just a group or a government but everybody.

Senator Gallagher raised the issue of CCTV. The number he mentioned is disappointing but Government is running this project for three years. It has been allocated €1 million in funding. Under the scheme, eligible community groups can apply for grants of up to 60% of the total capital costs of CCTV projects. There is a maximum grant of €40,000. I have been involved with a community group and have been told by the Department that officials are available to meet with, support and advise any group, whether urban or rural, in respect of applications for funding. I have been involved with a community group in my own area in Cork city which is looking for CCTV and which has established it in one area. I would be happy to work with the Senator on that. It is important that we support local community organisations. As I said to Senator Murnane O'Connor yesterday, it is about less bureaucracy and ensuring that communities are safe.

Senator Jennifer Murnane O'Connor: Absolutely.

Senator Jerry Buttimer: I would be happy to work with the Senator Gallagher on the matter.

Senator Davitt raised the issue of the Bitcoin payment system. The Central Bank is examining its potential impact. I would be happy to arrange for the Minister to come to the House to discuss that issue.

Senator Mulherin referred to alcohol and, in particular, below-cost selling. We will debate that matter when we deal with the Public Health (Alcohol) Bill, which, I hope, will be back before the House prior to Christmas. Given that this is Alcohol Awareness Week, it is important that we highlight the issues associated with the misuse of alcohol. The Senator was right to point out that a major issue in this regard is the below-cost sale of alcohol.

Senator Noone also referred to alcohol and raised the issue of health. Senators Feighan and Murnane O'Connor also raised that issue and called for a debate on it. I would be happy to make arrangements for a debate on health.

I thank Senators for their contributions. I welcome the guests of Senator Byrne to the House. I look forward to our having positive and constructive debates during the course of the day.

Order of Business agreed to.

Minimum Custodial Periods upon Conviction for Murder Bill 2017: Second Stage (Resumed)

Question again proposed: "That the Bill be now read a Second Time."

Senator Marie-Louise O'Donnell: I call for a quorum. This is a very serious matter.

Notice taken that 12 Members were not present; House counted and 12 Members being present,

Senator David Norris: I would like to recognise the presence in the Gallery of the families of people who have been murdered. It is, for them, a very shocking thing and there is no remission whatever from the sentence under which they must live. Murder is a very shocking occurrence. It revolts every decent person in society. I have had a nightmare once or twice in which I accidentally killed someone and tried to hide the person's body in a black plastic bag. I remember the feeling of utter shock at the idea of taking somebody else's life.

I also recall other situations. I remember very well the case of Declan Flynn, who I knew but not terribly well. He was a young gay man who was murdered in Fairview Park and the judge just let the people off, with no penalty whatever imposed. The case sparked a revolt among the people of Ireland and very substantial marches took place.

This is a very important Bill. It should be allowed to proceed to Committee Stage. It is only concerned with first degree murder and people who are convicted of that offence. We have mandatory life sentences for murder but they are never served. According to the figures supplied to me by Senator Marie-Louise O'Donnell, in the 1970s and 1980s the average term served by convicted murderers was seven and a half years. That is astonishing when we think of comparable sentences for other offences. It is very shocking. The position has changed, however, and the average time that a person convicted of murder serves in this country now is 17 years. However, he or she is eligible to come before a parole board after a mere seven years. A parole board is made up of political appointees, civil servants and so on.

I just do not think this is appropriate. This Bill will give the judge much more flexibility and allow him or her to impose the appropriate sentence. There will be a minimal custodial period to be decided upon, up or down, by the court.

Ireland is full of maximum sentences for offences that are never met. They are on the Statute Book but they never come into operation. Society and murder families want sentences that reflect our absolute horror and revulsion at the crime of murder because as it stands a life sentence for murder does not mean life. The court needs to have a more defined and greater role in sentencing rather than a blanket mandatory minimum sentence. We need greater certainty for sentencing for the offence of murder and prison sentences that are of sufficient length to deter criminal activity and express society's horror at the taking of a human life.

This Bill will introduce a regime similar to the one that already exists in the United Kingdom. This is one model where we can follow the example of the United Kingdom to our advantage. Under the Bill, discretion would still be available but we would be operating from a set of tariffs and only with transparent and predetermined criteria. Minimum tariffs and sentences are critical if we are to achieve justice for the victims' families and the wider community.

Another situation to be addressed is the question of consecutive, as opposed to concurrent, sentences. There is a tendency now to grant concurrent sentences in a case of the murder of more than one person. A situation that has not been referred to in the debate so far arises where somebody who has committed multiple murders is tried on only one charge. That leaves the families of the other victims dangling. There is no closure for them at all. I have had a brief

conversation with the families in the Gallery whose grief I greatly respect. They made the point that there is no closure anyway for any of them. There is never closure. I am repeating something that has been said on many occasions - it is a life sentence for those who are left behind. The practice of giving concurrent sentences should be re-examined. There may be a case for it in certain situations but we need to be very careful. If two lives have been taken, surely sentencing should reflect this.

If this Bill goes through, and I very much hope it does, judges will be able to exercise discretion for the first time when it comes to murder. It is a very tragic and complex situation, one which this House is wise to take under consideration, and I am grateful to Senator Marie-Louise O'Donnell for bringing this important matter to the attention of Seanad Éireann. I appeal to the Government not to vote this Bill down, but to allow it go to Committee Stage for further consideration. If there are defects in the Bill, it can be amended. The Gallery is full of the relatives of people who have been murdered. This is a situation that Seanad Éireann must take into account.

Senator Paudie Coffey: I also welcome the opportunity to make a contribution on this Bill and to the debate. Many Senators have given perspectives on it. I join Senator Norris in recognising families in the Gallery who have suffered loss due to murder. All of us can only imagine the huge grief and loss those families have had to live with not just at the time of the horrific event, but during the very trying court cases that followed, hearing the witness statements and all that is associated with the case. They have to live their lives after the event, knowing that the perpetrator is in prison for some time.

When somebody is given a life sentence for first degree murder, the public and anybody who is aware of such a case expects that the sentence is served. Even objectively, for a person not directly affected by the case but as a member of the public, it is very frustrating and worrying to discover that due to a decision of a parole board, a life sentence is shortened for whatever reason. That is why as a Government Senator I support the general thrust of this Bill.

When the courts have gone through detailed investigation, the jurors have made their recommendations and the judge has handed down a decision, there is a fair expectation that the sentence would be served. When I was growing up in the 1970s, a murder appeared on all the main news bulletins, and it was spoken of at every door. I am concerned that as a society we have become somewhat desensitised to the word "murder". Murders happen on a weekly basis in this country. It is of concern to me as a parent of young children that the same hurt and frustration is not being felt by society when it hears the word murder as it was in my day. I remember hearing about the murder of a garda. It was a very serious offence when I was growing up, and it is still a very serious offence. The life of a garda, one of the custodians of law and order in this State, has to be protected but, in the same way, the life of a person or a citizen of this country has to be taken seriously.

I commend Senator Marie-Louise O'Donnell on introducing this Bill because it is important that we debate these issues in a public forum such as the Houses of the Oireachtas. It is important to discuss people's concerns when they read that someone who was sentenced to life imprisonment is out because of a parole board recommendation.

I understand how legislation works. This Bill may not be perfect, and I ask the officials of the Department of Justice and Equality to engage with the Senators who proposed the Bill. If this Bill does not address their concerns, perhaps the Minister of State could bring forward other legislation that they can support and that addresses their concerns. I understand the Gov-

ernment may not be supporting the Bill, but I emphasise that when a sentence is handed down by the courts of this land for a serious offence such as murder, the general expectation, after a fair trial has been heard, is that the person must serve that life sentence. I understand that parole boards sit and there is a role for them. My view is not right wing or ideological. When I was a child, murder horrified me, my family and my peers. I am sure it is the same for everybody else. We cannot allow murder to become a lesser degree crime in the statutes of this State. There is strong merit in the thrust of this Bill.

Senator Lorraine Clifford-Lee: Like Senators Coffey and Norris, I acknowledge the presence of the families in the Gallery. I cannot even imagine the grief and horror of their situation. My heart goes out to them and I hope that, in time, they can bring closure to their situations.

In his opening statement, Senator Norris referred to the horrific murder of Declan Flynn in Fairview Park. He is right to say that it provoked a revolt and brought homophobia and the homophobic society we lived in to the fore to the point that we have passed marriage equality legislation. I hope that society has moved on to a great extent and that we would never see the likes of that murder again.

Fianna Fáil will not support this Bill. In the Dáil we have brought forward the Parole Bill 2016, which is awaiting Committee Stage. It is based on the strategic review of the penal policy in July 2014. While conscious that the Law Reform Commission has recommended that legislation should be introduced to provide that a judge may recommend a minimum term to be served by an offender sentenced to life for murder, the review group questioned the extent to which it would be necessary to make that provision in legislation. It is also the view of that group that the sentencing judge may, in any event, make such a recommendation. This recommendation may guide the Parole Board, which Fianna Fáil is proposing to put on a statutory basis, at the review of the prisoner's detention.

The Minimum Custodial Periods upon Conviction for Murder Bill 2017 may dramatically increase the length of time in custody for persons for persons sentenced to life imprisonment for murder, providing for a life sentence with a minimum custodial period of between 25 and 40 years. It raises constitutional issues regarding judicial discretion and it would introduce one of the most punitive regimes in Europe.

Murder is the most serious of criminal offences, as outlined by Senator Coffey. While this Bill purports to recognise the seriousness of the offence by establishing a minimum sentence and a minimum period of custody, it does so in a manner that will establish the State as potentially one of the most punitive in Europe, while departing in a substantial way from existing sentencing and prison policy. The Bill will, in effect, create a hierarchy of murder offences, to which a minimum period of custody of either 40, 30 or 25 years will apply, depending on the circumstances relating to the offence. For example, the offence where the victim is a child would fall within the most serious category offence. Within this category is also the offence involving more than one victim of an act or arson. It is unclear why this is limited to acts of arson and not the murder of multiple victims by other means. Murders involving the use of weapons would fall under a further category subjected to a minimum of 30 years in custody. Other murders not in this category would attract a minimum sentence of 25 years in custody.

There is judicial discretion to reduce the minimum sentences relating to the 25 year custody period. This, however, is restricted in regard to the more serious categories and the 40 year period may not be reduced below 30 years. The 30 year minimum period can only be lowered

to a minimum of 25 years. Legal advisers have examined the case law of the European Court of Human Rights and have noted previous legal opinion that material before the court shows clear support that prison sentences should be reviewed no later than 25 years after the imposition of a life sentence, with custodial, periodic reviews thereafter. Section 1 of the Bill is clear that a minimum custodial period will be the minimum number of years' imprisonment a person will serve before being considered for release. Any sentence, therefore, of greater than 25 years imposed under this Bill could not be reviewed at the 25 year mark.

A further difficulty with the Bill is the impact on the role of the Parole Board. Currently, a judge imposes a life sentence on a person convicted of murder without specifying the period to be served. The Parole Board is then responsible for reviewing the sentence and making recommendations around the release. It will do so having regard to the nature and gravity of the offence. Under the Bill, however, the court is required in determining the period to be served to consider the nature of the offence and the circumstances of the offender, as well as any relevant aggravating or mitigating circumstances. This is established sentencing practice and in circumstances where the court determines that the sentence takes into account these factors it is unclear how a period of detention beyond that sentence could be supported and what role, if any, the Parole Board would actually serve.

An alternative way to achieve the aims of the Bill would be to proceed with the establishment of a parole board on a statutory basis. In sentencing an offender for murder the court would continue to impose the mandatory life sentence and the Parole Board could then set out the minimum period to be served by persons convicted of murder who can be considered for release by the Parole Board. Fianna Fáil has published a Bill in this regard. It is before the Dáil and is awaiting Committee Stage. The gravity and nature of the offence could then be considered by the Parole Board.

There does not appear to have been any consultation with stakeholders, especially the Judiciary, in drafting this Bill. This is of concern to the Fianna Fáil Group. The legal advice states that a change of this significance would require consultation with the Judiciary and therefore, unfortunately, we cannot support this Bill today.

Senator Frances Black: I thank Senator O'Donnell for bringing this legislation before the house, and her passion in making this case on behalf of people who have lost a friend or loved one. I welcome and commend the families and their representatives for coming forward and making the case that our judicial system, as it stands, is not adequately dealing with sentencing for murder.

At the moment, a murder conviction in Ireland carries a mandatory life sentence. Many convictions, however, result in early release with the average custodial sentence coming to 17.5 years. It is important to remember that after release, that person can be recalled to prison at any time if they violate certain conditions. The life sentence does carry for the rest of the person's life. The issue is what proportion of that time should be spent in prison.

As it stands, this timeframe is determined based on a number of factors relating to the specific circumstances of the case. In presenting this Bill Senator O'Donnell has made an important point that the uncertainty over these factors and the corresponding length of the sentence can put a huge degree of stress on families. We should always keep that in mind. This issue was raised by the Law Reform Commission review in 2013, when it recommended that a court should have the capacity to recommend a minimum term to be served. This is an important

legal context to the Bill, and we should take this recommendation seriously.

There are aspects of the Bill that raise serious concern. The minimum sentence would be set at either 25, 30 or 40 years, which seems quite severe. It has been suggested that this would be one of the most punitive measures in Europe. The UK has set the limits at 15, 25 and 30 years, for example. I would like to see further debate as to why the lower limit of 25 years was chosen. As was mentioned during the debate in February, the 2013 Law Reform Commission review suggested that a judge could recommend a minimum sentence, which would then be taken into account by the Parole Board.

In general, as a member of the Joint Oireachtas Committee on Justice and Equality, my outlook on criminal justice matters is to emphasise rehabilitation. That is in no way to diminish the heartbreak suffered by victims in particular cases, but to ensure that we take a balanced approach that considers the wider impact on Irish society and considers the specific features of the case at hand. With careful consideration we can reconcile the principle of rehabilitative justice with the rights of victims of serious crime. The Irish Penal Reform Trust has been helpful in providing this perspective and has said that it is resolutely against mandatory sentencing, that it is a blunt instrument that always results in unequal justice and that there is scant evidence, national or international, that mandatory sentencing is effective in reducing crime. This evidence base concerns me, and I think we would need to see further debate on that specific point. Similarly, I am concerned that mandatory sentencing could see an increase in the prison population, as has happened in the US, or more guilty pleas to avoid minimum custodial periods.

I welcome the aspect of the Bill which seeks to bring clarity on the operation of parole boards. Currently, the question of release is removed from the judge's hands and is handed over to a Parole Board after seven years of the sentence. Concerns have been raised about the transparency of these decisions and the stress this has caused grieving families. I would like to see discussion on how we can bring greater transparency to this process. For example, it was raised in February that non-statutory sentencing guidelines could be outlined for the Parole Board to take into consideration.

While I have concerns over the severity of the Bill, it raises several important questions about our judicial system and highlights areas for consideration and reform, such as the decision to begin parole hearings after seven years and the transparency around any decisions made. These areas could be considered in greater detail on Committee Stage, where amendments can be tabled and the finer points can be outlined and altered.

I commend Senator Colm Burke's point that while he was opposed to the Bill when first presented, having listened to the debate and the proposals made, he did not want to close the door on it immediately. The Minister of State, Deputy Stanton, made the same point that consideration of the Bill on Committee Stage could see it improved or provide an impetus for Government policy. I agree with him on this and support the Bill going forward to Committee Stage for detailed analysis and scrutiny.

Senator Jerry Buttimer: I welcome the Minister of State to the House. I also welcome the families to the Gallery and thank Senator Marie-Louise O'Donnell for her work on this debate and for challenging us in our approach here today. Senator Black made reference to restorative justice, to the role of rehabilitation in prisons and to how we see those who have been incarcerated. I believe that we should all support the general thrust of the Bill. Nobody wants to stray into the realm of interfering with the Judiciary, which is an independent pillar from us. I do not

agree with Senator Clifford-Lee's comment with regard to consulting with the Judiciary. We are the Houses of the Oireachtas.

Senator Paudie Coffey: Hear, hear.

Senator Jerry Buttimer: I accept that Fianna Fáil has a Bill and I have no problem with that but I think that we, as Members of this House, must engage in the debate on this. I always find the Minister of State to be very accommodating and he made a very practical suggestion today that the Bill be sent to the justice committee. I know that pre-legislative scrutiny has increased but it is disappointing that that committee has not yet dealt with the matter.

Senators Norris and Clifford-Lee spoke about Declan Flynn, whose murder set off a whole new revolution in the gay community. We should all go back, meanwhile, to Senator Coffey's point about murder. I always remember the case of a person who was killed in a house up at the top of Spur Hill back when I was a child. We were afraid to go to bed for nearly six months afterwards, so abnormal and horrific was the event. I can have no idea of the sense of loss, pain and frustration endured by the families sitting in the Gallery today. Like all of us, however, they have expectations that justice be served. This Bill is very important and I hope we do not see it disappear into the ether today. The Government is opposing it and I understand the reasons for that. There is huge merit in what Senator Marie-Louise O'Donnell is bringing forward here.

Business of Seanad

An Leas-Chathaoirleach: I hate to interrupt the Senator but I am conscious of the order of the day. I ask him to move the amendment if he plans to do so.

Senator Jerry Buttimer: To allow others to contribute-----

An Leas-Chathaoirleach: Senator O'Reilly is yet to speak and then Senator Marie-Louise O'Donnell has five minutes to conclude.

Senator Joe O'Reilly: Can we take some more time on this?

Senator Jerry Buttimer: Notwithstanding the order of the House today, I propose an amendment to proceedings on No. 1, the Minimum Custodial Periods upon Conviction for Murder Bill 2017, to allow for Senator O'Reilly, the Minister of State and Senator Marie-Louise O'Donnell to contribute.

An Leas-Chathaoirleach: Senator O'Reilly and Senator Marie-Louise O'Donnell have five minutes to conclude. What time? The Leader would want to allow another five minutes if he is concluding now.

Senator Jerry Buttimer: I am going to finish now and then allow five minutes for Senator O'Reilly and five minutes for Senator Marie-Louise O'Donnell and for the Minister of State.

An Leas-Chathaoirleach: Just so as to give us a few minutes grace, will we say 1.40 p.m? If it finishes earlier the other item can be taken.

Senator Jerry Buttimer: Yes, I propose we conclude at 1.40 p.m.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Minimum Custodial Periods upon Conviction for Murder Bill 2017: Second Stage (Resumed)

Question again proposed: “That the Bill be now read a Second Time.”

Senator Jerry Buttimer: I will now conclude. We all agree that victims of crime and their families deserve to be supported and deserve justice. Senator Coffey used the word “desensitised”. I say that we cannot make this normal. Notwithstanding rehabilitation and restorative justice, there must be intent in what we do and an understanding of the consequences. I hope we can find a mechanism to avoid the Bill getting lost, be that by referring it back to the committee, perhaps, or having it redrafted. I hope that we will not have to do that but I understand the Minister of State’s position on this.

Senator Joe O’Reilly: I welcome the Minister of State, Deputy Stanton, to the House and wish him well in his role. I have not had occasion to speak in the House when he was here in the past. I wish him continued success. I also join the Leader in welcoming the victims’ families in the Gallery. Our hearts go out to them, they are very welcome here and we absolutely understand where they are coming from on this issue.

I congratulate Senator Marie-Louise O’Donnell on bringing forward this legislation, which is greatly to her credit. Members bringing forward legislation like this is exactly what an active and successful Oireachtas Chamber should be about. I agree with the Leader that this Bill and its worthy content should not be lost; it should become part of the debate. I understand that both the Law Reform Commission and the Oireachtas Joint Committee on Justice and Equality are carrying out ongoing work on this matter and this Bill should be part of that equation.

This Bill, if I have understood it correctly, would establish minimum custodial sentences from the very start, that is from the day of the judgment, of 40, 30 or 25 years in the most serious categories. We currently have a life sentence with the potential for parole which tends to be granted after 18 or 20 years. Having heard Senator Black’s contribution on my way in, I feel that we must leave sufficient flexibility in the system and I say this with the greatest of respect to my good friend and colleague, Senator Marie-Louise O’Donnell. The current system dictates a minimum life sentence, amounting to life or virtually life in most cases, but there has to be flexibility in the system to allow for rehabilitation, restorative justice, and personal and psychiatric development programmes.

Murder is a horrific crime and nobody is suggesting otherwise. I do think, however, that we have to leave within the system the potential for rehabilitation and for the restoration of the person, though I understand that it must be very hard for the families in the Gallery to get their head around such a concept. Without getting overly sanctimonious or righteous, it is inherent in our Christian ethos that the potential for redemption should always be possible for every human being in every scenario. Believing in the redemptive potential for every human being is part of what we are.

The current system dictates a custodial life sentence for murder and then that the person serves 18 or 20 years. The potential is there for a rehabilitative and restorative programme. A certain flexibility has to be left in the system. Having said that, as Senator Buttimer said, there is potential to incorporate and to examine some of the concepts contained in the Bill. There may in some instances be anecdotal evidence to the contrary but I am not personally aware of

many if any instances of what is popularly understood to be unfortunately early releases. I fully understand Senator Marie-Louise O'Donnell's concerns over this, but I am concerned that we not build too much rigidity into the system.

Let us take, for example, the first and very serious category, namely, the 40-year sentence. That effectively in most instances would mean the potential for release would never exist for that person. Senator O'Donnell's categories could be looked at with regard to further refinement, but the second category is a 30-year sentence and this is similar. The third category of 25 years is quite close to the current situation and it is not that different to what exists. There may be too many rigidities in the Bill. It may stave off the potential for rehabilitation.

I was interested in Senator Black's point. I am not sure of her evidence, and I am not aware of the evidence around it, but it was an interesting point. It is one I can relate to and see sense in. This is the point Senator Black made that there is no evidence that completely mandatory sentencing necessarily has any beneficial effect on crime figures. There is no evidence it has any benefit for the individual.

We have absolute empathy with the people in the Gallery. Our hearts go out to them. The crime of murder is a horror that is contrary to everything the best of the human condition stands for. I understand there must be very long custodial sentences, that there must be a statutory protection of such a thing and there never can be any degree of discretion that would allow premature release of people.

Having said that, within the system there must be the potential for redemption, restoration and rehabilitation. What we must achieve is a marriage of these three objectives. To some degree, it is my humble contention, the present process probably best marries the three but it could well be open to modification. In this debate, Senator O'Donnell's Bill is very helpful. Senator Buttimer got it right when he said we should not lose the objectives of the Bill in the debate. Perhaps it is a conservative instinct, but I do not yet have evidence, anecdotally, empirically or at any level, to suggest to me that the present system, with all its faults, is not working reasonably well.

An Leas-Chathaoirleach: I share the concerns expressed by Senators on this very serious matter. I sympathise with those who have joined us today in the Gallery, who are relatives of people who were murdered.

Senator Marie-Louise O'Donnell: I thank the Leas-Chathaoirleach, the Minister of State and the Senators who have spoken, even though some of them obviously have not read the Bill and some of them are only interested in their own Bills and they did not argue this Bill at all. In my time in the Seanad I do not think a Bill has ever come in on Second Stage that was flawless or did not need extensions, enlargement, précising, discussion or communication. I am presenting this to Senators and asking the House to allow it go to Committee Stage where all of these concerns can be dealt with, of which there are many and I am very aware of this.

The thrust of the Bill is that there would be minimum disapproval for the taking of a life and, exactly what Senator Coffey said, that it just does not become another kind of crime. It is the taking of a life, which can never be got back and a conviction for the taking of that life with purpose and not accidentally. That is what the thrust of the Bill is about, and the Judiciary, starting at, we will say, 25 years, could decide, depending on the case, whether that sentence was to be 26, 27, 30 or 40 years. That is the thrust of the Bill, and all the make-up other stuff is not

relevant. It is not relevant for Fianna Fáil to come in here and read out a speech - I am surprised at the Senator - about another Bill, which had nothing to do with mine-----

Senator Lorraine Clifford-Lee: I did not talk-----

Senator Marie-Louise O'Donnell: -----and then sit here on her phone for 20 minutes while the rest of the Senators tried to argue.

Senator Lorraine Clifford-Lee: Excuse me-----

An Leas-Chathaoirleach: Sorry, Senator-----

Senator Marie-Louise O'Donnell: "Excuse me" all you like.

Senator Lorraine Clifford-Lee: I did talk about your Bill.

An Leas-Chathaoirleach: The Senator cannot address any other-----

Senator Lorraine Clifford-Lee: I pointed out the flaws in the Bill.

An Leas-Chathaoirleach: Senator Lee, through the Chair.

Senator Lorraine Clifford-Lee: I will not have such accusations-----

An Leas-Chathaoirleach: Hold on.

Senator Lorraine Clifford-Lee: -----made against me.

An Leas-Chathaoirleach: Order.

Senator Lorraine Clifford-Lee: They are completely unfounded accusations.

An Leas-Chathaoirleach: You will speak to the Chair. You cannot address another Member across the floor of the House.

Senator Lorraine Clifford-Lee: Through the Chair-----

An Leas-Chathaoirleach: No, you had your speech.

Senator Marie-Louise O'Donnell: I said yesterday here in the House-----

An Leas-Chathaoirleach: Sorry-----

Senator Marie-Louise O'Donnell: Thank you, a Leas-Chathaoirligh.

Senator Lorraine Clifford-Lee: Senator O'Donnell is-----

An Leas-Chathaoirleach: Through the Chair.

Senator Lorraine Clifford-Lee: -----completely misrepresenting my-----

An Leas-Chathaoirleach: Silence.

Senator Lorraine Clifford-Lee: Through the Chair, the Senator has completely misrepresented-----

An Leas-Chathaoirleach: No, you cannot raise a point of order.

Senator Lorraine Clifford-Lee: I did not ask for a point of order.

An Leas-Chathaoirleach: The Senator has spoken. Sorry now, order please. Senator O'Donnell please, through the Chair, carry on.

Senator Marie-Louise O'Donnell: Thank you, a Leas-Chathaoirleach.

There is no such thing as life for first-degree murder in Ireland, that is also the thrust of the Bill. It is 17 years or less. There are also technicalities with regard to looking for parole after seven years. Ask the families in the Gallery, about whom we are all so empathetic but we will not go past the glass panel. I am very passionate about it because I do not want to see it cut off at the pass.

Yesterday, I said that in this House there is a pathology of territory and not a pathology of ideas. That is what happens in here. People come with their territory, and out comes the territory as a force and we have to answer the territory and not the idea. I know there are a lot of flaws in the Bill and I am aware of that. I am very aware of it, but that is no reason it should not go to Committee Stage and all those flaws be aired and changed. It is not in competition with the Lower House and it is not in competition with any other Bill. It is of itself, a Bill independent of thought and mind, good or bad.

I do not feel that prison sentences are strong enough or of sufficient length to deter criminality. We are living in a very violent society and there is an acceptance it is all right behaviour.

Senator Jerry Buttimer: Hear, hear.

Senator Marie-Louise O'Donnell: I am not "hang 'em high". I understand if someone wants revenge he or she should dig two graves. We learned that in Northern Ireland for 40 years. I am not a "hang 'em high" merchant, but there has to be a minimum disapproval of the taking of a life purposely as first-degree murder. There are so many families, brothers, sisters, mothers and cousins living that appalling tragedy every day, and I want it discussed. That is all I want, to get the Bill to Committee Stage and not cut it off at the pass. It is not, Senator Lee, and I say this in my passion, it is not in competition with your Bill.

Senator Lorraine Clifford-Lee: My name is Clifford-Lee.

Senator Marie-Louise O'Donnell: It is a Bill on its own. It is not in competition with the Lower House.

I also suggest that these flaws could be worked out. People should not read the Bill and make generalisations. All Bills are somewhat generalised until they are honed down. They should have more respect for it.

I thank my colleagues here. I am an Independent Senator and I do not truck with any particular political party, but I thank the Leader for allowing the Bill back to the House. I thank colleagues who spoke honestly, even though they may not vote for the Bill. I would like to see that perhaps today there would be change and people would vote and allow the Bill to go to Committee Stage. Then it can be looked at in a thousand different ways and added to, extended, enlarged or even thrown out, but it would be thrown out for a reason. At the moment it is not, it is just people being territorial.

Question put:

The Seanad divided: Tá, 9; Níl, 27.	
Tá	Níl
Black, Frances.	Bacik, Ivana.
Boyhan, Victor.	Burke, Colm.
Craughwell, Gerard P.	Buttimer, Jerry.
Freeman, Joan.	Byrne, Maria.
Kelleher, Colette.	Clifford-Lee, Lorraine.
Lawless, Billy.	Coffey, Paudie.
Norris, David.	Coghlan, Paul.
Ó Domhnaill, Brian.	Conway-Walsh, Rose.
O'Donnell, Marie-Louise.	Daly, Paul.
	Davitt, Aidan.
	Devine, Máire.
	Feighan, Frank.
	Gallagher, Robbie.
	Gavan, Paul.
	Hopkins, Maura.
	Horkan, Gerry.
	Leyden, Terry.
	Lombard, Tim.
	Mac Lochlainn, Pádraig.
	McFadden, Gabrielle.
	Murnane O'Connor, Jennifer.
	Ó Clochartaigh, Trevor.
	Ó Donnghaile, Niall.
	O'Donnell, Kieran.
	O'Mahony, John.
	O'Reilly, Joe.
	Richmond, Neale.

Tellers: Tá, Senators Gerard P Craughwell and Marie-Louise O'Donnell; Níl, Senators Gabrielle McFadden and John O'Mahony.

Question declared lost.

Business of Seanad

Senator Jerry Buttimer: I propose that, notwithstanding the order of the House today, in respect of No. 2, statements on tracker mortgages, we will allow just six minutes for group spokespersons rather than eight.

An Cathaoirleach: Is that agreed? Agreed.

Tracker Mortgages: Statements

An Cathaoirleach: I remind Senators that group spokespersons have six minutes and all others have five.

Minister of State at the Department of Finance (Deputy Michael D'Arcy): I thank Senators for raising the important issue of tracker mortgages. The fair treatment of customers is a key requirement of the financial services regulatory framework and of the Central Bank consumer protection code. The code requires all residential mortgage lenders to act honestly and fairly in the best interests of their customers and not to mislead customers about the products they provide. It also requires lenders to make a full disclosure of all relevant information to a consumer in a way that seeks to inform the consumer and enable him or her to make an informed decision before entering into or changing a loan or other financial services agreement. However, it has now clearly been demonstrated that mortgage lenders have significantly failed in their regulatory or contractual responsibilities to many of their tracker mortgage borrowers.

The Central Bank has long warned lenders of their duty to act in the best interests of their customers when recommending that a borrower switch from a tracker mortgage to another type of mortgage product. The Central Bank specifically provided in the code of conduct on mortgage arrears that mortgage lenders must not, except where it would be in the interest of the borrower, require a borrower to change from an existing tracker mortgage to another mortgage type as part of an alternative repayment arrangement to address a mortgage difficulty. Over time, the Central Bank identified and pursued a number of tracker-related issues with some lenders. These included issues ranging from a lack of transparency for the borrower, a failure to fully inform customers of the consequences of switching from a tracker mortgage, the application of incorrect tracker rates and a failure to afford customers their contractual entitlements to specified tracker interest rates. Separately, individual tracker-related complaints were also presented to the Financial Services Ombudsman and that office was making determinations on the cases, some of which were also coming before the courts. In addition, due in part to these developments, the matter was coming to greater public attention more generally. In total, the Central Bank identified in the region of 7,100 mortgage accounts where tracker failure was identified and in respect of which mortgage borrowers were adversely impacted upon prior to the commencement of the bank's industry-wide tracker mortgage examination.

Having regard to these developments, and to Central Bank concerns that there may be other tracker-related issues that could be impacting upon other consumer borrowers across the system, the Central Bank announced in October 2015 that it had commenced a broader, industry-wide examination of tracker mortgage-related issues. This systems-wide review was intended to cover, among other things, transparency of communications with, and contractual rights of, tracker mortgage borrowers. This examination has turned out to be the largest review ever carried out by the Central Bank on its consumer protection side. It covered 15 mortgage lenders that may have sold tracker mortgage products to consumer borrowers from the time they com-

menced selling tracker mortgages until December 2015. As such, it covered banks and other regulated mortgage lenders and also lenders that are no longer providing new mortgage credit. It also covered mortgages that have been redeemed or borrowers whose tracker mortgage has been transferred to another creditor. The industry-wide examination required all lenders to examine the extent to which they had been meeting their contractual obligations to their tracker mortgage customers or their compliance with their obligations under the Central Bank's consumer protection code and other consumer protection regulatory requirements.

Under the initial phase of the industry-wide examination, the Central Bank required lenders to put in place governance structures and systems to conduct a comprehensive examination. The second phase of the examination involved an extensive internal review of mortgage books to identify mortgage borrowers who were impacted by banks' failings. This phase was due to be finalised at the end of September. In its latest update on progress on the tracker mortgage examination, as published last month, the Central Bank indicated that 13,000 affected mortgage borrowers had so far been identified, although it was also noted that this number was expected to increase. In particular, the Central Bank noted that it is continuing to challenge lenders on the number of affected customers. As Senators are now aware, on 9 November last, Bank of Ireland accepted that it had a further 6,000 affected tracker mortgage accounts.

This is in addition to the 4,300 it had earlier accepted arising from the Central Bank examination and the previous 2,100 accounts identified prior to the industry-wide examination.

2 o'clock These 6,000 additional accounts are groups of customers that the Central Bank has identified as having been impacted but which Bank of Ireland had previously disputed. KBC is another bank which has recently said that it is continuing to engage with the Central Bank on the identification of impacted customers. The Central Bank has stated that the number of impacted accounts as of the end September will increase in light of the recent announcement by Bank of Ireland and that it may increase further as it continues to challenge mortgage lenders.

The two other phases of the Central Bank examination cover the calculation and the payment of redress and compensation for impacted customers. When the Central Bank published its update report last month, payments amounting to €120 million had been paid to 3,300 impacted customers, as identified from the recent industry-wide examination. This is additional to the €43 million in compensation and redress paid for impacted cases identified before the commencement of the Central Bank industry-wide examination.

When the Minister for Finance met the chief executives of the five main banks at the end of October he made it very clear to them that all affected customers are to be identified and that the wrong is to be put right through the payment of appropriate redress and compensation without any further undue delay. Following on from those meetings, the banks also committed to the following. AIB is to pay redress and compensation to over 4,100 of its customers before the end of this year; Bank of Ireland is to pay redress and compensation to the 4,300 of its customers that they accepted had been impacted at that point - as indicated above. Since then Bank of Ireland has accepted that a further 6,000 mortgage accounts have also been impacted and payments in respect of these accounts is now also to start before the end of 2017.

PTSB is to pay redress and compensation to almost 2,000 customers before the end of this year and Ulster Bank is to pay redress and compensation to 1,000 customers before the end of this year and to the bulk of its remaining impacted borrowers in early 2018. KBC also said that all its customers so far identified as having been impacted have been or are in the process of

being contacted and that redress and compensation payments have commenced. The payment of redress and compensation to impacted borrowers without any further delay is now a key requirement as it will be a practical reflection of the regret that banks are now expressing for the harm they have inflicted on their impacted borrowers.

The payment of redress and compensation serves two different functions. Redress is intended to return the borrower to the position he or she would have been in if the harm had not occurred. In effect, the banks are giving back money that was wrongly taken from the borrower. Compensation is additional payment and it is intended to reflect the detriment to the borrower which arose from being put on the incorrect interest rate. While the Central Bank cannot formally require lenders to implement uniform redress and compensation programmes, it nevertheless has repeatedly challenged lenders on their proposals. The tracker examination framework clearly set out the Central Bank's expectations that appropriate redress and compensation is to be provided to impacted borrowers. Lenders are also to categorise impacted customers by reference to the type and level of detriment suffered and to ensure that compensation is proportionate to the level of harm which was incurred. The types of detriment identified range from overcharging due to the application of incorrect interest rates, which at the lower end of the scale may have only been a small difference and for a short period of time, to failure to return a borrower to a tracker rate after a period where the interest rate was fixed and up to cases of more significant harm, such as a loss of ownership of mortgaged properties. A higher level of compensation would be expected in cases where a severe level of harm has been inflicted on a customer.

Some people have said that a uniform redress and compensation approach to the payment of compensation should be put in place by the Central Bank for all banks. A uniform redress and compensation approach could fail to address an individual's particular circumstances adequately as personal circumstances and experiences will differ. A uniform redress approach could also mean that it would become the *de facto* maximum level of payment across the system and that it could prevent or inhibit lenders from putting in place a somewhat more generous package for their impacted borrowers. Overall the approach to compensation adopted by the Central Bank is the one which is available to it under the existing law, which places the onus on lenders to produce schemes for their own affected customers. However, the Central Bank reserves the right to challenge lenders in particular cases if it considers it necessary or appropriate to do so. The principles for redress set out by the Central Bank also provide for the general upfront payment of redress and compensation to all impacted borrowers. This upfront payment, however, does not preclude or prevent the borrower from appealing the level or any aspect of compensation if he or she does not consider that it is appropriate to the harm that was inflicted in his or her particular case. Regardless of the outcome of an appeal, the initial payment cannot be reduced.

Two types of appeals panels are to be set up by each lender as part of the tracker framework process. The first is intended to deal with the more serious cases of harm and the panel membership is fully made up of members independent of the lender. The second appeals panel is intended to hear cases where the level of harm is not as serious and the majority of the members on this panel are also independent of the lender. Impacted borrowers also have the further right to appeal their case or circumstances to the statutory independent Financial Services Ombudsman or to the courts. It is worth repeating that a fundamental element of the redress and compensation process is that the upfront payment which is made by a lender cannot be reduced by any subsequent appeal that may be made by the borrower, either to the appeals process under

the tracker examination framework or ultimately the ombudsman or the courts.

The approach to the payment of redress and compensation is designed to deliver the most efficient process in the interests of impacted borrowers. Upfront compensation frameworks are determined by lenders, although subject to Central Bank challenge, and provide for the making of payments as quickly as possible. The detailed appeals process allows borrowers to take the matter further without risk to them if they consider that the level of the upfront payment is not appropriate in their particular case. This appeals process then allows the individual borrower to set out his or her individual circumstances and to set out in detail the full harm which was imposed on him or her by the lender and, consequently, why a higher level of payment is appropriate in that case.

On enforcement, it will also be important to hold the banks to account for their actions. The existing supervision and enforcement powers of the Central Bank are strong and should be used to punish wrongdoing where supported by evidence. Thus far, the Central Bank has imposed a monetary penalty of €4.5 million on Springboard Mortgages Limited for serious failings in its obligations to its tracker mortgage customers. The Central Bank is also pursuing enforcement investigations regarding Permanent TSB, Bank of Ireland and Ulster Bank Ireland.

The Central Bank is also liaising with An Garda Síochána and other relevant statutory bodies, such as the Competition and Consumer Protection Commission, and it has statutory reporting obligations to An Garda Síochána or another relevant statutory agencies where information obtained by it at any stage prior to, during, or after an investigation, gives rise to a suspicion that a criminal offence may have been committed. The Central Bank takes its reporting obligations, as provided for under section 33AK of the Central Bank Act 1942, very seriously and complies with them on an ongoing basis as appropriate. The Central Bank has met An Garda Síochána and has discussed at a high level what it has seen and while it has not made a formal statutory section 33AK report of suspicions to other relevant agencies it is keeping the matter under constant review. The Central Bank has also engaged with the Financial Services Ombudsman with regard to the welcome amendments to the time periods for customers to make complaints to the ombudsman pursuant to the Central Bank and Financial Services Authority of Ireland (Amendment) Act 2017. This legislation now extends the time limits for long-term financial services beyond six years to permit complaints to the ombudsman within three years of the customer becoming aware of the cause of complaint.

The Government will be monitoring the progress and outcome of this important Central Bank examination very carefully and it has concluded that follow up actions will be pursued if the main banks do not meet the updated commitments made to the Minister for Finance. I look forward to an update being provided by the Central Bank to the Minister for Finance in mid-December. However, it is clear at this point that some tracker mortgage customers have been treated disgracefully by mortgage lenders and many borrowers have incurred considerable loss; in particular where they have directly or indirectly lost their homes due to this harmful action by lenders.

I assure the House that the Government is fully aware of the seriousness of this matter and it wishes to have adequate redress and compensation provided to impacted customers as quickly as possible. At this point the Government wishes to support and encourage the Central Bank to complete its tracker mortgage examination investigation as quickly as possible.

An Cathaoirleach: I remind the House that speakers are allocated six minutes each. As we

must finish by 2.40 p.m. in order to allow the Minister of State to respond, it will be a tight fit. We are scheduled to have the five main spokespersons speak.

Deputy Michael D’Arcy: Can I clarify at what time we are finishing?

An Cathaoirleach: We have to be finished by 2.45 p.m. The next item will be taken then. The Minister of State will reply at 2.40 p.m. I ask Senators to be as brief as they can. Unfortunately I will have to adhere to the time strictly.

Senator Gerry Horkan: I thank the Cathaoirleach. I understand that we are a bit constrained by other business. I will try to be as brief as I can. I thank the Minister of State for being here. I also thank the Leader. I called on him to arrange a debate in the Seanad on tracker mortgages during the Order of Business at one point. All of us here, or certainly a very significant number of us including Senators Kieran O’Donnell, Rose Conway-Walsh and indeed, previously, the Minister of State, were discussing this issue in the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach as far back as last December and earlier.

I welcome the opportunity to speak on the issue of tracker mortgages today. Fianna Fáil supports the thousands of customers who have been denied their contractual right to return to the tracker mortgage rates and the customers who were put on incorrect tracker rates. Bank of Ireland recently announced that a further 6,000 customers were affected by the scandal on top of the 13,000 customers identified by the Central Bank examination, as reported in October. It is frustrating that these were contested accounts which Bank of Ireland did not originally want to admit to, although it has now put its hands up and said that these customers are to be included and were treated incorrectly by the bank.

On 25 October Fianna Fáil brought forward a motion in the Dáil calling on the banks to fully identify all customers affected by the scandal, to instantly restore all affected customers to their appropriate rates, and to pay redress and compensation to all victims without further delay. It called on the banks to provide adequate housing to those who have lost their homes. It is important that we remember some people lost their homes as a result of being put on the wrong rate and of being dealt with inappropriately and not in accordance with their original contracts. It also called on the Government to consider introducing wide-ranging legislation to tackle the regulatory issue, including legalising class action suits and empowering the Financial Services Ombudsman to decide on compensation and redress levels. The motion also calls on the Government to threaten to vote against the board of directors in each of the banks in which the State still has a shareholding.

The Minister met the banks on 23 and 24 October and they released statements on 25 October in respect of their individual examinations. It is still unclear what the Minister said to the banks on this issue. If enforcement orders by the Central Bank are the only outcome of this examination it will not be a satisfactory result. We need personal accountability and a solid explanation as to why 11 institutions acted in precisely the same manner in respect of the scandal. It is fairly difficult to believe that there was not some element of collusion or cartel-like behaviour in what was going on. How could every bank have made the same mistake with their customers in respect of the same type of product?

In early October 2017 the Central Bank published its second update before the Minister’s meeting with the banks. According to the Central Bank, the number of customers affected stood at 13,000 at that point although, as we know, the figure is set to increase. With the 6,000

extra customers of Bank of Ireland, we are already very close to 20,000. It is likely that figure will rise further.

It is concerning that there appears to be a contest taking place between some of the banks and the Central Bank, in which banks are arguing that some customers should not be recognised as having been treated badly. As we saw Bank of Ireland contested 6,000 customers. When these customers were announced last month it doubled the number of affected accounts. On 19 October, Central Bank figures appeared before the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach. It is galling to learn that the banks unofficially threatened the Central Bank with legal action. This is despite all that has transpired with this scandal and the fact that the Irish taxpayer bailed out these banks.

The findings from the Central Bank update are as follows. It believes that two lenders have failed to properly identify affected customers; the lenders' initial proposals for redress and compensation fell well short of the Central Bank's expectations and they had to be pressurised consistently to bring them up to an acceptable level; two lenders did not complete phase 2 in a comprehensive manner on time and have much more work to do; the number of customers and tenants who lost their home stands at at least 102 and is set to rise further; the Central Bank imposed enforcement fines on Springboard Mortgages last year; and the Central Bank has commenced enforcement investigations against both Permanent TSB and Ulster Bank.

This scandal is completely unacceptable from the banks yet no credible explanation has been provided as to why this happened in all of the banks at around the same time and in the same way. Despite the banks acknowledging the scandal, they have been incredibly slow to rectify it. Only 40 of the 3,500 Ulster Bank mortgage holders have gotten their money back while KBC have yet to even contact some of its customers and to comply with phase 2. KBC confirmed that it missed the Central Bank's deadline to the committee of which I am Vice Chairman.

Padraic Kissane, a financial consultant who represents many of the victims affected, appeared before the committee. He believes the figure will be much higher in the end, perhaps closer to 30,000, but it remains to be seen if this turns out to be the case. The Governor of the Central Bank indicated that the total number could be at least 20,000. Either way, a very significant number of households, families and individuals have been affected by this.

The effect on mortgage holders' lives is incalculable and in many cases no amount of compensation will be enough to fully come to terms with the pain and suffering caused. As we said, some have lost their homes and many have lost their lives. The stress and suffering that has been added by the banks refusing to take responsibility is shocking. A homeowner, Thomas Ryan, came before the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach and told us that he suffered a stroke at the age of 47 and that his wife had a nervous breakdown. They contend that this was a direct result of what happened to them.

Fianna Fáil has long been calling for the banks to take responsibility. If the boot was on the other foot the banks would be tracking customers down for every last cent. Why is it that the banks must be dragged kicking and screaming to pay back this money? The Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach has worked well in exposing much of the issue. As I have mentioned, we have been questioning the banks very thoroughly and they will be before the committee again in January. Some banks are taking the matter more seriously than others but the fact remains that money was wrongfully taken from customers and

now needs to be paid back once and for all, and quickly. The priority must be to ensure that those affected will receive restitution as quickly as possible and that the Central Bank moves through the various stages of its process to ensure customers will be treated fairly. We will certainly do our job as committee members in interrogating and dealing with the banks.

I appreciate that we are having the debate. I thank the Minister of State for being here and I again thank the committee for its work. There are switchers, however, who have not been contacted yet - people who switched mortgages and with whom the banks have not dealt. The banks say they do not know who they are or where they are. An individual contacted me after seeing me in the committee and said that his compensation, before redress, will be at least €200,000. That is an enormous amount of money for an individual to be without. He has suffered and his family have suffered. It is a very important issue and I am glad we are discussing it today.

Senator Gerard P. Craughwell: I will be as brief as possible. My colleague has covered most of the things I wished to say. One concern I have is that we seem to be talking more about Ned Kelly than the respectable banks the Minister of State and I once knew. I am quite concerned that somewhere along the line these gangsters must have come together and agreed that they would all apply the same principle on tracker mortgages to their customers. There is an internal process for the banks to identify affected customers. My understanding of the instruction is that internal process is not just to be independent of the bank, but that there is to be no conflict of interest, either actual or perceived. If one considers an actual conflict of interest, one would assume that the internal process is not to be carried out by some accountancy or consultancy firm which has worked for the bank before. What about work such firms might take on the future, however? What about the promise of a big contract at the end of the process?

I want to see people who overpaid on their mortgages get the money they overpaid returned right now. I do not want to see them get their compensation now because I want the courts to rule on compensation where court cases are running. They can set the benchmark for compensation, not the banks. We have seen the way these crooks have treated their customers. There are people who have struggled to maintain homes while these mortgages were being overpaid and my fear is that the carrot of a quick few bob now might settle their claims much more quickly than if they were given the option to take their cases before the courts. As we do not have class actions in this country, let us get a couple of court cases under our belts and see what the courts deem to be a proper level of compensation. Then let us benchmark claims to that. Let us not allow the banks to negotiate with the ordinary individual who has been struggling for some years while the banks have been screwing them having given them the wrong mortgage rate.

On the collusion element, I want to know why An Garda Síochána are not in every single bank now. Why is the Director of Corporate Enforcement not looking at the directors of these banks? There are people on these boards to represent the public interest. Where are they? What have they got to say on this? Why have they not been hauled in to explain the situation to the Minister instead of bringing in the CEOs? With the best will in the world, the Department of Finance does a good job. These CEOs have treated this country in an appalling way. They lied in 2008 when this country was going down the tubes. They tried to convince the Minister that everything was fine. The Minister of State, Deputy D'Arcy, sat on the banking inquiry and he gave it his attention every single day. He was there all the time, as were Senator O'Donnell and others, and they have to be commended on the amount of work put into it. The Minister of State knows more about how these banks behave than any of us. We need to be in there and to

see exactly how banks define who is owed money. We need to see what companies are assisting them and if there is a conflict of interest, whether perceived or actual, we need to remove companies from the process. Very few companies in this country are big enough to do the type of work we are talking about and I fear that they have all worked for the banks at some stage in the past. I will not delay this debate because I know we have to try to finish things, but that is what I would like the Minister of State to take on board.

Senator Kieran O'Donnell: I welcome the Minister of State, Deputy D'Arcy. I commend the great work he does in the area of banking. I want to deal with where we are now and what we can do. The banks are being dragged, kicking and screaming, into addressing the tracker mortgage issue. Something that brought that to the fore was four witnesses coming before the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, who were compelling. The Minister met with the banks and the banks largely committed to have compensation and redress under way before the end of the year. Does the Minister of State have any update on where it stands at this moment? When does he expect to meet the banks before the end of the year to find out precisely where we stand?

At the European Parliament Committee on Economic and Monetary Affairs yesterday, Mr. Brian Hayes, MEP, asked Commissioner Vestager about cartels with regard to interest rates in Ireland. It is high-time that the Competition and Consumer Protection Commission looked into that issue. There is a view among the public that a cartel operates between the main banks. That has to be investigated. The competition authority or, as it is now called, the Competition and Consumer Protection Commission, is the authority to do it. It has stated previously that the mortgage market in Ireland is dysfunctional. It owes it to people, considering the rates they are paying, to look at the matter. The Government has indicated that legislation for white-collar crime is coming in and that needs to be expedited.

I heard both the Minister of State, Deputy D'Arcy, and the Minister, Deputy Donohoe, mention the possibility of class action legislation. We need to look at that. We cannot allow the banks to behave in the way that they have with tracker mortgages. I meet people on a regular basis in the Limerick constituency. A lady contacted me in the past two weeks after she was visited by an individual on behalf of a bank, who had a letter, at 6 o'clock on a Friday evening when she was on her own in the house. She was petrified. That is not on. This person arrived to drop in something for her former partner and she rang me in a panic. I had to put her in touch with a personal insolvency practitioner, PIP, who could make contact with the bank to bring some sort of reason to the matter.

It now looks, from investigations, as if people who were on tracker mortgages agreed to go to a fixed rate on the basis that they would return to a tracker rate. There now also appears to be a category where people were on trackers and were put on variable rates without even being told by the banks. This was done by all the banks. It has to be asked why this was done. The banks cannot be above the law. In some cases, it could make a difference on an average mortgage of approximately €200,000 of approximately €4,000 a year in mortgage repayments with regard to how banks fiddled with interest rates. We need to have closure and people are entitled to payments of compensation and redress.

The intervention by the Minister should not have been necessary but I felt it was appropriate at the time, and I think a further intervention will be needed. When does the Minister of State expect that will happen? Every person with a tracker mortgage is an individual with a family who is under pressure from the banks. Is it not quite ironic that these same people, the taxpay-

ers, bailed out the banks in the years after 2008 while, at the same time, these banks were ripping them off with high interest rates? It is a bit like going into a show or nightclub where one has to pay going in the front door and again when leaving. It is incredible that the banks think they can get away with it. Their approach and mentality is like that for whatever reason. In 2008, in either the committee that dealt with finance or economic and monetary affairs, I asked for the banks to come in because there was no lending to small and medium-sized enterprises. That was in July 2008 and all the banks said things were fine. The only one to cry that day was Richie Boucher, who said the banks had a problem. The banks then came and took taxpayers' money and are now ripping them off again. We need to bring closure to this and ensure that it never happens again.

Senator Rose Conway-Walsh: I thank the Minister of State for being here. As a member of the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, I found it very frustrating to try to get positive results for those customers affected by the tracker mortgage scandals. The growth in the number of those affected was particularly annoying. Those banks claim that it took them time to identify all those who were removed or denied and not informed of their entitlement to a tracker mortgage. I know the matter of people's entitlement to a tracker mortgage would be of interest with regard the case that was recently brought against Permanent TSB by O'Dwyer Solicitors in Ballymun. That case was settled for a substantially larger amount than was originally offered. The basis of it was that people were wrongly not allowed to avail of a tracker mortgage.

Many people are in that situation and perhaps the Minister of State can clarify the position for us. If a bank was offering a tracker mortgage or had one on its books over a period and somebody went to it for a mortgage but was not offered the tracker mortgage option, does that person have a case to bring under the Central Bank review? That is hugely important. If that is the position, which is how I would read this case against Permanent TSB, then the numbers will increase substantially.

We have been contacted by many customers who are blue in the face from contacting their banks to ask to be included in the redress scheme and the banks are still doing the bare minimum and not listening to their own customers. Will the Minister of State clarify what a client can expect if a bank refuses to put a client's file under review or to get his or her file in the first instance? Where would that person go and how can we help him or her? I highlight the work of my colleagues, Deputies Donnchadh Ó Laoghaire and Pearse Doherty, who recently presented the multi-party actions Bill to the Dáil. That Bill would allow class actions to be taken by people such as those who have suffered in the tracker mortgage scandal. This class action move is hugely important. Many people are financially constrained because of the tracker mortgage issue and other issues who cannot afford to take action themselves, so the class action provision is needed.

Has the Government made any moves to ensure that individual responsibility is taken for what was done? Has the Minister stated clearly to the heads of the banks that action will be taken against individuals found to be responsible? I note what the Minister of State said in regard to enforcement. Credit is due to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach for pushing for action in that regard. I am travelling to Iceland next week, where I hope to discuss the circumstances whereby dozens of bankers in that country were sent to prison for their wrongdoing within the banking system. Unfortunately, we all know Ireland does not do prosecution of white-collar crime. People can only wait to see whether enforcement will finally happen in this instance.

There is much the Government could have done already in order to encourage action by the banks. The Minister could, for example, have objected to the reappointment of the CEO of Bank of Ireland, in which the Government is a majority shareholder. He could have sacked the boards of Permanent TSB and Allied Irish Banks. I do sometimes empathise with the Government in all this, especially when Fianna Fáil makes lots of allegations and suggestions.

Senator Jennifer Murnane O'Connor: Sinn Féin would never make allegations or suggestions.

Senator Rose Conway-Walsh: We all know, of course, that the crux of the problems in the banking system is the closeness that has existed between senior people in that party, including successive leaders, and senior bankers. It was a case of “You scratch my back and I will scratch yours”. I am sorry to have to say this, particularly as I have great respect for Senator Horkan and the work he has done on the finance committee.

Senator Gerry Horkan: I was never in that club.

Senator Rose Conway-Walsh: We have the photographs and everything else to prove it. The playing of golf together, the appointments to boards and all of those things helped to create a culture of absolute corruption within the banking system. Governments are there to protect people, not to protect bankers and the elite. That type of closeness must never again be allowed to develop between senior politicians and senior bankers.

Senator Kieran O'Donnell: Does nobody in Sinn Féin play golf?

Senator Rose Conway-Walsh: I know this type of truth hurts. I am pleased to see Senator Kieran O'Donnell sticking up for his mates on this side of the House.

An Cathaoirleach: Senators are wasting time whenever they interrupt or respond to interruptions. I intend to be strict and invite the Minister of State to respond at the assigned time, at which point some Senators may be disappointed at not having had an opportunity to speak.

Senator Rose Conway-Walsh: People were robbed of their entitlements in respect of their mortgages and that has caused great suffering. I commend, once again, the work of the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach on this issue and the efforts being made by the Central Bank to address it. The deadlines are being moved all the time but what will happen if the final deadline is not reached in terms of making the initial payments? I am not referring to the entirety of the redress owing but, rather, to the initial moneys that have been definitively quantified. Those amounts must be repaid as quickly possible to the customers in question. What action will the Minister for Finance take if that is not done?

Senator Frances Black: I welcome the Minister of State to the House to discuss this issue. However, I am deeply disappointed that we are having this type of debate yet again. It is not the first time the Oireachtas has had to examine disgraceful and reckless behaviour on the part of banks in this country. It is difficult to believe that we are in the same position again and, in this instance, the scale and impact of the wrongdoing is absolutely shocking. As of September last, some 13,000 mortgage holders had been denied their right to a tracker rate or had been moved onto the wrong rate, which cost them a fortune. Many of these customers were unable to meet their repayments, with the most recent figures showing that 102 people lost their properties. In 23 of those cases, the person's home was involved. How many of those people are now homeless? How many woke up this morning in the cold and the lashing rain? It is contemptible that

banks' pursuit of profit could place people in this situation.

It is important, when considering the hardships inflicted on these people, to bear in mind that we are not dealing with circumstances where individuals lost their jobs or sources of income during the recession, as happened to so many in the past decade. What happened in these cases was purely the fault of the banks. Moreover, these were not some random accidents or isolated incidents. This particular practice happened across several independent banks over a number of years and, as such, appears to have become a systematic problem. That is a serious indictment of the attitude taken by banks to customers and also of the culture and ethos within those institutions. One wonders whether the people involved have any heart at all, or any compassion or empathy. Their behaviour has been disgraceful.

My focus in respect of issues of this nature is always on the families and individuals affected. We should never lose sight of the pain, hardship and distress this has caused. The Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach heard testimony from a man who, under intense pressure as a consequence of the actions of his bank, had a stroke at the age of 47. These types of stories should shame us. As legislators, we must consider what it feels like to lose one's home, the place where one spends cherished moments with family. To lose that home, not because one's income has dropped or a job has been lost but because one's bank illegally raised the repayment rate on one's mortgage such that it was impossible to cover the payments, amounts to a grave injustice. The human suffering, particularly the mental health impact, must not be forgotten. I commend the people who came forward to seek redress for this mistreatment. That took courage and persistence in light of how long this has been going on. They did not have the capacity for a class action suit but they pushed forward regardless. It can be difficult at the best of times to go toe to toe with a bank or financial institution in order to highlight an injustice and have it set to rights. The complexity of the issues in this instance makes it more difficult still. When one is inundated with legal letters, for example, it is incredibly hard to find the time and space needed to get out from under the pressure of the financial difficulties one is experiencing and make one's case.

A large number of the people affected have not received the moneys owing to them. I call on the Government and the banks involved to rectify this as a matter of urgency. For some people it could mean the difference between skipping a meal or not. That is the seriousness of what we are dealing with here. However, it is not enough simply to give the money back and say "Sorry". People have lost their homes and I am concerned that the redress schemes touted fall short of what is expected and what is being proposed by the Central Bank. We are all sick of situations like this whereby we are forced to debate the actions of banks in pursuit of profit and the ruin this has meant for ordinary people. We need to learn from this case and put robust controls in place to ensure it does not happen in future. That should be the key lesson from our last serious banking crisis and this latest scandal. We must deal with the way our banks are governed and the capacity of the Central Bank and the Government to regulate them. It is not good enough to keep saying that we must change the culture. As legislators, the onus is on us to act to make that happen. Given this latest scandal and those that have gone before it, I do not see how people can have any confidence in the State's ability to deal with reckless banking and financial institutions. People feel disempowered and, unless we act quickly, that will not change. I urge the Government to take every step needed to correct that situation.

An Cathaoirleach: I apologise to the Senators who did not get an opportunity to speak. The next speaker on the list was Senator Feighan, who left the Chamber, I understood, on the assumption he would not get a chance to contribute. I am merely the referee; I do not order the

business. I call on the Minister of State to reply.

Minister of State at the Department of Finance (Deputy Michael D’Arcy): Senator Black noted that 23 people lost properties that were their primary dwellings. I have been talking to people about tracker mortgage issues since before I became a Minister of State. We have all dealt with people facing these types of difficulties. There is a huge difference between, on the one hand, somebody who was overcharged but who was capable of making the overcharged payment without it affecting him or her in a significant material way and, on the other hand, people who ended up losing their homes as a result of being overcharged. My view is that the people who were seriously injured by the actions of the banks should be compensated by a country mile more than those who were not severely impacted.

The Government does not regulate the banks; the Central Bank does so on behalf of the State. Several Senators asked whether the overcharging was systematic. We know that 10% of accounts were affected. If it was a systematic practice, one would expect the number of accounts affected to be much higher. I do not know how we got to the point that a nice, even 10% of customers were affected, but we are looking into that.

Senator Conway-Walsh raised a point that is very difficult to answer when she referred to the customers who went into contracts with their banks after the latter had failed to offer them a tracker rate on their mortgages. That is the nub of the matter under discussion. Having not been offered trackers, if they chose to enter contracts on a variable or fixed rate, should they then be entitled to compensation? I do not know the answer to that.

Senator Rose Conway-Walsh: The court ruled that they should be so entitled.

Deputy Michael D’Arcy: It is part of the Central Bank’s examination, which covers all aspects of the matter. I think that will be decided by the courts. It is most likely to expand to the superior courts from the original O’Dwyer case. However, I do not know for certain. Natural justice is always an issue. If someone was happy to accept a variable rate at that stage, was told about a tracker and chose - with an informed mind - not to get one, should he or she be entitled to the compensation? I do not know. I think all those in this Chamber would have different opinions on that.

Iceland was used as an example. The population of Iceland is 300,000; the population of Wicklow and Wexford is equivalent. The population of Ireland is 4.7 million. Our population is multiple times the size of Iceland’s, so comparing Iceland and Ireland in this regard is not really comparing like with like.

Class actions are an option for the Government. We have not reached any conclusions in that regard. As of the end of September, there were 13,000 cases. Representatives from five banks met the Minister for Finance and committed offers being made in respect of 12,000 cases. It is very important that those offers be made. If people choose not to accept offers, that is up to them. However, offers will be made and the Central Bank will have oversight of the process. We do not want a one-size-fits-all approach because we feel that some individuals might fall through the cracks. Some people may be much more impacted upon or injured than others. We do not want to see those round pegs being squeezed into square holes. We want the process to be fair and legitimate. First will come redress, which will involve customers getting their money back, and second will be compensation. We want this to be fair and reasonable and ensure that the injured people are fairly treated.

Regarding class actions and a dysfunctional market, I previously served as a Member of the Dáil between 2007 and 2011. In that period, we all said that there was not enough competition. We brought in competition and that really made a mess of things. Let us be honest about it. Older, established institutions such as Bank of Ireland, which previously had not lent money for mortgages easily, suddenly went into a space that they had never occupied before because they were chasing their competitors. National Irish Bank and Bank of Scotland, Ireland, came in and offered tracker mortgages at rates that were not sustainable. They have since exited the market. However, the other banks remain. The issue we have now is whether we have a dysfunctional market. We do not have a dysfunctional market; we have an expensive market because we do not have enough competition. The problem is that when competition comes in, goes after market share and undercuts existing financial institutions, there is a price war. Price wars never work out well. Someone gets the benefit of entering early, someone gets the market share up but, eventually, there must be a sustainable product, whether a mortgage or any version of any product on the shelf of any institution.

Is there a cartel when it comes to competition? That is a matter for the European Commissioner for Competition. She is pretty good at slapping us with fines, so perhaps she could look into that.

Matters relating to the ODCE, the Garda and the Central Bank are for those institutions; they do not concern the Department of Finance. The Central Bank is investigating and engaging in a deep dive into the financial institutions' activities. If any information that requires to be passed on to the ODCE or An Garda Síochána is identified, that will be a matter for the Central Bank. I support the Central Bank 100%. If wrongdoing is identified, we must ensure that the institutions of this State pursue it. God knows, if someone robbed a supermarket or a bank, he or she would be pursued, and rightly so. The same standard applies to any other wrongdoing, whether it involves white-collar crime or crime of any other type.

If I did not reply in respect of particular issues, I apologise.

An Cathaoirleach: Again, I apologise to Senators Murnane O'Connor, Mulherin and Feighan, who were not able to make contributions.

Judicial Council Bill 2017: Order for Second Stage

Bill entitled an Act to provide for the establishment of a body to be known as *Comhairle na mBreithiúna* or, in the English language, the Judicial Council; to provide for its functions and for related matters.

Senator Colm Burke: I move: "That Second Stage be taken today."

Question put and agreed to.

Judicial Council Bill 2017: Second Stage

Question proposed: "That the Bill be now read a Second Time."

Minister for Justice and Equality (Deputy Charles Flanagan): I am very pleased to

have the opportunity to introduce this important legislation in the Seanad this afternoon. I recall that in October of last year the Government accepted a motion tabled in this House which called for the setting up of a judicial council and the publication of a Bill which would provide for it. This is important and long-awaited legislation and I look forward to hearing the comments of Senators on it. It has had a somewhat tangled history, and many hands have made a contribution to its making. However, it would be remiss of me if, at the outset of this debate, I did not single out for special appreciation the contribution made by the former Chief Justice, Mrs. Justice Susan Denham, since the start of this work. Her commitment to this project was beyond question. Her vision and energy were very much in evidence on more than one occasion in the course of the debate leading up to the introduction of the Bill this afternoon.

The primary purpose of the Bill is to provide for the setting up of a judicial council. It has long been recognised that the absence of such a judicial council in Ireland is somewhat out of step with other countries which share our value system, including those countries which have a similar legal background and tradition. Indeed, this absence has been the subject of critical comment by the Council of Europe's Group of States against Corruption, commonly referred to as GRECO. Judicial councils are generally seen as having an important role to play in safeguarding the independence of judiciaries. They also provide a vehicle for addressing matters such as further education and training, as well as matters pertaining to discipline. In keeping with this approach, the Bill affirms the independence of the proposed judicial council and provides that one of its key functions will be to promote and maintain excellence in the exercise by judges of their judicial functions. In addition, the Bill institutes a complaints regime for judges, which will address instances of misconduct which do not warrant the invocation of Article 35.4.1° of the Constitution. As Members know, that article relates to the removal of a judge from office for stated misbehaviour or for incapacity.

The Judiciary is one of the fundamental pillars of our democracy and its independence is guaranteed by our Constitution. However, the fact that it represents a separate branch of Government does not mean that it is in any way separate from the society which supports it and which it, in turn, supports. The Bill before the House has a delicate balance to maintain. That is why I look forward to hearing the views of Senators in the course of the debate this afternoon.

The Bill must respect the independence of the Judiciary, which is essential if our citizens are to have confidence in the free and impartial administration of justice in the State. However, that independence is not a privilege for the individual judge in his or her court, rather it is a protection for the individual rights and freedoms of our citizens under our laws. It follows that independence on the one hand must be balanced by accountability on the other. The fact that justice is, for the most part, administered in public is one aspect of accountability. The ability to appeal a particular judgment is another. However, the accountability gap which has existed heretofore, and which this Bill proposes to address, relates to the absence of a mechanism for dealing with complaints about judicial misconduct which would not require an intervention under our Constitution.

Before dealing with the content of the Bill, I wish to raise two matters which have recently been in the public eye - the need for the so-called secrecy provisions in the Bill to be removed, and the need to establish a public register of pecuniary interest for members of the Judiciary. Regarding the secrecy provisions, I have had the opportunity to review the Bill since becoming Minister for Justice and Equality. It is fair to say that some of the provisions intended to protect the confidentiality of the complaints process do not sit well with current understandings of accountability or transparency. I am considering, therefore, the nature of amendments which

might be made to these provisions.

With regard to a register of interests, there are not many models in the common law world upon which we can draw in putting such a register in place. While many jurisdictions have seen debates about the need or otherwise for a register of interest for judges, very few have as yet decided to go down that path. Nonetheless, I can see that such a register may have a function in maintaining public confidence in the integrity of the judicial process, and I will explore options in that regard. My preliminary thinking is that the Oireachtas should have a role in setting out the broad parameters informing the creation of a register, but the operational aspects should be embedded in the structure of the judicial council itself. In this way, we would recognise the balance which needs to be struck between the two branches of Government. While acknowledging the need for greater openness concerning pecuniary matters, we would also acknowledge the independence with which judges are vested by virtue of their constitutional office. This is a matter to which I hope we can return on Committee Stage.

Turning to the Bill itself, I wish to refer to its main provisions. Part 1 deals with matters of a general nature such as definitions and repeals. One of the most important definitions is that of judicial misconduct. In broad terms, this means conduct which constitutes a departure from acknowledged standards of judicial conduct and brings the administration of justice into disrepute. It is specified that standards in this context should have regard to certain principles, which are essentially those commonly referred to as the Bangalore principles of judicial conduct. These principles were adopted at a round table meeting of chief justices held in the Peace Palace in the Hague in November 2002 and endorsed by member states of the United Nations Commission on Human Rights in 2003.

Part 2 of the Bill concerns the council itself and provides for its setting up. In addition to the function of promoting and maintaining excellence in judges' exercise of their judicial functions, to which I have already referred, the council will also be tasked with promoting and maintaining high standards of conduct among judges; the efficient and effective use of judicial resources; continuing education of judges; respect for the independence of the Judiciary; and public confidence in the Judiciary and the administration of justice. The council will consist of all members of the Judiciary. It is anticipated that it will generally meet on an annual basis, with the Chief Justice acting as its chairperson.

Part 3 of the Bill deals with the board of the council and its committees. However, it does not deal with the judicial conduct committee, which is covered in Part 5. The board will be responsible for the performance of the council's functions on a day-to-day basis. It will be chaired by the Chief Justice and will include among its members the president of each of the courts, five judges elected from each of the courts, and one judge who will be co-opted from each of the courts on a rota basis. Provision is made for the Chief Justice and the presidents to nominate a replacement judge to act in their stead. The board will hold a minimum of four meetings per year and will establish committees to assist it in its work from time to time. Under this Part, the council is also obliged to establish a judicial studies committee, a sentencing information committee and judicial support committees.

The judicial studies committee will have a role in facilitating the continuing education of judges and in the training of judges. This will be broader than the role now undertaken by the current committee of the same name concerning matters of education and training. The sentencing information committee will be involved in the collation and dissemination of sentencing information, and will also have a research function. It will take on, albeit in an expanded

way, the role currently carried out by the steering committee of the Irish sentencing information system, which has been in existence now for a number of years. The judicial support committees will be available to advise each of the courts, and to assist the council in the performance of its functions concerning their particular court. It will be possible for the judicial council to appoint persons who are not judges to be members of both the judicial studies committee and the sentencing information committee.

Part 4 of the Bill deals with staffing and funding issues. Provision is made for the appointment of a secretary to the council, who would also act as registrar of the judicial conduct committee. Funding for the council will be provided via the Department of Justice and Equality Vote, and the council will be required to prepare an annual report of its activities, which will be laid before each House of the Oireachtas.

Part 5 is a core element of the Bill. It creates the formal structures which will, for the first time, provide a delivery mechanism to allow for the investigation of complaints of judicial misconduct which fall outside the current constitutional framework.

I have already referred to Article 35 of the Constitution, which provides that a judge of the superior courts shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his or her removal. This constitutional process has been extended by statute to the question of removal and dismissal of Circuit Court and District Court judges. Otherwise, with the exception of statutory provisions dealing with investigating and reprimanding judges of the District Court, there is no means of investigating or dealing with allegations of judicial misconduct to which Article 35 of the Constitution would not apply.

Many in this House will be aware of the history of the Bill. However, in order to contextualise the complaints provision in particular, I would recall for Senators the fact that the genesis of those provisions lies in the report of the Committee on Judicial Conduct and Ethics, which was established in 1999 and which reported in the year 2000. That committee concluded that the existing structures for dealing with concerns about judicial misconduct were inadequate and that formal structures should be put in place to deal with misconduct which would not justify the invocation of the formal Oireachtas procedure. The type of misconduct instanced included discourtesy, prejudice, demonstrated insensitivity to the feelings of litigants, witnesses, members of the public or anybody engaged in the services of the courts.

At the heart of Part 5 is the provision relating to the establishment of the judicial conduct committee. The function of that committee will be to promote and maintain high standards of conduct. Given the importance of this function, I think it would be helpful to Senators if I set out some of the ways in which the Bill envisages this function will be carried out in day-to-day practice. The committee will consider complaints and refer them for resolution by informal means for investigation. It will prepare and submit draft guidelines to the board concerning judicial conduct and ethics within 12 months of its establishment, with a view to their adoption by the council. Furthermore, it may provide advice and recommendations to an individual judge, or to judges generally, on judicial conduct and ethics.

The committee will have 13 members. It will be chaired by the Chief Justice and it will include the presidents of all of the courts. It will be possible for these judges to nominate another judge to perform their functions from time to time. There will also be three elected judges on the committee. Finally, five lay members will be appointed by the Government following on

from a selection process that will take place under the aegis of the Public Appointments Service.

In keeping with the need for transparency in respect of the investigation of complaints, the committee will be required to publish the procedures which are to be followed in the making, the investigation and the determination of complaints. In broad terms, the process will be as follows. The registrar applying the criteria set out in the legislation will determine whether a complaint is admissible. If the complaint is deemed to be inadmissible, it will be open to the complainant to have that determination reviewed by the complaints review committee. That committee will consist of three members of the judicial conduct committee - two judges and a layperson. The complaints regime will only apply to judicial misconduct that will be alleged to occur after the regime enters into force. In order to introduce certain efficiencies into the process, provision is being made for the possibility that a judge may consent to being reprimanded by the judicial conduct committee, either before a complaint is investigated or while it is being investigated by a panel of inquiry.

There are also provisions which address what will happen in the event that a complainant or, indeed, a judge fails to co-operate with a panel of inquiry. Furthermore, it will be open to the judicial conduct committee to investigate judicial misconduct even where no complaint has been received or where a complaint has been withdrawn. The rationale for these provisions is that it is clearly not in the public interest that a clear sense of judicial misconduct should go without process or without investigation simply because no complaint has been made. The actual investigation of a complaint will be carried out by a panel of inquiry. The panels of inquiry would have three members - two judges and one layperson. The latter will be drawn from a nominated group of individuals recommended to the Government by the Public Appointments Service.

Special provision has been made to deal with two separate scenarios. The first concerns the possibility that the alleged judicial misconduct may be related to the health of the judge concerned. The second relates to the interface between the conduct regime proposed by the Bill and Article 35.4.1° of the Constitution. The effect of the latter provision is that if an investigation discloses that the matter under investigation is of such gravity as would warrant the tabling of a motion under Article 35.4.1°, any subsequent action becomes a matter for the Legislature and not for the committee. This affirms the prerogative of the Legislature in respect of this matter, a prerogative which is given explicit recognition by way of a statement in the legislation that nothing in it should be construed as affecting the power of the Oireachtas to remove a judge from office under the law.

Once the investigation of a complaint has been completed, a panel of inquiry will submit a report to the judicial conduct committee setting out its findings. Prior to that submission, both the judge and the complainant will be provided with a copy of the report and given the opportunity to make submissions if they believe that fair procedures have not, in the circumstances, been observed. Where a panel of inquiry finds that an allegation in a complaint has been proved, the recommendations for the reprimand of the judge concerned may include the issuing of advice, a recommendation as to the pursuit of a specified course of action, such as attendance at a training course and the issuing of an admonishment.

I recognise that somewhat antiquated terms, such as the “issuing of advice” or “the issuing of an admonishment”, may not sound serious or, indeed, punitive to modern ears but I am sure that Senators, lawyers and constitutional experts in the Chamber will agree that these may be considered quite serious sanctions for a judge in the context of the authority and, indeed, hav-

ing regard to the independence of that important office. It should also be borne in mind that this Bill does not displace the constitutional role of the Oireachtas nor, indeed, its powers under Article 35.4.1° to remove a judge from office for stated misbehaviour or to remove a judge from office in the event of him or her being incapacitated. Furthermore, additional recommendations directed towards safeguarding the administration of justice are also possible.

It will be open to the judicial conduct committee to accept - with or without any modification - a recommendation made to it by a panel of inquiry. It will be also open to it to reject such a recommendation. In any event, prior to the committee issuing its determination, both the judge and the complainant will be given an opportunity to make submissions regarding the recommendations included in the report and, where necessary, an oral hearing may be required to be held.

A final provision to which I wish to draw the attention of Senator relates to the annual report which the judicial conduct committee will be required to produce. The Bill sets out an extensive range of statistical data which must be included in that annual report. This will provide a useful perspective on the work of the committee. It will also provide a means of evaluating the effectiveness of the proposed complaints regime.

I thank Senators for their attention. I want to hear their observations on the Bill. As a result of its centrality, I have spent some time dealing with the complaints regime that the Bill will establish. However, it is right to recall and place on record the fact that we are particularly fortunate to have a Judiciary which is extremely well regarded in terms of its perceived independence and its integrity. This is reflected in the fact that Ireland has consistently received very high rankings in this area in successive global competitiveness reports from the World Economic Forum and from the EU justice scoreboard. It is very important that we bear this in mind as we debate the Bill. We need to have a full understanding of the special position of judges in our country, our courts and under our Constitution. The Bill achieves the appropriate level of balance between independence, on the one hand, and accountability, on the other.

I thank Senators for their attention and I commend the Bill to the House.

Senator Diarmuid Wilson: I welcome the Minister back to the House. I am taking this matter on behalf of my colleague, Senator Clifford-Lee. She must attend another meeting and apologises for not being here. Fianna Fáil will be supporting the Bill and is committed to strengthening the measures contained in it. As the Minister has outlined, the country has been very well served by the Judiciary and that has been internationally recognised. The establishment of a judicial council by the Bill will ensure continued public confidence in judicial integrity. Fianna Fáil has long called for the introduction of a procedure for investigating allegations of judicial misconduct. The public currently has no formal procedure through which to make a complaint against a member of the Judiciary. I ask the Minister to clarify in his closing remarks whether it is open to members of the public to make a complaint to the president of the court of which a judge is a member. Has he any statistics in respect of the number of complaints that the presidents receive in that regard?

In 2010, the former Fianna Fáil Minister for Justice, Equality and Law Reform, Dermot Ahern, published a scheme for a judicial council Bill. It sought to establish a judicial council to investigate allegations of judicial misconduct and provide options for dealing with misconduct where the nature of the misconduct warranted investigation and action but was not sufficiently serious to call for the removal of the judge from office. Much like the Bill before the House to-

day, the council was to be an independent body charged with the promotion of excellence in the exercise by judges of their judicial functions. The 2011 Fine Gael-Labour Party programme for Government contained a commitment to establish a judicial council. Regrettably, like so many other promises in that programme for Government, that was not delivered upon. However, I am glad a similar Bill is now before the House.

Fianna Fáil believes that one major flaw in the Bill is that it provides for inquiries into the misconduct of judges to be held in private under section 55 and that reprimanded judges will not be named. Fianna Fáil will table amendments to remove that secrecy. If a judge is reprimanded, the public is entitled to be informed of his or her identity. The goal of the Bill, which is to improve public confidence in the administration of justice, is undermined if the identity of judges who are sanctioned is kept secret.

The Bill includes provision for the establishment of a sentencing information committee to collate information on sentences imposed by the courts and to share that information with judges and other persons. Fianna Fáil believes in the need for improving consistency in criminal sentencing and is committed to achieving that. It introduced the Judicial Sentencing Commission Bill in 2013 which sought to support judges in their decision making while maintaining their independence. While the Bill before the House today goes some way to improving consistency in sentencing, we believe that we should proceed with our judicial sentencing Bill as the proposals in the Judicial Council Bill do not go far enough.

From my own experience in court as a defendant and a witness, I was very impressed by the workload the Judiciary in the District Court deals with on a daily basis. In my experience as a defendant in minor cases such as speeding and as a witness in some other cases in that court, they do so very professionally and humanely and are very overworked.

All Members are familiar with the term “if it is not broken, do not fix it” but there has been an attempt by some members of Government who do not have direct responsibility for the appointment of judges to interfere in that process. As both the Minister and I have said, the country has been well served by the Judiciary. The appointment of judges should remain the constitutional function of the Government and the process that is in place is sufficient and should be left alone.

There are other issues I would like to be dealt with but they are not up for debate today. As I raised with the Minister’s predecessor, the retirement age of a judge of the District Court is 65, although they are entitled to apply on a yearly basis for extensions up to the age of 70. That is demeaning to them and they should be entitled to retire at 70, the age at which judges of the other courts may retire. That age should be raised to 72 for all judges because it takes a number of years to build up the expertise needed to become a judge and if a person is appointed in his or her 60s it gives them very limited time to exercise that function. That should be considered. It is not relevant to today’s Bill but it should be discussed further down the road.

Fianna Fáil is very happy to support the Bill and we look forward to the Minister’s closing remarks.

Senator Michael McDowell: I warmly welcome the Minister, Deputy Flanagan, to the House and do so in particular because he is carrying the Bill under his arm. As Senator Wilson said, others have stood in the Minister’s place and failed to deliver on this matter. I occupied his position for five years. Prior to my being Minister for Justice it was the desire of the Judiciary

to have a judicial council established by law. While I was in office, the situation was slightly different in that I was taking all the initiative and at times it felt as if I was playing handball against a haystack. Happily, several people have now brought about this particular departure in law, which I welcome. I also welcome and hope that the Judiciary, the Executive and the Legislature are singing from the same hymn sheet in respect of what can and cannot be done and what should and should not be done.

I echo what Senator Wilson said regarding our Judiciary being generally and almost universally of a very high quality. We have been very well served by them. Their appointments have generally been wise and appropriate. I echo his sentiment that recent experience shows that very good appointments can be made without the introduction of a very elaborate Judicial Appointments Advisory Board. The cost of the board, estimated at €1 million per annum, seems to be a waste. The real issue is excellence of choice by the Cabinet, excellence of advice by the Attorney General and the Minister for Justice and Equality as to who the best people are who come through whatever filtration system there is and courage on the part of the Government to appoint people on the basis of merit, whatever their political leanings or whether they have any political leanings at all.

I welcome what the Minister said about the terms of the Bill. I particularly welcome his remarks about revisiting section 55(5) which appears to provide for a general regime of secrecy in regard to the manner in which the judicial conduct committee would carry out its functions. I do not believe the majority of judges want that stipulation even if some expressed a desire for it at an earlier stage. It is misguided and most people feel it should not be countenanced. On the other hand, the Judiciary is in a weak position and it must be protected from malicious, vicious attacks on it and there is, in the Bill, a screening mechanism to ensure that people do not bring complaints and have them adjudicated in public just simply in a kamikaze effort to destroy or impugn a person's reputation by having the opportunity under privilege to attack him or her. I believe this is right.

Some people may say that admonishment is not much of a sanction, but we do have to remember, as the Minister said, that the ultimate sanction is vested in these Houses, and that is the sanction of removal under the Constitution. Admonishment may sound somewhat Victorian as a term of criticism, but no judge would lightly disregard a public admonishment from a State council composed of a majority of his or her colleagues on the Bench. Short of removing a judge, it is hard to know what to do that would go beyond admonishment. Nobody is suggesting there should be a system of fines, and that would be, in my view, a very strange thing to do.

The Minister mentioned the question of a register of interests, and that is something about which I have had some worries. I fully accept what the Minister is feeling his way towards, which is some kind of private register that would be internalised into the process of a judicial council. The post of being a Superior Court judge, and I will deal with this for the time being, is not all that attractive today. If one had to lay bare what land or property one owned or what one's means were, in my view it would make people who had any substantial assets reluctant to start announcing what they were. It is an inhibition to those people who do have substantial assets going into politics that they have their private affairs raked over as to what they do or do not own. A lot of people who have wealth would avoid going into politics because they would see it as one area of their privacy which would be interfered with. It has always struck me that probably the greater issue for many judges is to whom they owe money rather than by whom they are owed money or what property they own. If one is indebted for €3 million to a particular bank should one hear a case involving that bank? Is that not much more of a worry? I only

mention this to point out the difficulty. I do not suggest that every judge has to register his or her debts to function on the bench. I think that is excessive.

I also want to mention the wording of section 58, which refers to accepting a “reprimand”, and section 63(5), which uses the term “admonishment”. I presume they are intended to be more or less the same thing. If they are, it would be a good idea if we decided one way or the other in the legislation to opt between “reprimand” or “admonishment” as the name of the declaratory criticism sanction we are dealing with.

The definition in the Bill of judicial misconduct set out in section 2 could perhaps be looked at again. It states judicial misconduct:

means conduct (whether an act or omission) by a judge, whether in the execution of his or her office or otherwise, and whether generally or on a particular occasion, that -

- (a) constitutes a departure from acknowledged standards of judicial conduct, such standards to have regard to the principles of judicial conduct referred to in section 7(1)
- (b) and 30(2)

The only thing I would say about it is the phrase “acknowledged standards” seems to be a little vague. There should be generally accepted standards as well as those laid down in any code of conduct. There could be arguments about what is or is not an acknowledged standard. The phrase “generally accepted standards of judicial conduct” might be more objective than “acknowledged standards”.

With these few remarks, I congratulate the Minister for bringing the Bill through. I regret it took so long for it to be put before the Houses. Subject to the Minister’s points about revisiting some of the sections of the Bill with a view to their improvement, given that these Houses sometimes have a dearth of legislative activity to carry out, this Bill should get fair wind in its sails and be put through with expedition, because there are mishaps in politics and it would be a tragedy if, after getting the Bill to this Stage, anything were to stop it going any further.

Senator Colm Burke: I welcome the Minister. I apologise for being slightly late. Senator Conway was to deal with this matter and he was delayed so I apologise on his behalf also. I welcome that the Minister has brought forward this Bill. Like my colleagues, I would also set out that over the past 90 years the Judiciary has served us well and has enjoyed total independence from the Oireachtas and the Government of the day. It has arrived at very fair decisions in its dealing with the public, whether in family law, criminal law or in any other area. There are times when we need to look and see what changes need to be brought about. The Minister has come forward with the Bill, setting out what those changes should be.

Regarding the courts system, there are checks and balances in our Constitution, in that the Government can be held to account through the courts system. Likewise, within the courts there are various appeals processes, whereby in the lower courts one can appeal from the District Court to the Circuit Court, cases initially tried in the Circuit Court can be appealed to the High Court on circuit, and matters in the High Court can go to the Court of Appeal. We introduced amending legislation in this regard in recent years.

The judicial council is something that, as Senator McDowell has outlined, has been sought by the Judiciary for some time. It is welcome that we are bringing it forward. I agree with Senator McDowell on the Judicial Appointments Advisory Board. I am just concerned about

the cost of it, in particular when I look back over the years regarding the fair and appropriate manner people have been appointed to the Bench, no matter who has been in government. As I have said, all of the judges down through the years have served us well and have enjoyed that independence without interference from the Government.

I have a concern about the complaints procedure as set out in the Bill. I believe there need to be checks and balances. Whether a case is about a dispute between neighbours or family law, no one will be totally satisfied. I recently spoke to a colleague about a family law case that has gone on for over 16 years in which a lay litigant has used all sorts of mechanisms within the court system to prolong a matter. Every member of the Judiciary operated in a very fair and appropriate manner and gave considerable leeway to the lay litigant. The problem is that the process has now taken a long time to deal with. That is because the judges felt they needed to give that space to the lay litigant. It is about having checks and balances. Nobody could complain about any of the decisions, but the problem for the person on the other side was that delay in the process. The members of the Judiciary are very concerned that a matter coming before the courts is dealt with in a speedy and timely manner. A decision needs to be reached and it should not be allowed to drag on *ad infinitum*.

The Court of Appeal was put in place due to a delay of over four years in having matters dealt with in the Supreme Court. I understand that a list is now building up in the Court of Appeal, which removes one of the advantages of setting it up. Hopefully that will also resolve itself.

Overall the Bill is welcome. The issue regarding the Judicial Appointments Advisory Board should be reconsidered. While going through the Bill in this House or in the Dáil, serious consideration should be given to that issue. Why do we need to introduce it at this stage given that there will be a cost factor? If the process that has been there for some time needs to be strengthened, so be it. I am not clear if we need to introduce the amendments that are now proposed.

I thank the Minister for introducing the Bill. I thank the Department of Justice and Equality officials for their work. Careful consideration should be given to the amendments.

Senator Niall Ó Donnghaile: Gabhaim buíochas leis an Aire. Mar an gcéanna le roinnt de na cainteoirí go dtí seo, tá mé sásta an Bille seo a fheiceáil ag teacht ós ár gcomhair inniu. I welcome the Minister and welcome the Bill, much of which is in concert with what I have been requesting during my short time in this House, as have many others going back even longer, as Senator McDowell said. I am happy to say that my party will be supporting the Bill through the various Stages although we will be proposing amendments on Committee Stage. I know the Minister will welcome and encourage those amendments, and participation by us and others.

The Bill on first reading appears to aim to promote excellence and best practice among judges and the functioning of the Judiciary. It put in place a system to deal with complaints about judges, which fall below the level necessary to trigger impeachment but are deemed not to be abiding by principles of best practice when administering the law of the State.

The judicial conduct committee, to be established under the Bill to examine complaints, will issue an annual report on its investigations. However, to the Bill's detriment, judges' names will not be published in that report unless they fail to co-operate with the committee or fail to complete a sanction imposed on them. I am unsure as to why such a provision would be in place. I ask the Minister to elaborate on that.

While I understand everybody is afforded the right to privacy as a citizen of this State, I fail to see a compelling argument as to why such a clause should be inserted in this Bill, something my party will seek to amend on Committee Stage. Under the Bill, inquiries will be held in private and it will be an offence, attracting a fine of up to €5,000 or a jail term of up to 12 months, to publish any document or evidence provided to the inquiry.

It is worth noting that the Legal Services Regulatory Authority will be holding inquiries into the conduct of barristers and solicitors in public and that no anonymity will be provided. It is not uncommon in other professions, so I do not understand why protections should be afforded to this one as some sort of privilege.

Public confidence in the Judiciary requires not only accountability for misconduct, but also transparency. However, that is not achieved under the legislation currently. Judges who behave improperly should be named. Judges who intend to act properly into the future should have nothing to fear from the inclusion of a measure to publicly name those who act improperly.

My colleague and Sinn Féin justice spokesperson in the last Dáil, Senator Mac Lochlainn, published legislation on 8 October 2015 that sought to introduce a sentencing council in this State. The Senator put months of work into that comprehensive legislation. We plan to introduce many of its provisions on Committee Stage as we feel it would further strengthen the Bill and would complement it.

A sentencing council already operates in England and Wales and provides sentencing guidelines to the Judiciary. This has ensured that sentences handed out for criminal offences in their courts are consistent and accountable across the board. Concern has arisen over recent years about the perceived inconsistency of sentencing in our courts. Of particular concern and controversy have been some sentences handed out for sexual offences, an issue that has again arisen only today after a very small sentence administered to a prominent journalist for a very grave and sickening crime.

Senator Mac Lochlainn has examined the model of the Sentencing Council for England and Wales for some time. We believe that this model of consistency and accountability should be introduced in this State. A key strength of the sentencing council model is that it involves a range of key stakeholders such as victim support groups, academics, senior police officers, senior parole officers and the wider public in the process of establishing sentencing guidelines for the Judiciary. As members of the Judiciary are the majority members of the Sentencing Council for England and Wales and a senior member of the Judiciary chairs the council, they are still central to the process.

However, the sentencing guidelines issued ensure that the Judiciary must stick to the range provided for the category of offence before them. They must also clearly indicate why they have sentenced an offender within that range, taking into consideration the impact on the victim and the blameworthiness of the offender. This ensures consistency and accountability across the court system and across the State.

Similar to the Sentencing Council for England and Wales, the sentencing council we are proposing for this State would develop sentencing guidelines and monitor their use, and assess the impact of guidelines on sentencing practice. It may also be required to consider the impact of policy and legislative proposals relating to sentencing when requested by the Government, and promote awareness among the public regarding the realities of sentencing and publishing

information regarding sentencing practice in our court system.

We must consider the impact of sentencing decisions on victims and monitor the application of the guidelines to better predict the effect of them. We need to play a greater part in promoting understanding of and increasing public confidence in sentencing and the criminal justice system overall.

I again reiterate my party's support for the Bill. I commend Senator Mac Lochlainn on his work on our amendment. I thank the Minister for making this Bill a priority and bringing it before us.

Senator Ivana Bacik: I welcome the Minister to the House, and I welcome this important and long-overdue Bill. Like others, I express my support and that of the Labour Party group for the Bill. I look forward to teasing out the proposals in it on Second Stage, and also on Committee and Report Stages.

As we know, the Bill will introduce for the first time a formalised system for the public to make complaints about judicial misconduct. Actually it is about much more than that. As the Minister did in his speech, many of our contributions will concentrate on Part 5, relating to the misconduct or complaints provisions. Of course, the judicial council is a far more important entity and provides for many more aspects than that. When one looks at judicial councils in other jurisdictions, one sees that these are forums where judges seek to ensure best practice, promulgate codes of conduct among their members and provide for support structures for themselves. We see that in this Bill. We know the need for a judicial council has been strongly recognised by judges in Ireland in order to enhance public confidence in the Judiciary and to affirm its independence. It is important for all these reasons.

Like other Senators, as a former practising barrister, I would like to say that we all appreciate the independence and integrity of the Judiciary generally and note the high regard in which our judges are held internationally. Ruadhán Mac Cormaic's great recent book on the Supreme Court illustrates that in his insights into the members of the Supreme Court and their work. We need to have a judicial council. This has been flagged for a long time. We have seen more than 20 years of consultations and promises to legislate. I note the Minister commended former Chief Justice, Susan Denham. It is important to commend her work leading to the preparation of this Bill. She has been very involved in the past in preparing draft legislation and pushing the need for this. I was struck by one comment she made saying there was a significant institutional vacuum where we do not have a provision for a judicial council. Those are the reasons it is important to see this Bill in place. I note, as others have said, that there was a commitment to a judicial council in the Fine Gael-Labour Party programme for Government in 2011. I am sorry that we did not deliver on that. I think Senator McDowell has also given a *mea culpa* about failure to deliver. Successive Governments have failed to deliver so having this Bill before us now is extremely welcome.

I know the Bill is part of a package of measures. Earlier this year, we saw the introduction of the Judicial Appointments Commission Bill. Others have commented on that. My view is that we could have strengthened the current Judicial Appointments Advisory Board, JAAB, and enhanced its powers to have greater effect without the need for the new Bill but perhaps that is only of historical interest.

Turning to the structures and provisions of the Bill, one has to acknowledge that there has

never been a completed process of impeachment under the Constitution and others have referred to the Article 35.4.1° procedure providing for impeachment for stated misbehaviour or incapacity. We have never seen a completed process to that effect in the Oireachtas but concerns were raised about particular issues and members of the Judiciary in the late 1990s and there was the Curtin case in 2002. That is part of the context of this.

Looking at the provisions of the Bill, one of the first things I wanted to refer to is its relationship with the constitutional procedure and, in particular, the definitions contained in the Bill. I think Senator McDowell referred to those. In section 2 of the Bill, we see the phrase “judicial misconduct”, which is used throughout the Bill, in particular in Part 5. That is the key concept on which the complaints procedure is built. The question I have is how that relates to the constitutional definition of stated misbehaviour or incapacity. A different phrase is used. It is misconduct rather than misbehaviour. What does this mean in practice? I am looking at the definition in section 2, constituting the departure from acknowledged standards of judicial conduct and so forth with reference to those principles set out on section 7(1)(b) and section 32. I think the standards in section 7(1)(b) are very important and welcome.

I particularly welcome the recognition of the need to ensure equality of treatment to all persons before the courts but reading on in section 7, perhaps more detail could be provided on those principles. I note that it is envisaged that the council will provide what are called guidelines. I do not see a specific reference to a code of conduct for the Judiciary. I know it was a recommendation in the 2014 Council of Europe Group of States Against Corruption, GRECO, report to which the Minister referred. Clearly the GRECO called for an independent statutory council to be adopted in Ireland but it also recommended a code of conduct for judges and a dedicated training service for judges. Are the provisions relating to guidelines referred to in this Bill sufficient to constitute a code of conduct such that we would have more detail on what the high standards of conduct expected of judges are and, in particular, where we fall short of those and where misconduct becomes misbehaviour?

I was interested in the provisions further on in the Bill which refer specifically to the relationship with the Constitution, particularly section 67 of the Bill which gives us what we might call the transition process, which is the referral by the judicial conduct committee to the Minister of a matter relating to conduct or capacity of a judge which Article 35.4 prefaces. That seems to provide the only route for the judicial council to take where a panel of inquiry has formed the opinion that a matter disclosed by the investigation relating to conduct or capacity is of such gravity that it would justify a referral by the judicial conduct committee with regard to that judge. That provision in section 67(3) seems to be the only guidance given to the panel of inquiry and the judicial conduct committee on when a matter becomes misbehaviour of a constitutional nature as opposed to misconduct of a statutory nature. Can more detail be given to that or is that sufficient? Are we satisfied that it is enough definition to govern the relationship between statute and Constitution?

I have spoken about section 7, the functions of the council and why there is no reference to a code, as I see it. GRECO required that the issue of training be addressed and I welcome the provisions for it. Section 17, on the Committee for Judicial Studies, is very welcome. I am grateful to Maeve O’Rourke from the Irish Council for Civil Liberties, ICCL, for pointing out to me that it might also be worth including a specific reference to training on human rights and equality provisions. There is a specific mention about training in IT which is clearly important, as it is for all of us to increase capacity in that area. Given the reference in section 7 to standards and equality of access to justice, perhaps we should have something about equality and

discrimination. I will give a short anecdote. In an academic capacity some years ago, I gave a paper to what is called “judges school”, the Judicial Studies Institute, to judges about the right to an interpreter before the courts. In the course of researching that, I came across some quite serious issues relating to comments made by individual judges, generally at District Court level, about nationalities of persons coming before the courts. I will not go into more detail on that but it is in the public domain and it is an area where there has been public concern. It might be worth having a specific reference to human rights and equality obligations in section 17 although there is a general provision about training. The legislation could also make provision for the right of judges to pursue further academic studies which is a recommendation from the Irish Council for Civil Liberties when talking more generally about judges’ councils in 2007.

The sentencing information committee mentioned in section 18 is welcome. We need to enhance our capacity there. I have a more general point arising from provisions in sections 37 and 51 about the role of the complainant. While there is much focus in Part 5 of the Bill on the judge about whom a complaint is made, and rightly so, I wonder if we should focus more on the complainant. The Part 5 procedure is complex. I am grateful to the Oireachtas Library and Research Service, which provided us with a very useful diagram showing how complaints would proceed. When one reads Part 5, it is hard to follow the process. Should there therefore be provision, where a complaint is found admissible and a panel of inquiry has been constituted, to provide assistance to a complainant? The ICCL suggests access to free legal representation once the matter proceeds to investigation. I take the point that costs are involved here and that complaints may be made which are not admissible and are ruled out. I do not know about free legal aid. I think there can be more support and provisions for complainants. For example, in section 62, where an investigation is adjourned by the panel of inquiry, there is a provision that the panel of inquiry must notify the judge that it is adjourning the investigation but there is no provision that it must notify the complainant. That is a very basic matter. In section 64, there is a requirement that a report of the panel will go to the complainant but we need to make the procedure workable.

Acting Chairman (Senator John O’Mahony): The Senator must conclude.

Senator Ivana Bacik: I shall now turn to the issue of the sanctions and the refusals. With regard to the reprimand or admonishment, for clarification the reprimand is something that happens at an earlier stage and an admonishment is at the conclusion of an investigation. Section 58 covers where there is failure or refusal by a judge to co-operate and the panel of inquiry makes a report to the judicial conduct committee, but it is hard to see where it goes after that.

My final point is on the secrecy. I am delighted to hear the Minister commit, I think, to making amendments on the issue of proceedings to be heard otherwise than in public. Sections 55 and 69 currently are weighted the wrong way and I suggest that we have a good precedent in the Medical Practitioners Act 2007, section 65 of which states that, “A hearing before the Fitness to Practise Committee shall be held in public unless...”. The presumption is, therefore, that hearings are held in public.

An Leas-Chathaoirleach: The Senator’s time is up.

Senator Ivana Bacik: There is provision that hearings may be held in private, or otherwise than in public, where it would be appropriate in the circumstances. That would be an appropriate amendment and I thank the Minister for his time.

An Leas-Chathaoirleach: I call on Senator Boyhan and he has six minutes.

Senator Victor Boyhan: I welcome the Minister. I will not be taking the eight minutes and I will not repeat what everyone else has said-----

An Leas-Chathaoirleach: The Senator does not have eight minutes. He has six minutes.

Senator Victor Boyhan: Okay six minutes. I am sorry.

An Leas-Chathaoirleach: The Senator stands corrected.

Senator Victor Boyhan: I shall not repeat what everyone else has said, although it has all been very valid. I welcome the Minister and I welcome this legislation. The very first thing I did when I came into the House was to propose a motion under Private Members' business, which was passed by this House, when the Tánaiste, Deputy Frances Fitzgerald, was the Minister for Justice and Equality. The motion was broadly welcomed. It was suggested that in December 2016 it would come back to the House. It has been a long time coming and I welcome that. I note in particular the tone in the Minister's speech in the House today. It is clear that he has taken a fresh look at it. The Minister referred to that in his statement.

I have listened to Senator McDowell's contribution and I am interested in the area of the register of interests for the Judiciary. I note the Minister's comments in this respect. We have to tread carefully but I believe there is a case for instilling confidence and there is a desire by people that we have some greater understanding of the process. I am aware that it must be careful. We need to encourage people into this profession. The Minister has made the point that this legislation has to be balanced. This is very important. In his final comments the Minister said that he believes the Bill, "achieves the requisite balance between independence and accountability". That is a really important balance. Personally, I would favour some sort of register of interests for the Judiciary. As politicians we have to complete registers of interests in respect of our work and we are all pretty familiar with that. Local government practitioners, councillors and all sorts of professions now have registers of interest. We must guard carefully what it is about. Senator McDowell raised the valid point about a register of debts of people in the profession. Independence is important.

Maeve O'Rourke was in the House when my colleague across the House discussed the Criminal Justice (Victims of Crime) Bill. The Government opposed an amendment to that Bill that I had tabled, and which was agreed by this House. It was opposed in the Dáil. The amendment proposed a provision for mandatory reporting around the training of the Judiciary, especially in the areas of victims of crime. Perhaps the Minister might take that on board as part of the process.

On balance I believe the Bill to be fair and it is welcome. It is an area that people want to understand. They want to see that the Judiciary is treated like any other profession with a regime regarding conduct. It is welcome legislation.

I am aware that we will have a further Stage on which to table amendments but I particularly welcome the clear set of rules being proposed around the conduct of the Judiciary and the issue of pecuniary interests. It is a balanced Bill. I am not saying that it is open season. We may look at other models and there may be a private register that could be inspected. These are all sensitive issues but they should be addressed.

Senator Martin Conway: Cuirim fáilte roimh an Aire go dtí an Teach. On a personal note I thank the Leader of the Seanad, Senator Buttimer, for allowing Senator Colm Burke to cover for me on this issue earlier. I was unavoidably detained in my constituency.

This legislation is long overdue and very welcome. The establishment of a judicial council brings Ireland in line with best international practice. The Minister may have referred already to the unparalleled record of excellence in the manner in which members of the Judiciary do their job. This is well recognised internationally. When the troika was in Ireland it could not challenge the absolute integrity of the Judiciary in Ireland and the independence afforded to the Judiciary directly through the Constitution. Ireland is probably one of the European countries with the longest tradition of democracy. This has been underpinned, in part, by the excellence and independence of the Judiciary. That message needs to go out from Seanad Éireann loud and clear as we begin a new chapter in the distinguished existence of our Judiciary in bringing it into line with best international practice. We are proofing the Judiciary going forward. No more than any profession there will be bad eggs from time to time. When this happens, the bad eggs need to be dealt with in an open and transparent manner.

I absolutely agree about the detail of the Bill. The proposed judicial council will bring the Judiciary into a very modern era. The Chief Justice has allowed cameras into the Supreme Court recently to record the delivery of a judgment. This is a reflection of how the Judiciary wants to see the profession modernised and evolving with modern times.

The proposals in the Bill have a significant amount of positives. I am sure that as we move on to Committee Stage there will be amendments tabled, not just from across the House but also from the Minister, as the legislation continues to firm up. The notion of a system where people declare their interests is very important. I agree with the comments made on this by Senator Boyhan. As Members of the Oireachtas, Senators must submit information annually on properties we own to the Standards in Public Office Commission. Given the important role played by the Judiciary, and in order to prevent any suggested conflicts of interest, a register is certainly worth continued discussion.

The power to impeach a judge remains with the Oireachtas, under the Constitution - I believe it is Article 35.4.1°. That is enshrined in the Constitution and is the ultimate sanction.

The contributions made here today have been positive overall. I thank the Minister for initiating this legislation through Seanad Éireann. I look forward to and hope for a positive engagement to ensure the legislation is as good as we can produce.

Minister for Justice and Equality (Deputy Charles Flanagan): I acknowledge what was a very constructive debate. Many important points were raised and I thank Senators Wilson, McDowell, Ó Donnghaile, Bacik, Boyhan and Conway for their contributions. Valid points have been made.

Almost all of the Senators who spoke made reference to the length of time involved in the preparation of this legislation. In this regard I will be very open to giving positive consideration to any reasonable proposals that come by way of amendments on this legislation.

4 o'clock The wide-ranging nature of the debate underlines the importance of the issues and the concerns we all share around the need for a Judiciary that adheres to the highest standards of probity and which continues to have a very high degree of trust and confidence of the people.

We have that currently but it is important we maintain it on the basis that judges continue to have a vital role to play in our society. Citizens come before the courts daily in large numbers, and going to court can be a stressful experience and a time of worry, difficulty, challenge and, in some respects, trauma. That said, I believe that all our citizens and everyone appearing before the courts enjoys a legitimate right to expect that the highest standards of independence, impartiality, integrity and behaviour will prevail at all times.

The relationship we have as a society with the members of our independent Judiciary is complex. As an institution, the Judiciary derives strength from the confidence we repose in it, and it acts without fear or favour, as it should. We in turn, therefore, feel secure in the knowledge that we can trust it to do its job to the highest possible standards. Judicial independence continues to be recognised, and rightly so, as a core value within our society. The founders of the State were wise in the way in which they gave explicit constitutional effect to that recognition. I believe it is important, therefore, in the context of whatever final shape this Bill has when it goes for enactment, that it will continue to foster that culture of independence and impartiality. It will also ensure there is appropriate oversight in respect of the conduct of judges and will be of benefit in supporting continuing professional development among judges, having regard to the advances in our economy and our society, technological or otherwise. All of us in our professional lives, no matter what we do, need to keep abreast of new developments in advancing technologies, changing practices and anything else that can enhance and further develop our capacity to work in a way that can be described as more efficient. Judges are no different in this regard, and I know they welcome the more structured approach to education and training provided for in the Bill.

I will very briefly advert to some of the points raised by Seanadóirí in the course of the debate. Again, I would be keen to ensure a sufficient lapse of time between Second Stage and Committee Stage to allow for many of the issues we discussed to manifest themselves in amendments, and I assure the House of my full co-operation in this regard.

I welcome Senator Wilson's indication that his party, Fianna Fáil, will support the Bill. As I mentioned at the outset, the Bill has a long history and it has outlived many Governments. I also acknowledge the support of the Opposition, including Senator Ó Donnghaile's and Senator Bacik's welcome for the Bill. I note the point that was made about confidentiality. I have already given a commitment to bring forward amendments on this point but I am open to hearing the views of other Senators. Senators McDowell and Ó Donnghaile also referred to this matter. I agree there is a greater willingness to embrace transparency in this area and I very much welcome that. I acknowledge what Senator Wilson said in reference to the possibility of a member of the public making a complaint against the president of a court where the judge concerned is a member of that court. I understand that this may happen, but on an informal basis. I do not have statistics in that regard at this point. Should I be in a position to provide the Senator with further information on this, I will be happy to do so.

Both Senators Bacik and McDowell referred to the definition of judicial misconduct. I note the reference to "acknowledged standards of judicial conduct". I feel that must be read against the explicit reference to the Bangalore principles. Looking at the Bangalore principles, I think there is a reasonable precision there. As for the use of the term "a code of conduct" as opposed to "guidelines", as referred to by Senator Bacik, I acknowledge that differing terms are used in different jurisdictions. In essence, I do not see any significant difference between the terms. If a better understanding or clearer interpretation would come from the use of one over the other, I am happy to consider it.

I note Senator McDowell's reticence about the matter of the register of interests and I would be happy to hear more from Seanadóirí in this regard. This is a sensitive issue and a delicate matter, but we should be mindful of developments in other jurisdictions, particularly jurisdictions of a similar common law nature to ours. As I said in my initial remarks, I am giving careful consideration to what in the circumstances might be feasible, whatever shape such a register might take. I would be happy to discuss this issue with Senators openly but we have an opportunity here to see how best we can deal with this issue, and I hope we can do so.

Senators Colm Burke, Michael McDowell and Diarmuid Wilson mentioned the Judicial Appointments Commission Bill. Senators will be aware that Bill is currently making its way through Dáil Éireann. It was published in June, and Second Stage was taken before the summer recess. We spent a day discussing the Bill on Committee Stage before the Select Committee on Justice and Equality last month. I can now say that Committee Stage is due to resume in January - I think the date of 18 January was given. It is whatever the Wednesday that is closest to 18 January. I acknowledge, as Seanadóirí will be aware, that a large number of amendments have been tabled. I have an open mind about some of the areas raised in amendments to that Bill but I will have difficulty agreeing to any amendments or making any changes that cut across the basic tenets of A Programme for a Partnership Government and the commitment towards a new judicial appointments commission with an independent chair and what has been described as a non-legal or lay majority. This House will have an opportunity to debate that legislation in its entirety at an appropriate time to be considered after the Dáil has completed its deliberations some time next year.

Senator Ó Donnghaile referred to the need for a sentencing council. The Bill provides for the setting up of a sentencing information committee. The functions of such a committee are to collate an appropriate level of information on sentences imposed by the courts and to disseminate that information from time to time to judges or interested stakeholders, who may be persons other than judges. However, I do not envisage that such a committee will have a role in preparing sentencing guidelines, which, in essence, would be binding on judges. Without seeing the detail of the Bill referred to by Senator Ó Donnghaile, I would hazard a guess that it goes a little further, perhaps considerably further, than what is envisaged under this Bill in the sentencing information committee. However, regarding that committee, it would be expected that the transmission of such information would be very valuable in promoting the overall approach which I think we all agree needs to be consistent regarding the practice of sentencing, not in any way interfering with the fact that each and every criminal case has its own particular circumstances.

It would be unwise to impose any restrictions that the Judiciary might consider cut across its independence in terms of sentencing. The House dealt with such a Bill earlier today and I appreciate it is a matter of concern for Senators.

The sentencing information committee will be mandated to conduct research on sentences imposed by the courts, which will undoubtedly be of benefit to judges, practitioners and the wider public, including those who appear before the courts and those who do not but have an interest in the matter as citizen stakeholders.

A number of Senators, including Senators Bacik and Boyhan, referenced the need to be more explicit in terms of the training required, which is a reasonable point. I am open minded on the issue but it is often better to have a general inclusive provision rather than a list as that runs the risk of something being omitted. Having a general framework is often more inclusive.

However, we can revisit the issue on Committee Stage.

Senator Bacik referred to the adequacy of the guidance offered to a panel of inquiry when it comes to the reference of a matter to the Minister for action under Article 35 of the Constitution. I again caution against a list as being too prescriptive. However, I am willing to look at the language of the provision and I am happy to engage on it. As regards the refusal by a judge to co-operate with a panel of inquiry, it is explicit in the Bill that in such a case the name of the judge would be published in the annual report with the appropriate adverse consequences that would ensue.

I acknowledge the useful nature of today's debate and the positive tone of all who made a contribution. I apologise if I have not addressed all the points made by Senators in the time available to me but I assure the House that I have carefully listened and will give appropriate consideration to all points made and proposals mentioned and look forward to a more detailed examination of the Bill on Committee Stage. I reiterate that I am open to offering a positive response to what might be regarded as reasonable proposals for amendment. Let us hope that we can put legislation on the Statute Book that will stand the test of time and acknowledge the very detailed consideration the legislation has had in draft form over many years and Governments.

Question put and agreed to.

An Leas-Chathaoirleach: When is it proposed to take Committee Stage?

Senator Martin Conway: Next Tuesday.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Committee Stage ordered for Tuesday, 28 November 2017.

Sitting suspended at 4.15 p.m. and resumed at 5 p.m.

Defence (Veterans Lapel Badge) Bill 2017: Second Stage

Senator Gerard P. Craughwell: I move: "That the Bill be now read a Second Time."

I thank the Minister of State for coming to the House today to debate my Defence (Veterans Lapel Badge) Bill 2017. The Bill provides for the establishment of a veterans lapel badge to be conferred upon members of the Army, Air Corps, Naval Service and Reserve Defence Force by the Minister for Defence.

The purpose of the veterans lapel badge is to raise the profile of our Defence Forces veterans, who have served their country with bravery and loyalty at home or abroad, or both. The awarding of the veterans lapel badge by the Minister for Defence would be a very appropriate recognition of the selfless and dedicated contribution of Defence Forces members in the protection of the State, and of their participation in multi-national peacekeeping and humanitarian aid missions in support of the United Nations. I acknowledge the dedication and commitment of Defence Forces members in providing fisheries protection, search and rescue service, air ambulance and assistance in natural disasters. The awarding of the veterans badge would also visibly recognise the work of our Defence Forces in assisting the civil powers, such as An Garda Síochána, in protecting the internal security of the State.

During active service, many Defence Forces members are decorated with military medals. These are bestowed in recognition of a specific act or service, which can vary in significance from routine duty to bravery and valour. These naturally are highly valued and well-earned. What I am proposing is not a medal, but a simple badge or pin which can be worn by everybody who has completed active service, regardless of whether he or she ever received a medal. Ireland is unusual in that we do not have a veterans badge, or a veterans day. In other countries, this is commonplace, and I believe that both a badge and a special official national veterans day would be welcomed not just by the veterans and their families, but by the public in general. Today, I hope to get this under way, with the badge as the first step.

I know that the principle of military neutrality remains a core element of Irish foreign policy, and the numbers in our Defence Forces are small compared to other countries. However, the dedication and loyalty of the women and men who have served is no less valuable than those of service personnel from our larger non-neutral European neighbours. Their contribution equally deserves formal recognition not just during active service, but upon retirement. As a former soldier, I am very aware of the sense of unity, camaraderie and *esprit de corps* shared by Defence Forces veterans, and I know how good it would feel to recognise immediately another veteran by their lapel badge. When I travel abroad, I often recognise veterans from other jurisdictions by their lapel badges. In fact, those displaying veterans lapel badges or carrying veterans recognition cards are often offered discounts on services and goods and, for example, free entry to public buildings as a token of thanks for the service they have given their states.

To have served one's country is a great honour. It is something which veterans take very seriously, and it behoves us all to do the same. In putting this Bill before the House, I would also like to commend the organisations which support veterans in very practical and often life-saving ways. In particular, I acknowledge the work of Óglaigh Náisiúnta Na hÉireann, ONE, which ensures the welfare of ex-service personnel by providing accommodation to homeless, elderly or disabled members in need. They also offer support at several locations throughout the country, and we are all familiar with the fundraising fuchsia badge and annual appeal. I also pay tribute to the Irish United Nations Veterans Association, which provides support for the soldiers, gardaí and civilian personnel who serve in often dangerous and difficult circumstances. I also acknowledge and praise the many unit associations who play a massive role in supporting veterans from their units around the country. I thank the Minister of State, Deputy Paul Kehoe, for the support he gives to those organisations through the Department of Defence. It is valuable and vital.

Defence Forces members' values of selflessness, respect, integrity, moral and physical courage and loyalty do not disappear at the end of their service period. Such values have been deeply instilled and integrated into the characters of our soldiers and sailors, and remain with them as they continue their journey through civilian life. These men and women do not just make excellent service people, but they make exemplary citizens, and they should be recognised for their commitment to the State, however short or long.

I thank the Minister of State and our former Taoiseach, Deputy Enda Kenny, for officially recognising the bravery and valour of the men of A Company, 35th Battalion, who fought so heroically at the Battle of Jadotville, and who will be finally recognised thanks to the Minister of State, Deputy Kehoe, at a medals ceremony in Athlone on 2 December. I thank the Minister of State again and I commend the Bill to the House.

Senator Victor Boyhan: I welcome the Minister of State to the House. I also acknowledge

the enormous work that Senator Gerard P. Craughwell, a colleague of mine, has done on a broad spectrum of issues relating to the Defence Forces. Across all parties and none, we can all vouch clearly for his huge commitment. This is a man who has served as a soldier himself, who has personally experienced many issues with comrades and colleagues in the Defence Forces, and who has shared many an agony and hurt.

It struck me as I was reading this Bill this afternoon that it is very simple. The lapel badge is a very simple gesture, but it is a critical one. It is symbolic and it is important because it is the State and the Minister for Defence acknowledging the men and women who put their lives on the line for our country, nationally and internationally, including on peacekeeping missions in Europe and across the world.

We have a proud tradition in our Defence Forces through their work and engagement and their humanitarian efforts. Let us not forget, however, that they put their lives on the line. They bring their physical and emotional scars home. Families and loved ones also suffer the pain and anguish, and it is so important that they collectively are recognised by the State for their work and commitment. They are honourable and noble people of whom we, as a country, and especially as politicians in both Houses here, can be particularly proud. I know that the Minister of State is close to this area. The Minister of State works in this area and is ultimately responsible for it. I know that he is very proud of the work of the Defence Forces. He has acknowledged this on many occasions and I want to do the same here.

What does this Bill do? It provides for the establishment of a veterans' lapel badge, to be conferred upon former members of the Army, Air Corps, Naval Service and the Reserve Defence Force. This may be simple but it is an important symbol of recognition. Let the gesture not just stop there, however, important as it is. Let us also remember the need for continuous support for the people who served in our Defence Forces, along with their families and loved ones, in terms of welfare, mental health and how they can come back and engage in their communities and get on with their lives, particularly if they have suffered trauma. Such trauma does not have to be physical. Many have inner hurt and scarring; many have emotional problems. Some might call this "baggage" but they are wounds nevertheless. Those who have served this country in the Defence Forces need to know that they have that support. This is very important.

I want to particularly acknowledge the work that Senator Craughwell has set out here in this simple proposal. I will finish by saying that this is a simple gesture but an important one. It is a noble, great and honourable thing for a State to bestow such recognition on the service of these individuals to their country and also to the wider world. I commend and again thank Senator Craughwell for initiating and pursuing this piece of legislation.

Acting Chairman (Senator Michelle Mulherin): I call on Senator McFadden. She has eight minutes.

Senator Gabrielle McFadden: As I have said many times before, eight minutes is a ceiling rather than a target. I thank the Minister of State for coming to the House again. I acknowledge the positive intent of this Bill and I personally have a huge grá for our veterans. I admire the wonderful way in which they have served their country and the enormous loyalty and bravery with which they have done so. I have a long and proud family association with the Army. I grew up next door to Custume Barracks in Athlone and I know first hand the work that the soldiers in the barracks do, not just for the country but right across our community. We in Athlone know this better than anyone, having received great service from the Army on numer-

ous instances of flooding.

We in Fine Gael are not opposing this Bill. I am not entirely sure, however, what its purpose is. Nor am I entirely sure that we need another medal or lapel badge to pay tribute to the men and women who have served our great country. What I am sure of, however, is that there are other ways in which we can pay tribute to and support them. There are already many medals for the Defence Forces: service medals for ten or 15 years; the national medal; the bravery medal; and UN medals for every overseas mission. After far too long a wait, as has already been mentioned, a Jadotville medal will shortly issue to our brave heroes of 1961. All of these medals are recognition for our veterans and all are provided by regulation rather than by primary legislation.

I believe that a more fitting way to pay tribute to these great soldiers would be to continue to support them through veterans' organisations, to meet them regularly and to respectfully listen to their needs. Perhaps the Minister of State might be in the position to commit here to increasing the number of meetings he and his Department have with these veterans so that he is kept completely up to date with all of the issues they face. I would love to see an increase in the grant aid to these associations so that better services could be provided to our veterans. As has already been mentioned, Óglaigh na hÉireann provides housing to veterans but it struggles terribly for the funding to do so. Perhaps the Minister of State and the Minister for Housing, Planning and Local Government, Deputy Murphy, could come together to discuss the issue of housing for veterans. This is very important.

I would also love to see the Minister of State facilitate access to Defence Forces property for use by veterans struggling to find meeting places. It can be very difficult for veterans when they leave the Army as they can suddenly find themselves with nowhere to go everyday. Access to meeting places would be very beneficial to them.

I move on to other matters. All of the veterans' associations premises were to receive a framed 1916 centenary commemoration plaque signed by both the Minister of State and the Taoiseach. When will these be delivered? This will be a very proud day for the veterans. We can further support the veterans by implementing projects 51 and 59 of the White Paper. I was present at Farmleigh when that White Paper was drawn up. These projects deal with the systems, procedures and scheduled training necessary to ensure that members of the Permanent Defence Force, PDF, are prepared for the transition to civilian life following military service, something that is very difficult for many soldiers. The projects also serve to further develop the supports available to exiting personnel and veterans. I wonder if the Minister of State might update us on the status of these projects when he makes his contribution here today.

I will finish with a line from John F. Kennedy: "A nation reveals itself not only by the men it produces but also by the men it honours and the men it remembers." I am sure that he would include women in that were he around today. It is very important that we honour and remember our veterans. Most important of all, we need to look after them.

Acting Chairman (Senator Michelle Mulherin): I call on Senator Diarmuid Wilson. He has eight minutes.

Senator Diarmuid Wilson: I thank the Acting Chairman and welcome the Minister of State to the House. Fianna Fáil will fully support this Bill as initiated by Senator Craughwell and his colleagues. This Bill provides for the establishment of a veterans' lapel badge to be

conferred by the Minister of State with special responsibility for defence upon former members of the Army, Air Corps, Naval Service and the Reserve Defence Force. Whether the provision of such a badge requires legislation is not clear but we fully support the concept of veterans receiving it.

The purpose of the veterans' lapel badge is to raise the profile of our Defence Forces veterans by assisting the wider public to easily recognise and acknowledge veterans who have served their country either at home or abroad. While the principle of military neutrality remains a core element of Irish foreign policy, and while the numbers in our Defence Forces are small compared with other countries, the dedication and loyalty of the women and men who have served is no less valuable than that of those from our larger, non-neutral European neighbours. Their contribution deserves equal formal recognition, not just during active service but also upon retirement.

Irish troops are today deployed in United Nations, European Union and NATO-led missions in Africa, Europe and the Middle East. They leave their families for six months at a time, missing milestones such as birthdays, christenings and family weddings. When they go abroad they are aware that they are going on a peacekeeping mission, often to very volatile and fragile countries. They are most certainly more at risk then, than if they were to stay at home. There were scenes of jubilation at Dublin Airport last Friday when troops returned home from a six-month deployment in south Lebanon. Watching the news on Friday, I saw troops walk through the airport doors, some from my own town of Cavan, to be greeted by families delighted to have them safely home for Christmas. All of the troops walking through those doors were wearing their Irish Army uniforms. They were easily recognisable in their blue berets. With this Bill they can now be recognised by the badges on their lapels. The author of the Bill, Senator Craughwell, himself a former soldier in both the British and Irish armies, is very well aware of the sense of unity, camaraderie and *esprit de corps* among the Defence Forces veterans, and how good it would feel to be able to recognise other veterans by their lapel badges.

Former Liberal Democrat M.P., Stephen Gilbert, published legislation in the House of Commons on Armistice Day 2014 calling for a national defence medal to be introduced in the United Kingdom. The aim of his legislation was to honour the millions of armed forces veterans who did not in fact fight in battles. Mr. Gilbert argued at the time that those who give themselves to their country should be recognised. This argument still holds today. The decision to serve is no less impressive and worthy than that of those who have seen conflict. We understand that Senator Craughwell will be moving amendments to introduce a military covenant for the Defence Forces along the lines of that in place in the United Kingdom. Fianna Fáil will be proud to support those amendments.

I acknowledge, as Senator Craughwell did, the enormous contribution the Minister of State, Deputy Kehoe, has made, together with the former Taoiseach, Deputy Enda Kenny, in ensuring the heroes of Jadotville are recognised. On many occasions in this House I have raised issues concerning the Defence Forces, as has Senator Craughwell. I join Senator Boyhan in paying tribute to Senator Craughwell for his work in bringing forward these proposals. Senators Mac Lochlainn, McFadden and others have raised concerns about the low morale among personnel in the forces. Given that the matter has very little recognition outside of their own ranks, it is up to us to highlight the difficulties they are experiencing.

I take this opportunity, rather than having to raise it on the Order of Business, to refer to an email I received from Mr. DJ Moore of the Kildare North comhairle Dáil ceantair of my party

in which he points to a motion that was proposed at a recent meeting by Mr. Joe Kelly from Sal-lins and Councillor Michael Coleman, both of whom are Defence Forces veterans. I understand Councillor Coleman is known to Senator Craughwell. In his address to the meeting, Mr. Kelly said that the core structures of the Army are under increasing strain and that, as a result and due to manpower shortages, soldiers are completing often traumatic tours of duty without receiving the necessary psychological aftercare before then being sent off on further tours without appropriate rest. Mr. Kelly pointed to the urgency of the situation whereby two thirds of recruits are leaving after training and concluded by noting that while the Army had never let down the State, the men and women of the armed forces feel the State is letting them down. Those few lines sum up what we in this House have been attempting to bring to the attention of the Minister of State and the Government.

I acknowledge the Minister of State has a difficult situation to deal with but I ask him to grasp it with both hands and take on his own Department. We have seen in recent days and in recent years how Departments, and some high-ranking officials in those Departments, can mislead the person who has political responsibility and hang him or her out to dry. I implore the Minister of State to grasp this issue with both hands and discover what is really going on in his Department. I pay tribute to the work he is doing as Minister of State at the Department of Defence.

Senator Pádraig Mac Lochlainn: Sinn Féin supports this Bill and commends Senator Craughwell on bringing this important issue before the House. Its provisions offer a means of honouring those who have served in our Defence Forces and brought honour upon our country. We are immensely proud of our Defence Forces, particularly those members who have served overseas. The calibre of the men and women who represent Ireland on the international stage, especially in the area of peacekeeping, is best exemplified by the men who participated in the Jadotville siege in 1961. I am overjoyed that the surviving veterans of that event and the loved ones of those who have passed away will be presented with medals. It was important to finally have a standing up to elements within the Department of Defence who were resisting that development. I thank the Minister of State for listening to the voices in this House, as did the former Taoiseach, Deputy Enda Kenny. It will be a proud day for our country when those medals are pinned on our heroes' chests.

I hope this Bill will give us the opportunity to honour the heroes among the crew of the *LÉ Cliona* for their actions during the fire on that vessel in 1962. My colleague, the Sinn Féin spokesperson on defence, Deputy Aengus Ó Snodaigh, has written to the Minister of State about this. We would like to see commemorative medals presented to the loved ones of those who proved themselves so brave on that occasion. Eighty lives were saved as a result of the heroism they demonstrated. Of particular note were the actions of Lieutenant Pat O'Mahony, the engineer Maurice Egan, and the stokers Gerry O'Callaghan and William Mynes. They were all badly burnt in that incident and deserve now to be honoured for their incredible bravery. I hope this Bill will facilitate that.

The capacity to present medals for service given is something that can help to raise the morale of our Defence Forces. However, there have been several issues in recent times that have damaged the morale of personnel, with concerns regarding pay and conditions probably being top of the list. The University of Limerick report published some years ago was devastating in its outlining of how so many Defence Forces members rely on family income supplement to top up their wages. Some of them have had to sleep on boats and in cars because they cannot afford accommodation costs. That is not acceptable. These people bring honour to the State

by their service at home and on the international scene. We have all been immensely proud, in particular, of those personnel who served in the Mediterranean in recent years. We must pay these people a fair wage, not have a situation where they require their income to be subsidised in order to get by.

My party colleagues, Deputies David Cullinane and Aengus Ó Snodaigh, have published a Bill that would allow members of An Garda Síochána and the Defence Forces to join trade unions. In the interest of the security of the State, the Bill does not propose to facilitate their ability to strike, but it would give them access to the Labour Court and the Workplace Relations Commission and allow them to participate in wage negotiations and agreements. It would define them in legislation as workers, while acknowledging citizens' concerns that they do not have the capacity to strike. I hope the Minister of State will give serious consideration to that Bill.

I am sure the Minister of State has received representations from a range of Oireachtas Members regarding the restructuring of brigades and how that is impacting on resources and the conditions of serving members in terms, for example, of the long distances they have to travel, from places like Donegal and elsewhere, to make duty in Dublin city. That is an issue about which Senator Craughwell has spoken at length.

I urge the Minister of State to support the Bill before us this evening. He and I do not always see eye to eye, but I take this opportunity to acknowledge the decisive action he has taken on Jadotville. That was a marvellous intervention which demonstrated his capacity to stand up on these matters. I ask that he take note of the issues I raised regarding the rights and morale of members of the Defence Forces. We in these Houses must work together to do better by the men and women serving this country. It is good to have a chance today to express our immense pride in them. I had the opportunity when I was defence spokesperson for my party to travel to Haulbowline naval base, Baldonnell Aerodrome, Michael Collins Barracks and other barracks across the State. We have the most wonderful Defence Forces personnel, people who have great pride in their work and show enormous professionalism in the way they apply themselves, particularly on international service. We must work harder to stand by them and show our appreciation of what they do. The Bill before us today represents a good start in that regard, as does the decision to present medals to our Jadotville heroes. We must keep that momentum going.

Senator John O'Mahony: I am pleased to have this opportunity to pay tribute to the Defence Forces. We are all very proud of their service during State occasions, including last year's 1916 commemorations. We are proud of the work of our Naval Service in the Mediterranean. As Senator Wilson said, we are very proud of the troops who come back from overseas peacekeeping duties. As citizens, sometimes we can take the Defence Forces for granted. The Minister of State has taken on the issue of Jadotville, which was mentioned already. It was an important issue which the Minister of State helped get across the line with our former Taoiseach.

Senator McFadden talked earlier about the importance of morale and support for our veterans and Defence Forces in general. It is hugely important. There is ongoing recruitment as a result of people leaving the Army. Having some family connections to the Defence Forces, it is important to realise the immense pride they take in representing the country at home and abroad. It is in all our interests to confront whatever issues are there. The Minister of State is doing that bit by bit. He cannot change the world in a short period. I am not sure about the

detail of the Bill, how many veterans there are or what administrative difficulties it might produce, but it is a means of recognising both veterans and people who have served in the Army. It would be an acknowledgement of them on an ongoing basis.

Senator Gerald Nash: I welcome the Bill and thank Senator Craughwell for introducing it and taking the initiative. I commend all Senators who have supported it. I am not certain its objective necessarily requires it to be anchored in primary legislation. I will await the Minister of State's advice on that but perhaps it could be achieved by way of regulation. I am interested in hearing the Minister of State's views on it. Notwithstanding all of that, the adoption of a formal badge awarded by the State to honour those who have served in our Defence Forces is an interesting suggestion and something that would be welcome by all of us and which would find favour with the public. It is appropriate, when necessary, that our ex-service men and women receive some kind of formal recognition of their service from the State. It would be a mark of our respect as citizens and our gratitude and pride for our Defence Forces, which is something we do not express enough. I have worked on a number of initiatives on a regular basis with ONE and its chief executive, Ollie O'Connor. Some of my party colleagues in County Louth are directors of ONE and I very much respect and admire the work they do, often in very difficult circumstances. I note this is an initiative they broadly support.

I have some observations on the Bill, which I am happy to share with the authors. Section 4 states the veterans lapel badge may be worn on formal occasions. I suggest to Senator Craughwell and his colleagues to drop that provision. It should be a pin that is worn more widely. It should be worn with pride every day so that we as citizens can see for ourselves those who have served in our communities. They are people who are active in our communities and we can recognise the service they have given to the State in defence of our country. We do not promote or recognise enough the value our Defence Forces bring to our democracy and national life. I firmly believe that ex-service men and women are the best possible ambassadors we have for our Defence Forces and are in a prime position to promote the Defence Forces in our community and to encourage young men and women to consider joining the Defence Forces. Let them wear the badge with pride on a daily basis so we can recognise and identify those in our community who have served with distinction over the years. They have earned that right.

Section 5 sets out the criteria Senator Craughwell and his colleagues propose for the conferring of a veteran's badge. It says that any individual, regardless of time served in the Army, Naval Service, Air Corps or RDF would meet the criteria laid down for the awarding of a badge.

Section 6 states that the Minister for Defence would have sole discretion to confer the award. I do not agree with that provision. There is nothing in the Bill preventing the awarding or not of a veteran's badge becoming overly exposed to political interference of some description or another. I am not saying that would be the case but we need to prevent the possibility of something like that happening in the future and the awarding of a badge of this nature becoming a political football. One way of addressing this would be to provide for a formal application process for those who have served. The criteria are loose and any legislation that gives far too much discretion to a Minister is something we should guard against. I am a big fan of ensuring that we have very clear rules in legislation. In the past, we have seen primary legislation that was not that clear and which provided too much discretion to a Minister and was undone in the courts. These sections need to be tightened up. I suggest the awarding of a badge of this nature to veterans be restricted to those who have at least one contract of service. If they did not manage to fulfil that one contract of service due to ill-health, for example, then we could consider that. I am a strong believer in the idea that somebody should at least serve one contract

of service before they are awarded a badge of this nature by the State. We do not want to see somebody who has disgraced the uniform and been court-martialled and discharged receiving this badge and besmirching the good name of the Defence Forces and delegitimising it in some way. I hope they are issues that can be addressed on Committee and Report Stages.

On a separate but related matter, we are all familiar with the fuchsia campaign which Senator Craughwell referred to earlier. It is a very important initiative that raises much needed funds for ONE, an organisation that carries out extremely good work, as Senator McFadden said. The campaign is run in July of each year around the national day of remembrance. I am often struck by the fact that when I wear the pin in July, some people come up to me on the street to ask me what it is. They do not automatically understand what it signifies. That is a very poor reflection on us as a society. The poppy is extremely well anchored in British society, and rightly so. It is high time the Government gave some consideration to formally recognising the fuchsia as a national symbol of remembrance of those who have served or lost their lives in the service of our country. I ask the Minister of State to work with ONE and individuals in this and the other House to identify a mechanism whereby we can promote the fuchsia in an inclusive way so that people understand it is a symbol that has been adopted by ONE to remember those who have served. We should reflect on the role of our Defence Forces in the context of our democracy and society.

I am very taken by the comments made by Senator Mac Lochlainn and others. Over the years, everybody who has spoken on this legislation has put on the record of the Houses our concerns about the pay and terms and conditions of members of the Defence Forces. Far too many of our Defence Forces, both currently and in recent years, depend on subsidies from the State to make ends meet. It is a disgrace and it is something we need to reflect on seriously as a society. While we are talking about the legacy of the Defence Forces and how we remember and honour those who have served, the best way to honour our Defence Forces is to ensure that we recognise their right to make a decent week's pay for a decent week's work. They put their lives on the line in the defence of the State and in defence of peace across the world.

Senator Michael McDowell: I welcome Senator Craughwell's Bill and I welcome the Minister of State. I join others in congratulating him on the measures he is introducing in regard to the Jadotville survivors in terms of honour their service to the United Nations and to this country, which is belatedly but properly being recognised.

Other speakers have drawn attention to particular aspects of this Bill. One particular aspect of it that strikes me is the fact that it covers the Reserve Defence Force. I did a small amount of service in the former FCA. There are many people who made much bigger contributions to this State through FCA service and did extended service at a difficult time in our recent history. Volunteerism is very important to Irish society. I honour and respect the women and men who serve in the Reserve Defence Force. I believe it is a service we should collectively honour and respect and that we should give due credit to those people who for no personal gain put themselves in the service of this country and make themselves available to back up the Permanent Defence Force in carrying out its tasks and in creating the necessary infrastructure to enable it be a credible force and carry out its functions in different ways.

When I was Minister for Justice and Equality, the Garda Reserve was established. It was pushed through against considerable opposition at the time, which I take some pride in. My view was that in a time when there are people to serve their communities as reservist gardaí and where in many respects the links between local society and the gardaí who serve in localities is

becoming very distant, it was important there should be this particular function of being able to volunteer to serve one's country. It is a matter of deep regret for me that so many reservists, some of whom have written to me, feel neglected, sidelined, unused and unappreciated. We live in turbulent times as regards policing but I hope that the Minister for Justice and Equality, Deputy Flanagan, will give whoever will be in charge in the future a very firm instruction to get on with the process of building up of the Garda Reserve. Mr. Conor Brady, former editor of the Garda reform group and *The Irish Times* recently stressed the necessity for this particular step to be taken.

On the Bill, there are people who are natural badge wearers and people who are not. There was a time when one could not come into this House unless one was wearing either a fáinne or a pioneer pin. One was not allowed into either House wearing anything else. Nowadays people come into this House bedecked in ribbons and all sorts of other things such that it causes one to wonder what is on the menu any given day or week. I believe that former members of the Defence Forces, be that full-time members or reservists, would appreciate the opportunity to wear a symbol, not only on formal occasions as proposed in the Bill but, as stated by Senator Nash, on other occasions too, just to show solidarity.

Before I was Minister for Justice and Equality I was Attorney General. My former military police company, the 6th Field Company of the Military Police, was amalgamated with the 2nd Field Company Military Police. They were in two different brigades which became the 26th Field Company. As Attorney General and law officer of the State I stretched things and made the decision that there was a connection between my office and the military police as exponents of military law for which the Attorney General had a limited function. We had a reception in Dublin Castle to honour the members of the aforementioned units before they were formally stood down. The point was made earlier, and I believe this is the case, that ex-members of the FCA, the Permanent Defence Force and the Reserve Defence Force only get together at commemorative masses for their deceased colleagues. The Defence Forces could do more for former and retired members.

That said, it occurs to me that Senator Craughwell's proposal is a good one. A little bit of pride in respect of having served in the colours of this State should be reflected in the capacity to wear a badge and to be recognised in the ordinary course of daily life as somebody who has done so. I echo all that has been said in this House about the financial difficulties of many members of the Defence Forces, including that many of them are dependent on family income supplement and so on. I also echo what has been said about some veterans, namely, the need to provide housing and support voluntary organisations in that regard.

I was proud to attend the recent launch of the fuchsia badge at Lissadell House in the west of Ireland. There is immense goodwill towards the Defence Forces. The Minister of State and the Department of Defence should not underestimate the support among ordinary Irish men and women and the pride they take in and for the Defence Forces. They also should not underestimate that as an asset.

As I said earlier, I support the Bill although I accept Senator Nash's point that it needs to be tweaked a little. However, what is proposed in this Bill should not be a matter of ministerial discretion for a favoured few. It should be for everyone and the discretion should only come into play to prevent the badge from being abused or shamed. That is my view as to what should happen. I believe that it would be a great step forward if we were to adopt Senator Craughwell's proposal. I share the view that it may be possible to do this without legislation and I am abso-

lutely sure that if Senator Craughwell had not brought forward a Bill and instead had contented himself with a resolution, we would not be giving this issue the same attention that it is getting here today. Again, I congratulate him on that account.

Acting Chairman (Senator Gerry Horkan): As there are no other speakers indicating, I invite the Minister of State to reply to the debate.

Minister of State at the Department of Defence (Deputy Paul Kehoe): I welcome this opportunity to respond to Senator Craughwell's Private Members' Bill which proposes the establishment of a veterans' lapel badge to be conferred upon former members of the Irish Defence Forces. The Bill proposes that the badge is to be worn on formal occasions to enable other people to recognise former members' past service in the Irish Defence Forces.

The Government, the Department of Defence, the Defence Forces and I recognise the valued public service given by former servicemen and women of the Defence Forces to the State. The programme for Government pledges our support to veterans in recognition of that service. Senator McFadden was the only person who mentioned the commitments in the White Paper on Defence in respect of veterans. My officials and I will continue the process of engagement with the recognised veterans' associations to further these commitments. I will update Senator McFadden personally on the status of the White Paper projects for veterans as I do not have that information to hand now.

The Department and the Defence Forces provide significant ongoing supports to Defence Forces veterans through supporting the officially recognised veterans associations. A service level agreement, SLA, has been entered into with the Organisation of National Ex-service personnel, ONE, and the Irish United Veterans Association, IUNVA. Under the service level agreement, my Department pays annual subventions towards their general overheads to support and encourage them in the work they do. Officials within the Department of Defence hold regular meetings with them. Since taking office in May 2016, I have increased the number of meetings my officials have with the associations representing veterans. Also, just as I have with the Representative Association of Commissioned Officers, RACO, Permanent Defence Force Other Ranks Representative Association, PDFORRA and the Reserve Defence Force Representative Association, RDFRA, I have committed to formal annual meetings with the veterans' associations. I believe I am the only Minister, going back over a long number of years, who has committed to meeting the veterans' associations at least once a year. My next annual meeting with the associations is scheduled for 13 December. I look forward once again to engaging with them about the issues that affect them and their members. My Department officials have a very good working relationship with all the veterans' associations. They meet them, under my instructions, at least three times a year, which is followed by my own meeting with them. I understand they were met once or twice a year but I gave a standing commitment that they would be met at least four times every year.

The veterans' associations have been provided with contact details of appropriate personnel within the Defence Forces and the Department that deal with issues that are relevant to veterans of the Defence Forces. These personnel are available to engage with the associations on issues such as medals, service matters, medical files, pensions and disability pensions. The Department and the Defence Forces provide support, where possible, for key events of importance to the Irish United Veterans Association, IUNVA, and the Organisation of National Ex-Service Personnel, ONE, by way of attendance at these events. If I am available, I also gladly attend these events. One such event is ONE's annual Fuchsia Appeal which aims to raise much-

needed funds for the services it provides to former members who have fallen on hard times or are homeless.

The Defence Forces organise an annual Veterans Day. This is the third year to have such a ceremony. I have attended the Veterans Day and one of the most recent ones was held in the Defence Forces Training Centre in the Curragh on 8 October. That day I recognised, on behalf of the Government, the significant contribution of former members of the Defence Forces to the 1916 commemorative events and their past service to the State by presenting a framed 1916 Centenary Commemoration Medal and citation to ONE, IUNVA and a third veterans' organisation, the Association of Retired Commissioned Officers. The plaques, signed by both the Taoiseach and myself, are a special acknowledgement from the Government of our appreciation for the selfless service of former members of Óglaigh na hÉireann who have served Ireland and the Irish people since the foundation of the State.

One of the most visible recognition of veterans that I have been privileged to lead is the awarding of a medal to the men of the A Company, 35th battalion, who served in Jadotville. I thank the former Taoiseach, Deputy Enda Kenny, for his support on this issue. This fully recognises their bravery and courage during the unique circumstances of the siege of Jadotville. A formal medal ceremony has been organised by the Defence Forces to recognise these men. The ceremony is prioritising the Jadotville veterans and their families, providing them with military honours in a ceremony that is organised in a similar way to medal ceremonies for serving personnel. I look forward to being in Athlone on 2 December to present the medals to these men and to once again meet them and their families in what will be a momentous day.

I thank all Members of this House and of the Dáil who have contacted me on numerous occasions about this issue. I would like to thank one person in particular, the former Deputy Nicky McFadden, who has now sadly passed away. She was one lady who felt very strongly about this, and no doubt her sister, Gabby, will have continued the very strong message that Nicky had.

On the presentation of the citation in 2016, I realised the importance of what these men went through in Jadotville. I met each of them and their families and friends. As I stated on that occasion, if I had an opportunity to be able to give them proper recognition with a medal, I would do so. It is regrettable it has taken so long for previous Ministers to honour these great men. I am only one part of a very big link of recognising these people. I am delighted, as Minister with responsibility for defence, to be able to do so on 2 December in Athlone.

I would also state that there are a very small number of veterans who were part of the A Company who were in Jadotville on that occasion who my Department officials have been unable to locate. We have almost tracked down each and every member of the A Company but if anybody is aware of members of the A Company who have not received an invitation for that day, I would appreciate if they would contact either myself or my Department and we can make sure, if they are former members, that they will be included that day. I have asked my Department officials to circulate that message in so far as they can. I was delighted on Sunday evening last to receive an email from a person in the UK whose uncle or father was a member of the A company. We had been unable to track down that gentleman for quite a number of years, so I was delighted to hear from that person. If any Member of this House is aware of any members of the A Company, I would ask them to contact me, my office or my Department.

I recognise the positive intent of the Senator's Bill to recognise Defence Forces veterans

by awarding them with a veterans' lapel badge. However, I have concerns and reservations regarding the proposal in its current form. Apart from identifying veterans at formal events, I am unclear as to what the purpose of the badge is. It is custom and practice that service medals are worn by veterans at such events. These medals are visually more identifiable and striking than a lapel badge can be. While I recognise that some former members do not have service medals, as many veterans wear their medals I would question the purpose of a lapel badge.

My Department and the Defence Forces have raised many questions as to the practicalities of the award of a veterans' lapel badge. Since the foundation of the State, many thousands of persons have served in either the Permanent Defence Force or the Reserve Defence Force. If the intent is to proactively seek out each former member of the Defence Forces, service records for all would have to be identified and examined to validate their eligibility. Checks would need to be carried out to establish whether these personnel are still alive, what their contact details are and, in the case of any personnel who are still alive but infirm, who should receive the badge on their behalf. This, the Senator will agree, would present considerable administrative challenges.

Such a task would deflect the focus of the Department and the Defence Forces from other very important and pressing priorities. No specific benefits have been identified in the proposal and, given the significant administrative overhead, it is difficult to justify it as it currently stands. I consider the proposal is in need of further development so that it can be given due consideration. If, after further development it proved viable, it is unlikely that such a proposal requires an Act of the Oireachtas. An administrative decision is all that would be required to implement it.

6 o'clock

A number of issues were raised in the contributions of a number of Senators. Senator McFadden raised the 1916 commemorative plaques. I hope each veteran association will receive its 1916 commemorative plaque before Christmas. I addressed the issue of the number of meetings; there will be one each quarter. I understand the property management branch within the Department of Defence, in conjunction with the Defence Forces, is working with the veteran associations to give them access to military property. I am very much aware of a number of barracks in which the veterans associations have property for their sole use. There is a very fine one in the barracks in Dundalk. There are others in some of the other installations. It is not always possible to accommodate the veteran associations but if they can be accommodated in any circumstances that is done. All of the associations receive annual funding from my Department and that is under constant review.

I thank the Senator for his well-intentioned proposal. However, I ask the House to consider my reservations. I also restate the Government's and the defence organisation's commitment to continue the support for veterans through ongoing engagement with the officially recognised veterans association.

One Senator - I think it was Senator McDowell - said we should never underestimate the respect for members of the Defence Forces. I will always respect serving and former members of the Defence Forces, and I know the respect they are held in by each man, woman and child in this country. I very much acknowledge that. I would be the first to state that we have many challenges within the Defence Forces. I do not know which Senator said Rome was not built in a day, and I am doing my best to address the challenges we have. After coming through the difficult economic situation the country has faced in the past number of years, I do not think anyone would expect us to fix all the problems in one go. I assure the Senators - I have stated

this in the Lower House also - that I am addressing each of the challenges to the best of my ability with my Department officials and the Defence Forces. I accept the points Senators Wilson and Mac Lochlainn made in their contributions. I ask the Senators to look back, in a practical way, at my record over the past 12 months and the areas I have addressed and I ask them to give due respect to that. Unfortunately, not everyone gives respect but I ask people to look at the number of changes and issues I have addressed over the past 12 to 18 months. I look forward to working with the Defence Forces and Members of the Seanad and Dáil and having a good debate on these issues. If anyone has any practical ideas or proposals, I am very open to them.

Acting Chairman (Senator Gerry Horkan): I gave the Minister of State three and a half minutes extra. I was not trying to cut him short. It is Senator Craughwell's birthday. We should acknowledge that. I do not know if he got the present he wanted but we should acknowledge it anyway.

Senator Gerard P. Craughwell: I thank the Minister of State for his reply. Some of the concerns he raised were raised by my colleagues, Senators McDowell and Nash, and will be considered on Committee Stage if the Bill passes Second Stage today. The British system for the award of a veteran's badge is very simple. One simply fills in an online application form with one's service number, rank and name. It is very easy to check military records to establish that the applicant was there and they are given their badge. I agree the badge need not necessarily be confined to formal events. Many of my former colleagues wear their veteran's badges and it is immediately recognisable. The first question one is asked in the UK is "Where did you serve?" and "What did you serve with?" It is a conversation piece if nothing else. I will not take the time of the House other than to thank the Minister of State for coming here. On the Jadotville issue, I sincerely thank him for what he is doing. I ask him to extend an invitation to all Members of the Oireachtas who would like to attend. It is a very important day. Those men have been waiting 56 years. It is only right they should be honoured by having Oireachtas Members present.

Question put and agreed to.

Acting Chairman (Senator Gerry Horkan): When is it proposed to take Committee Stage?

Senator Gerard P. Craughwell: Next Tuesday.

Acting Chairman (Senator Gerry Horkan): Is that agreed? Agreed.

Committee Stage ordered for Tuesday, 28 November 2017.

Councillors' Conditions: Statements (Resumed)

Acting Chairman (Senator Gerry Horkan): I welcome the Minister of State, Deputy John Paul Phelan, to the House for our resumed discussion on the pay and conditions of councillors. At the conclusion of statements last week, which were adjourned due to the Minister of State's time constraints, there were four Senators waiting to speak, only two of whom are currently in the Chamber. Other Senators who did not speak the last day may do so this evening, but anybody who already spoke is not permitted to contribute. I call on the Leader to begin.

Senator Jerry Buttimer: I welcome the Minister of State to the House. All of us who are

former members of a local authority recognise the work done by councillors and the strategic importance of local government in our democratic system. Senator McDowell, in one of his recent contributions on the Order of Business, was critical of Dublin City Council both from a strategic planning perspective and for the way in which the council operates. We are all concerned to ensure we have good local government which delivers for citizens. The Minister of State has made an important step in that direction by increasing the pay and conditions of councillors. My own view, with which the Minister of State is familiar, is that public representatives at local authority level should be linked to a grade in the Civil Service and paid accordingly.

I am engaged in ongoing discourse with local authority members and I have a brother who is a councillor. One of the main concerns they have expressed to me is that under the proposed new regime, they will have less capacity for discretionary expenditure in their roles and, second, a lower remuneration than is currently the case. It is important to stress that these concerns are not about money *per se*. Politics, including at local government level, is about service to individuals and the community. What concerns me is that if we are in a race, which we were for a decade, of reducing pay and conditions for everybody, is what the outcome of that will be for the political system. I am not saying the Minister of State is doing this, but it a general concern. Will we have a situation as in other parts of the world where big money influences political decision making, where the campaigns of local politicians are paid for by business interests and the independence of public representatives is diminished? I do not want to go down the same road as the United States, in particular, where politics is the preserve of the few. Many of us, the Minister of State included, have come up in politics the hard way, via involvement in the local GAA sporting organisation and so on and operating with little or no money. We have worked hard to represent people and gain their trust sufficiently that they will give us their votes. That is how politics should continue to operate in this country.

We all recognise that the workload of local authority members has increased significantly. Senators Boyhan and McDowell may have a different view on this, but my view is that the municipal districts as they are currently constituted are much too large. In parts of west Cork, for example, the areas involved are vast.

Senator Victor Boyhan: The Leader knows my views on this.

Senator Jerry Buttimer: I am just making that point in the context of the position of the Minister for Transport, Tourism and Sport, Deputy Shane Ross, and other members of the Independent Alliance. The important point to make is that the priority must be ensuring adequate representation for citizens. I give the Minister of State credit for having engaged on this debate and delivered the first steps towards progress, in keeping with the commitment in the programme for Government. It is only fair to acknowledge this given that other Ministers have not done the same.

I have had a constant flow of representations from councillors on the question of the unvouched allowance of €2,500 versus the vouched allocation of €5,000. They see the choice available in the Oireachtas in terms of vouched and unvouched expenses and would like a comparable level of flexibility. We all want to ensure there is transparency and accountability when it comes to the expenditure of public moneys, a point I made yesterday during the discussion on the Leader programme. We must get the balance right between ensuring transparency for taxpayers and adequately compensating public representatives, including at local level.

I am aware that the Minister of State is considering an independent review of councillors'

pay and how it might be benchmarked. I hope that if we do have such a review, the pay of local authority members will be linked to a grade in the Civil Service, thereby ensuring a proper and fair wage for them. We are well served by the vast majority of our councillors, who are generally well-intentioned and decent people. The importance of local government can be seen every day and was never more evident than during Storm Ophelia and its aftermath.

I thank the Minister of State and for taking the first steps towards improving pay and conditions for local politicians. He will not be able to keep everybody happy but if we make changes as we go along, it will be very helpful to our councillors throughout the State.

Senator Gerry Horkan: I thank the Minister of State for returning to the House for the resumption of our discussion on councillors' pay and conditions. I acknowledge his own involvement in local government over many years and his personal commitment to the role of councillors. I will not be saying many good things about the changes we are seeing but the best thing about them is the attempt to achieve parity between municipal district members and other local authority members. I was the only Senator who raised that particular issue when this subject was last discussed six months ago. It was unfair that municipal district members should receive an additional €1,000 while councillors in the four local authorities in Dublin and in the cities of Cork and Galway would not. We will at least now have parity between the different types of local public representatives on that particular matter.

Senator Victor Boyhan: Hear, hear.

Senator Gerry Horkan: I was very proud to be elected three times to local government and to spend a total of more than 12 years serving on four different councils. During that time I served also as chairman of an area committee of 20 councillors, for which I did not receive any allowance. That was fair enough and I did not seek any such compensation. However, the reality is that this particular committee was larger than some local authorities. The workload, too, was large, with two-hour meetings taking place twice per month every month, on the first and fourth Monday. Meanwhile, there are cathaoirleigh of municipal districts, some of which have only six members, in receipt of an allowance of €6,000, €12,000 or €18,000. Serving as first citizen of a county is undoubtedly a very important job but if we are going to have chair allowances for municipal districts, and I have no problem with that, then there also should be a recognition of the work involved in chairing an area committee. I do not aspire to go back to that role any time soon but, who knows, I might be back in it sooner rather than later. There should be parity of esteem between chairmen of municipal districts and those local authority members who chair very large area committees with very substantial meeting schedules. Of course I chaired some meetings that did not last very long but I am sure that also happens in municipal districts.

There must be an acknowledgment that councillors in urban areas deserve to be compensated on the same level as those who represent rural areas. I was very happy to serve for more than 12 years in Dún Laoghaire-Rathdown but I must point out that the €1,000 payment is taxed. Most people were expecting that allowance not to be part of representational payment but, rather, a payment in recognition of the efforts made by councillors serving large populations. There are councillors in Dublin city in eight-seat and nine-seat areas who have almost a whole Dáil constituency or certainly more than half a constituency to service. Consider the outcome if we were to allocate the appropriate numbers of representatives in accordance with the recommended ratio of one councillor for every 4,700 citizens. Dublin City Council does not have 63 members, it has 119. All areas are slightly different but those councillors are effec-

tively representing double the average number of constituents. In some rural areas, there might only be between six and nine councillors, rather than a minimum of 18. I am not having a go at these councillors at all, not in the slightest.

It is important to realise that while councillors in Dublin might represent relatively small geographical areas, they service a huge population. They may not be doing great mileage - I will deal with that matter in a moment - but it may take them a very long time to cover the distance. Many of us spent a lot of time - some more than others - travelling through Dublin earlier and anyone in the city today would realise that. If a councillor is in a more rural area in which traffic is light, he or she may have to travel a fair distance but will at least get some recompense through the mileage allowance. In Dublin, a councillor must still spend the time travelling but he or she will not get anything for it.

We are asking many of our councillors to operate on an almost full-time basis. Many of them would not get re-elected if they were not working almost full-time. A large number of councillors are putting in more than 40 or 50 hours a week. It is not a nine-to-five job. They work weekends, they attend functions, cake sales and fairs and they attend meetings of the committees of which they are members by virtue of being councillors. We are asking for a part-time wage of €16,000. I think most people in this Chamber or elsewhere would acknowledge that it would be very difficult to live on €16,000. That is less than the minimum wage and does not reflect the hours they work. We need to acknowledge that they make a great contribution. We ask them to do a great deal of work and to serve on an awful lot of committees, yet they are not being treated in the way we would acknowledge that they should be treated.

Councillors are the only people in the entire public service who do not get pensions. People working part-time in the most basic grades of the public service get pensions based on their years of service, although they are probably on very low salaries and would receive very low pensions as a result. Councillors are the only people in the entire public service who do not get that. I acknowledge the work on PRSI but, up until very recently, councillors were also paying a 4% politicians' supertax and getting nothing for it.

Many councillors work on many committees for nothing. I was on theatre boards and the board of DLR Properties. There were no expenses or allowances. I sat on boards on which half the people - members of the audit committee, the non-councillors - were getting paid €4,000 to act as chair for four meetings or €2,000 to attend those meetings as members. The rest of us, the local authority members, got nothing for our work. We were sitting on the boards and some people were being paid while some were not. There were those who were getting expenses while others were not. All those matters need to be addressed.

The €1,000 is welcome, although it is paltry enough. Much more needs to be done. I acknowledge the Minister of State's bona fides on the issue. Hopefully, we will see more. We need to realise that many councillors will be worse off. The mileage rates are being cut. Most people realise that they will be on less money next year than they were this year, despite the €1,000. That needs to be acknowledged.

Senator Michael McDowell: As the Leader, Senator Buttimer, provoked me into responding I will say that Dublin City Council now has a budget of almost €1 billion.

Senator Gerry Horkan: It does not have a budget for councillors' pay though.

Senator Michael McDowell: It now has nearly 6,000 people - perhaps more - on its pay-

roll. Its functions seem to be diminishing due to the outsourcing of all sorts of engineering contracts, etc. Its stock of social housing has not expanded. The point I was making is that it is all very well to pay councillors more - and I do not begrudge councillors decent pay for the hard work they do - but the time has come to take a look at bodies such as Dublin City Council and ask whether that €1 billion is really justified. Is the local property tax really justified? Householders in Dublin are paying huge sums of money in local property tax. I have seen tiny cottages, both north and south of the Liffey, which have a road frontage of 10 ft or 12 ft and a depth of 20 ft being auctioned for €350,000 and €450,000. The occupants of those houses are paying far more in local property tax than people in large Georgian and Victorian homes 80 or 90 miles from Dublin.

We have to address the wider issue of local government and its powers. When I was Minister for Justice, Equality and Law Reform, I introduced local policing committees and tried to introduce a provision which would have given local authority members the right to determine closing times for nightclubs and so on in their areas. I also tried to bring in CCTV schemes to be operated by local authorities, as well as other proposals to increase the democratic accountability of local government. It seems that local government in Ireland is distrusted by central government to an extraordinary extent. Elected councillors in the United Kingdom are given a much greater say over planning decisions in their areas than is the case with our councillors. Perhaps there is good reason for that. Such powers may have been abused in the past. I do not know but I think Irish councillors should be trusted to do more work, especially if they are now being paid.

The time has come for a much broader review of local government. It is just a system of local administration with a smattering of democracy in the form of elected members. It could be radically different. I chose to use those words about Dublin City Council. I regard it as a body which now should be called to the bar of public opinion and asked to justify both the €1 billion it spends every year and the 6,000 people it employs. It should be asked to explain to the people of Dublin why they are paying such huge sums of money in local property tax.

Local property tax will be an issue in the next general election. I believe that very strongly. Anybody who thinks that will not be the case will be disappointed come the next election. We know that elections can happen when they are not expected and that people can suddenly be faced with situations which they did not expect and in which they have to confront the electorate. The time has surely come to reform local property tax, to admit it is unfair and to change it radically. There are many proposals. I have put some forward. The time has surely come to take a second look at local government.

Acting Chairman (Senator Gerry Horkan): I thank Senator McDowell. I probably agree with his comments but they were not necessarily statements on councillor's conditions.

Senator Pádraig Mac Lochlainn: I recall when the issue of Deputies' pay came into the public domain a number of years ago. At that point, serving Members of the Dáil were earning more than €100,000 per annum. The Taoiseach was earning more than €300,000. People asked serious questions about the levels of pay Deputies were receiving. It was stated that if pay was to be cut significantly, it would mean that only the wealthy would be attracted to politics and that other people - small business people and those earning a certain amount - would be disinclined to go into politics. That was the reason given. The wage of a Deputy is now approximately €92,000. The Taoiseach earns approximately €250,000 or something of that nature. It is a huge amount of money. If one looks at our councillors, and I was proud to serve as a town

councillor and then a county councillor, the reality is that people are being asked to be available 24-7 and deal with the most stressful of circumstances. Anybody who is a public representative knows that the types of phone calls one gets, the types of situations that one is faced with day in and day out are immensely difficult, challenging and very stressful. There was this huge disservice because for a number of years there were issues in politics for sure in terms of pay and expenses that needed to be challenged. I believe that in these Houses in some categories people are overpaid. However, it was deeply unfair to the significant majority if not the vast majority of what were town councillors and county councillors to listen to them being denigrated regularly by sections of the media suggesting that they were in it for the expenses and they were getting paid to go to funerals and wakes. It is disgusting because the vast majority of public representatives that I have been honoured to serve with since I became a town councillor in 2002 are entirely honourable decent people of all political parties and none. Nobody stood up to fight for them, nobody got in there and said this was wrong. If we are going to denigrate politics, people lose faith in the ability to have change and it is hugely damaging for democracy. The turnout at elections in this country again and again proves that we have a problem.

I strongly believe that city councillors and county councillors should have a wage, not linked to the way it is now. They should have an average industrial wage at the very least that would allow them to go full time if they wish. What we have done, and think about this, we have put in €5,000 of vouched expenses. At first read that looks pretty good. It is €5,000 to use for leaflets, advertisements, whatever it is to communicate. However, think about that. I started this talking about politics being for the rich man and woman. Local politics is definitely for the rich man and woman. It is an invitation because one can now give €5,000 to someone to do one's secretarial work and €16,500 is just a handy few bob, and one can show up at a couple of meetings and use the resources. In other words it is an invitation for local politics to be most advantageous to the very wealthy. In other words it becomes a hobby to be a public representative. They might get away with it. We are punishing large numbers of decent men and women who step up to be counted to take up the civic responsibility. For the reasons I have outlined it is often thankless work. It is denigrated and not fully appreciated. It is decent, honourable people taking up their civic role and we are just treating them with contempt with what we pay them.

I probably will not be standing for election to the Seanad looking for votes from county councillors in the next election. That will probably be the case one way or the other. I want to say that just in case anybody says I am speaking to the Gallery. I want to be clear that I am saying it from my own experience and from the councillors that I speak to and that I listen to. We are treating councillors with disrespect and with contempt, and we are playing into the hands of those who would denigrate democracy and accuse people of being in it for the expenses. That is a disgusting label to put on the vast majority of honourable people who serve us across the State.

Acting Chairman (Senator Gerry Horkan): I thank Senator Mac Lochlainn and I call Senator Paul Coghlan. The Senator has five minutes.

Senator Paul Coghlan: I welcome the Minister of State to the House and I was glad to hear him speak on this matter when we discussed it last week. The nub of this is, as Senator Mac Lochlainn has just said, we need to pay councillors a decent living wage. Given the pressure that they are under they are almost expected to be full time. If we are going to attract the proper, talented and best people we are going to have to pay them properly. Otherwise, as we have seen, and Senator Boyhan has seen this, councillors in his area in South Dublin have dropped off because they could not afford it. They had to return to other jobs and that is a pity.

There is the issue of the vouched and unvouched payments. If we could make it easier for them on an unvouched basis it would be preferable. They should be eligible for a pension of course when they reach retirement age. I very much welcome that, even though it is not happening yet but the Minister has committed to it, it will be put on a level with a Civil Service grade. Is that right?

Deputy John Paul Phelan: Yes.

Senator Paul Coghlan: That is to be welcomed.

Local democracy is the foundation of our political system. We want the best people in there. Unfortunately we have seen instances of people who cannot keep pace with it, they just cannot afford it. That needs to be addressed.

We know that both the Association of Irish Local Government, AILG, and the Local Authority Members' Association, LAMA, have always played an extremely important role in providing training and education for councillors on a whole range of issues regarding their roles as members of local authorities. These training days are a great chance for councillors from all parts of the country to interact with each other, swapping and sharing knowledge. However, the new proposed mileage system could theoretically result in a drop-off in attendance for all of these training days as it may not be financially viable for a councillor to travel to them. The reason, as I understand it, is that depending on the index of local authorities, once one travels 1,500 km per year there are only then a further 4,000 km to put one in at the higher mileage rate before it drops by more than half from 83.53 cent per kilometre to 32.32 cent per kilometre after 5,500 km. They are going to suffer and they are very upset about that provision as the Minister of State knows. I do not know what the Minister of State can do about it but if there was something he could do it would be greatly welcomed.

I accept what the previous speakers have said. I also served on a local authority, both town and county, and they are very decent people. They are hard-working people. They are the front-line troops. One could get a knock on one's door any hour of the day or night, or a phone call. More often it was a phone call. One reacted to it because if one did not one was out. They are more troubled and put upon than we are as Senators. Perhaps everyone is different, I do not know. I know we probably work clinics and we go to places to meet people but the councillor, as I say, he is the first port of call generally, no matter what it is.

Deputy John Paul Phelan: Or she.

Senator Paul Coghlan: Or she indeed. It could be anything. It could be a local road or it might be a pothole as it often has been in my part of the world. It is anything and everything. Any Department, anything at all.

Acting Chairman (Senator Gerry Horkan): The Senator has one minute.

Senator Paul Coghlan: We are aware of the work commitments, as is the Minister of State. I appreciate what the Minister of State is trying to do in making a move, and there is movement. However, councillors are not on a proper living wage and they are not entitled to a pension. There is more that can be done for them. It behoves us to attempt very seriously to do this for them.

Acting Chairman (Senator Gerry Horkan): As our final speaker I call Senator Wilson,

who has five minutes.

Senator Diarmuid Wilson: I do not want to go over ground that has already been covered last week and again this evening. I welcome the Minister of State back to the Seanad on this very important issue. I know that above all recent Ministers he is most aware of the difficulties that councillors are facing. He was one himself and I know his sister was a councillor. He is in daily contact with his own councillors in County Kilkenny and working very closely with them.

From talking to councillors throughout the Twenty-six Counties they are united in one belief and that is that they feel let down. They feel let down by all of us. They also say to me that there has been enough talk and while I welcome the Minister of State's review, and I will refer to that in a second, they feel that there has been enough talk. They are fed up of letters from Senators telling them all the work that we are doing on their behalf. They cannot go to the local shop and buy groceries for their families with those letters. I know that the Minister of State has inherited this issue but he has now signed off on it and councillors are not at all happy about this. As Senator Mac Lochlainn and others here stated already, we have to bite the bullet once and for all when it comes to this review. We as Deputies and Senators are well paid and well resourced to do our jobs, but the first port of call and the main pillar of our democracy is our councillors. If we value democracy then we will value these men and women on our local authorities, and we can start by paying them a living wage.

We in Fianna Fáil are preparing a paper for submission to the Minister of State, and in order to formulate Fianna Fáil policy on this matter. We believe that councillors should be paid a basic salary, equivalent to a third of that of a Senator. These people are not civil servants; they are politicians. As the first pillar of our democracy their pay should be linked to this Parliament, and I suggest that be in the form of a third of a Senator's salary. We also need to pay them proper expenses for doing their job. If not, as Senator Mac Lochlainn has suggested today, we will end up with hobby councillors who can afford the office. Senator Buttimer said that our councillors focus on service, community and people. It is true that they do all of those things. They have to be able to live, however, and we are not affording them the opportunity to do so.

I compliment the representative organisations that are working extremely hard and extensively on many of the issues that are currently very important to local authority members. These matters include, to mention but a few: the national planning framework; the public services Bill; and the funding of local government. Along with trying to get better pay and conditions for their members, this is the kind of work currently being undertaken by the representative organisations, the Association of Irish Local Government, AILG, and the Local Authorities Members Association, LAMA.

I know that we are pushing an open door here with the Minister of State. I know that he is having difficulties with his officials. When it comes to some of those officials it would be far easier to get certain things through the eye of a needle than get better pay for councillors. We are going to have to stand up and take on these officials, and indeed take on the media, which would happily have us all out sweeping Kildare Street and paying for the privilege. That is how highly we as politicians are regarded by the media. We stand up for our own pay and conditions and now we have to stand up and be counted when it comes to supporting the main pillar and front line of our democracy, namely, our local councillors.

I will finish by briefly mentioning the mental health survey carried out by our colleague, Senator Swanick. The results were frightening but they came as no news to me or anyone else

in daily contact with councillors. They are entitled to be supported when it comes to matters of mental health. I compliment my colleague, Councillor Shane P. O'Reilly, and his colleagues in the AILG for recently providing a mental health training day. They did so out of their own resources but matters of mental health should really be separately resourced.

Acting Chairman (Senator Gerry Horkan): I call on the Minister of State to respond. He has until 7 p.m.

Minister of State at the Department of Housing, Planning and Local Government (Deputy John Paul Phelan): I acknowledge those who spoke tonight and indeed last week. I think it is fair to say that tonight's contributions were quite different. They were more objective and less grand-standing-----

(Interruptions).

Deputy John Paul Phelan: I welcome the opportunity to clarify some things such as the abolition of the difference between city and county councillors, as introduced in the reform of local government, and the measure to ensure city councillors are treated in the same way and are no longer subject to a six-month delay. There was previously a certain view that municipal districts should be treated differently to area committees. Having abolished the two-tier system, any move to reintroduce it would have been a retrograde step, to say the least.

I will now respond to the issues raised this evening. The committee that I will refer to later, which will look at councillors' pay and conditions in advance of the next local elections, will certainly examine Senator Horkan's concern over how area committee chairmen are treated compared with municipal district chairs.

Senator McDowell raised a number of interesting points, not all of which concern councillor remuneration. It is certainly fair to say, however, that Dublin City Council with its budget of €1 billion is a very significant organisation and it is only right to ask questions about how that money is spent. It is also only right to ask about the local property tax, the review of which will take place in 2019, and may we all still be here for it. Apart from addressing rates of collection, part of that review must also examine the distribution of the LPT through the local government fund. The fund and the mechanism for its distribution are based on a time that is now passed and this must also come under the examination of the review. Whatever property taxation system exists, however, areas with the highest demand and prices for property will almost invariably receive higher tax revenue on those properties. People in both south and north Dublin, for example, have certain benefits that others around the country do not. That is not to say, however, that the current system should not be reviewed or that things could not perhaps be made fairer.

Senator Mac Lochlainn's point about Senators earning the average industrial wage is a fair one. I do not agree with him, however, when he suggests that local government could end up the preserve of the wealthy. I am a student of local government and of the Poor Law Acts of the 1850s and 1860s, which acted to set up a system of local government and were then superseded by the Local Government Act 1898. At that point in history, local government bodies were entirely composed of the rate-paying landed classes. Things have changed dramatically. During my own time on Kilkenny County Council I was lucky in that I was a student living at home, with parents who provided me with a house and older brothers who gave me a banger of a car. At the end of the month I would get a cheque for £200 or £300, which I, as a second year college student, was happy to get. Things have moved on a lot since then. That is not to say that I

disagree with the argument that councillors do not get paid enough. I fundamentally agree and that is why the committee I will refer to later is going to deal with this issue.

Senator Wilson is one of the wisest old owls of the Oireachtas. I fundamentally disagree with him, however, when it comes to the idea that councillors' pay should be tied to that of Senators. It should not. It should be tied instead to a grade in the Civil Service, along with all of the knock-on benefits, including a pension and increments as part of wage agreements. I do not think that councillors should be linked to other politicians like the Taoiseach, Ministers, Ministers of State, Deputies and Senators. They should be linked to a grade. That is my own view, but it is a matter to be dealt with by the committee I am going to refer to.

Senator Boyhan argued that 2019 is not good enough. Those who stood for local election in 2014 knew what terms and conditions currently apply to councillors, this slight modest improvement aside. I feel then that it would be appropriate to introduce a fundamentally new system at the start of a new term. I suggest to Senator Boyhan that what is particularly important here is that people know what the terms and conditions are well in advance of the next local elections. None of the speakers who spoke so eloquently from the Fianna Fáil benches last week to criticise the €1,000 allowance allocated for councillors pointed out that Fianna Fáil had cut councillors' pay by €1,400 over the course of the lifetime of the last Fianna Fáil-led Government. A number of external factors were at play, but I thought it was interesting that they failed to remember it. I suppose it is my job to remind them.

I thank the Senators for their contributions. I want to get into a few specifics. It is fair to say that councillors do have a much broader portfolio function at sub-county level, and even at county level, than they would have had in the past. I take Senator McDowell's point about extending the powers of local government on board. Three reports on local government from my Department were due in the last couple of weeks. One concerns municipal governance for our larger cities, one concerns the remuneration issue and the other is on urban governance in general, in terms of the absence of town councils. Those reports are imminent. It is important that our expenses and salary regime for councillors is of the highest standards and is transparent. It was absent in my comments last week, but it has always been my intention that the rules of vouching expenses that apply to Members of the Oireachtas will apply to councillors. My words last week indicated differently, and I have been able to get clarification on a number of matters in that regard. If Senators and TDs are audited in terms of their expenditure - I have had the pleasure of being audited for the past two years -----

Acting Chairman (Senator Gerry Horkan): The Deputy reminded us of that last week as well.

Deputy John Paul Phelan: I will never forget-----

Acting Chairman (Senator Gerry Horkan): Is the Deputy looking for three in a row?

Deputy John Paul Phelan: I will never forget it, that is why I wanted to remind the Seanad that councillors will be treated the same. I am happy to be able to say that secretarial support, on the basis that Oireachtas Members can vouch it, will apply under this scheme. It will not have to be registered agency secretaries but will apply to people who have a PPS number and when details of work that has been carried out are provided. It works in the same way as the PRA arrangement for Members of the Oireachtas.

Rent for offices, rates on offices and utility costs for those offices will be vouched expenses

in the new regime. The days of unvouched expenses for anyone in public life or Civil Service do not exist any more. They should not exist any more. Equally, the vouched system must reflect the expenses that people incur in order to do their job. I believe Senator Mark Daly said last week that ink was not covered. I do not know where he read that, but I can assure this House that all stationery items are fully covered. I have been waiting for the opportunity to point it out to him.

I am investigating a further matter at the moment. I am personally very amenable to this idea, but we need clarification on it. It is the inclusion of child care costs incurred by councillors when they are attending council meetings. Many councillors are also carers. Having done two Seanad elections, during which I met every councillor in the country, I was struck by the number of councillors who were caring for someone, whether it was a child, a sibling or a parent. The costs that they incur from having someone in their home to do the caring while they are out doing council work should be a vouched expense. We are investigating if that can happen and if there might be knock-on effects in other areas.

On the issue of revised annual travel rates, the Revenue Commissioners have previously ruled that travel rates that are higher than the prevailing Civil Service travel rates set by the Minister of Finance and Public Expenditure and Reform can incur a tax liability unless the person claiming higher travel rates can demonstrate on a vouched basis that it is to offset actual costs incurred. I am afraid I do not have more positive news on the travel rates front.

On the issue of linking councillors to the Civil Service, into the future - by which I mean the turn of the year - I will be establishing a local authority members remuneration reform group to review pay and supports provided by councillors with the intention of streamlining, modernising and improving these supports. This group will operate on a cross-departmental basis as appropriate and will include representation from councillors and local authority management. Some Senators mentioned these groups in their contributions. The group will report ahead of the next local elections in 2019. The intention is that the group will commence early in 2018 and report at the end of the year. That will happen if I get my way on the issue. The linking of councillors' remuneration to an appropriate grade in the Civil Service is long overdue. It will ensure that people who want to stand and have something to offer in local government should not be put out of pocket or disadvantaged by their decision to run. It should not be left to the wealthy class. I do not come from that background myself.

I did not refer to the work that councillors do last week because I had a limited time to speak. Running for the Seanad is an uplifting experience in which one meets so many people in their own communities and sees different places in the country. I remember having a mini breakdown around north Donegal during my second Seanad election, when I was sure I was not going to get re-elected. One meets so many people who are active in their communities. The political badge they wear is a small part of their life. Their real drive comes from doing their bit for their own community, whether that community is in Donegal or the north side of Dublin city or anywhere else. For a young man out of college with no background in politics it was a real eye-opener as to how the country works and to how real politics on the ground operates for communities. If I get the time I will deliver a link between councillors' remuneration and the Civil Service so that this is not a matter that will come up for a Minister in the future.

I am disappointed with some of the reaction to the changes that have been announced. The figures are small, and everyone acknowledges that. However, in my first meeting with the representative groups of councillors I was asked about increasing expenses and pay, and although

it is modest it has happened within the first six months. Many of my predecessors talked about it for years. I know that the job is not even half done. The job is to ensure that we have a system of paying local authority representatives that is fair to the taxpayer and the ratepayer of their local authorities, but also ensures that the best people, the people that we want in local government, are in a financial position to stand for election at the next local elections in 2019 and into the future.

Justice Matters: Statements

Acting Chairman (Senator Diarmuid Wilson): I welcome the Tánaiste and ask her to make her contribution.

Tánaiste and Minister for Business, Enterprise and Innovation (Deputy Frances Fitzgerald): I welcome this opportunity to update the Seanad and put on the record of the House certain matters that have been raised in the Oireachtas and in the media in recent days. As the Taoiseach said in the Dáil, I had no hand, act or part in the former Garda Commissioner's legal approach. I want to reiterate that point. The former Commissioner's legal approach was a matter for her alone and it would have been utterly inappropriate for me to interfere in that regard.

Many Members of the Oireachtas and others have suggested that I should have interfered. I have received legal advice again today from the Attorney General, who wrote to confirm that the legal position correctly conveyed from his office to the Department was that the approach to be adopted to adducing evidence by the then Garda Commissioner before the O'Higgins commission of investigation of May 2015 was a matter for the Garda Commissioner who was being legally advised separately, and that neither the Attorney General nor the Minister had a function regarding the evidence any other party, including the Garda Commissioner, to a commission of investigation might adduce. In other words, the position to be adopted before the O'Higgins commission of investigation was for the Garda Commissioner and her own legal team to decide. In fact, it would have been inappropriate and improper for me to have interfered.

The political implication of the questions asked of me in recent days is that I did not take the concerns of whistleblowers seriously. The suggestion is that I did not act to improve how An Garda Síochána dealt with the issue of whistleblowing. The suggestion is that I did not want the truth to be found. Let me be clear, I utterly reject those suggestions. Actions speak louder than words. As Minister for Justice and Equality, I pursued a programme of fundamental reform of An Garda Síochána and the Department of Justice and Equality. For decades, successive Governments failed to deal with the issue of whistleblowers. I was part of the Government that sought to bring about a transformative change in approach to whistleblowers and which enacted the Protected Disclosures Act, providing, for the first time, comprehensive whistleblower protection across all sectors of the economy.

I have always been a hard-working, proactive Minister, never afraid to tackle the issues in the three Departments in which I have served. Nobody could credibly accuse me of being work shy. As Minister for Justice and Equality, I enacted 27 pieces of legislation, including the Marriage Equality Bill and the legislation to establish the Policing Authority, one of the most fundamental reforms of An Garda Síochána in the history of the State.

The treatment of whistleblowers was always a priority on my desk as Minister for Justice and Equality. I was always scrupulously careful about the lines I could not cross. I shared the outrage that other Members of this House expressed when I read about the alleged treatment of some whistleblowers, but as Minister for Justice and Equality I always had to proceed on the principles of natural justice.

I strongly encouraged Garda management to put in place comprehensive policies and procedures for whistleblowers during my tenure as justice Minister, including bringing Transparency International on board to advise on best practice in relation to whistleblowers. I accepted and acted on the recommendations in the Guerin report by going to Government and establishing the O'Higgins commission. I acted on the findings of the O'Higgins commission. I used the powers available to me under the legislation establishing the Policing Authority to ask the authority to conduct a detailed examination of the procedures and policies around whistleblowing in An Garda Síochána and to prepare a report on the matter, including any recommendations necessary to ensure those arrangements operated to best practice. I also used the legal powers available to me to ask the Garda Síochána Ombudsman Commission, GSOC, to investigate matters alleged to have occurred in relation to a meeting in Mullingar involving certain officers. I drove the establishment of the disclosures tribunal, working with officials in the Department of Justice and Equality, the Office of the Attorney General and with all Members of the Oireachtas. I empowered the tribunal with wide-ranging terms of reference so the truth could emerge. This is my record, and I stand over it.

Senator Frances Black: Hear, hear.

Deputy Frances Fitzgerald: When the truth is revealed at the disclosures tribunal it will be because of that work from all Members of the Oireachtas. I do not believe we should be running a parallel process, though, of course, I fully respect the role of the Seanad and the Dáil.

The terms of reference clearly mandate the tribunal to consider a wide range of questions, including the then Commissioner's legal approach. Among the 16 separate terms of reference are those to: investigate contacts between members of An Garda Síochána and media and broadcasting personnel, members of the Government, Tusla, the Health Service Executive, any other State entities or any relevant person as the sole member might deem necessary to carry out his work relevant to the matters set out; and investigate whether the false allegations of sexual abuse or any other unjustified grounds were inappropriately relied upon by Commissioner O'Sullivan to discredit Sergeant Maurice McCabe at the Commission of Investigation into Certain Matters in the Cavan-Monaghan district under the chairmanship of Mr. Justice Kevin O'Higgins. Members will have to agree these are very broad terms of reference indeed, agreed after much consultation with the Opposition.

I will endeavour this evening to shed as much light as possible on what I and the Department of Justice and Equality knew, and at what time. I can only speak from my personal experience and knowledge, and I must be careful under law not to say anything that would undermine or interfere with the work of the disclosures tribunal.

On the Monday before last, I confirmed to the Taoiseach that neither I nor the Department of Justice and Equality had any hand, act or part in the legal approach of the former Commissioner. In that phone conversation, I also confirmed to the Taoiseach that I only became aware of the broad details dealt with in the commission when they came into the public domain in May 2016. Last Thursday, the Department of Justice and Equality informed me that an email had

been located. It had been sent to me late in the afternoon of 15 May 2015. This email, which I released publicly last night, outlined a conversation between an official in the Department of Justice and Equality and an official from the Office of the Attorney General, highlighting that a disagreement had arisen between the two legal teams at the commission. The email indicated that counsel for An Garda Síochána had raised, during the hearings, an allegation of a serious criminal complaint against Sergeant Maurice McCabe that had previously been made. It is important to state that the email had said that Sergeant McCabe had always denied this allegation. The email states that counsel for Sergeant McCabe objected to this issue being raised and asked whether the Garda Commissioner had authorised this approach. The Garda Commissioner's authorisation was confirmed, although it was understood separately that that might be subject to further legal advice.

It should be noted that extensive reference has been made to this matter on the public record in the opening days of the disclosures tribunal earlier this year. The email also states that the independent review mechanism found that an investigation file on the case had been submitted to the DPP, who had directed no prosecution. I put on the record of the Dáil last night, and the Taoiseach did so again today, that he had spoken with Sergeant McCabe and had had some disagreement over the contents of the email.

The concluding point in the email sent to me advised that neither the Attorney General nor the Minister has a function relating to the evidence a party to a commission of investigation may present. I could have no role whatsoever, then, in questioning or in any way seeking to influence the evidence another party gave to a commission of investigation or any legal argument made by such a person. I might also add that this is all the more so the case in circumstances where the Department of Justice and Equality was appearing before the commission itself with regard to issues that had arisen in the Guerin report and which were being followed up by the O'Higgins commission. It had separate legal representation at that commission and clearly there could be no contact between the legal counsels representing individual members of the Department of Justice and Equality and counsel representing a separate legal strategy for the Garda Commissioner.

As Minister for Justice and Equality I paid tribute to the work that Sergeant Maurice McCabe has done and I met Sergeant McCabe and his wife, Lorraine, early in my tenure. In welcoming the publication of the O'Higgins commission of investigation last year I made a very comprehensive speech and pointed out that Mr. Justice O'Higgins described Sergeant McCabe as a man of integrity who had performed a genuine public service at considerable personal cost. He is due the gratitude, not only of the general public, but also of An Garda Síochána and of this House. We set up tribunals of inquiry to look at all the evidence, hear all sides, and establish what the truth is. Above all, everyone is entitled to basic, fair procedures enshrined in our Constitution.

Senator Jerry Buttimer: Hear, hear.

Acting Chairman (Senator Diarmuid Wilson): I thank the Tánaiste. The main spokesperson for each group now has six minutes to contribute. I will be sticking to this rigidly because the Tánaiste will be called back at 7.55 p.m.

Senator Lorraine Clifford-Lee: I thank the Leas-Chathaoirleach and I also thank the Tánaiste for coming to the Chamber tonight. Her statement, along with her statement to the Dáil and the answers she gave to questions raised in the Dáil last night, are far from satisfactory.

I hope that we will get more information in response to the questions asked by myself and by my Seanad colleagues tonight because, as things currently stand, we have more questions than answers.

The Tánaiste released the transcript of an email last night. Why was the email itself not released? The transcript alone is not satisfactory, as the Tánaiste knows. If this were a court of law, and on foot of an order of discovery, then the release of a transcript would not be considered sufficient. The Tánaiste should be able to release the email with whatever necessary redactions made.

The phrase “no hand, act or part” has been repeated *ad nauseam* over the past few days. It is clear to everyone that the Tánaiste, by failing to act on foot of the information supplied to her as Minister for Justice and Equality, agreed to and actually allowed this adversarial strategy to be implemented. She allowed the Garda Commissioner and her legal team to use information that had actually been disproved by the independent review mechanism and by the DPP so as to discredit Sergeant McCabe’s reputation. That is a fact. By failing to act on this information the Tánaiste actually agreed with it.

From that point in May 2015 right up to May 2016 she fully supported the Garda Commissioner. When she referred to the O’Higgins commission in the Dáil on 17 May of this year, she said that the commission was inquisitorial rather than adversarial in nature. Prior to that, however, she had been informed of the actual strategy which was, as is clear from the email, certainly adversarial rather than inquisitorial, as she claimed. The Tánaiste was fully aware of that. She claimed that she had forgotten receiving the email and did not act when she was informed of this scandalous strategy. The fact that she did not act, did not see fit to act, and failed to remember getting the email is utterly incredible, particularly considering that she had been appointed Minister for Justice and Equality because the previous Minister had had to resign over this issue. Surely alarm bells should have rung in the Tánaiste’s head when she saw this email coming in and if they did not then we really have to call her judgment on this matter into question. She says that she was not aware of this until it came into the public domain but that is clearly not the case.

With regard to the email itself, why was it not found before now and why was it not forwarded to the Charleton commission? Are there other emails? What searches of remaining emails has the Department of Justice and Equality carried out since the Tánaiste’s departure from that office? Would this email ever have been found were it not for Deputy Alan Kelly and “Prime Time” digging around to get it?

The Tánaiste was in charge of policy at the Department of Justice and Equality at the time and the Garda Commissioner was answerable to her, so serious questions arise now over the Tánaiste’s lack of judgment. This email was not submitted to the Charleton inquiry until yesterday. Why was it not submitted when the Tánaiste found it last week? She allowed the Taoiseach mislead the Dáil and it took several days before he was actually informed of this email, something the Tánaiste has yet to adequately explain. She has said that she was abroad and that the Taoiseach was abroad, but the Department officials were here and I am sure that the Tánaiste is in contact with the Taoiseach when she is out of the country. I hope that she will be able to answer some of my questions and those of my colleagues.

Acting Chairman (Senator Diarmuid Wilson): I call on Senator Boyhan. He has six minutes.

Senator Victor Boyhan: I welcome the Tánaiste and former Minister for Justice and Equality. I want to start with the line “parallel process”. Why are we having a parallel process when we have the Charleton tribunal? Based perhaps on the arithmetic of these Houses, there is a sense here of Members vying for political blood and for heads on a plate and this is neither fair, right, nor appropriate. It is questionable why we are allowing both Houses a parallel process when we already have a commission of investigation, namely, the Charleton tribunal. We belly-ached both here and in the Lower House for a tribunal. We got it, and we got the terms of reference, and yet now we want to interfere in the process of that tribunal. This is fundamentally wrong. I have no allegiance to any of the party political groups in this House but I find it fundamentally and grossly wrong and unfair to undermine this tribunal and allow a parallel process. As democrats and as politicians we should not do this.

Senator Jerry Buttimer: Hear, hear.

Senator Victor Boyhan: This is worth saying because it is what I fundamentally believe. The Tánaiste is well-regarded, well-respected and an experienced Deputy, former Senator and Minister. She has clearly set that out. She has come to this House and explained her position. She said, critically, that last Monday she confirmed to the Taoiseach that neither she nor the Department of Justice and Equality “had any hand, act or part” in the legal approach or strategy of the former Garda Commissioner. I accept that because this is a matter of accepting people. Nobody comes in here to this House to deliberately mislead us. Let us accept those who come before us. If they are then proven wrong or if a tribunal of inquiry comes up with other findings then we will deal with them then, but not before then. This, I think, is worth saying.

Issues have come out of this, however, over how every Department deals with the flagging of emails. This is a real issue. I know myself that I do not see every email that comes into my office every day, and I am only a mere Senator in the basement of LH2000. The very nature of our work places huge demands upon us. These are critical emails that clearly were important and the Tánaiste’s officials would have been aware of them. We need assurances on how matters of this nature will be addressed in the future.

I commend Sergeant Maurice McCabe who is a force for justice, accountability and fair play. He has suffered. He has shone a light on many dark places. He has done this State a great service and has played a meaningful role.

Let us be careful in what we say. Let us allow the tribunal of inquiry that we sought to establish complete its job, as per its terms of reference, and deliver its report. If wrongdoing is identified in that report, then let us have a debate and seek to remedy such wrongdoing. Let due process take its course and let us not have a parallel investigation that undermines a tribunal established by the Houses of the Oireachtas.

Senator Martin Conway: I welcome the Tánaiste. I have known her since the early 1990s. Anybody who would have the cheek to question her integrity is not doing the Houses of the Oireachtas any service. She is a woman of the highest integrity. She pioneered women’s rights in the 1980s and 1990s when it was not popular to do so and when it was a big challenge to do so.

Senator Lorraine Clifford-Lee: What does that have to do with it?

Senator Martin Conway: Much of what we heard from the Opposition in the past 24 hours has been quite unsavoury. That continued this evening with Senator Clifford-Lee, who

should reflect on her contribution, which was quite outrageous. It is totally inappropriate for her to suggest that the Tánaiste created some sort of scenario that allowed Sergeant Maurice McCabe to be smeared, slurred or whatever.

Senator Lorraine Clifford-Lee: She did not stop it.

Senator Martin Conway: The Tánaiste certainly did not allow anything of the sort to happen. The email in question clearly states that she had no role or function in the matter. Had the Tánaiste given any kind of a direction to anybody on the commission of inquiry, the Opposition would rightly have something to say. The Opposition cannot have its bread buttered on both sides. The bottom line is that the Tánaiste acted appropriately. It is shocking and distasteful that the Opposition is pulling one or two lines out of an email in which it is clearly stated that the Tánaiste had no function or role to play. I ask somebody to explain when black and white is not black and white, because the position here is clearly obvious.

As Senator Boyhan rightly said, for the past 24 hours we have seen an unusual and bizarre chase for political blood where it is totally and utterly inappropriate.

Senator Jerry Buttimer: Hear, hear.

Senator Martin Conway: The Tánaiste has never done anything inappropriate in her professional life. As Tánaiste, Minister, Deputy and Senator, she has served the public, through her hard work, with dignity, integrity, and determination. She quite rightly outlined what she did when Minister for Justice and Equality in order to ensure that we could see that there was transparency, justice and an appropriate development of the facts. What more can an individual do?

I find some of the commentary in both of these Houses quite distasteful. Until this evening, that type of distasteful commentary more so marked the debate in the Lower House. There comes a point when one has to ask natural justice. The Tánaiste was in Boston representing the country with dignity in recent days. As soon as she got back, even though she is no longer Minister for Justice and Equality, she made available whatever emails that were necessary to be passed on to the tribunal of inquiry, even though, from looking at the relevant email, she had no role or function whatsoever. That needs to be reiterated.

We live in a society that is fair. The people who are watching in tonight are reasonable and fair. Anybody who engages in a fair assessment of what the Opposition has been doing over the past 24 hours will judge it for what it is - skulduggery.

Senator Niall Ó Donnghaile: Gabhaim buíochas leis an Tánaiste as a bheith linn. She is very understandably facing many inquiries on foot of the manner in which she responds to questions she is being asked about this very serious issue in the context of what she knew about the denigration of the whistleblower, Sergeant McCabe. I say to Senator Conway that nobody is calling anything else into question. Effectively, the Tánaiste's failure to answer satisfactorily the questions that have been asked is undermining her judgment, competence and credibility. She has clearly failed to convince the public that she cannot remember whether she read the email. It is, of course, inconceivable that she did not know in May 2014 of the malicious criminal complaint against Sergeant McCabe.

Did the Tánaiste's departmental officials brief her about Sergeant McCabe? Was she aware of the documents that the then Taoiseach was given by Deputy Micheál Martin regarding allegations against Sergeant McCabe? If not, why was she not aware of them? The email, the

Tánaiste says she cannot remember reading, refers to the malicious complaint and its use as part of the legal strategy of the then Garda Commissioner, Nóirín O'Sullivan, to denigrate the sergeant despite these allegations having been disproven and not pursued by the DPP. On mature reflection, does she recall any clearer now that she did, in fact, read the email?

The Tánaiste said that actions speak louder than words. Let us reflect on some of her actions. Despite having misinformation, despite having read this email and knowing what has been pursued by the legal team of the former Garda Commissioner, Nóirín O'Sullivan, what did the Tánaiste do? She told the Taoiseach that she did not know about the former Commissioner's malicious legal strategy to undermine Sergeant McCabe before his cross-examination by the commission on 18 May 2015. However, the sensational email sent to her, which she conveniently says she cannot remember reading, is dated 15 May, three days before the cross-examination. In her opening remarks, she has told us again of everything she has done for whistleblowers during her tenure as Minister, but upon mature reflection and looking at the evidential facts put before us, what did she do for whistleblowers in this instance?

On mature reflection, would the Tánaiste now like to revisit her memory while she has the opportunity here in the Seanad and correct these contradictory accounts on the floor of this House? As other colleagues stated, why did it take over two years before this sensational email was uncovered? I suggest to Senator Boyhan, who is no longer here, this is the reason we find ourselves having this debate. It took almost three years before the email was uncovered.

We are told that, on his appointment, Mr. Justice O'Neill was provided with all the relevant documentation. I presume that the Charleton tribunal was also provided with all the relevant documentation. However, this elusive email has not surfaced with Mr. Justice O'Neill or the Charleton tribunal. Why did the sensational email not surface on both these occasions? Was the email contained as part of all the relevant documentation and if not, why? If it was, why did it lie dormant and its importance overlooked until now? Who first informed the Taoiseach about the email? Was it the Tánaiste? When did the current Minister for Justice and Equality find out about the email?

Senator Aodhán Ó Ríordáin: Nobody really enjoys this type of event. We do this because we are dealing with a very serious issue and because there are very serious issues in this country. We have the highest number of people sleeping rough on record, a health crisis, issues in education and Brexit. We do these things because we need to know that the second most important politician in the land is up to the job. The Tánaiste is a senior Minister at Cabinet and was previously the Minister for Justice and Equality. We need to be very careful to split the personal from the political.

The Tánaiste came to the Department of Justice and Equality shortly before I did - as her Minister of State - when it was completely reeling following the resignation of the previous Minister associated with this issue, the resignation - we will say he resigned - of the previous Garda Commissioner and the resignation of the Secretary General of the Department. The Toland report is damning on the culture in the Department of Justice and Equality. Notwithstanding all of the issues I referenced earlier, there is no greater political controversy than the ongoing issue of Sergeant Maurice McCabe and his treatment. In her opening statement, the Tánaiste referenced her great achievements in the Department of Justice and Equality, which is fair enough. I would contend, however, that the Labour Party had huge influence in the justice area in terms of the whistleblower legislation, the establishment of the Policing Authority and the freedom of information legislation. Notwithstanding all that is stated in the Toland report

in regard to the Department of Justice and Equality, including that it has a silo culture, and all of the resignations outlined, the Tánaiste's best defence in regard to the email in question is that it was not stated therein that she was required to do anything. Given the culture of the Department of Justice and Equality, one wonders who was running the show.

The Department of Justice and Equality is an interesting animal. It is located in a building which has reinforced bullet-proof windows. Those who work there walk with a certain swagger and consider themselves to be very important. The Department has a huge budget and it deals with issues of security and law and order. The vast bulk of legislation that goes through the Houses of the Oireachtas comes from the Department of Justice and Equality. Those who work there take themselves quite seriously. When one is in a ministerial role in that Department one has to be aware of their reputation. The Tánaiste would have been aware of this reputation because she read the Toland report. It was given to her soon after her appointment as Minister for Justice and Equality and so she knew the reputation of the Department staff. The Tánaiste received an email and her reaction was that she did not need to take any action. That is pretty damning. We are governed by the political entity that is Fine Gael and a number of Independents, which I do not believe has the capacity to deal with the serious issues we face.

On three separate occasions this week the Department of Justice and Equality has provided information to the Taoiseach which required him to correct the record of the Dáil. It is important not to mix the personal with the political in this matter. I feel sorry for the Fine Gael Members because I was that soldier. When Minister of State, I had to read speeches confirming confidence in the former Minister, Deputy Shatter, and various other Ministers who were in trouble. When Fine Gael and the Labour Party were in government and a Fine Gael Minister was in trouble, Labour Party backbenchers' phones would be ringing off the hook but when a Labour Party Minister was in trouble Labour Party backbencher" phones were off the hook. It is remarkable that the Independent Alliance Ministers are not on record supporting the Tánaiste. I would be interested to know, beyond the spokesperson from the Independent Alliance, where they stand on this matter.

The Department of Justice and Equality has had oversight of huge change in the justice area. It brought down two Garda Commissioners and a former Minister for Justice and Equality. It could be said that it effectively led to the Taoiseach being toppled. The Tánaiste's best response in regard to the email she received is that she was told it was no big deal. Given the seriousness of the situation surrounding Sergeant Maurice McCabe this indicates either a lack of interest or competence to deal with the most serious political issue of our day. The response of the Tánaiste, as the second most senior politician in this land, leaves a huge amount to be desired.

Senator Jerry Buttimer: I welcome the Tánaiste to the House. Senator Ó Ríordáin should never apologise for Fine Gael Senators. We are here to support our Minister, who is a reforming Minister, who has done nothing wrong and who had the zeal to do what was not mentioned by Senator Ó Ríordáin. Her best defence is the establishment of the tribunal by her in a coalition Government and the introduction of approximately 27 pieces of legislation. I will not take lectures about the high moral ground from people who can come in here without any responsibility. As Members of this House, our purpose is to get to the truth of matters. The purpose of the tribunal is to get to the truth. That tribunal was initiated by this Minister and no other Minister. Lest Members have forgotten, the Tánaiste has not been Minister for Justice and Equality for a number of months now. The Toland report was initiated by the Tánaiste. The Department of Justice and Equality and not the Tánaiste must answer for matters relating to the Department.

As I said earlier on the Order of Business, all of us have an obligation and duty to get to the truth for Sergeant Maurice McCabe and his family. In this regard we either have process and substance, or we can have a media witch hunt, political blood letting or the calls for a head, which the Labour Party is particularly good at doing. We all remember what it did previously. What is important is that the Department of Justice and Equality is reformed. The Government and the Tánaiste should not cross the line in this matter.

I refer the House to the Tánaiste's remarks in her opening statement that the legal advice from the Attorney General's office was that it would be wrong for her to interfere in the legal approach being taken by the Garda. Had she done so, we would be having a different debate now. The hypocrisy is on one side. The Tánaiste is trying to establish the facts in terms of her role as Minister for Justice and Equality. It is the Government that is putting information in the ether. In regard to the question posed in some of the remarks made in this House, it was the first opportunity she got on her return to provide the information. We have nothing to hide. The Taoiseach is on record that Sergeant McCabe is a decent, honourable man and in regard to the need to get to the truth. On this side of the House, there is nothing to hide. We want to know all the facts. The Tánaiste, under the coalition of Fine Gael and the Labour Party in government, initiated the whistleblower legislation. I will give credit to the Labour Party for being a good partner in government. However, I will not accept Senator Ó Ríordáin's remarks about the Tánaiste's best defence being X. The Tánaiste's record of achievement in government, in terms of her being a reforming Minister, is available for all to see.

Has anybody here read the email? The last line states that neither the Attorney General nor the Minister has any function relating to the evidence that a party to a commission of investigation may adduce.

Senator Lorraine Clifford-Lee: Why then was the Tánaiste being informed about it?

Senator Jerry Buttimer: Senator Conway asked the question, "When is black and white not black and white?" If the Tánaiste had done anything different the high moral ground being taken by some people would be different. They would be singing a different tune. There is no issue in respect of the Tánaiste. I have known her for over 20 years. As an individual and as a Minister her only motivation is to serve the people and to do right. As stated by Senator Boyhan it is time that we, as a country, accept the process that is the tribunal rather than a process in which we are all undermined.

Senator Frances Black: Hear, hear.

Senator Colm Burke: I will be brief as a lot of what I had intended to say has been said by Senators Boyhan, Buttimer and Conway. The Tánaiste has served this country well whether in opposition or in government. She has always been above board in every action that she has taken. On this matter it was quiet clear she had no role whatever in what is now being alleged against her. I think it is wrong that we are now having, as Senator Boyhan said, a parallel inquiry going on which is wrong. We have a process in place. It is about getting the truth and making sure that there is a fair and accurate report of how Maurice McCabe and his family were so wrongly treated. I think that is the crux of what we have to get to the end of, to make sure that there is fairness and that there is truth and to make sure that he gets justice for the wrongs that he suffered. It is important that the Tánaiste, since she became Minister for justice, made sure that all the t's were crossed and the i's dotted, to make sure that would happen. That is what she has done while she was Minister for justice and that is what is important here. Every-

thing that was done she did above board and in accordance with the obligations that she had as Minister. She did nothing to interfere with any of the inquires that were in the process of trying to establish the truth in this matter.

Acting Chairman (Senator Diarmuid Wilson): I call Senator Ó Clochartaigh. The Senator has four minutes.

Senator Trevor Ó Clochartaigh: Cuirim fáilte roimh an Aire. Cuirim fáilte roimhe i gcónaí agus beidh fáilte roimhe i gcónaí teacht ar an Teach seo. Ó thaobh an comhoibriú a bhí agam leis an Aire ar go leor ceisteanna agus é sa Roinn Dlí agus Cirt agus Comhionannais, fuair mé é an-oibleagáideach go deo.

As a Minister I have always had the height of respect for Deputy Fitzgerald. I respect the fact that she has come into this House and she is discussing the issues. I do think we are getting dragged off on tangents to a certain extent. There are some fundamental questions that do really need to be answered. It is very important that the full content of the email that was received is released so that all of it can be seen. I do not think it is credible and I do not think most people looking at, listening to or observing this scenario feel that it is credible that in the context of a commission dealing with the concerns relating to the most high profile whistleblowers in the State, and one of the biggest issues in the Department, the Minister cannot remember being made aware of this strategy in May 2015. This revelation raises the question as to whether the Department of justice and the Deputy were aware for a whole year of the legal strategy to smear Sergeant McCabe and did nothing. That is the question because as a Minister for justice she did come into this House, she was on the Plinth, she was at Oireachtas committees and she was in the Dáil defending Garda Commissioner O'Sullivan to the hilt, full confidence in her, as were all of her Fine Gael colleagues. To think that she would have known that this was happening and that she still went out to defend her, those are the actions that we are calling into question. They are the ones that we want to draw attention to tonight.

We also need to seek clarity as to what the Minister knew, when she knew it, and who told her. What about the rest of the people in the Department of justice? Can the Minister tell us who else knew about this email? Who released it? Why was it kept under wraps for so long? Why was it not sent to the different commissions? We need full disclosure of all the relevant documents and communications on this specific issue.

Are there going to be more documents found in the back of boxes somewhere in the Department of justice? I refer to the track record of the Department of justice. In fairness to the Leader, it has had a lot of very serious questions asked of it in recent years. We have seen the resignation of two senior officials in that Department. We have seen a Garda Commissioner go over different issues in the Department of justice so its track record is certainly questionable and one cannot deny that there have been questions about the plausibility of some of the evidence that has been given.

We want to know who else in the Department knew about the strategy. Is the Tánaiste aware of other people in the Department who were aware of the strategy? What action did they take on foot of this information because if the email was there somebody surely read it somewhere. Somebody gave the Minister direction that she did not need to do anything about it. Surely, that person's motivations need to be questioned as well in this scenario. Why, when it became apparent last Thursday that an email was received, was it not disclosed immediately rather than a very good journalist having to drag the statement out of the Department of justice? That is

a key question that is being asked. Publishing that email is a matter of urgency. We have the height of respect for the Minister as a person but these are very serious and fundamental questions about the way our country is being run and about the role of one of the most senior Ministers in the Government. These are very serious questions that do need to be asked and we have not been given credible answers to date.

Acting Chairman (Senator Diarmuid Wilson): I call on the Tánaiste.

Tánaiste and Minister for Business, Enterprise and Innovation (Deputy Frances Fitzgerald): I would like to thank the Senators for the range of issues they have raised here tonight.

First of all a number of Senators have raised this question in relation to the email. The full email has been published. I took the decision last night. I circulated it before I spoke in the Dáil. That is the full email. There is nothing being kept back. That is the full email. I do not know where this idea has come from that we have not published the full email. Everything that was in the email is available on the public record. That is the first point that I want to make.

The second issues arises around the fact that I did not interfere with the legal strategy of the Garda Commissioner. If I had done that, as a number of Senators have said, I would be here answering very different questions. I would be answering questions about why I had acted illegally. I am surprised at a number of Senators who have made the point that I should have interfered or done something about the legal strategy. It was not my role. Any barrister or solicitor will tell one, as the Attorney General told me again today again, that there was no role for my former Department or myself getting involved in the legal strategy of the Garda Commissioner. That is absolutely clear.

However, then to go on and suggest that because I did not cross that boundary inappropriately and did not take action regarding whistleblowers, that I did not take initiatives to make sure that whistleblowers were dealt with in the best possible way by An Garda Síochána, is completely inaccurate. One does not follow the other which is what people are implying. What I have tried to point out tonight in my contribution is the range of actions that I took to deal with how whistleblowers were being dealt with in An Garda Síochána, to improve the way that they were being dealt with, and anytime issues came up to see that they were dealt with appropriately, with new procedures and new practices. The Garda Commissioner was the person who invited in Transparency International for advice, again to try to bring independence and objectivity to how whistleblowers were being dealt with within An Garda Síochána.

Clearly, every time issues were brought to my attention about whistleblowers they were raised with me by the Department and indeed with the management of An Garda Síochána. Any time that an issue was raised where, for example, Deputies expressed concerns about the way whistleblowers were being dealt with, I would always raise those issues. To say that because I did not get involved in the legal strategy was in some way to then imply that I did not act on the issues in relation to whistleblowers, is completely inaccurate. What I told the Taoiseach and what the Taoiseach told the Dáil, namely, that I had no hand, act nor part in the legal strategy, I repeat here again tonight. That is accurate. That is truthful.

The information in relation to the email and when it was brought to my attention is truthful. It was last Thursday. The Department had not found that email previously. When I was told of that last Thursday, the Department of justice informed me that it was searching its database to

see if there was any other relevant information and it was taking legal advice on the contents of the email and it would revert to me. I have been asked this question, it would revert to me when it had that legal advice. I took the first opportunity to make that information available to the Taoiseach. Then it was placed on the record of the Dáil as Members know and the way the issues have unfolded this week.

A number of points have been made about the fact that I said that I did not remember getting that email. I got thousands of emails. I have made every effort to read every email. I do not remember reading that email as I said but it is likely that I read it. I did not remember it when I was speaking to the Taoiseach and I was subsequently informed of it. When I told the Taoiseach that the first time I heard of the issues that came out was in May 2016, that was accurate. I did not know about the questioning of witnesses, the meeting in Mullingar or the way in which Garda witnesses were being dealt with. That was all news to me, and that is what I was referring to when I spoke to the Taoiseach. Then this email was found subsequently and was brought to my attention.

I wish to take up a point one of the Senators made, namely, that the only defence I am using is that the email said I should not get involved in any way. That is not correct. I am saying I did not get involved in dealing with the legal approach which, by the way, is still to be determined by the Charleton tribunal. The Charleton tribunal is examining the Garda Commissioner's approach, and no doubt information will be put on the record of the Charleton tribunal and it will make a determination on the question it was asked to answer about the legal strategy of the Garda Commissioner.

Senator Niall Ó Donnghaile: In whom the Tánaiste had confidence.

Deputy Frances Fitzgerald: That question is yet to be fully determined in the Charleton tribunal.

As for not remembering, when one gets an email that specifically says "This is for information only" and so on, regarding the legal strategy, that has a different significance. I acted on all the issues that came up about whistleblowing and I put that on the record of the House tonight. I hope Senators will accept that all my actions showed that I took the issue of whistleblowing very seriously when I was Minister for Justice and Equality.

Senator Trevor Ó Clochartaigh: The Tánaiste had full confidence in the Commissioner all the way through.

Acting Chairman (Senator Diarmuid Wilson): That concludes the statements. When is it proposed to sit again?

Senator Jerry Buttimer: Amárach ar 10.30 a.m.

The Seanad adjourned at 7.50 p.m. until 10.30 a.m. on Thursday, 23 November 2017.