



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Dé Máirt, 19 Feabhra 2019

Tuesday, 19 February 2019

Chuaigh an Leas-Chathaoirleach i gceannas ar 2.30 p.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Gnó an tSeanaid - Business of Seanad

An Leas-Chathaoirleach: I have received notice from Senator Neale Richmond that, on the motion for the Commencement of the House today, he proposes to raise the following matter:

The need for the Minister for Children and Youth Affairs to provide an update on the planned baby box scheme.

I have also received notice from Senator Michelle Mulherin of the following matter:

The need for the Minister for Business, Enterprise and Innovation to make a statement on the efforts of the IDA to deliver foreign direct investment and jobs to north and east Mayo, including the construction of an advanced technology building in Ballina.

I have also received notice from Senator Lynn Ruane of the following matter:

The need for the Minister for Health to provide an update on the progress of the working group examining alternative approaches for personal possession of illegal drugs.

I have also received notice from Senator Robbie Gallagher of the following matter:

The need for the Minister for Culture, Heritage and the Gaeltacht to provide funding for the restoration of the Market House, Castleblayney, County Monaghan.

I have also received notice from Senator Maria Byrne of the following matter:

The need for the Minister for Education and Skills to consider the introduction of social media education for primary school students.

I have also received notice from Senator Maura Hopkins of the following matter:

The need for the Minister for Health to provide an update on the development of a pri-

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mary care centre in Ballaghaderreen, County Roscommon.

I have also received notice from Senator Rose Conway-Walsh of the following matter:

The need for the Minister for Culture, Heritage and the Gaeltacht to make a statement on the need for a helicopter pad on Inishturk Island, County Mayo.

I have also received notice from Senator Brian Ó Domhnaill of the following matter:

The need for the Minister for Finance to make a statement on the decision to put 23% VAT on food supplements and vitamins.

I have also received notice from Senator Joan Freeman of the following matter:

The need for the Taoiseach to provide an update on the re-establishment of the Joint Committee on the Future of Mental Healthcare.

I have also received notice from Senator Martin Conway of the following matter:

The need for the Minister for Housing, Planning and Local Government to provide funding for the building of sewerage systems in Broadford and Cooraclare, County Clare.

Of the matters raised by the Senators suitable for discussion, I have selected those raised by Senators Richmond, Mulherin, Ruane and Gallagher and they will be taken now.

I regret that I had to rule out of order the matter raised by Senator Ó Domhnaill on the ground that it is a repeat of a Commencement matter raised on 30 January 2019. I regret that I had to rule out of order the matter raised by Senator Freeman on the ground that the Taoiseach has no official responsibility in the matter. I regret that I had to rule out of order the matter raised by Senator Conway on the ground that the Minister has no official responsibility in the matter. The other Senators may give notice on another day of the matters they wish to raise.

Nithe i dtosach suíonna - Commencement Matters

Early Years Sector

Senator Neale Richmond: I am delighted to welcome the Minister of State at the Department of Housing, Planning and Local Government, Deputy Phelan, to the House. I appreciate his taking this Commencement matter on behalf of the Minister for Children and Youth Affairs, Deputy Zappone.

As every parent knows, the early years of a child's life are of great importance in ensuring the child reaches his or her full potential. Parents are also aware of the fear, panic and apprehension that even the best prepared new parents may experience on the birth of their first or subsequent children. One way of helping parents through this very difficult process is by assisting them with the essentials they will need for the crucial first weeks and months of parenthood. A baby box is a box full of the supplies new parents need to give their child the best start in life, including clothes, books, blankets, thermometers, towels and toys. The box also contains a mattress and can double as a cot for the infant. Baby boxes have been distributed in Finland and

many other Scandinavian countries since the 1930s. More relevant to this country, they have been distributed in Scotland since 2017. As parents may choose to have their child sleep in the box, it is obviously important that all necessary safety tests be carried out before the boxes are provided to the public. Baby boxes have been distributed in counties Wexford, Limerick and Tipperary under a pilot scheme which has been a significant success. It is a clear indication of the appetite among new parents for the baby box.

In the past week or so, I met the Scottish Minister for Children and Young People, Ms Maree Todd, in Edinburgh to discuss the success of baby box initiative there. As of December 2018, 68,513 Scottish parents had received a baby box, with an estimated take-up rate of more than 85% of new parents. More than 60% of those Scottish parents used or intended to use the box as a crib.

As well as supporting new parents, the baby box gives all children a fair start in life by providing them with essential goods. As the box doubles as a crib, it ensures that babies have a safe place to sleep. In 2018, the Minister, Deputy Zappone, announced her intention to bring baby boxes to all Irish parents. That intention must be made a reality. When will the baby box scheme be rolled out across the country? If it is not envisaged that it will take place in the very near future, I plead with the Minister of State to do everything in his power to ensure it is done as soon as possible.

Minister of State at the Department of Housing, Planning and Local Government (Deputy John Paul Phelan): I thank the Senator for his question. The Minister for Children and Youth Affairs, Deputy Zappone, has asked me to take this Commencement matter because she is attending the Oireachtas Joint Committee on Children and Youth Affairs this afternoon and is, therefore, unable to be present in the House. I bow to Senator Richmond's greater knowledge of parenting and I hope that young Master Luke is-----

An Leas-Chathaoirleach: The Minister of State will get there.

Deputy John Paul Phelan: -----better having been ill recently. Baby boxes for newborns are to be trialled in a pilot under First 5, the recently published whole-of-Government strategy for babies, young children and their families. Piloting baby boxes is just one initiative which is part of a wide-ranging strategy addressing various aspects of the lives of children from birth to age five, including supports for parents to balance working and caring, developments in early learning and care and health initiatives. The gift of the baby box is intended as a welcome from the State for a new arrival to a family and an acknowledgement of this very significant moment for parents. The universal distribution of baby boxes also reflects an important equality principle that each child is given something of equal value at the start of their life.

As the Senator outlined, the concept originates in Finland and has been implemented in a number of other countries. It consists of a package of items to assist with the transition to parenthood. The pilot will undertake research and consultation to determine items for inclusion in the pack and these may include safety items, baby clothes and toys to support early development and books to foster a love of reading from infancy. The distribution of a baby box also offers the opportunity to communicate important child development and safety messages to parents and is an early opportunity to link families in with support services if they are required. This is consistent with the principle of progressive universalism whereby all families receive something universally, but where there are additional needs, extra supports are provided. Key objectives with the baby box and linked communications will include support for parent infant

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bonding, information on baby development and early learning, advice and support for breast-feeding and promotion of infant health and safety. At this point, it has not yet been determined whether the box will be designed for babies to sleep in. In other countries, as the Senator outlined, it can act as a crib for the first six months of a child's life. The logistical issues with this and whether such a feature would be of value to parents will be questions for the scoping phase. Other options for design will also be considered.

Baby boxes will be piloted in parallel with book bags to support early literacy and the home learning environment. Book bags are packs with books for children and other resources to support reading and learning. It is intended that book bags would be made available free of charge to families with young children at key points in a child's life such as infancy, the transition to preschool and the transition to primary school. The pilot of baby boxes and book bags will also address questions of how to facilitate distribution of these resources and the local service provision infrastructure that will be required to be configured to support this.

Senator Neale Richmond: I thank the Minister of State for his reply and I agree with much of what he said about this issue, which I am very passionate about. Every new parent should be given the same basic start and opportunity for the new life they are bringing into the world. I am not necessarily the best parent. I had many privileges when I had the opportunity to help, support and pretend to pay attention to all the great work my wife did 16 months ago. Many people in this country are not in the same position and this scheme provides the Government with an opportunity to assist them. I note the report and the pilot scheme but I appeal to the Minister, Deputy Zappone, to speak with her counterparts in Finland, other Scandinavian countries and, in particular, Scotland, which is comparable to Ireland. The scheme in Scotland has been highly successful. We should definitely consider having the box as a crib. Concerns raised in Scotland have been addressed so let us use Scotland's wisdom and experience to make our scheme the best possible. The great thing about these boxes is that not only do the items contained within give people a great start but they can provide great guidance on swaddling or reusable nappies, which I will not pretend I use. We need to start implementing this and encouraging people that this can be done so that everyone has the same first start.

Deputy John Paul Phelan: Dormant accounts funding has been secured for the development of the pilots in both baby boxes and book bags between 2019 and 2021. That is the direct answer to the Senator's question. If the pilots are successful, as we hope they will be, and once the consultation on what should be included has taken place, it is envisaged the schemes will be introduced.

An Leas-Chathaoirleach: I thank the Minister of State and the Senator.

Job Creation

Senator Michelle Mulherin: I thank the Minister for attending in order to deal with this matter. We were very happy to have her in the west last week for the launch of the west regional enterprise plan to 2020. That was a great occasion because it allowed us to reflect on all the great work that has been achieved as part of the Action Plan for Jobs. More than 28,000 jobs have been created since 2015 and our unemployment rate is approximately 6.6%. Under the new plan, we are seeking to increase the number of jobs in the region by 10% to 15% by 2020. The event to which I refer was fantastic, and the PorterShed digital innovation centre where it took place is very impressive. I am very hopeful that my own home town of Ballina, where we

have secured €3.2 million to create a digital and innovation hub at the old military barracks, will have something similar to the PorterShed if not bigger. There are lots of good things in the pipeline and I acknowledge the Minister's work and that of her predecessor.

The Minister will recall that the chair of the Action Plan for Jobs regional steering committee, Mr. Gerard Kilcommins of Medtronic, outlined his experience of being the chair and looked at the entire region. He acknowledged that the biggest challenge is to spread job growth. Galway and Mayo are two of the largest counties in the country. The position in Galway city is almost a world apart from the other counties. The challenge is to shunt growth outwards and achieve balanced regional development in accordance with the objective of Project Ireland 2040 to grow the population outside of Galway, Dublin and the other big urban centres.

Strategic objective No. 6 of the regional enterprise plan is to "Enhance the quality and availability of enterprise space in the West". I wish to speak about north and east Mayo. We had wonderful news several weeks ago with the announcement of 150 jobs to be created by US firm Meissner. That firm will have its base in Castlebar. We are all very aware in Mayo and in more peripheral areas that it is that bit more difficult to attract foreign direct investment into these areas. I am asking the Minister how we can put north Mayo, east Mayo and Ballina on the map as an economic driver for the region. How can we attract more foreign direct investment? We already have a success story in Coca-Cola's presence in Ballina, which employs about 500 people. Hollister's operation in Ballina employs 800 people. We have foreign direct investment from about six companies including Lionbridge Technologies, which tests software. These are very welcome and they have grown in the last several years but we want new investment, and that makes sense. We may have issues regarding connectivity and roads, but I have spoken with the managing directors of several of these companies and what we have to offer is quality of life. We have never had better sports facilities and there are school places and houses. Moreover, the cost of living is much lower than in Dublin. Let us face it - all jobs are welcome, but if all the investment is in Dublin and Galway, those centres will cave in on themselves. They cannot take the pressure. We know about the shortage of housing and school places.

One solution that has been suggested by some of the multinational companies driving foreign direct investment is the construction of an advanced technology building. We know that it was key to Meissner's choice to invest in Castlebar. That was stated at the launch. Even the Minister for Rural and Community Development, Deputy Ring, who was officiating, said we need to build more such facilities. I am asking for an advanced technology building to be provided in Ballina, which is the biggest town in the area. The town needs to be put on the map so that companies can see not just a field, but a building with the capacity to expand. I get this message from people constantly and if the Minister facilitates this she will put us in a better position to attract the jobs we want and which we are willing and able to have in the north and east of Mayo.

Minister for Business, Enterprise and Innovation (Deputy Heather Humphreys): This Government is determined to support the growth of high-quality and sustainable employment across Ireland, including in County Mayo, and I have made regional development one of my priorities. The recent annual results of the IDA demonstrate that we are making significant progress in Mayo and the west region. In 2018, for example, 56% of all net new jobs created by the agency were in locations outside Dublin. Similarly, every region in Ireland, including the west, posted net gains in jobs last year. There are now over 132,000 people employed across 681 firms in IDA Ireland-client companies outside the capital. In fact, 58% of all IDA-supported employment is now outside Dublin. This represents the highest number of people

employed in the regions by IDA Ireland clients in the agency's history.

While more work remains to be done, County Mayo has benefitted from this regional focus. Mayo is home to a number of prominent multinationals which have shown a significant level of commitment to the county with companies such as Allergan, Baxter Healthcare and Fort Wayne Metals continuing to perform well. The past two years have seen Coca Cola investing €26 million in its Ballina operations to expand its range of activities at the facility. The presence of these companies is a testimony to the positive, enterprise-focused environment for international business that has been fostered in County Mayo.

In the past 12 months, Mayo has experienced a 7.5% growth in employment by overseas companies with 344 net new jobs added and FDI employment now reaching 4,828 people. The IDA, for its part, continues to highlight the benefits of expanding or locating in Mayo to multinationals. In 2018, the agency hosted ten site visits in County Mayo compared with seven site visits in 2017. The IDA also has a number of property solutions in place for prospective investors including approximately 11 ha of industrial zoned land in Ballina which could facilitate the development of a business and technology park. As part of its regional property programme, the IDA constructed an advanced building in Castlebar and I welcome the recent announcement that Meissner will occupy this building with the intention of creating 150 jobs over the next five years. Initiatives like the regional property programme have, so far, supported the creation of hundreds of jobs to date in regional locations such as Sligo, Waterford and Athlone with more expected in the short to medium term. This is a positive reflection of the IDA's proactive investment in property solutions in the regions.

Senator Michelle Mulherin: I applaud and welcome all the progress that has been made. Objective 6 in the regional enterprise plan for the west is to find quality, available enterprise space and an advanced technology building would bring more visitors to the county. The FDI companies on the ground, and Meissner when it made its announcement, have stated that the increase in the number of visits in 2018 is down to the construction of an advanced technology building and this is in keeping with what the chair of the regional steering committee has said.

The Minister may not be able to give me an answer today but I ask her to have a serious look at a site for the construction of a building. IDA Ireland is supportive of this and the local enterprise office can also see its benefits. There is a field but there is no substitute for seeing a building and this would really put us on the map.

Deputy Heather Humphreys: We are achieving real results in encouraging greater investment in County Mayo. The number of people on the live register in Mayo has fallen by 6,124 or 47% compared with February 2012 when we launched the first Action Plan for Jobs. Employment in IDA-supported companies in Mayo has increased year on year since 2012, with a 37% increase in foreign direct investment, FDI, employment in the country from 2012 to 2018. The number of people employed in Enterprise Ireland-supported jobs in Mayo has also increased by more than 55% since 2011. Just last week, I announced the local enterprise office results for Mayo with 130 net new jobs created in 2018.

In terms of Project Ireland 2040, I know that under the urban regeneration fund more than €3.2 million has been allocated for the development of the Ballina Innovation Quarter, which I know the Senator has welcomed. That will be a major boost for Ballina. The Senator has been a great supporter of that project, which she has highlighted to me on a number of occasions. I was delighted she was with us for the launch of the regional enterprise plans for the west

last week. Those plans are all about supporting regional development through collaborative, ground-up proposals.

I see great potential for the regional steering groups who will oversee the implementation of each plan to come up with very good projects of scale which we, as a Government, can support under the various Project Ireland 2040 funds, whether it is rural or urban regeneration, disruptive technologies or the climate fund. There is also my Department's regional enterprise development fund that I plan to launch in the coming months.

I would like to see more projects like the Ballina Innovation Quarter being replicated throughout the country because it is a very good project. I want to emphasise that creating jobs in the regions is a priority for both IDA Ireland and my Department. I am focused on doing everything I can to deliver the fairest possible spread of investment.

In 2018, IDA Ireland recorded its highest number of jobs created in the region in 17 years. Every facility has been completed under the regional property programme, and the Senator is right in saying that every one of them is occupied now.

Senator Michelle Mulherin: Is the Minister looking at another one?

Deputy Heather Humphreys: I am. The programme is clearly delivering results. That is the reason I have increased the budget for the regional property programme by €10 million in budget 2019. Under Project Ireland 2040 and because of Brexit, a need has been identified in the Border region. There has been very little investment in terms of IDA Ireland in recent years, but that has changed. There have been a good number of job announcements in Sligo, for example. A number of very good jobs have been announced there in the past year. The Senator can understand that there is a particular focus on the Border currently.

We are making real progress. We will continue to do our utmost to encourage further such job growth across all parts of Ireland in the time ahead.

An Leas-Chathaoirleach: Before calling the next item, I welcome to the Public Gallery the president and past presidents of the Irish Amateur Rowing Union, colleagues of Senator Billy Lawless, who I have no doubt is a former champion rower.

Senator Billy Lawless: I thank the Leas-Chathaoirleach. I just wanted to show him the fantastic specimens of sportsmen I have brought here today.

An Leas-Chathaoirleach: I have noticed.

Senator Lynn Ruane: Where is-----

Senator Billy Lawless: He is coming.

Drug Treatment Programmes Policy

Senator Lynn Ruane: I thank the Minister of State for being here. I raise the issue of drug policy reform and the progress of the work of the Department of Health working group examining alternative approaches to the criminalisation of drugs possession. As she is aware, this is an issue I have a keen interest in and I have been following closely the progress of the Department working group. The decriminalisation of drugs for personal use is a necessity in

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modernising our antiquated laws which unfairly and without an evidence base criminalise drug use and addiction.

The international evidence is clear and overwhelmingly supportive of decriminalisation as a harm reduction measure and one that would allow for a shift to a health-led approach where drug treatment, education and community engagement would be central rather than harsh criminal penalties.

3 o'clock

My first Seanad Private Members' Bill, the Controlled Drugs and Harm Reduction Bill 2017, would have allowed for a Portuguese-style model for the decriminalisation of drugs possession for personal use and the creation of a drug dissuasion service to administer and case-manage those found in possession of drugs, whereby appropriate health-led interventions could be made instead of sending people through the court and prison systems.

As the Minister of State will remember, I agreed with her and the Government to adjourn the debate on the Bill and suspend its progression through the Oireachtas to allow for the working group to conduct its work. I thank her for the opportunity to present my Bill to the working group. I hope it was of use in its deliberations.

I was delighted to see the extraordinary amount of engagement through the public consultation process. Over 20,000 submissions were received. I understand this is the Department's record. It clearly shows the public support and appetite for substantive change. At every point, I have tried to be constructive and supportive of the working group and of Deputy Catherine Byrne in her role as Minister of State responsible for the drugs strategy.

I held my Bill back because I believed there was openness and willingness to assess the failings of our current drug laws, genuinely consider evidence internationally and move to recommend real and substantive change. The Minister of State can imagine my concern, therefore, when I read in the *Irish Examiner* a few weeks back that the group is preparing to reject recommending decriminalisation and instead recommends some sort of diversion scheme - a system in which we would maintain the criminalisation of addiction and tell people we are going to put their stigmatisation and shaming before meeting their needs and recovery. It is just not good enough.

As a State, we cannot continue to label addiction as offending behaviour and hold criminal penalties over users' heads as a way to keep them in line. It may be the thinking of the Department and working group but it is not supported by evidence, international experience or the extraordinary support for decriminalisation the Department would have noted in the public consultation. If the reports in the newspaper article are true, the Government will have ignored the evidence and the public in opting for this path.

Could the Minister of State confirm whether the reports are untrue and whether the working group is still considering full decriminalisation? Can she confirm that she will be publishing the submissions received in the consultation, as was done for the Citizens' Assembly, so we can all know of the public support for decriminalisation or the model the Government is putting forward? Can she confirm that any proposals from the group will be fully cited in extensive detail, with the international evidence supporting the policy and evidence base for their effectiveness? I look forward to the Minister of State's response.

Minister of State at the Department of Health (Deputy Catherine Byrne): I thank the Senator for her compassion and passion in dealing with this matter. I thank her for the time she put in when she came to see us about her Bill. I asked her to hold off until we put the group together. We have done so. I thank the over 20,000 people who emailed their views on the matter.

I appreciate very much the Senator's special interest in this issue. She introduced a Private Members' Bill in 2017. We share the same desire to make positive changes in this area. In November 2017, I established a working group to consider the approach in other jurisdictions to the possession of drugs for personal use. The group was set up to examine alternative responses for simple possession and will make recommendations on policy options to me and my colleagues in government, including the Minister for Health, Deputy Harris, and the Minister for Justice and Equality, Deputy Flanagan.

The group is chaired by a retired judge, Mr. Garrett Sheehan, and consists of representatives from the Department of justice, the criminal justice system, the Department of Health, the HSE and the HRB. There are also two service users as well as academic experts. The work programme of the working group has consisted of meetings with experts from other countries, commissioning research on other jurisdictions and undertaking a public consultation. I understand the group met Senator Ruane, who explained to it the background and context to her Private Members' Bill.

I have been informed there have been 14 meetings of the working group to date. To inform its deliberations, wide-ranging public consultation was undertaken by the Department of Health, consisting of an online questionnaire, focus groups and an open policy debate. The online questionnaire received a response from over 20,000 people, which far exceeds the response in any consultation previously undertaken by the Department. Two focus groups were held, with a total of 15 people who had been prosecuted for the possession of illegal drugs for personal use. An open policy debate was attended by 17 representatives of stakeholder organisations. The participants explored how an alternative health-led approach should operate in practice. The working group commissioned a group of internationally renowned researchers to conduct a review of the approaches and experiences in nine other jurisdictions with respect to the possession of drugs for personal use. In light of the large volume of work undertaken and the associated amount of information to be considered by the working group, the chair requested an extension to the original timeframe. On 19 December 2018, I granted an extension of three months so that the group could complete the report and ensure it addresses all of the terms of reference. I met the chair of the group in January and he updated me on progress. He advised me that the working group is drafting the final report and is on track to submit it by the end of quarter 1 of 2019.

Senator Lynn Ruane: It goes without saying that a significant amount of work has gone into this. The majority of NGOs, community groups and voluntary groups that support decriminalisation have welcomed the level of consultation and the role that the Department has played, as have I. We were concerned by the report in the *Irish Examiner*, which pre-empted the outcome of the as yet unpublished working group report. Is the newspaper report accurate? Can we expect a diversion programme to be introduced under which someone caught once with drugs will be expected in that moment to be able to grasp recovery? Relapse is such an everyday part of drug use. A system under which people would not face court the first time they are caught in possession of drugs would still label people as criminals and is not a health-led approach. Is the report in the *Irish Examiner* accurate?

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It was useful that all the submissions to the Citizens' Assembly process were made public. It would also be useful if everybody who has a stake in this debate could see the information supporting the policy decision of the working group. The Minister of State spoke of internationally renowned researchers. Will the international evidence used to support the working group's recommendations be cited in the report in order that we can see it when the report is published?

Deputy Catherine Byrne: I will not pre-empt what is in the report because I do not know what is in it. I have not asked to be kept informed as the group has proceeded with its work in recent weeks and months. Only when the report crosses my desk will I know the full extent of what is being recommended by the working group. Newspapers can write anything they like. I will have to consult officials in the Department on the online assessment as I am not sure whether we would be in a position to publish the emails received given that they are private correspondence.

Senator Lynn Ruane: They can be anonymised.

Deputy Catherine Byrne: I will have to come back to the Senator on that.

As I indicated, work was done by internationally renowned researchers and we have looked at other jurisdictions. Until the report is on my desk, I cannot speculate on its contents to the Senator or anybody else, including newspaper reporters who telephone me. Let the working group finish the work it has started and come back with a report. If I am not happy with the report, I am sure many Senators will not be happy with it either. Only then will we be able to work on the recommendations.

I visit young people in services and communities, many of whom the Senator knows, who find themselves caught up in addiction and criminal activity and end up at a young age with a criminal record which can alter their lives for ever. They cannot go back into education, go abroad on holiday or even get housing. We need to be compassionate, particularly towards young people who get involved in criminal activities and find that they have a lifelong mark against them that is very difficult to shake off.

I hope the working group report will provide for flexibility and compassion and, above all, a health-led change to our approach to young people who are caught up in drug addiction and, unfortunately, criminal activities around that. Young people of 15 and 16 years are being targeted daily. This morning, on a visit to the Blanchardstown task force, I was informed that children as young as 12 and 14 years are smoking weed. This is something we must take on board. It is not only in poorer areas but across every constituency and part of the country. We need to recognise that addiction is a health issue and not stigmatise people because of it.

I apologise to Senator Ruane that I have nothing to add other than the judge and the working group were given a job to do, and out of respect to what they are doing, we should wait and ignore whatever is in the newspaper until we get the facts.

An Cathaoirleach: The Minister of State will keep in touch on this anyway.

Deputy Catherine Byrne: I certainly will. I am sure that I will be back in the House.

Heritage Sites

Senator Robbie Gallagher: I welcome the Minister of State to the House and thank him for taking time to be here. On behalf of the people of Castleblayney, I seek the Minister of State's help and assistance in addressing the dreadful and dangerous state of the Market House building in the centre of Castleblayney town. The Market House, which is a protected structure, dates back to 1801. Until the 1990s, the building was used as a library and the Courts Service also used the building, but since then it has remained vacant and is in an advancing state of decay.

It is soul destroying for the people of Castleblayney to see this iconic building in the heart of their town decay to this current condition. In recent weeks, Monaghan County Council has found it necessary to cordon off the building and surrounding area after engineers found that an internal wall had collapsed. Investigations are ongoing to determine the structural integrity of the building. The council has engaged a structural engineer to prepare measures that would stabilise the walls of the Market House and protect the public. Interim measures under design provide for a heavy steel bracing to support the external walls and prevent the potential collapse of the building onto the public footpath. The estimated cost is €250,000.

On the footpath outside the building, there is a statue of the late great Tom McBride, which was installed only last year, when President Higgins came to the town for the day, which was very successful. I am glad to report that the Big Tom statue has proved a great tourist attraction for the town which has benefited from increased numbers of visitors who have come to see it. Unfortunately, there are reports that the Big Tom statue may have to be relocated because the Market House is in such an unstable condition. I have been contacted by many business owners, traders, residents and the community at large who have voiced their concerns about the situation. Unfortunately, a knock-on effect is that car parking has been restricted around the building which has affected businesses because of the loss of footfall. Businesses are losing money. Castleblayney has many fine attractions, including Lough Muckno which has seen it called the Killarney of the north. It is important that we promote and maintain its attractions as best we can.

Sadly, protected status in this country means very little. Heritage grants are meagre and go no way to retaining buildings. Many of our structures are neglected and are allowed to deteriorate and rot, as in this case when the building is about to fall onto a public highway. However, this is not just about a neglected building in Castleblayney. It has a serious knock-on effect on the town's business life. Funding must be allocated so that the building can be used by the people of Castleblayney. There have been suggestions locally that due to the huge popularity of the Big Tom statue, and more people coming to the town, that the statue may have to be relocated. This is an emergency situation that needs emergency funding from the Government to restore this building to its former glory so it can be utilised for the people of Castleblayney, perhaps for a Big Tom visitor centre that will add another visitor attraction to the area. My message is that this has come to a critical state and funding needs to be allocated so this building can be brought back to life.

Minister of State at the Department of Culture, Heritage and the Gaeltacht (Deputy Seán Kyne): I thank the Senator for raising the matter. I am sorry to hear of the concerns over the Big Tom statue because I know it was only recently installed in Castleblayney. I saw the television footage of the crowd and of the President attending its unveiling.

The Market House at Castleblayney is a well-known building in Castleblayney's historic town centre which will be familiar to many people. The building is in the ownership and man-

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agement of Monaghan County Council. It was recorded in my Department's national inventory of architectural heritage and is rated there as of regional importance. As such, it was recommended to Monaghan County Council for inclusion in its record of protected structures and it is a protected structure within the meaning of the Planning and Development Acts.

The role of the Minister with regard to the protection and management of our architectural heritage is set out in the provisions of relevant legislation, as are the roles of local authorities and the responsibilities of owners. Part IV of the Planning and Development Act 2000, as amended, gives primary responsibility to planning authorities to identify and protect the architectural heritage by including particular structures on their record of protected structures. Inclusion on the record of protected structures places a duty of care on the owners and occupiers of protected structures and also gives planning authorities powers to deal with development proposals affecting them and to seek to safeguard their future.

Under section 59 of the Planning and Development Acts, the Minister has no power to serve endangerment notices on protected structures as this is a reserved function of the local authority. As the owner of this protected structure, Monaghan County Council has a duty under section 58 of the Acts to ensure the structure does not become endangered. I am informed there is considerable work under way by the county council to identify a course of action that would see the Market House saved and protected into the future. I understand this will require a very significant investment.

In terms of the support the Minister can offer, her role in regard to protected structures is mainly advisory. The national inventory of architectural heritage in my Department identifies, records and evaluates the post-1700 architectural heritage of Ireland as an aid to its protection and conservation. The Minister recommends structures rated as being of regional importance or above to the planning authorities for inclusion on their record of protected structures. However, the making of an addition to, or a deletion from, a record of protected structures remains a reserved function of the relevant planning authority.

My Department's architectural heritage advisory unit provides advice and support to owners dealing with protected structures and, as in the past, this service remains always available to Monaghan County Council should it find it would be of assistance. My Department also provides financial support for the protection of heritage buildings and historic structures through the historic structures fund and the built heritage investment scheme, which are administered by local authorities. This year, I have allocated €4.3 million in total to these schemes. I understand the scale of investment needed for the Market House would mean that the levels of grant funding available under these schemes might not be sufficient and that the local authority intends to seek funding from other sources.

The Minister provided funding of €1 million in 2018 and again in 2019 for the historic towns initiative, which is a joint initiative of my Department and the Heritage Council. The historic towns initiative supported six historic towns in 2018 in carrying out significant heritage regeneration projects. I understand that Monaghan County Council applied for and was granted €140,000 in funding under the historic towns initiative in 2018 for works to the Market House in Castleblayney to commence the process of stabilising the building, but the application was later withdrawn by the local authority because of its growing appreciation of the scale of the works needed to this building and the likelihood, therefore, that the funding awarded would not have made a significant difference to the future of the building, which needs a much larger scale intervention.

In terms of future funding, Investing in our Culture, Language and Heritage 2018-2027 represents a major capital investment scheme of €1.2 billion over the next ten years, which will include increased investment in protecting and celebrating our built heritage across the country. More details on the commencement and completion dates for projects and programmes, as well as the timing of the expenditure in regard to them, will emerge as we go through the process of appraisal and planning as required under the public spending code.

My Department is aware of the significance of this building and its position in the town of Castleblaney. My officials remain available to assist Monaghan County Council in any way possible with its efforts to manage the building and see it returned to a sustainable use that is consistent with its significant history and position in the town. It remains open to Monaghan County Council to apply for funding under any of the built heritage grant schemes that it would find suitable for supporting the various phases of the project, once a plan for the sustainable future of the building has been identified by the local authority.

With regard to Castleblaney, I also welcome the allocation to Monaghan County Council from the Department of Rural and Community Development, under Deputy Ring. That Department's rural regeneration development fund, category 1, grant for Castleblaney enterprise centre, comprises some €2.41 million for a disused site adjacent to Castleblaney town centre, given the great potential this brings to the town. Perhaps Monaghan County Council has plans to seek funding under the rural scheme, which has a €1 billion fund over ten years. It is now in its second year. I am sure the Senator will liaise with his colleagues on the local authority to see whether Monaghan County Council would be interested in applying for the fund. I cannot pre-empt a grant of funding but making an application to the Department of Rural and Community Development may be a route the local authority could go down.

Senator Robbie Gallagher: I thank the Minister of State for his comprehensive reply. Unfortunately, I take no solace from its contents. To put this in context, the Minister of State mentioned a national figure of €4.3 million for protected structures. At present, figures are circulating that restoring the Market House to its former glory would cost more than €6 million. If the building were to be removed and built back up again it would cost between €3.5 million and €4 million. These figures outline the seriousness of the problem. The funding allocated for protected structures, with all due respect, is totally inadequate not just with regard to this building but for protected structures throughout the country. This is something of which the Government needs to take cognisance. This is a serious issue for the economic well-being of a small Border town such as Castleblaney. I ask that the Government opens its doors to potential funding so the issue can be addressed and the lives of the people of Castleblaney can get back to normal. They are on hold at present and it will take emergency funding for the Market House to be restored.

Deputy Seán Kyne: As I stated, I am speaking on behalf of the Minister, Deputy Madigan, and I know the Department of Culture, Heritage and the Gaeltacht is acutely aware of the historic nature and significance of the Market House in Castleblaney. I am not here to speak on behalf of Monaghan County Council or to comment on matters that are part of the local authority's reserved functions, but I know the local authority owns the building and is responsible for its care. It is acutely aware of the position and is working to identify solutions. The Minister and the Department are ready to offer advice, support and assistance to the local authority. There may be other routes the local authority can take on the project, and I urge the Senator to liaise with it. As I have stated, the Minister, Deputy Madigan, will be free to discuss the matter with the Senator at some stage.

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Sitting suspended at 3.25 p.m. and resumed at 3.35 p.m.

An tOrd Gnó - Order of Business

Senator Jerry Buttimer: The Order of Business is No. 1, Judicial Appointments Commission Bill 2017 - Committee Stage, resumed, to be taken at 4.45 p.m. and to adjourn at 7 p.m., if not previously concluded; and No. 2, Personal Injuries Assessment Board (Amendment) (No. 2) Bill 2018 - Committee and Remaining Stages, to be taken at 7 p.m.

Senator Catherine Ardagh: Today I express my disappointment about the comments made by Deputy McDonald concerning the Police Service of Northern Ireland, PSNI. She said she would not have confidence in any current member of the PSNI senior leadership team taking the helm of the organisation. I am very disappointed and surprised by these remarks and they very much undermine the role of the PSNI. From both sides of the community we spent so much time and many years building up and ensuring confidence in the police service. It was confidence that members of both the nationalist and unionist community could have in the institution. It seems Sinn Féin is hell-bent on destroying all the institutions in the North, first with the assembly and now the police service. Deputy McDonald should withdraw her remarks and apologise for them because they are very destabilising. It is very unfair on those who live in Northern Ireland to have the policing service undermined while not having an assembly.

I also raise the Irish Naturalisation and Immigration Service, INIS, which I have mentioned in the House before. Where people are seeking re-entry visas and are legally in this country, they must apply for an appointment. I said before that bots have taken these appointment slots so that people can resell them. I raised the matter in October but it has not been resolved. It seems there is some sort of institutional racism against people in this country legally. The matter has been raised and lip service has been paid in the fixing of the problem but nothing has been done.

Before the introduction of the appointments system, people with visas living in this country who needed to re-enter the country after going home for an emergency, for example, could go to the Garda National Immigration Bureau on Burgh Quay for a meeting with a member of An Garda Síochána with responsibility for immigration. That cannot be done now and it is very unfair on those who are legally in the country. They deserve some sort of service as they pay their taxes. These people make a contribution, as they are largely nurses, doctors and others who are here legally. I call on the Government to ensure the system is corrected so that the appointments system is fair. I call on the Minister to ensure these people can meet a person if there is an emergency in their home and they have a visa to be in Ireland.

I also raise the sourcing of cannabis products. The Government has stated it is difficult to source these products but the UK has managed to import a large amount of cannabinoid products from Canada. Many patients in Ireland suffer from multiple sclerosis or epilepsy and are not able to gain access to cannabinoid products that might help their illness. I call on the Government to have a look at the matter as people are crying out for access to these products. It is not fair that they do not have access to them despite the appropriate legislation being in place.

Senator Gerard P. Craughwell: It has been brought to my attention that the Leader of this House believes the ongoing debate on the Judicial Appointments Commission Bill 2017 is bringing the House into disrepute. It has been said that the almost 90 hours we have been

debating the Bill has damaged the reputation of the Seanad.

Senator Jerry Buttimer: On a point of information, Senator Craughwell should not mislead the House. He is peddling a line regarding the time for the Bill being debated.

An Cathaoirleach: The Leader will have ample opportunity to reply when responding to the Order of Business.

Senator Jerry Buttimer: The Senator is incorrect and should give the facts.

An Cathaoirleach: The Leader will have ample opportunity to correct the Senator if he is wrong.

Senator Martin Conway: It is important to correct him about this immediately before it goes out to the public.

Senator Jerry Buttimer: It will go out to members of the media as well.

An Cathaoirleach: We have wasted a minute already. I ask Senator Craughwell to continue.

Senator Gerard P. Craughwell: As I said, it has been said that the time debating this legislation has damaged the reputation of the Seanad and, by implication, the reputation of all Members of the Seanad. While I do not know where the Leader has formed this view or what papers he is reading, since the commencement of debate in the Seanad, the following bodies have expressed their views. The Council of Europe's Group of States against Corruption questioned whether the Bill was in line with European standards and whether it secured judicial independence. The European Commission, in a report in March 2018, was definitive in its view, which it stated explicitly, that the Bill was not in line with European standards. In an editorial published in November 2018, *The Irish Times* stated: "It is still not too late for the Government to scrap the ill-advised Judicial Appointments Bill being foisted on the country at the whim of the Minister for Transport".

Senator Fintan Warfield: Does the Senator take his lead from *The Irish Times*?

Senator Jerry Buttimer: We know he does, except when it comes to the presidential election.

An Cathaoirleach: The Leader is only prolonging the debate.

Senator Gerard P. Craughwell: I have a question for the Leader. Are those of us doing our damndest to oppose this legislation by scrutinising and trying to change it the enemy from within or is allowing one single elected Member of Dáil Éireann to fundamentally interfere with the central tenet of our democracy the enemy?

Senator Robbie Gallagher: That is Independents for us.

Senator Gerard P. Craughwell: We all know the political responsibilities and pressures that the Leader of this House has to endure to ensure the Government programme passes through it but for him to intertwine-----

Senator Jerry Buttimer: The Senator promised he would support the Government when he got elected. He said he would consult on every vote.

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An Cathaoirleach: Please, Leader.

Senator Jerry Buttimer: He has not consulted on one vote yet. He has broken his political promise. I have the text on my phone.

An Cathaoirleach: The Leader has a position of great responsibility and leadership.

Senator Jerry Buttimer: It is not a time to take sick with stress though.

An Cathaoirleach: I ask him to acknowledge that by allowing Senator Craughwell to continue.

Senator Jerry Buttimer: The Cathaoirleach is right. I am sorry.

Senator Gerard P. Craughwell: By intertwining the fate or reputation of the Seanad with this legislation the Leader is being derogatory to the House.

Senator Jerry Buttimer: That sounds like a senior counsel to me.

Senator Gerard P. Craughwell: Nobody reading the transcript of the 90 hours of debate or witnessing it live could fault the quality of what is being debated or the public service benefit-----

Senator Jerry Buttimer: The Senator did not write that himself, in fairness.

Senator Gerard P. Craughwell: -----of having a former Tánaiste, Minister for justice and Attorney General to point out, line by line and word by word, how awful this legislation is and how dangerous it is to the independence and quality of the Judiciary. I ask the Leader not to sully the reputation of this House because the political demands and pressures placed on him. Thank God for the checks and balances built into our Constitution that when an Executive gone rogue and allowed a single individual to dictate the future of our Judiciary, our institutions, including the Seanad, can still provide a check for however long it takes to defend the administration of justice.

An Cathaoirleach: I ask the Senator to conclude his prepared script.

Senator Martin Conway: Well said. Why did I not think of that?

Senator Gerard P. Craughwell: The only reason the Irish people believe this House-----

(Interruptions).

Senator Jerry Buttimer: This sounds like a senior counsel's opinion.

An Cathaoirleach: The more the Leader interrupts, the longer Senator Craughwell will speak. The Senator's contribution has already lasted for four minutes and 20 seconds because he has been interrupted.

Senator Gerard P. Craughwell: I am prepared to stand here all day if that is what it takes.

An Cathaoirleach: I will not allow that. I ask the Senator to conclude and he can-----

Senator Gerard P. Craughwell: Snide remarks were made about this having been prepared by a senior counsel. It was not prepared by a senior counsel.

Senator Aodhán Ó Ríordáin: Was it a junior counsel?

Senator Gerard P. Craughwell: It is a prepared script because the matter is important.

An Cathaoirleach: The Senator has made his point.

Senator Gerard P. Craughwell: The point I am trying to make is that if it takes from now until hell freezes over, we will continue to debate this awful Bill to see to it that it is changed into something worthwhile or the Government wakes up and scraps it altogether.

Senator Rose Conway-Walsh: I want to address what has just been said by Senators on my left and their party leader about the non-disclosure of information by the PSNI. Does Fianna Fáil think it is okay for the PSNI to withhold vital, significant and sensitive information? That is my question for Micheál Martin. Is Fianna Fáil okay with that?

Senator Jennifer Murnane O'Connor: We are talking Sinn Féin here.

An Cathaoirleach: I do not want a debate between two parties. Will the Senator please address the Chair?

Senator Rose Conway-Walsh: I wish to ask a number of questions.

(Interruptions).

Senator Rose Conway-Walsh: I am not addressing Senator Noone.

Senator Niall Ó Donnghaile: Fianna Fáil are.

An Cathaoirleach: Cease the interruptions. Please continue.

Senator Rose Conway-Walsh: I know the Fianna Fáil Party has a confidence and supply arrangement with the Government. If the Fianna Fáil Party has full confidence in the PSNI does it think it is okay that the PSNI has withheld vital significant information? It is not me who is saying that it is significant information, it is Dr. Michael Maguire, the police ombudsman. There are at least 20 families across seven counties who are impacted by that. Have representatives from Fianna Fáil spoken to these families?

Senator Niall Ó Donnghaile: Hear, hear.

Senator Rose Conway-Walsh: Have its representatives asked these families what they want?

Senator Máire Devine: Hear, hear.

Senator Rose Conway-Walsh: Have they total disregard for these families? That is the reason that last week we asked for the Minister for Justice and Equality, Deputy Flanagan, to come to this House to tell Members what the Irish Government was doing about this issue. Is the Government going to turn its back? If Fianna Fáil thinks it is okay to have no accountability, saying that is fine, and the computer was old, there was nothing to see, I am sorry. Fianna Fáil Party is ignoring its own bedfellows in the North, the SDLP. The SDLP has even said that this should not be happening and that it needs to be stopped. Fianna Fáil needs to make up its mind. I cannot figure out how a political party in the South could not think it was wrong for a police force to withhold this vital information to prevent those families from having the

ombudsman's report they have waited decades for. Those in the North could then say they had seen Dr. Maguire's report. However, Dr. Maguire had to come back and tell them that he did not have the information because the police withheld it from him. Does Fianna Fáil think that is okay? That is not okay with me. It is not okay with Sinn Féin and we will not stand over it.

Senator Máire Devine: Hear, hear.

Senator Rose Conway-Walsh: If the Fianna Fáil Senator wants to stand over it, stand full square behind it. We are not standing over it and we will make no apologies for that. Trying to make party politics at the expense of these families is wrong. Perhaps one of the Fianna Fáil Senators would respond to me if he or she has spoken to the families in question because they are the people at the centre of this. Fianna Fáil might want to cover up the collusion that has gone on for decades but certainly we are not going to cover it up any longer.

Senator Máire Devine: Well said.

Senator Frances Black: I wish to highlight how shocked and angered I was during the weekend having read the comments of the chief executive of Dublin City Council, Mr. Owen Keegan, on homelessness. He stated:

The best way to solve homelessness in Dublin would be to provide no beds. When you go out of your way to increase accommodation and improve the standards of that accommodation it's a much more attractive place to be.

He later clarified that his comments were intended as a joke, stating that he was trying to make a point that if we really want to cut numbers, then cut the service. I do not find this funny. It is deeply unfair on the people who are suffering the stress, indignity and hardship of trying to look after their families in the midst of homelessness.

I know a person very close to me who is living in a hub in Crumlin. This beautiful young woman, who is proud that she is doing her best, has two young beautiful girls but is separated from her partner. She has been living in the hub in Crumlin for the past 15 months. She carries the shame of not having her own home and it is 100% not funny. The complete lack of empathy in these comments is unacceptable and it really saddens me that these are the sorts of statements being made by the head of Dublin City Council, which has such a pivotal role to play in fixing this crisis.

It fundamentally misrepresents the problems we are facing. People are not in this situation because it is attractive, they are there because of an acute lack of social and affordable housing. Marginal improvements in homelessness services do not create homelessness. We should be talking about the root cause of homelessness, which is an unwillingness to build social housing. This was something we did for decades and it is frustrating to see officials downplaying the importance of public sector housing provision in light of this ongoing crisis. As far as I can see, no statements have issued from the Minister for Housing, Planning and Local Government, Deputy Eoghan Murphy, in response to these comments. I would appreciate it if the Leader were to ask the Minister to clarify that he does not share the view that providing acceptable and compassionate homelessness services is contributing to the problem.

Senator Aodhán Ó Ríordáin: I wish to raise the issue of the details of the asylum claim of Ellie Kisiyombe, a local election candidate for the Social Democrats in the north inner city, being splashed on the front page of a national newspaper last Sunday. I find it disturbing that,

out of approximately 1,000 candidates hoping to contest the local elections in May, this woman was selected for investigation by the newspaper and made the subject of a front page story. The newspaper could only have obtained the information on which the article is based from a leak in the Department of Justice and Equality. Will the Leader request the Minister for Justice and Equality, Deputy Flanagan, to come to the House to discuss this disturbing matter to allow him the opportunity to deny that the information came from the Department?

I formed part of a panel with Ms Kisyombe some weeks ago and I said it was quite brave of her to put her name forward because it would open her life and situation to intense scrutiny. That is exactly what has happened. Official Ireland has found a way to try to put her back in her box by means of a screaming headline on the front page of a supposedly reputable newspaper. This House should not stand for it. There is a line that we cannot cross. The picketing of politicians' private homes is out of line and so is fishing into the personal details of a person's story and leaking it to a newspaper. The Minister for Justice and Equality should address the House on this issue. If it happened to Ellie Kisyombe, it could happen to anybody who seeks public office or anybody in the direct provision system who wishes to speak about the conditions in or the reality of that system. In recent years, this House has had a proud cross-party tradition, regardless of political allegiances, of Senators on the Government side and the Opposition speaking out about the injustices of the direct provision system. I can only imagine the horror Ms Kisyombe felt when she was singled out by a newspaper having decided to run for election. A line has been crossed. The Minister or his representatives should come to the House to discuss whether a leak emanated from the Department, which is my suspicion. If that is so-----

Senator Jerry Buttimer: What is the basis for that suspicion?

An Cathaoirleach: The Leader will have a chance to respond.

Senator Jerry Buttimer: Senators must be fair. They cannot make outlandish statements which they cannot prove.

Senator Aodhán Ó Ríordáin: If the Leader thinks it an outlandish suggestion-----

An Cathaoirleach: The Senator's time is up.

Senator Aodhán Ó Ríordáin: That may be so, but I was interrupted.

Senator Jerry Buttimer: The Senator is accusing the Minister of leaking information.

Senator Aodhán Ó Ríordáin: Personal information regarding an asylum seeker ended up on the front page of a newspaper. That information was held within the Department of Justice and Equality. If the Leader contends that it is outlandish to suggest that the information was leaked, he does not know the Department as well as I do. The Minister should be given the opportunity to come to the House and tell us that the information was not leaked by the Department.

Senator Martin Conway: On the matter, I was horrified that the information was published in a Sunday newspaper. Although I do not believe that the Minister or his staff, who always act appropriately, would leak such information, it is not beyond the realms of possibility that at some stage an official of the Department-----

Senator Jerry Buttimer: One cannot say that.

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Senator Martin Conway: There is nothing beyond the realms of possibility and it could have happened but the bottom line is that it should not have happened. It should be noted in this House that it happened and it was not appropriate. Nobody will ever get to the bottom of how it happened but it is regrettable that it did.

I have to thank the Minister for Rural and Community Development, Deputy Ring, for the rural regeneration fund, of which County Clare got almost €7 million. Lahinch Seaworld and Leisure Centre got €2.8 million, €900,000 went to Loop Head lighthouse, €1.7 million went to the Vandeleur Walled Garden in Kilrush and more money went to Holy Island. That said, there were projects that did not succeed in getting funding, and two in particular. One project which did not get funding was the Broadford sewerage scheme and the other was the Cooraclare sewerage scheme. Both sewerage schemes have been promised for decades. The ground for the treatment plant in Cooraclare was even purchased and several hundred thousands euro were spent but it just came to a standstill, in spite of commitments through previous Governments and the local authority.

I submitted this issue as a Commencement matter but it was ruled out of order because the Department did not want to come in and deal with the issue. It said that it was exclusively for Irish Water. It is my belief that the Government runs Irish Water so the fact that Irish Water was able to opt out of dealing with this as a Commencement matter is regrettable.

My question is simple. Can the Leader, on behalf of the people of Cooraclare in west Clare and Broadford in east Clare, communicate to the Minister for Communications, Climate Action and Environment, that when any development in either of these villages is applied for, the message that comes back from the local authority is that it is premature ahead of a sewage scheme being constructed? The problem is that there are people in rural Ireland who are prepared to invest in development but it is not happening because of this type of situation. The Leader might ask the Minister to communicate with those communities who are unhappy with this and in his own good time, he might organise a debate on small village sewerage schemes because we need to get to the bottom of this.

Senator Jennifer Murnane O'Connor: I want to address an issue that has been raised previously, namely, VAT on food supplements. The Revenue Commissioners published its revised guidance at the end of last year on how various food supplements would be treated for VAT purposes on 1 March 2019. This will have serious implications for many food and food supplement items and it will end up costing the end consumer far more.

In the Revenue review, it referred to various items which would continue to be deemed to be food items and therefore be exempt from VAT. Typically, these would be products that are licensed or authorised by the Health Products Regulatory Authority. However, from 1 March 2019 many items will be considered food supplements and will be liable for the standard rate of VAT at 23%. This new treatment is extremely broad. Many items have a zero rate of VAT and will now be subject to 23% VAT. This will mean that the cost of those items is likely to increase substantially over the coming months and that is the biggest fear that people who are coming into my clinics have been expressing. I had a lady in with me recently who is on Macushield. It is a macro degeneration and it costs about €25 per box. That will go up by €5.75 extra so it will be €31. These are elderly people who have come to my clinic and that is just one example. We have continually asked the Minister to review this issue and to address these concerns but we do not seem to be taken seriously. The Taoiseach stated:

Food supplements very rarely do anything for our health. They're mostly snake oil and just cost you money.

That is not right. It was an extremely unhelpful comment and he should not have made it.

I recently joined an awareness rally for Lyme disease. One of the campaigners comes from Carlow and she relies on health supplements so she can live a normal life because she has Lyme disease. She spends over €200 a month on health supplements prescribed by her consultant. If her supplements are hit with this tax, she will not be able to afford them. We cannot on the one hand counsel awareness of diseases such as Lyme disease and then not help the victims. I call on the Minister to come into the Seanad before 1 March.

4 o'clock

We need to help the people that need these supplements. There are people who genuinely need these supplements and they will not be able to afford them. I am asking the Leader to get the Minister in here so that we can get some-----

Senator Jerry Buttimer: He has been in.

Senator Jennifer Murnane O'Connor: When is he coming in?

Senator Jerry Buttimer: Senator Murnane O'Connor had a Commencement matter on this subject.

Senator Jennifer Murnane O'Connor: I did not have one.

Senator Jerry Buttimer: Other members have.

Senator Jennifer Murnane O'Connor: This is a massive issue. If we do not address it, there are people who will not be able to afford to purchase their supplements from 1 March.

Senator Marie-Louise O'Donnell: I want to make one or two comments on Brexit. I know about imports and exports, the economy, jobs, the Border, violence and the lack of certainty regarding the future. Something very interesting was said about Ulster unionism last night. It was actually said about Senator Richmond, who has been absolutely outstanding as a voice on Brexit, as has Mr. Michael Harding. Mr. Harding is a writer and a philosopher, as the House knows. He said that we have so much in common with Northern Ireland, the Northern tradition and Ulstermen in theatre, language, poetry, drama and music. I am not hearing any of that. Senator Richmond spoke about his unionist grandparents who lived in Cavan.

All communication at this stage in the negotiation has to be open, taking in all strata, all levels and all kinds. It should not be limited to economic issues or those pertaining to the Border or violence. I refer to music, literature and drama. One of Seamus Heaney's lines was "take a last turn in reasonable light". He considered himself an Ulster Irishman and an Irish Ulsterman. I refer to Beckett, Wilde, C.S. Lewis, Louis MacNeice and Friel, who attended to the area of language and its power. They considered what can happen to us when language turns from what we want to happen into something far more murky and violent. I refer to the works of Brian Moore, Flann O'Brien, Glenn Patterson, Michael Longley, Jennifer Johnston, Bernard MacLaverty and Marie Jones. I did not even start on the musicians. I refer also to Benedict Kiely and William Trevor, who said he was a "lace-curtain Protestant". In his poem, "Fosterage", dedicated to Michael McLaverty, Seamus Heaney wrote:

‘Listen. Go your own way.

Do your own work ...

But to hell with overstating it:

‘Don’t have the veins bulging in your Biro.’

That seems to be what it has become. We need all strata of communication to be open. What is wrong with asking artists, philosophers, writers and dramatists to speak about this? The way forward cannot always be political. There are thousands of different ways forward now. I just wanted to make that point. I will leave you with this line from a comedy song by Frank McCrory, which describes a lot of what I am hearing on television:

Sea-lions, sharks, alligators and whales

With mouths that would swallow a truck ...

We need to be very careful about how we move forward. We must do the best for both our islands, traditions and peoples and have respect for them all.

Senator Maria Byrne: I wish to raise the issue of University Hospital Limerick and the scaremongering that has been going on. This is the second or third week that misinformation has been put out there. The Minister for Health indicated that he realises that University Hospital Limerick has been neglected for quite a while with regard to the need for additional beds and the issues colouring his visit. He acknowledged the issues there. He has committed to providing 60 modular beds, which are to start this year and not in 2020 as has been suggested.

The Minister has been quite clear in his message that the 60 beds are going to be mentioned in the capital plan, even though the capital plan has not yet come forward to be signed off on. This is most important because some Deputies were speaking about this on many local radio stations in the mid-west this morning. It caused major upset to people living in the area. I had many calls to my office. I heard from one lady who was very distraught. That is due to the misinformation out there. It is so important that we set the record straight. The 60 modular beds will be delivered. It will happen in two phases, with enabling works and then building works. The process may take anything up to ten months. The delay was because there was an objection to An Bord Pleanála during the planning process but this has now been resolved. I am glad to say that there is planning permission in place but it is important to get the message out that the 60 modular beds will be delivered. The work will start this year and will be completed either before the end of this year or early in 2020.

An Cathaoirleach: I remind Senators that if an issue is raised on the Commencement and I accept it, then it should not be raised again in the Seanad, either on the same day or the day before. Some people seem to want two bites the cherry but that is unfair to the Leader and to the Minister who has to respond.

Senator Máire Devine: I want to be even-handed with the Fianna Fáil leader, Senator Ardagh, but I lived on the Ormeau Road for over 11 years and I raised my family there. The friends and neighbours who were shot on the Ormeau Road were my friends and my neighbours. We knew when we gathered in the Hatfield House that night, in mourning, in grief and in shock, that something was amiss with the activity of the RUC on the Ormeau Road. Instead of asking Sinn Féin to apologise, the Senator should apologise to the people - my friends and my

neighbours - who rang me this morning to ask me to stand up for them and make their voices heard. It is important for us not to dance around these issues but to try and build communities on an honest basis.

I want to move an amendment to the Order of Business and ask the Leader to bring in the Minister for Health, Deputy Harris, as was promised a few weeks ago following a request from Fianna Fáil. I asked last week and I was told he would be here in the next few weeks but we may not have a Minister for Health tomorrow so I ask the Leader to bring the Minister in to answer questions on the costs of the national children's hospital.

Senator Grace O'Sullivan: I commend Senator Marie-Louise O'Donnell on her contribution. I acknowledge our poets and writers through the generations and their contribution to biodiversity. I ask the Leader to let the Minister know of an article by Dr. Liam Lysaght, director of the National Biodiversity Data Centre in Waterford, in today's edition of *The Irish Times*. His article acknowledges the loss of biodiversity and reflects his concern about the issue. He makes six policy recommendations, of which I would like the Leader to make the Minister, Deputy Richard Bruton, aware. If we do not do something about biodiversity loss, everything will be destroyed because that is the base of the food chain and of all parts of the ecosystem, not just that relating to humans. Our ecosystem is essential to all life on the planet. We have major problems with climate change but Ireland is not stepping up to the mark at all. Dr. Lysaght's article is a fine one and the recommendations it contains represent a good step forward.

Senator Colm Burke: Members of this House raise issues of concern but it is also important to raise good news stories. I refer to the CSO figures which have just been released and which show the highest ever number of people working in this country, at 2.28 million, with the number of additional jobs created in the past 12 months standing at 50,500. Some 48,000 of the latter are full-time jobs. This means that over 1,000 jobs were created each week in 2018 and that is a good news story. It is as a result of having stability, good leadership and making it attractive for businesses to establish and grow here. That is extremely important. It is also important that we have access to export markets. We will face many challenges in that regard in the coming months in the context of Brexit. I hope we will find a satisfactory solution to the latter.

I wish raise another matter which came to my attention recently. It concerns various people who have had a very difficult time in terms of housing in recent years. I am talking about people who had to sell their homes because they ended up in negative equity as a result of losing their jobs. In some families, both the husband and wife, or both partners, may have lost jobs. It could also be the case that couples separated. I am finding that they are back on their feet and are on good money but none of the banks will lend to them because they ran into difficulties previously. I am also finding that they are not entitled to apply for local authority loans because they have already owned houses. The regulation in that regard needs to be amended. People should not be penalised for the rest of their lives for something they did not cause. They happened to be in a difficult situation at the time, which they had no hand, act or part in creating, and I do not believe they should be penalised for the rest of their lives for that. This is an issue we should bring to the Minister's attention. He should come to the House to deal with it and to consider the changes that need to be made in the regulations in order to ensure that people who are now back on their feet and want to buy again are entitled to apply for local authority loans, thereby ensuring that they can have homes of their own again.

Senator Fintan Warfield: I second Senator Devine's amendment to the Order of Business.

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Like Senator Black, I wish to reflect on the comments made by the chief executive of Dublin City Council in *The Sunday Business Post* last weekend. To remind the Leader, he stated, “The best way to solve homelessness in Dublin would be to provide no beds.” He also believes that providing quality emergency accommodation would create a system whereby people would not want to leave. He went on to state, “The more you do in terms of service the more it becomes attractive”. Those comments show a huge degree of ill judgment on the part of someone who holds an influential position in terms of tackling the housing and homelessness issues and the crisis of rough sleeping in this city. We all know well that it is a crisis. On the day on which those comments were made, a man died in a homeless services unit, something that is all too constant among Dublin’s homeless. People are homeless because of a lack of social and affordable housing. No one wants to rely on homeless services. People want security, certainty and a sufficient number of homes to be built so that they can have a roof over their heads.

The normalisation of homelessness is incredibly harmful to our most vulnerable people. The last time we had an issue like this, it involved the former chair of the Housing Agency. I saw him on RTÉ and I asked, “Who let this fellow out?”. Not only did he say that homelessness was normal once, he said it again a few days later. This shows a distinct lack of care and understanding of the complexities in terms of how people become homeless. Those who want to normalise homelessness should consider going out and talking to rough sleepers to see how they feel about our services. They will not be long finding them at night. Fewer services means more tents. We only have to look at San Francisco. The chief executive of Dublin City Council should apologise.

Senator Niall Ó Donnghaile: Last Thursday, when the revelations came to light about the Police Ombudsman for Northern Ireland’s investigations and the withholding of what he deemed sensitive and significant information from those investigations, I asked the Deputy Leader if the Minister for Justice and Equality could come before the House. These issues are very sensitive and emotive, as we have already seen here today. I will ensure that I temper my remarks, conscious of the victims concerned, but there are a number of points that need to be made and a number of issues that need to be addressed.

I want to refer to Senator Ardagh’s speech. I have a feeling — I do not say this disrespectfully — that she does not mean to cause any additional hurt or trauma for the families and that she was handed a script to recite. It is worth reflecting on that. Many words were missing from the address this morning. These included “victims”, “the Ormeau Road bookmaker’s”, “Councillor Eddie Fullerton”, “the UDA”, “the UVF”, “Special Branch”, “murder”, “Police Ombudsman”, “accountability”, “truth” and “justice”. What we are talking about here relates to some 30 killings by British security services or, indeed, their proxies, loyalist paramilitaries. Everything else is just a distraction. That is what we should be talking about in the here and now. Through their solicitors, families have asked that the Irish Government scrutinise how the omission or deliberate withholding, or whatever it may prove to be, came to pass.

Like Senator Devine, I grew up a short distance from the Ormeau Road bookmaker’s. I know many of the families affected and survivors. Our constituency office is just a few doors up from the bookmaker’s. I would have occasionally gone for a pint in the Hatfield House bar and I worked in the local Gaelscoil so I know the area very well. I know the families there have waited 27 years for truth and justice. Their hearing that the PSNI has withheld significant and sensitive information does not warrant a shouting match back and forward here; it warrants serious consideration and reflection by all of us and the Government. I have heard various questions asked, including about Sinn Féin. We could get into this if people want but I do not

believe it does the victims any good.

Damien Walsh was 17 and on a youth training scheme at the Dairy Farm complex on the night he was killed. He went to work in a coalyard. He was not actually meant to be working on the night. He changed his shift so he could go out with his girlfriend to the pictures the following night. The UFF came into the courtyard and shot Damien upwards of six times in the back. That is bad enough. When talking about these cases, I do not believe Damien's mother, Marian, would appreciate people shouting back and forward and asking about this case or that. I think Marian would appreciate it if people took the time to reflect on the loss of her son and the fact that, when he was shot and killed by the UFF, there was an undercover British army intelligence unit watching the coal depot that did not intervene.

These are the kinds of cases we are talking about. They pertain to seven counties and involve 30 murders, including that of Councillor Eddie Fullerton in Bunrana, County Donegal. I ask again that, as per the families' request, the Minister for Justice and Equality come to the House to comment on the revelations during an available slot next week and address the families, given their concerns, and indicate the Irish Government's view on this and the action it hopes to take.

Senator Jerry Buttimer: I thank the 14 Members who contributed on the Order of Business. Senators Ardagh, Conway-Walsh, Devine and Ó Domhnaill raised the remarks of the Sinn Féin leader regarding the appointment of a new PSNI Chief Constable. Notwithstanding the last remarks made and the contribution of Senator Ó Donnghaile to the effect that victims on all sides of the political divide in the North are looking for truth and justice, are grieving and do not want in any way to be seen to denigrate their loved ones or their own grief, and the fact that we all want reconciliation, it is important that the Senator and other Members put in context the fact that Sinn Féin has no authority to dictate what can be said and to whom. To me, it seems to have no regard for authority at all. It is absolutely destructive in the way it approaches things.

Senator Fintan Warfield: Give me a break.

(Interruptions).

Senator Jerry Buttimer: Sinn Féin pulled down the assembly in the North.

Senator Máire Devine: Why?

Senator Jerry Buttimer: All it can do in these Houses-----

Senator Máire Devine: Choose between marriage equality and caring about equality.

Senator Jerry Buttimer: -----is to put down motions of no confidence looking for a political head.

Senator Niall Ó Donnghaile: The Leader might address the issue.

Senator Jerry Buttimer: It has no sense of how to fix anything or how to solve anything. It does not accept any responsibility-----

Senator Niall Ó Donnghaile: The Leader might address the concerns of the families here.

Senator Jerry Buttimer: -----and it opposes everything. In the context of Senator Ó Donnghaile's contribution, I understand and acknowledge the remarks of the ombudsman, Dr.

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Maguire. Nobody condones or supports the concealing or withholding of information for whatever reason. I note the report. I am not here as an apologist for anybody but there are two parts to what I am speaking about.

Senator Niall Ó Donnghaile: Perhaps that is why confidence is so low in policing. One can understand why the confidence is so low.

Senator Jerry Buttimer: Senator Ó Donnghaile has a one dimensional view of the world and that is his entitlement.

Senator Niall Ó Donnghaile: I do not.

Senator Jerry Buttimer: To be fair, the Senator does.

Senator Niall Ó Donnghaile: I do not. Does the Leader want to go up on the Ormeau Road with me?

Senator Jerry Buttimer: I have been up there. I will walk with the Senator any day.

Senator Niall Ó Donnghaile: Does the Leader want to come up to the Ormeau Road and meet the families?

Senator Jerry Buttimer: I will walk with Senator Ó Donnghaile any day.

Senator Niall Ó Donnghaile: Please do.

Senator Jerry Buttimer: I will walk with the Senator any day up there.

Senator Niall Ó Donnghaile: I will take the Leader up on that.

Senator Jerry Buttimer: I have friends of mine, as I have said to Senator Ó Donnghaile previously, and I would be happy to go up there with him any time.

(Interruptions).

Senator Jerry Buttimer: I am a very open person. I was the first Oireachtas health committee Chair to bring the committee to Stormont-----

Senator Niall Ó Donnghaile: Very good.

Senator Jerry Buttimer: -----to have a joint sitting there.

(Interruptions).

Senator Jerry Buttimer: We welcomed, collectively, in this Chamber, the Lord Mayor of Belfast, Senator Ó Donnghaile's party colleague, who gave a very impressive contribution here. Let me make it clear that I do not come with any dimension other than open-mindedness but Senator Ó Donnghaile's party has a one-dimensional view.

I will challenge Senator Ó Donnghaile on this. The Senator's own party colleague, Mr. Gerry Kelly MLA, stated in contradiction of Senator Ó Donnghaile's party leader, that there were people within the PSNI who were capable of the job. Mr. Kelly stated that Senator Ó Donnghaile's party leader did not know the top brass of the PSNI. In terms of policing, if we have learned nothing from the mistakes of the Troubles or if we learned nothing from the

mistakes that we made down here, there is no place for political involvement in policing. It should be independent and devoid of political interference. Senator Ó Donnghaile's own party is against political policing.

Senator Niall Ó Donnghaile: That is the ombudsman telling us.

Senator Jerry Buttimer: The Senator is either for-----

Senator Niall Ó Donnghaile: The ombudsman told us.

Senator Jerry Buttimer: One cannot be all things to all people. One cannot interfere in a political process which is independent and transparent to appoint a new PSNI Chief Constable. Senator Ó Donnghaile has his own party members on the policing board who are quite capable of appointing someone. I would make that point. Senator Ardagh is well within her remit to come into this Chamber today and make her contribution in the way she did.

Senator Niall Ó Donnghaile: Tomorrow Senator Ardagh might mention the victims. Senator Buttimer might mention the victims tomorrow.

(Interruptions).

Senator Catherine Ardagh: There were other victims.

Senator Máire Devine: What will they do with the hiding of evidence?

Senator Catherine Ardagh: Senator Ó Donnghaile talks about looking after victims and this is the victims they have made.

Senator Máire Devine: There is no evidence.

An Cathaoirleach: Through the Chair. Respect the Chair.

(Interruptions).

Senator Jerry Buttimer: All of us-----

Senator Catherine Ardagh: The Senator did know what I am talking about. They wanted us to get involved as a reasonable party in Northern Ireland.

Senator Jerry Buttimer: All of us-----

(Interruptions).

An Cathaoirleach: If the Senators are going to continue-----

(Interruptions).

An Cathaoirleach: If Senators Ardagh and Devine are going to continue to have a conversation here, I will suspend the House for 20 minutes.

Senator Niall Ó Donnghaile: All this has done is expose-----

An Cathaoirleach: Please let the Leader respond.

Senator Jerry Buttimer: All of us-----

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Senator Máire Devine: I hope the people of the North are listening.

Senator Jerry Buttimer: -----want to achieve, despite the rhetoric of some, the continuation of reconciliation on our island. There are victims on all sides of the political debate and divide who are looking for justice-----

Senator Niall Ó Donnghaile: Hear, hear.

Senator Jerry Buttimer: -----and truth. That applies north of our island - orange, green or white-----

Senator Niall Ó Donnghaile: Exactly.

Senator Marie-Louise O'Donnell: And south.

Senator Jerry Buttimer: -----and, in fact, down South. There are members of An Garda Síochána and the Defence Forces who were killed and whose families are grieving today and who require answers.

Senator Ardagh raised the issue of the INIS. As the Senator rightly said, there was a significant issue around the system put in place. The re-entry visa system has change and will again change in 2019. The current online system is to be replaced sometime this year. I have not got a timeline for the Senator on that. I accept the point the Senator makes regarding the need for interpersonal engagement. We all have members of our own community who come in to talk to us about their visa requirements. The lack of a human interface needs to be changed immediately. I do not have an answer on the question raised about cannabis products. A Commencement matter might prove an expeditious means of getting an answer.

Senator Craughwell made a fine contribution on the Judicial Appointments Bill. In order that we understand each other and to enable Senator Craughwell to amend his prepared script so that it does not require correction, we have had two hours of debate on the Bill on Report Stage and 64 hours of debate on Committee Stage. I fully understand that people have different points of view on the Bill. I reiterate that Government or other legislation has been opposed only twice on the Order of Business and that related to the scheduling of the Judicial Appointments Bill. Members will be aware that since I became Leader, I have never opposed any Senator bringing a Bill before the House to move it to the next Stage. I have always accepted that. However, it is important that we recognise that part of the job of this House is to scrutinise, debate and pass legislation and to make statements. By any stretch of the imagination, 66 hours of engagement on the Judicial Appointments Bill is enough.

Senator Gerard P. Craughwell: Which statement was factually incorrect?

Senator Jerry Buttimer: I ask Senators to reflect and replay the proceedings here and look at some of the interaction, the filibustering and childish behaviour-----

Senator Gerard P. Craughwell: Were Standing Orders breached at any stage?

Senator Jerry Buttimer: -----involving the calling of quorums and walk-through votes. All of this casts this House in a poor light among commentators, Members and people who watch proceedings every day. I have received emails from people who watch Oireachtas TV complaining about the way in which this Bill is being delayed. I am all for Members having a right to express their views, but 66 hours of debate for a Bill that has excited many people's

interest is fair enough. However, I put it to Senator Craughwell that there comes a point when a time limit needs to be applied. I am very much aware that Senator Craughwell and other members of his group oppose the Bill. I stand over my remarks that some of the behaviour is unacceptable and not parliamentary.

Senator Gerard P. Craughwell: On a point of information, the Leader is entitled to make his opinion known. However it is the job of Senators to oppose legislation and try to correct it when it is wrong.

An Cathaoirleach: The Senator should resume his seat.

Senator Jerry Buttimer: I said that.

Senator Gerard P. Craughwell: We have done nothing but use the parliamentary procedures available to us.

An Cathaoirleach: I think Senator Craughwell is saying that full parliamentary scrutiny by whatever means is appropriate under Standing Orders. I have been on different sides of this in practice but I agree with that bit.

Senator Jerry Buttimer: I remember fondly the Cathaoirleach's opposition to the Harbours Bill and his stirring and steadfast defence of his views on it. Other Members may have learned from that in their deliberations on the Judicial Appointments Bill. However, Senator Craughwell protests too much.

Senator Gerard P. Craughwell: The Leader has a hard neck.

Senator Jerry Buttimer: Senator Black raised the remarks made by the chief executive of Dublin City Council on homelessness, as did Senator Warfield. The way we can solve the issue of homelessness is to create a platform whereby we can build more houses, increase supply of private and social housing and make housing affordable. That is what the Minister for Housing, Planning and Local Government, Deputy Eoghan Murphy, is committed to and I am not prepared to say anything beyond that.

Senator Ó Ríordáin referred to Ellie Kisyombe. Information relating to her should not have been revealed in any newspaper. There should not have been any disclosure by anyone concerning her personal circumstances. As a democrat, I welcome her candidacy and I wish her well. It is certainly not my intention to bring the Minister to the House on the basis of hearsay, to come to the matter raised by Senator Ó Ríordáin.

Senator Conway raised the issue of a number of projects in Clare. I join with him in congratulating the Minister, Deputy Ring, on his stewardship of the Department of Rural and Community Development. I believe the matter he raised concerning projects in Clare is best served through a Commencement matter.

Senator Murnane O'Connor raised the issue of VAT on food supplements. Every week since the Revenue decision to alter VAT, a Member of the House has spoken on it on the Order of Business. I have replied on every occasion that either the Minister or a Minister of State has been here in regard to the issue. It is important to understand that while Revenue removed the concession, oral medicines for humans, including certain folic acids and other vitamin and mineral products, are exempt, as is infant food, and they are all at the zero rate. As the Senator knows, products licensed by the Health Products Regulatory Authority are also at the zero rate.

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The Minister has put in place a process under the tax strategy group which will report back, and when that report comes back, we will have the debate. I understand the issues raised by the Senator and it is important that we bring clarity to the situation. However, there is also a bit of hype in some quarters, which is their prerogative.

Senators Marie-Louise O'Donnell and Grace O'Sullivan raised the issue of Brexit. In a very fine contribution, Senator O'Donnell highlighted the importance of hearing different voices on Brexit and of those voices, first, being able to articulate a viewpoint and, second, of that viewpoint being listened to and heard. I commend her contribution. As we enter the critical phase, the endgame around Brexit, it is important that the voice of the centre, the voice of reason, is heard, rather than the one extreme we are hearing the whole time in this debate.

Senator Marie-Louise O'Donnell: Other voices.

Senator Jerry Buttimer: Yes. I welcome the clarification by Senator Byrne and the Minister in regard to University Hospital Limerick and the 60 modular beds being delivered this year. It is important that message is promulgated from here.

I understand Senator Devine's frustration regarding the Minister for Health and I know Senator Ardagh has raised the matter before. The difficulty we have is that the Minister was in the other House twice last week and our schedule did not allow for him to come to this House on another day. This week, the Minister is in the other House on a motion of no confidence tomorrow. To be honest, I am endeavouring to have the Minister come to the House and, earlier today, my office was reminding the Minister's office that we have a request for him to come in. To be fair to Senator Ardagh, she did not divide the House on the matter two weeks ago and I hope Senator Devine will not do so today. I will endeavour to have the Minister come to the House at the earliest convenience. We are not sitting on Thursday, as the Senator knows. I would be happy to have him come to the House this evening, if possible, but it is highly unlikely, although I have not been able to check my phone. I would be happy for him to come in next week and I will give a commitment to do that. I apologise that we have not had the Minister in, to acknowledge Senator Ardagh's request of two weeks ago.

Senator Grace O'Sullivan raised the issue of Dr. Liam Lysaght's warning about the 60% loss of biodiversity across the globe, which is an alarming figure. Equally, the Minister, Deputy Bruton, spoke about the need for action with the IFA and farmers recently. Government action to tackle climate change is, as the Taoiseach said, the next big progressive cause. We need to step up our response to the issue of climate change. I am confident that, through the Minister, Deputy Bruton, and Members of this House, such as Senators Grace O'Sullivan, Lombard, Mulherin and others, we can reach cross-party consensus on how we tackle the issue of climate change. I would be happy to have that continuing debate with the Minister in the House.

Senator Colm Burke raised two issues. First, he welcomed the fact that, today, we have 2.28 million people at work, with 50,000 jobs created in 2018, or 1,000 a week. As the Senator rightly said, this illustrates the importance of stability and of having a Government committed to having people at work. The other point raised by Senator Colm Burke on the entitlement of people who were the previous owners of houses to local authority loans and housing is something on which we need to have a debate. We need a change in outlook and I concur with Senator Colm Burke. Many people today are in the unfortunate world of negative equity and we must do everything we can to get people back on their feet to be able to stay in their own homes and have access to an affordable or local authority loan. A person who sold a house because of

desperation should not be penalised forever. I agree with Senator Colm Burke on this.

I would be happy to try to reach an agreement with Senator Devine on the Minister coming to the House rather than dividing the House. If not, I will have to await the Senator's proposal on when she wants the Minister to come to the House.

An Cathaoirleach: Senator Devine has proposed an amendment to the Order of Business, "That a debate with the Minister for Health on the cost of the construction of the national children's hospital be taken today." Is the amendment being pressed?

Senator Máire Devine: It is.

Senator Jerry Buttimer: I am not sure of the protocol but rather than dividing the House-----

An Cathaoirleach: The difficulty is there is only one bite of the cherry.

Senator Jerry Buttimer: I was on my feet and, to be fair, I am endeavouring to get the answer for Senator Devine.

An Cathaoirleach: If we defer it, Senator Divine will not have an opportunity to press the issue.

Senator Máire Devine: I will press it.

Amendment put:

The Seanad divided: Tá, 14; Níl, 22.	
Tá	Níl
Ardagh, Catherine.	Burke, Colm.
Bacik, Ivana.	Butler, Ray.
Black, Frances.	Buttimer, Jerry.
Conway-Walsh, Rose.	Byrne, Maria.
Daly, Paul.	Coffey, Paudie.
Devine, Máire.	Coghlan, Paul.
Gallagher, Robbie.	Conway, Martin.
Gavan, Paul.	Craughwell, Gerard P.
Humphreys, Kevin.	Hopkins, Maura.
Mac Lochlainn, Pádraig.	Lawless, Billy.
Nash, Gerald.	Lawlor, Anthony.
O'Sullivan, Grace.	Lombard, Tim.
Ó Donnghaile, Niall.	Marshall, Ian.
Warfield, Fintan.	McFadden, Gabrielle.
	Mulherin, Michelle.
	Noone, Catherine.
	O'Donnell, Kieran.
	O'Donnell, Marie-Louise.
	O'Mahony, John.
	O'Reilly, Joe.

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	Reilly, James.
	Richmond, Neale.

Tellers: Tá, Senators Máire Devine and Paul Gavan; Níl, Senators Gabrielle McFadden and John O'Mahony.

Amendment declared lost.

Order of Business agreed to.

Judicial Appointments Commission Bill 2017: Committee Stage (Resumed)

NEW SECTIONS

Debate resumed on amendment No. 86g:

In page 28, between lines 25 and 26, to insert the following:

“Right of Government to advise President

41. Notwithstanding the provisions of *section 40*, nothing in this Act affects, limits or inhibits the right of the Government in any case where it advises the President to appoint any member of the Supreme Court, the Court of Appeal, or the High Court to any judicial office in any of those courts, at its discretion, to further advise the President to appoint any other member of those courts to the vacancy thereby created without seeking any recommendation from the Commission.”.

- (Senator Michael McDowell)

Acting Chairman (Senator Paudie Coffey): I welcome the Minister for Justice and Equality, Deputy Flanagan. Senator McDowell was in possession.

Senator Michael McDowell: On the previous occasion I was asking the Minister about the massive hole that this proposal, as it currently stands, will make and the major delay it will create in the filling of judicial vacancies. I understand Senator Craughwell wishes to contribute.

Senator Gerard P. Craughwell: Looking at the methodology we are talking about using here, it is quite similar to what is used for appointments in the education system. Where a deputy principal is appointed as a principal, his or her post cannot be advertised until it has been vacated. The backfill works its way down the line. It is my experience that it can take up to 18 months to clear a backfill of this nature. With what we are discussing, a judge of the Supreme Court could be appointed as Chief Justice and if we have to go back to the commission to replace him or her, it would take time to do so because of advertising and all the work that goes with it. One cannot use the same panel and there is no panel system in the legislation. The post must, therefore, be re-advertised before applicants can come in for interview and as-

essment. Eventually, three names would be given to the Government, which may choose any one of the three people involved. However, I go back to my original point that it does not have to do so. The Government can decide under the Constitution that it does not like any of the three individuals and can recommend to the President the appointment of whomever it likes. If a High Court judge is appointed in the Supreme Court position, there would then be a vacancy in the High Court. As this process works through, there would be an ongoing vacancy in the system. I can almost guarantee that by the time we get to the end of the line, we would have to start all over again because the Chief Justice would probably have retired by the time every vacancy had been filled.

I see the Minister shaking his head and I understand from where he is coming. I have great difficulty with this. We had a little discussion on the Order of Business about the amount of time this Bill is taking. I put on record that this is not a game we are playing or a filibuster for the sake of it. This is a genuine concern on the part of Senators Bacik, Norris, McDowell, Boyhan and myself. There is a genuine concern that we are putting through a Bill that at the end of the day has no real teeth. I am not convinced that even the Government is supportive of this, not all of the Government anyway. Our job is to challenge this. If we cannot defeat it then we have to change the Bill and make it more robust and less open to challenge. We are privileged, in my view, to have my colleague, Senator McDowell, a former Minister for justice, Attorney General and Tánaiste, and a man with a distinguished record in the courts. I know the Minister will accept that and he is not short of being distinguished himself.

Senator Martin Conway: Hear, hear.

Senator Gerard P. Craughwell: We have two fairly immovable objects here confronting one another. I ask the Minister to think about where we are going here. This Bill is not going to fundamentally change the way we appoint judges because, as the Minister has admitted himself, the Constitution cannot be trumped by the Bill. I do not know why we are pushing the legislation through if we really wanted to change the appointment system for judges. I should say that I am fully supportive of the notion that we should review how we appoint judges. I am fully supportive of the efforts by the Minister to change the appointments system for the Judiciary but this Bill is not going to do that for him.

I will be surprised if the President signs this Bill into law. I really will. We will have, I am told today, 66 hours of debate so far in this House. The one thing I will say about the Minister is that I admire his dedication. I admire the way he comes in here every day this debate is on and he sits there and responds. In fairness to him, he is fighting for the Bill. I am not so sure that any of us have faith in the Bill but he is fighting for it.

Acting Chairman (Senator Paudie Coffey): I ask the Senator to please stick to discussing the amendment.

Senator Gerard P. Craughwell: I will stick to the amendment. I will leave it at that and I will be interested in the reply by the Minister. Perhaps my colleague, Senator McDowell, might have more to say.

Senator Michael McDowell: I was just trying to work out how bad this particular lacuna in the Bill is going to turn out to be and what inefficiencies will be created by it. If for whatever reason - illness or whatever else - the position of Chief Justice were to fall vacant tomorrow, supposing it did, regarding the procedure going to be put in place to fill that position, and as

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I understand it at the moment, every person who wanted to be considered for appointment to the position of Chief Justice would apply to the Judicial Appointments Commission, following an advertisement put in the newspapers for that purpose. As the Bill presently stands a commission-based approach to that would operate. The applicants would set out at length their qualifications for the job. They would, as the Bill currently stands, be interviewed, presumably, because the lay members of the commission would not know one of them from another. A procedure would be engaged in whereby the commission would then come to a conclusion as to its recommendation for appointment to the position of Chief Justice and the matter-----

Minister for Justice and Equality (Deputy Charles Flanagan): The amendment does not deal with the Chief Justice. I have to attract the Chair to the subject matter of the amendment, in fairness.

Senator Michael McDowell: Hold on a second. Just wait and see. I will come to that. The Minister is misreading the amendment.

Acting Chairman (Senator Paudie Coffey): I ask the Senator to continue, without interruption. It is okay, Minister. The amendment is about the right of Government to advise the President, just to remind the Senator.

5 o'clock

Senator Michael McDowell: I know what the amendment is about.

Acting Chairman (Senator Paudie Coffey): I am just reminding the Senator.

Senator Michael McDowell: The Acting Chairman should not try to hassle me. I am-----

Acting Chairman (Senator Paudie Coffey): Excuse me. I am not hassling the Senator.

Senator Michael McDowell: The Chair is doing so.

Acting Chairman (Senator Paudie Coffey): I am chairing this session of the Seanad. I am not hassling the Senator. I have just stated that the Senator should be allowed to continue without interruption; I am supporting him.

Senator Michael McDowell: This is a Committee Stage process-----

Acting Chairman (Senator Paudie Coffey): Correct.

Senator Michael McDowell: -----and the Minister, if he thinks I am making a mistake, is perfectly entitled to point that out.

Acting Chairman (Senator Paudie Coffey): Correct.

Senator Michael McDowell: -----and I am entitled to respond-----

Deputy Charles Flanagan: The response was made. It is a deliberate attempt to-----

Acting Chairman (Senator Paudie Coffey): With respect, I ask the Senator and the Minister to respect the Chair. I have asked Senator McDowell to continue without interruption. That is a message from the Chair to Senators and the Minister. I ask the Senator to continue.

Senator Michael McDowell: The amendment states, "Notwithstanding the provisions of

section 40, nothing in this Act affects, limits or inhibits the right of the Government in any case where it advises the President to appoint any member of the Supreme Court [...] to any judicial office”. Therefore, it does apply to a member of the Supreme Court being made Chief Justice, for instance. Let us get that straight. With the greatest of respect, the Minister should not contradict me on it. This amendment deals with a situation where the Government decides to appoint a member of the Supreme Court to be Chief Justice. The Minister’s interruption is interesting because it shows he has not read the amendment.

Deputy Charles Flanagan: I have read the amendment.

Senator Michael McDowell: He is misreading it, unfortunately.

Acting Chairman (Senator Paudie Coffey): I ask both the Minister and Senator to respect the Chair and to speak through the Chair.

Deputy Charles Flanagan: I have had the amendment in front of me for the past three weeks.

Senator Michael McDowell: Yes. This reminds me of F.E. Smith, Lord Birkenhead. I saw him on television last night or the night before on the RTÉ programme “The Irish Revolution”. He was in court on one occasion and a judge said to him that he had been listening to him for the preceding two hours and was none the wiser. F.E. Smith said he agreed but that the judge was better informed. This amendment deals with a case where the Government advises the President to appoint any member of the Supreme Court to any judicial office. One of those offices is the position of Chief Justice. This scenario is covered. I am not elongating the debate but dealing with what this amendment proposes to do.

Irrespective of the process before the Government makes its decision on a vacancy, as matters currently stand and because the Dáil amended section 44, the commission is the means by which the position is filled. By the time the commission has considered all the applications from all the eligible judges to be made Chief Justice and advised the Government as to a short list of three candidates it believes should be considered, and by the time the Government has considered that short list, in all probability two months will have elapsed since the arising of the vacancy. That is the position as the Bill currently stands. What happens then? If a member of the Supreme Court is appointed as Chief Justice, a follow-on vacancy has to be considered. If an ordinary member of the Supreme Court is made Chief Justice, its numbers will be depleted and there will be a vacancy in that court that presumably the Government would intend to fill. The Government would then have to consider the position of ordinary member of the Supreme Court. That vacancy would have to be advertised and made the subject of a request to the commission to carry out its processes. It would be likely to take two or three months before qualified barristers, qualified solicitors and qualified members of the Judiciary could apply for the position of ordinary member of the Supreme Court. It is by no means pessimistic to state that it would take two or three months to carry out interviews and for the lay majority body to acquaint itself with the merits and demerits of each candidate.

Let me stop at that point to examine the circumstances. Could the Government ask for applications to the Court of Appeal and High Court in case an appointment was made from one of those courts? It cannot do so under the legislation as currently drafted-----

Deputy Charles Flanagan: And rightly so.

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Senator Michael McDowell: -----because it would pre-empt the whole idea.

Deputy Charles Flanagan: Exactly.

Senator Michael McDowell: This would suggest that the Government had already made up its mind about who it wanted to appoint.

Deputy Charles Flanagan: That is not intended in the Bill or the amendment.

Senator Michael McDowell: Exactly. Therefore, the follow-on vacancy in the Supreme Court, on foot of an ordinary judge of that court being appointed as Chief Justice, would be sent out for filling. Is it even in any sense unfair to say it is quite probable that one of the applicants for the ordinary position in the Supreme Court would be a member of the Court of Appeal? Where the Government gets a recommendation and, lo and behold, there is on the shortlist a judge of the Court of Appeal, be it a man or woman, whom it says it want to appoint, the consequence is that, under the Act, it would have to notify the commission of the vacancy that would arise in the Court of Appeal and ask all practitioners and judges interested in the position to submit their applications for it. The decision could not be anticipated. Another couple of months would elapse during this process.

The position in the Court of Appeal would in all likelihood, or with a good deal of likelihood, be filled by a judge of the High Court. The same process would take place to fill the follow-on vacancy that would eventuate in the High Court. The sequence of events, therefore, is that if each step took two or three months, the best part of the year would elapse before the follow-on consequential appointments to fill the vacancies in the courts system would come to be filled. If I am being unfair and the Minister believes these things can be done in a week-----

Deputy Charles Flanagan: Eighteen months according to the Senator's colleague Senator Craughwell, with whom he has been engaged in intense discussions.

Acting Chairman (Senator Paudie Coffey): Through the Chair, please.

Senator Michael McDowell: Through the Chair, Senator Craughwell was talking about the teaching profession. It can take up to 18 months to fill some positions in certain schools.

Deputy Charles Flanagan: That has no bearing on the commission.

Senator Michael McDowell: No, but he is-----

Deputy Charles Flanagan: I am glad Senator McDowell has admitted that it has no bearing.

Senator Michael McDowell: -----talking about the same principle, namely, that vacancies cannot be filled on a pre-emptive basis. One cannot start a process for a non-vacancy on the basis that one thinks one would be creating it by effecting a particular outcome because this would prejudice the whole arrangement. That is what Senator Craughwell is talking about. He said that, in his experience as a teacher, it may take 18 months. I am stating that we have a process of four times three in respect of which would take either eight or 12 months to make the consequential judicial appointments to positions arising on foot of one vacancy. It will not be the case that the Chief Justice will frequently vacate office and, therefore, it is more likely that we will have cases whereby the process will take nine months rather than 12 months. I accept that. However, the Minister has accepted that it will not be permissible under the Bill to

seek candidates to fill a vacancy created by appointing a judge of the Court of Appeal to higher office. This will lead to a sequential cascade of consideration of applications for positions going from the top of the Judiciary to the bottom, with separate recommendations, interviews, applications and advertisements required to fill each of the positions. That is implicit in the arrangement. Why would we do such a thing? While I was Attorney General or Minister for justice and Tánaiste, it was the practice, when an appointment to a particular court came before Cabinet, for the consequences of that appointment to be considered concurrently. Two, three, four or more appointments would be made such that all vacancies were filled on the same day and each of the courts could quickly function normally. The matter was resolved by the Government. The Bill will-----

Deputy Charles Flanagan: I am not sure about that.

Senator Michael McDowell: It was always the case in my day that if a vacancy was created, the question of who would be appointed to fill that vacancy would be considered.

Deputy Charles Flanagan: Except in certain circumstances.

Senator Michael McDowell: I am referring to the appointment of judges. Of course, the reason that was done was that under the 2002 Act the appointment of judges to posts within the Judiciary fell outside the remit of the Judicial Appointments Advisory Board. If the Government decided to select a judge, such as an ordinary judge of the Supreme Court or High Court, to higher office - my experience predates the Court of Appeal, so I do not have experience of that process - it was customary to consider the follow-on consequences of that appointment. The vacancy would be noted and the Cabinet would deal with it on the day.

Deputy Charles Flanagan: There was an absence of process.

Senator Michael McDowell: There was no absence of process. Under the Bill, the process is one involving an absence of judges for long periods and a trickle-down effect whereby a vacancy is created in court after court. There is no absence of process whatever in the former arrangement. The Government would be well advised to ensure that if it creates a vacancy at one level of the Judiciary, it acts smartly to fill that vacancy. The scenario I have drawn of an ordinary judge of the Supreme Court being appointed to higher office, a judge of the Court of Appeal being appointed to fill the resultant vacancy on the Supreme Court and a High Court judge being appointed to fill the vacancy on the Court of Appeal is not unlikely or fanciful. However, the consequence of failing to deal with that and accept this amendment is that if it appoints a judge to higher office, the Government will be dealing with follow-on applications for the following three, six or nine months or more. That is to where this process is bringing us.

On the most recent occasion this was discussed I pointed out to the Minister that the current situation may be preferable to the one he is mapping out. Perhaps it is a good idea, if one creates a vacancy as an ordinary judge of the Supreme Court, to decide to deal with that vacancy. The balance of the Supreme Court may change as a result of the promotion of one of its judges. The Cabinet may appoint a liberal or conservative as Chief Justice and want the balance of the Supreme Court to tilt a certain way and collectively decide to fill the vacancy in a certain manner. The problem with introducing a system with the rigidity of that proposed in the Bill is that the Government cannot of its own accord anticipate any action. It cannot prepare for the follow-on consequences of its decision because it must keep an open mind at every step in the process and must keep inviting people to participate in supplying every vacancy on the sequen-

tial ladder of judicial vacancies. This is a retrograde and reckless approach to the process of appointing judges. It will make life extremely difficult if the Government cannot fill the vacancy left on the Supreme Court by the appointment of a Chief Justice unless the fully competitive and open procedure is gone through and everybody is invited to apply for the post. This is not a casual vacancy such as the principal of a school as referred to by Senator Craughwell. This is about our Supreme Court.

Deputy Charles Flanagan: I was going to make that point but I need no longer do so. Senator Craughwell's comparison and the contrast he drew is immaterial.

Senator Gerard P. Craughwell: It was merely analogous.

Senator Michael McDowell: It is obvious that Senator Craughwell was drawing an analogy regarding what happens when one has cascading vacancies. That is what we are now dealing with. It is introducing an artificial and undesirable delay to the process of appointment to judicial office to stipulate that a Government which decides to appoint a judge to another position in the Judiciary would not be able to decide to appoint another person to fill the resultant vacancy. That was the practice followed when I was in Cabinet and it worked well. It was not a question of cronyism or anything of the sort.

For instance, if the Government was minded to appoint to the position of ordinary member of the Supreme Court a member of the Court of Appeal who specialised in criminal matters and was experienced in criminal trials and criminal appeals in order to give the Supreme Court day-to-day, hands-on experience of the criminal process rather than solely being composed of civil, administrative and constitutional lawyers, that appointment would remove a specialist in the area of criminal justice from the Court of Appeal and weaken that court *pro tanto* until that position was filled. It is perfectly reasonable to expect the position of a member of the Court of Appeal with experience on the criminal side who was appointed to the Supreme Court by the Government to be filled through the appointment of a criminal lawyer from the High Court or solicitors or barristers profession in order to ensure a properly balanced Court of Appeal. The point I am making is that those are the types of decisions the Attorney General and the Minister for Justice and Equality should bring to Cabinet. They should say that if they are appointing Ms Justice Bloggs to this particular position, they are going to need somebody of the same kind of approach or calibre of that judge to remedy the vacancy they are thus creating in the court from which she is being appointed. Those are real day-to-day considerations for the Attorney General for the proper operation of the Judiciary, and the like.

There is nothing wrong with the principle which exists at the moment that the Cabinet, in considering whether to fill one position, also addresses its mind to dealing with the consequences of its decision for the court from which the appointment is made. There is nothing wrong with the Cabinet addressing its mind to that and it works well. However, what will be wrong is if that kind of process becomes elongated and a whole lot of civil lawyers, for instance, see a vacancy in the Court of Appeal arising from the appointment of one of its prominent criminal law experts to the Supreme Court, and they waste their time putting in applications for a job which the judicial appointments commission will not take into account. While the Government may want a particular balance in the Court of Appeal, the criteria in the Bill that the judicial appointments commission is expected to apply do not require it to consider what the Government might or might not want to achieve by consequential appointments.

I am strongly of the view that to introduce this chain reaction to the - I will not use the term

“promotional” - consequential vacancies in the superior courts is a very big mistake. It means that, at the most ridiculously optimistic, one could have six to nine months of delay in filling consequential appointments down the ladder. That is not in the interests of the Judiciary. On the last occasion, I mentioned to the Minister the plea from, I think, Mr. Justice Kevin Cross in the High Court and the plea from the President of the Circuit Court in regard to the fact they are being asked to labour with inadequate numbers in their courts. However, this is recipe for further inadequacies on an institutional basis going forward.

For instance, if an ordinary judge of the Supreme Court is made Chief Justice, I do not see why that should mean the Government should leave the vacancy thereby created as ordinary judge of the Supreme Court vacant for a number of months while the judicial appointments commission applies its brain, its processes and its interviews to filling that position. It is going to damage the Supreme Court and the expeditious discharge of its workload that such built-in delay is contemplated in this legislation, and the whole trickle-down effect is as I have described.

I am strongly of the view that the present flexibility which allows the Government, when it advises the President to appoint any member of the superior courts to any other office in those courts, and at its discretion to further advise the President to appoint any other member of those courts to the vacancy thereby created without going back to the commission, is a sensible and reasonable arrangement, the absence of which in the Bill will create serious delays, difficulty and waste of time. Any serious Government would have in its mind the consequences of there being a vacancy in the Supreme Court consequent on one of the members of that court becoming Chief Justice. Therefore, any serious Government should be in a position to say this gives it an opportunity to appoint Ms Justice so-and-so or Mr. Justice so-and-so to that position. It can say that is the balance it wants and it does not want to waste the commission's time by asking for its advice or for it to give a shortlist of three, because that is the kind of decision the Government wants to make and that is the balance it wants to re-establish in the court as a consequence of its decision that day. That is what this section is all about. I plead with the Minister to heed what I am saying because, in the end, we are going to have further delay and further waste of time.

The other thing is that the Minister seems to consider that it is great to have transparency and great to have everything open to everyone, and that is supposed to be fair. However, if the Government is going to have a serious process, and if it is going to ask members of the Judiciary, members of the legal profession and legal academics to prepare their case for appointment to these vacancies, it is asking them to undertake a lot of work. This is not just a case of filling in an application, ticking four boxes and saying how long the person has been a lawyer, whether he or she likes animals and a few other tick-box things. They are being asked to make the case for their appointment. The Government is saying to a professor of law in Trinity College, UCD or UCC that it is inviting that person to seriously put himself or herself forward for a position of this kind. It is saying the same to members of the Judiciary, who have a huge caseload, to each put their case together to be given this position, rather than one of their colleagues. It is saying the same to a practising barrister or solicitor who is looking for an appointment to the superior courts. It is saying, “Do not just spend the weekend chewing a pencil. This is going to be a serious process.” If the person is going to be treated fairly and not just be knocked on the head by some outside expert who says he or she is not even recommending that this person be considered further, then there will be an interview and that person will go before some interview panel and make his or her case. That takes time, commitment and preparation.

I remember, from when I was in the Minister's Department, promotions within that Department. The amount of time the serious candidates for the seriously senior positions put into preparing for interview was very considerable. It was not a matter of saying, "The Minister will recognise my name", or "Sure, I have been here 30 years and I am the obvious candidate." They put in a huge amount of work, considering what a fair interview was likely to ask them about, such as how well they will perform as leaders of the Department and what their agenda is for the Department. We now know that one can get the senior position in the Department of Justice and Equality from outside the Department but somebody in a different Department who wants to be considered for Secretary General has to put a huge amount of effort into preparing for that interview. It is not something they just do on the back of a beer mat and say, "I will stick my name in and see how I go", and then just wander into the interview and give a few off-the-top-of-the-head views about what they would do in the Department of Justice and Equality. They have to study the position they are looking for.

Deputy Charles Flanagan: Rightly so.

Senator Michael McDowell: Rightly so. However, when it comes to the Judiciary, it is not the case that the Minister should be asking judges to self-assess for the purpose of being promoted to the Court of Appeal or the Supreme Court. It is a waste of their time and an invidious thing for them to be invited to do on a constant basis, especially when this awful Bill will mean they will not even be told if they have been short-listed for the job. In my experience in the Department, the people who were short-listed knew they were short-listed, while those who were not short-listed knew as much. There was some degree of transparency but this Bill will leave people completely in the dark.

Senator Gerard P. Craughwell: I want to go back to the issue of the period of time involved. I disagree with the Senator's suggestion that it can be done in a shorter period.

Senator Michael McDowell: I am being optimistic.

Deputy Charles Flanagan: The Senators are arguing among themselves now.

Senator Gerard P. Craughwell: The Minister has sat on interview boards in his capacity as a public representative, and on VECs and other boards, and he will know that the first thing a board has to do is sit down and agree the advertisement. In this Bill, we are dealing with the top legal minds in the country so we have to be very careful that every "i" is dotted and every "t" crossed so that the advertisement does exactly what it says on the tin and that the correct people are attracted.

Deputy Charles Flanagan: It is also to ensure it is not challenged in the courts.

Senator Gerard P. Craughwell: A board the size of the JAAB needs to agree to hold interviews on a particular date and the Minister knows that getting an agreed date is always a problem. Some candidates are not available on the appointed day and a second date has to be set up and this is why I believe Senator McDowell is being optimistic. It could take as many as four months to make just one appointment and if there is a trickle-down effect, there will be all sorts of problems.

Senator McDowell raised a number of issues that process and procedures cannot deal with, namely, those that include a human factor. He said the Supreme Court may be overly burdened with conservative members and may feel the need to get some liberal members on the board

but we cannot tell the board to advertise for a liberal person because that would open the door for conservative members of the Bar or the courts to object to the advertisement. We cannot prescribe the type of person we want. This methodology will turn people off after the first or second round of vacancies, because applying for a serious position requires a lot of attention to detail and a lot of work. It is not a question of resubmitting the same application, as the application has to be filled out to meet the needs of the advertisement. If the board is not allowed to take into account the various human characteristics of the individuals who apply and has to stick to a prescribed methodology, we will finish up with the wrong type of people. As Senator McDowell said, perhaps we will finish up with a Supreme Court with nobody who has criminal law experience and that will leave the entire process flawed.

The system we have at the moment is one in which the Minister and the Attorney General consider a number of people for appointments as Chief Justice, a Supreme Court judge, a judge on the Court of Appeal or a High Court judge, which are often considered together and announced on the same day. However, this will be taken out of the equation and we will finish up with even more serious bottlenecks than we have at the moment. One of the terrible aspect of this Bill, as it blunders its way through this House, is that the courts system is creaking as it waits for appointments. We would be far better off doing what they do in the United States, which is to have the esteemed members of the Senate interview prospective members of the courts and made a recommendation to the Minister, rather than to adopt the method in this Bill.

Senator Martin Conway: Praise the Lord.

Senator Gerard P. Craughwell: This is going to cause mayhem. I saw junior people in the public service appointed to senior positions, leading to the suspicion that it was to avoid the trickle-down effect of which Senator McDowell speaks, and to avoid having to fill a vacancy in the Supreme Court, the Court of Appeal or the High Court by appointing somebody from the academic world. The next thing that happens is that the door is opened to a plethora of appeals from people who feel they were hard done by. The system is flawed but if this Bill has to make its way up to the Phoenix Park, this amendment will make it a little more sensible. I know that the Minister is anxious to work his way out of here so I ask him to consider it.

Deputy Charles Flanagan: I do not wish to give any further oxygen to the fanciful notion of cascading vacancies on a regular basis. Both Senators will have to accept that the language of the past hour has been dramatic, to put it politely. What they said would happen will not happen. I am concerned to ensure that the courts run smoothly and that there are no delays of any description. We originally had 18 months and that was reduced to six months while, following Senator Craughwell's intervention, it has now been reduced to four months. There should not be any delays.

The problem the Senators have is hostility to embracing any form of change. My Government colleagues and I are introducing a new, reformed appointments system which will, for the first time, include serving judges. Over the past number of weeks, I have examined in detail the nature, substance and consequences of Senator McDowell's amendment. I agree with him that every effort should be made to ensure there is not any undue delay, or a delay of any description. I am concerned that, were the amendment to be accepted, there could be a presumption that all consequential vacancies should be filled by sitting judges. That would be a misrepresentation and would prevent the potential pool of candidates from including people from outside the current Judiciary. Under the reformed system we will facilitate applications by legal academics and other people who might not rub shoulders with Senator McDowell on a daily basis. My

concern is to ensure that, under the current formulation, there is nothing that might impede or slow down the filling of any vacancies or create a cascade of consequential vacancies. I do not see the domino effect that has been painted by the Senators arising. I will not accept the amendment. It is important that getting at the heart of this reform legislation is the fact that, for the first time, shape and form will be put on the matter of the appointment of sitting members of the Judiciary to a position that may become vacant. I agree with Senator McDowell that the positions should be taken very seriously, the application form should be particularly detailed and the process should be transparent and comprehensive. We do not have that under the current system and it is a weakness. I do not make any apologies for a requirement that, in the event of persons wishing to make an application, they would do so in a way that is transparent, fair and befits the job at hand. A mere tap on the shoulder in the lobby of the Four Courts is not a sufficient means by which the seriousness of the position could be dealt with.

Senator Gerard P. Craughwell: I totally accept the Minister's bona fides here and that he truly believes what he says. However, that will not matter the moment this Bill is passed into law because it will no longer be within his gift to control how this legislation is used by the commission. It will no longer be within his gift to tell the commission what to do or to prescribe how long it should wait after advertising a post or what type of person should fill the post, whether it be a liberal or a conservative. The Minister does not have that gift once this Bill passed into law. Legislation that is many years old is frequently struck down by the courts. This legislation, if passed, will outlast most of us in this Chamber.

Deputy Charles Flanagan: If Senator McDowell has his way, that will not be the case.

Senator Michael McDowell: Senator Craughwell said if it was passed.

Senator Gerard P. Craughwell: How badly have we been served by our Judiciary over the years that there is such a need to bring in such desperately flawed legislation? Why are we doing this? What purpose are we serving? At least the amendment would allow for the fact that there may be a trickle down effect. The Minister does not envisage that happening, but how can he guarantee in the legislation that there will never be a trickle down effect or delay, or that each appointment will take four months, as I estimate will be the case? He cannot do so. We are trying, with this amendment, to ensure we have robust legislation that will provide a guarantee that, in the event of the trickle down effect occurring at some stage - a bit like the backstop we keep hearing about for Northern Ireland - the Minister will be in a position to immediately act. The Minister may not want to give oxygen to it but I do not want to give oxygen to the notion that his beliefs today are *de facto*, God almighty, 100% certain. I do not want to give him that oxygen today. He and I are equally flawed and both of us are as flawed as the Bill before him.

Senator Michael McDowell: The Minister is a great man for suggesting that scenarios are fanciful and language is exaggerated. Let us analyse what we have just heard from the Minister and work out what is fanciful about the following scenario. An ordinary judge of the Supreme Court is appointed Chief Justice. Is that fanciful in any shape or form? Is it more likely than somebody else from a different court being appointed Chief Justice? The answer is, as the Minister well knows, that it is very likely that one of the eight or nine ordinary justices of the Supreme Court will be appointed to be Chief Justice should that job fall vacant. There is nothing unlikely, improbable or fanciful about it. If the consequence of that probable outcome is that there is a vacancy among the ordinary ranks of Supreme Court members, what is the likelihood that a judge of the High Court or Court of Appeal will be appointed to that vacancy? If I may say so, through the Chair, the Minister knows damned well that the-----

Acting Chairman (Senator Catherine Noone): Saying the words “through the Chair” does not mean the Senator is actually speaking through the Chair.

Senator Michael McDowell: The Minister knows as well as I do that it is very likely that it will not be an outside appointee to an ordinary judge of the Supreme Court. Such appointments occur very infrequently, although on occasions they are well merited. However, if one were to take what is likely and probable, it is very likely that a judge of the superior courts will be appointed to the vacancy in the Supreme Court. By the way, there is very good reason that should be so. Those those men and women have had the opportunity to function as judges, practice the art of adjudication and, so to speak, prove their capacity to be good judges. If the Minister is going to tell me that I am living in the past, I say that you are living in a fantasy world and I say that through the Chair as well.

Acting Chairman (Senator Catherine Noone): That was retrospectively through the Chair.

Senator Michael McDowell: The Minister is living in a fantasy world if he believes there is something improbable about consequential vacancies arising in the Judiciary when appointments of a senior kind are made. If one was going down to Paddy Power to bet that an outside person will be appointed and there will be no trickle down effect of a vacancy in the position of ordinary member of the Supreme Court, as a betting man I would say the odds would be about 1/8 or 1/10. The Minister may offer better odds and put his sign up at Leopardstown Racecourse and get different odds. I am saying, however, that there is nothing fanciful about saying that, as a matter of probability, other judges will move up, not in some kind of grotesque, tap on the shoulder, domino effect process but simply because they are the people in whom the Government is most likely to have confidence when making a particular appointment. That is the position. Of course it is possible that Josephine Bloggs or Joe Bloggs, barristers with ten years standing from wherever, can put in an application and get one of these positions but the chances of them doing so and being appointed are small. They are, by definition, less likely to be appointed to these positions than people who have established a track record, proven their worth, demonstrated their judiciality, impartiality and suitability for judicial office, and a proven capacity to deliver learned judgments and to listen patiently to lay and professional persons appearing before them. It is to them that, in all probability, the responsibility for filling judicial vacancies at higher levels in the court will fall.

There is nothing whatsoever improbable about a cascade effect. I ask the Minister to retract the idea that I am being extravagant in my language. I am being pragmatic. I am putting forward the likelihood that if there is a vacancy in the Office of Chief Justice, an ordinary judge of the Supreme Court will fill that job. It is not carved in stone anywhere but it is likely. I do not want to put bookies’ odds on it but it is a likely outcome. It not an improbable outcome or an odds against outcome; it is a likely outcome.

If the Minister is going to say to the present Judiciary that a vacancy in the Supreme Court, as an ordinary judge, is not likely to be filled by a judge of the Court of Appeal or the High Court, I would love him to justify that in public and say that with this new system it is not going to be likely anymore that those jobs will be filled in that way or those positions are not filled in that way. He should say that and stand over that. I appeal to the Minister to put his hand on his heart and say, “In future, when this new Bill comes into effect, it is improbable that a vacancy in the position of an ordinary judge of the Supreme Court is going to be filled by an existing judge of the superior courts.” If that his position, then say so. I am not as kind-hearted as Sena-

tor Craughwell on this matter. I believe it is self-evidently not the case that it is improbable. It is probable and, therefore, I say that if the Minister appoints an ordinary judge of the Supreme Court to the position of Chief Justice, it is highly likely that there will be one, two or three consequential appointments among the Judiciary rather than just some person coming in at the bottom and there being no vacancy. It is highly likely that that will happen, although not impossible. I look back over my own career and experience as a barrister to the number of occasions where somebody has come in from outside rather than a judicial appointment, made among the Judiciary, and in my lifetime as a practising barrister, which started in 1974-----

Acting Chairman (Senator Catherine Noone): That was before I was born.

Senator Michael McDowell: ----there have been a handful of appointments to the Supreme Court of that kind. The same applies even under the tutelage of the Minister. Even in recent times, I ask him the number of non-judges who have been appointed to the Court of Appeal. He has an open deck and can appoint whoever he wants at the moment to all of these positions. I ask him to show me how he has filled the Court of Appeal vacancies from outside the ranks of superior court judges because he has not. He has had the opportunity but he has not done it and his colleagues in Government have not done it. The reason is-----

Acting Chairman (Senator Catherine Noone): Sorry, this is the fifth time that I have asked the Senator to please direct his comments through the Chair.

Senator Michael McDowell: Sorry. The Minister has not done it, his colleagues in Government have not done it and we are, therefore, in a position of what is now the norm, we are now being told by the Minister here in the House, is an improbable cascade scenario, what is going on at the moment is likely to change and likely to become improbable in the future, and I am exaggerating when I say that these jobs are filled from among serving judges. It is simply not correct to say that, it is simply misleading the Minister himself and it is not assisting this debate to try to slap down the perfectly reasonable argument based on experience, not least recent experience by the Minister's own Government in filling positions in the Supreme Court and the Court of Appeal, to argue that they will be appointments from among the Judiciary, which will carry with them consequential vacancies. That is what is happening now. I have no problem with it happening now but I have a serious problem with the Minister saying that it is somehow exaggerating the situation-----

Deputy Charles Flanagan: Overly dramatising.

Senator Michael McDowell: Overly dramatising the situation.

Senator Michael McDowell: I am grateful to the Minister for his comment. What have I dramatised?

Deputy Charles Flanagan: Cascading vacancies.

Senator Michael McDowell: I ask the Members what I have dramatised.

Acting Chairman (Senator Catherine Noone): I ask Members to focus on the amendment.

Senator Michael McDowell: I am focusing on the amendment. I am speaking exactly to the amendment and to the substance of the amendment. The Minister is saying, as a reason for not accepting this amendment, that the scenario whereby there will be consequential vacancies,

as the rule rather than the exception, is overly dramatising the situation, but he is plainly wrong. If I am over dramatising the situation, could he kindly explain to this House why he has not, in all of the appointments he has made, chosen somebody from outside the ranks of the Judiciary for appointment to the Supreme Court or Court of Appeal? Why has he not done it? If I am dramatising the situation and saying this is the norm and this is the likely outcome, he has no such constraint on him at the moment. He says I am over dramatising the situation by saying that where there is a vacancy in those courts, it is likely to be filled by a member of those courts, there are likely to be consequential vacancies and, as a result, as the Bill now stands, unless this amendment is accepted, each of them will have to be the subject of a sequential separate appointment process.

Deputy Charles Flanagan: Trickle down effect, I think it is called.

Senator Michael McDowell: The Minister has agreed with the proposition that the Government cannot say, “We will be appointing so and so Chief Justice and we have in the back of our mind to appoint so and so from the Court of Appeal to the vacancy”. That would be an abuse of this new wonderful system we have, according to him, so we have to open everything, at every stage, throughout this consequential, sequential appointment process-----

Senator Gerard P. Craughwell: It is fully transparent.

Senator Michael McDowell: -----to have a separate competition for each and every position.

6 o'clock

The Minister stated that it is somehow fanciful and queried the time periods to which I referred. I stated that it will take two or three months for the judicial appointments commission to advertise a position, set a fair period for people to submit applications, interview and evaluate those individuals, meet thereafter and decide its shortlist and send it to the Government for its careful consideration.

Senator Gerard P. Craughwell: Queried.

Senator Michael McDowell: And queried, perhaps. I stated that the process in this regard would take two or three months. Senator Craughwell believes it will take four months. Whichever of us is correct, nobody is stating that it will be concluded in six weeks and or two months. Nobody is saying that the timeframe will be anything of that nature. Whatever way the Minister sees this sequence of appointments, it is clear that it is more likely than not to occur, based on the pattern of appointments made by this and previous Governments. It is not fanciful or unlikely that there will be sequential appointments. It has not been the case under the Judicial Appointments Advisory Board system, in cases where it is creating a vacancy by virtue of its own decision, that the Government has to resort to advertising a position when it has a different candidate in mind or whatever.

It is a bit irritating for the Minister to stated that I am overdramatising the situation. The scenario I have painted, be it in respect of two or three consequential appointments, is, first, quite likely to occur and, second, will, on the basis of any rational view and depending on whether Senator Craughwell’s opinion is correct, result in a delay of six to 12 months.

As I have indicated, the problem is that we are not getting a fully honest statement of how

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this Bill will work in practice. I am not accusing the Minister of dishonesty, but we are not getting a full frank indication of how it will work.

Deputy Charles Flanagan: I resent that. I have been here week after week and it does not matter what I say. It is not a matter what I say, it is what Senator McDowell says.

Senator Michael McDowell: Through the Chair, because I have to address-----

Acting Chairman (Senator Catherine Noone): The Senator has to address me, but we have to be careful about the type of language we use.

Senator Michael McDowell: I said that we are not getting a fully honest appraisal of how this Bill will work.

Deputy Charles Flanagan: I resent that. I resent the arrogance of it.

Acting Chairman (Senator Catherine Noone): In fairness, the Senator has clarified that he is not accusing the Minister of dishonesty.

Deputy Charles Flanagan: I also resent the arrogance that I now detect.

Acting Chairman (Senator Catherine Noone): Can we try to stick to the amendments?

Senator Michael McDowell: I think we need a call for quorum in order to allow the Minister to calm down.

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

Acting Chairman (Senator Catherine Noone): Senator McDowell was in possession. Does he wish to conclude?

Senator Michael McDowell: Sorry-----

Acting Chairman (Senator Catherine Noone): Does the Senator wish to continue?

Senator Michael McDowell: Yes, I wish to continue. I thought the Acting Chairman asked if I wished to conclude.

Acting Chairman (Senator Catherine Noone): Either. Whatever the Senator wishes.

Senator Michael McDowell: We have not had an honest description of what an individual member of the Judiciary will be told about his or her applications. It seems that under the Bill as currently formulated, a judge who applies to be considered and is interviewed will not be informed that he or she-----

Deputy Charles Flanagan: This has nothing to do with the amendment.

Senator Michael McDowell: Excuse me, I am talking precisely about the amendment. The Minister is here with right of audience, he is not here as a Member of this House and he is certainly not here as the adviser of the Chair.

Deputy Charles Flanagan: I have sought the assistance of the Chair in order to ensure an orderly debate. I have done no more than that.

Acting Chairman (Senator Catherine Noone): Sorry-----

Senator Michael McDowell: I am trying to have an orderly debate, through the Chair. I am speaking through the Chair as best I can.

Deputy Charles Flanagan: Just because the Senator is speaking through the Chair does not mean that he is in order.

Acting Chairman (Senator Catherine Noone): That is a matter for the Chair to decide.

Senator Michael McDowell: The situation is simply this: in this sequential cascade, or whatever one wants to call it - the sequence of appointments perhaps - a member of the Judiciary is obliged to submit an application form and is never told whether he or she is even short-listed. The Bill is deliberately opaque on this. On a literal reading of the section, it would be an offence to reveal the shortlist to candidates. We have never had a satisfactory explanation as to why that is not the case. Every time a judicial vacancy becomes available in the superior courts, a judge will have to ask himself or herself, "Do I gird my loins yet again to fill out a new application form; do I attend yet again to be interviewed by people who I have no idea what they made of me on the last occasion, whether they thought I was good, bad or indifferent or if I was short-listed; was it that I had not established to the judicial appointment commission members my suitability to be short listed or was it that I was short-listed and the Government preferred somebody else on the list?" There is complete lack of transparency in that regard in this legislation.

With respect, the Minister was not fair to me or to Senator Craughwell in saying that trickle down or consequential vacancies were somehow over-dramatising the situation. They are not, they are the probability and the likelihood. It is more likely than not that that situation will apply. If that is the case, unless this amendment is accepted, every time there is a consequential vacancy, all of the members of the Judiciary will have to go through this process. They will have to submit a new application to be interviewed again and, at the end of that process, they will remain completely in the dark as to whether they were short-listed or not, whether the Government had made the decision that although they were short-listed they were not suitable for the job, or whether it was the commission that had determined they were not suitable, even to be included among the top three. That is why this amendment is of importance.

I am not talking about an improbable scenario. Rather, I am talking about what is likely to happen. The Minister should remember, before he accuses me and Senator Craughwell of talking about unlikely scenarios or dramatising the situation, that the proof of the pudding is in the eating. The Government of which the Minister is a member has never appointed or advised the President to appoint someone other than a sitting judge to a vacancy in the Supreme Court. The Minister has never, as far as I know, advised the President to appoint a person who is not a sitting judge to the Court of Appeal. I may be wrong on that and the Minister has done so on one occasion. We are not talking about improbable scenarios. It is annoying to be told that one is over-dramatising the situation when the Minister then says that the consequence of not accepting this amendment is that where there are consequential trickle down vacancies, which is the probable likelihood unless something dramatically changes, it will give rise to delays of three, six and nine months in repairing the vacancies to the courts. Someone has to take responsibility for that.

Senator Gerard P. Craughwell: On the point Senator McDowell made-----

Acting Chairman (Senator Catherine Noone): I think Senator McDowell made the point well himself.

Senator Gerard P. Craughwell: I understand the Minister's frustration but currently in any public service or private sector job in respect of which a panel is established for interviews, unsuccessful candidates are given the opportunity to meet again with the panel to discuss where they went wrong. Senator McDowell spoke about a judge or a person who puts himself or herself forward for a judicial appointment and is unsuccessful. At the very least natural justice requires that that person be invited to attend the interview board again to discuss where he or she went wrong such that at the interview he or she can counter what was deemed to be lacking in the previous interview. Natural justice requires that.

In regard to this amendment, I want it on the record of the Seanad because in 20 years' time others will be trying to figure out what was going on in the minds of current Senators in regard to this Bill. I want the Minister to guarantee me tonight that there will never be a trickle down problem or lengthy delays in regard to the filling of vacancies at each of the levels below Chief Justice. In terms of this Bill, the Minister cannot give that guarantee. When the commission has short-listed three people the Government can, if it does not like any of them, appoint somebody else. This Bill does not prevent that either. We have spent approximately 66 hours thus far on this Bill. Why are we still arguing about it?

Deputy Charles Flanagan: I will make some brief points in response to the Senators' comments. The Bill does not preclude applicants being told by the commission whether or not they were short-listed. I invite Senator Craughwell in particular to look at amendment No. 87b. I look forward to his support and that of Senator McDowell when we come to that amendment.

Senator McDowell spoke in dramatic language about cascading appointments. I point him to section 53(5)(e) which states that the matter of the procedure set out by the commission will be in the best interests of due process and will, I am sure, bear in mind the points that have been raised regarding undue delay. The selection procedure will be set down by the commission and it will be required to ensure that the process is not only transparent - for which we are providing here for the first time but the Senators appear to have a difficulty with it - but smooth. For example, a not unlikely scenario would be a vacancy on the Supreme Court for which up to five members of the High Court may wish to express their interest and may wish to be considered. It is entirely meritorious and desirable that they should be required to express that interest in written form, that the merits or otherwise of their attributes, expertise and experience would be considered by the commission - I make no apologies for that, that the commission would in due course, in accordance with due process, make a recommendation of three to Government, and that in early course the Government would consider those three recommendations and make a decision having regard to the Act and the Constitution. I do not believe we will be in the dramatic territory outlined by Senators McDowell and Craughwell. The process will be determined and should not involve any great measure of delay, undue or otherwise.

Senator Michael McDowell: It is all very well for the Minister to say I am being dramatic. What is dramatic about saying that there will be a consequential vacancy in a court below? What is dramatic about saying that in all likelihood there will be a sequence of judicial appointments to be made?

Deputy Charles Flanagan: Five or six, the whole way down to the District Court.

Senator Michael McDowell: I did not say five or six the whole way down to the District Court. I never suggested that. The Minister is now over-dramatising the situation. I never suggested that the appointment of somebody to Chief Justice would have a knock-on effect in the District Court. What I did say was that it is very likely to have knock-on effects in the superior courts, the High Court, the Court of Appeal and the Supreme Court. Let us be clear on who is over-dramatising and who is distorting the issues that we are discussing. It is not me. I am dealing with what is probable but the Minister is now dragging in utterly ridiculous and fantastic notions that somehow I am proposing this amendment on the basis that some District Court judge's position would be the subject of a vacancy consequent on the appointment of somebody as Chief Justice. That is not what I have suggested and I have never suggested that. If the Minister would look again at the amendment he said he has spent weeks considering, it does not mention the District Court. It excludes the District Court.

Deputy Charles Flanagan: What about the 18 months?

Senator Michael McDowell: I do not know what the Minister is saying.

Deputy Charles Flanagan: Where did the 18 months come from?

Senator Michael McDowell: I am not going to argue and I have been told by the Acting Chairman to address the debate through her.

Acting Chairman (Senator Catherine Noone): It is just that the debate was getting a bit personal.

Senator Michael McDowell: I will do so. Let us look at the amendment. The Minister said he read this carefully. There is not one word about the Circuit Court or District Court in it. The proposed new section states:

Notwithstanding the provisions of *section 40*, nothing in this Act affects, limits or inhibits the right of the Government in any case where it advises the President to appoint any member of the Supreme Court, the Court of Appeal, or the High Court to any judicial office in any of those courts, at its discretion, to further advise the President to appoint any other member of those courts to the vacancy thereby created without seeking any recommendation from the Commission.

It expressly excludes Circuit Court and District Court judges from its ambit. The Minister accuses me of dramatising this by inventing the notion that somehow I was arguing that vacancies would arise in the District Court and, I presume, in the Circuit Court, which is simply wrong. I have never done that and the amendment does not contemplate it. It is a total distortion on the part of the Minister to lay that at my feet and say I am dramatising the matter. Of course it would be totally ridiculous for somebody in this House to say this might have implications for a vacancy in the District Court. The only person who has raised that ridiculous possibility this evening is the Minister. It was not me.

I am also interested in the Minister's statement that Senator Craughwell is ignoring amendment No. 87b in his own name. If we are to infer from the statement that the amendment enjoys the support of the Minister, I would like some clarity as to whether that is the case. If we were confident the Minister would support that amendment, we would not be making some of the points we are making about this specific amendment. However, we have had no signal whatever that the Minister has adopted it. There is certainly no asterisk on this list to suggest

amendment No. 87b enjoys the support of the Minister and would proceed as a Government amendment. If the Minister is now signalling that the points we are making are redundant because he proposes to accept the substance of amendment No. 87b, could we hear that?

Deputy Charles Flanagan: Yes. I am amenable to that.

Senator Gerard P. Craughwell: I asked how the Minister could guarantee there would not be a trickle-down delay. If he cannot do that, the argument he makes is flawed. It is as simple as that and he must accept the points I make.

Acting Chairman (Senator Catherine Noone): The Minister may respond in whatever way he wishes. The Senator may dispute his claims by pressing this to a vote or whatever. If the Minister wishes to respond now, perhaps the matter could be decided through a vote.

Deputy Charles Flanagan: I am not going to say or do anything in the context of the debate that might in any way fetter the activities of the independent board. I stand by the practice and procedures, particularly those outlined in section 53, which we will discuss later. I am not in a position to give any guarantees of the type sought and nor would the Senator expect it.

Senator Gerard P. Craughwell: The Minister has just agreed with my comment from approximately half an hour ago, which is that he cannot prescribe how the board or the commission would do its work. He cannot do so and therefore he cannot guarantee that if the Bill passes into law, the scenario outlined by Senator McDowell and me, irrespective of the period-----

Deputy Charles Flanagan: That is different. That is a twist. The Senator is playing games.

Senator Gerard P. Craughwell: The Minister has played on the periods I outlined earlier.

Acting Chairman (Senator Catherine Noone): It is quite all right for the Minister to respond to the Senator's assertions in any way he wishes. We cannot continue this conversation.

Senator Gerard P. Craughwell: What will we do then? Will we accept that in the Minister's view, this cannot happen and, ergo, we must believe it will not happen, so we will ignore it and move on? Is that what the Acting Chairman is asking me to do?

Senator Catherine Noone: No. The Senator has in a very articulate way expressed his dissatisfaction with many issues. Ultimately, this could be pushed to a vote to decide the matter. It is the way of these debates.

Senator Gerard P. Craughwell: I am not comfortable pushing this to a vote until I am 100% certain I know where the Minister stands. I am not certain at this time.

Acting Chairman (Senator Catherine Noone): In all fairness, I have been the Acting Chairman approximately four times for the discussion of amendment No. 86g. No matter how many times we go back and forth, perhaps the Senator will never be happy with the Minister's comments. It is why I suggest the Senator may wish to press the amendment.

Senator Gerard P. Craughwell: The Minister has stated his belief and he is expecting me and anybody opposed to that belief to accept his word.

Deputy Charles Flanagan: I am not expecting Senator Craughwell to accept anything I

say, such is his position on the matter.

Senator Gerard P. Craughwell: I specifically refer to this matter.

Acting Chairman (Senator Catherine Noone): Perhaps we are at an impasse.

Senator Gerard P. Craughwell: I have seen public appointments go very wrong. I have seen this system working and I have seen how it can frustrate entire organisations where there is a trickle-down effect when an appointment is made. It can cause mayhem. If it causes mayhem in organisations not responsible for the administration of justice in the State, what would it do to the administration of justice? We already have a crisis in the courts system with vacancies.

Deputy Charles Flanagan: Do we?

Senator Gerard P. Craughwell: We have heard there is a need for this Bill to pass in order that other Bills could be acted upon.

Deputy Charles Flanagan: What vacancies are unfilled?

Senator Gerard P. Craughwell: Do not ask me right now. If I am wrong about that, I apologise. I understand the Minister's bona fides but they are no good when it comes to the workings of this Bill. The Bill must be robust and be able to meet the challenges that will arise as a result of the establishment of this commission. One of these challenges may arise, and in the opinion of my colleague, Senator McDowell, who is a former Minister with responsibility for justice and a former Attorney General, the probability is that there will be a trickle-down effect. If that happens, it will cause mayhem with unfilled vacancies right across the system. The amendment being put forward today assists the Minister in dealing with that matter. We are trying to assist the Minister and not frustrate him. It is all we are trying to do.

Senator Michael McDowell: Did I understand the Minister correctly? He asked me and Senator Craughwell to deal with the amendment on the basis that he would accept amendment No. 87b. He used the word "Yes". He then said he did not want to interfere with the independent workings of the commission.

Deputy Charles Flanagan: I do not want to discuss the merits of amendment No. 87b now but I can tell Senator McDowell that I am favourably disposed towards its content.

Acting Chairman (Senator Catherine Noone): Thank you for the clarification.

Senator Michael McDowell: That is good to hear and I welcome the comment.

Deputy Charles Flanagan: We will not be discussing it now.

Acting Chairman (Senator Catherine Noone): No. In fairness, the Senator does not intend to discuss amendment No. 87b.

Senator Michael McDowell: No. If it is amended and accepted, it will deal with part of the argument that Senator Craughwell and I have made. This could have been diffused a long time ago if the Minister had indicated that. There is nothing to stop him from writing a letter to Senator Craughwell, me or any other Senator indicating that he is disposed to accept a particular amendment. Why do we constantly operate in the dark as to what the Minister's intentions are in these respects?

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Senator Gerard P. Craughwell: It might expedite the passage of the Bill if the Minister were to look at the amendments coming forward and give some indication as to where he stood on them.

Deputy Charles Flanagan: I do not get a chance to debate them.

Acting Chairman (Senator Catherine Noone): We will deal with each amendment as it arises.

Deputy Charles Flanagan: Exactly. The reason we have not reached the amendments, and the record actually stands-----

Acting Chairman (Senator Catherine Noone): Does Senator McDowell wish to press the amendment?

Senator Michael McDowell: Yes, if no other Members want to speak, I will press it.

Amendment put.

The Committee divided by electronic means.

Senator Gerard P. Craughwell: I think we will have a walk-through vote. Under Standing Order 62(3)(b), I request that the division be taken again other than by electronic means.

An Leas-Chathaoirleach: Senator Craughwell is calling for a walk-through vote despite the margin.

Senator Gerard P. Craughwell: There are no Senators from Fianna Fáil present but they may turn up.

Senator Jerry Buttimer: The Senator must not have been here for the Order of Business.

Amendment again put:

The Committee divided: Tá, 7; Níl, 24.	
Tá	Níl
Bacik, Ivana.	Burke, Colm.
Craughwell, Gerard P.	Butler, Ray.
Daly, Paul.	Buttimer, Jerry.
Humphreys, Kevin.	Byrne, Maria.
Marshall, Ian.	Coffey, Paudie.
McDowell, Michael.	Conway-Walsh, Rose.
Ó Céidigh, Pádraig.	Conway, Martin.
	Devine, Máire.
	Feighan, Frank.
	Gavan, Paul.
	Hopkins, Maura.
	Lawlor, Anthony.
	Lombard, Tim.
	Mac Lochlainn, Pádraig.

	McFadden, Gabrielle.
	Mulherin, Michelle.
	Noone, Catherine.
	O'Donnell, Kieran.
	O'Mahony, John.
	O'Reilly, Joe.
	Ó Donnghaile, Niall.
	Reilly, James.
	Richmond, Neale.
	Warfield, Fintan.

Tellers: Tá, Senators Gerard P Craughwell and Michael McDowell; Níl, Senators Gabrielle McFadden and John O'Mahony.

Amendment declared lost.

SECTION 41

Senator Michael McDowell: I move amendment No. 86h:

In page 28, line 29, after “office” to insert the following:

“(other than the office of the Chief Justice, President of the Court of Appeal, President of the High Court, President of the Circuit Court or President of the District Court)”.

One has to read section 41 to see where this fits in. The section states:

(1) *Subsection (2)* applies where—

(a) more than one judicial office in the same court stands vacant, or

(b) the following conditions are satisfied—

(i) the Minister reasonably apprehends that more than one judicial office in the same court will stand vacant, and

(ii) the Commission has received a request of the Minister (which request shall be addressed to the Commission and which, by virtue of this subsection, the Minister has power to make) that the recommendation referred to in *subsection (2)* be made.

(2) Where this subsection applies, the Commission shall, in accordance with this Act, recommend to the Minister, in respect of the judicial offices concerned, the names of such number of persons as is equal to the relevant number ranked in the order of the Commission's preference (and that expression of preference shall not make any distinction between the several vacancies concerned).

(3) In *subsection (2)* “relevant number” means the number obtained by multiplying by 2 the number of vacancies (or apprehended vacancies), and adding one to the product.

(4) Nothing in *subsection (2)* shall be construed as limiting the advice the Government may give to the President with respect to the appointment by the President, under Article 35 of the Constitution, of a person to be a judge.

Under the section, as currently drafted, if there is more than one vacancy in a court, the Minister shall signal to the commission that there is more than one vacancy or there is likely to be more than one vacancy. This could be the case where there are two people approaching retirement age and so on. In those circumstances, the commission, instead of short-listing three people, uses what is known as the “relevant number”, which is the number obtained by multiplying by two the number of vacancies or apprehended vacancies and adding one to the product. For instance, if it were the case that there were two vacancies anticipated in a court, the Minister could signal to the commission that he apprehended that there are two vacancies coming up in, say, the Circuit Court and in those circumstances, instead of sending three names forward, the commission should multiply two by two and add one, which means the relevant number would be five. Likewise, the figure would increase to seven if there were three vacancies in a court for whatever reason.

In regard to section 41(1)(a), where more than one judicial office in the same court stands vacant, the question that arises is whether that includes the position of Chief Justice, President of the Court of Appeal, President of the High Court, President of the Circuit Court or President of the District Court. The purpose of amendment No. 86h is to provide that if one of the presidencies is the subject matter of a vacancy, that vacancy is not subject to the requirement to multiply the numbers as would be the case in respect of an ordinary member of the court in question. In other words, if the Minister apprehended that the President of the District Court was retiring on a particular date and also that a District Court judge in, say, County Kerry, who is not the president, was retiring on the same date, the Minister would not ask the commission for only five names. As such, in those particular circumstances the multiplying rule would not apply. This proposal would improve the Bill.

At the other end of the spectrum, if the position of Chief Justice is to be filled and so too the position of an ordinary member of the Supreme Court, providing that a shortlist of five should be provided is not what the legislation should do. There should not be a consolidated list of five in those circumstances on the basis that one of the vacancies is for Chief Justice and the other is for an ordinary member. I am interested in hearing what the Minister has to say about the amendment proposed by me and Senators Craughwell and Boyhan. It seems to me that it makes eminent sense.

Senator Gerard P. Craughwell: This is about the qualifications the State requires for appointment as, say, the President of the Supreme Court and an ordinary member of the Supreme Court. In the case of the Chief Justice such qualifications would include experience, length of time on the Bench, ability to administer and so on. These qualifications would be different from those required for appointment as an ordinary member of the Supreme Court. To lump both together would be akin to holding an ordinary Member of the Dáil in the same way as one would hold a Minister. It cannot work that way or, at least, we would hope it would not work that way. We would hope that the best are chosen to hold the most senior positions. We are trying to ensure that-----

An Leas-Chathaoirleach: I am sorry to interrupt the Senator but the time allocated for this business has expired.

Senator Gerard P. Craughwell: That is most regrettable.

Progress reported; Committee to sit again.

7 o'clock

Personal Injuries Assessment Board (Amendment) (No. 2) Bill 2018: Committee and Remaining Stages

Sections 1 to 15, inclusive, agreed to.

Title agreed to.

Bill reported without amendment and received for final consideration.

Question proposed: "That the Bill do now pass."

Senator James Reilly: This is a very important Bill. I wish to take this opportunity to raise a number of issues that have come to my attention in recent weeks, one of which is the large numbers of individuals and small businesses that can no longer get insurance. I am aware of one individual who has been insured for 30 years. He has a number of shops but he was the subject of three claims in the past three years. His insurance increased from €7,000 to €35,000 last year. This year, the insurance provider will not provide him with cover. I am aware of an ever-increasing number of young drivers and others who are finding it difficult to obtain motor insurance. In one case, a small scrape three years ago amounting to €400 worth of damage means that the young professional involved is off the road because he cannot get insurance. While it is aimed purely at personal injuries on one level, I hope the Bill might afford the Department an opportunity to investigate what has been happening with motor insurance and insurance for small businesses in recent months. I do not want to rehearse all of the other issues we have discussed in the context of the Bill. However, I wish to state clearly that we need a review of the practices of motor and business insurance providers in this country.

Senator Aidan Davitt: I shall be brief. I fully agree with Senator Reilly. I agree with his call for an immediate review because small businesses are feeling the brunt of the insurance squeeze. I commend the Senator on what he said.

Senator Michael McDowell: I also wish to express my concerns regarding the rising cost of premiums. It is important that the civil law should be such that it is fair to persons who are injured through the fault of others. In particular, it should be fair to those who are trying to carry out business activities, voluntary activities, landowner activities, motorist activities, taxi-driving activities and all the rest. The burden cannot become excessive.

The Personal Injuries Assessment Board, PIAB, was piloted originally by Mary Harney when she was Minister for Enterprise, Trade and Employment. I was her Cabinet colleague at the time. Her initiative had a very significant effect at the time. It was generally accepted that public liability, employer insurance and the like were the equivalent of a 10% to 15% payroll

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tax for many employers, on top of pay-related social insurance, PRSI, making Ireland a difficult place to carry out entrepreneurial activity.

Whether one is talking about small and medium enterprises, as Senator Reilly mentioned, or the very small enterprise of simply being a taxi driver, being confronted with a demand for €5,000 or €7,000 means one is obliged to pay €100 a week simply to put one's car on the road. That is before paying for diesel, petrol or whatever to run the vehicle. That to which I refer a terrible imposition on an ordinary working man or woman driving a taxi. Likewise, it is really scary for small business owners to be confronted with massive increases in their premiums. When Mary Harney introduced the PIAB, it had a good impact. Obviously, some fine-tuning and improvement are required because, as Senator Reilly noted, the cost of premiums is rising. In addition, there was a change to the civil law as a result of which people are required to swear affidavits and not to cheat by putting in bogus or exaggerated claims. That has also had an effect. There was a general moderating effect on premiums when the two relevant Acts were brought into force. I hope that the effect of those two Acts has not atrophied. I am of the view that the PIAB is worth having. The Government should keep the burden of personal injuries claims within reasonable levels by whatever means is constitutionally possible and is fair to people who are genuinely injured. However, we must at all times discriminate between those who are in that position and individuals who are exploiting the system of civil justice in order to obtain compensation in a measure which exceeds what would be considered reasonable in other European countries.

I wish the Minister well with her proposals and in her commitment to ensure that the PIAB functions well.

Minister for Business, Enterprise and Innovation (Deputy Heather Humphreys): I thank the Senators for their time, contributions and support for the Bill. It is important legislation, which is designed to enhance the role of PIAB, to strengthen its powers within the personal injuries claims environment, and to benefit claimants, insurers and society more generally.

On the issue of the cost of insurance, I am aware of the serious impacts on businesses and consumers of high insurance costs. It is important that consumers and businesses can obtain insurance cover at a reasonable and fair price.

I have met the Minister of State, Deputy D'Arcy, who is chairman of the Government's cost of insurance working group, and other stakeholders to discuss the high cost of insurance for business and consumers, and the work in my Department in this regard. The working group has undertaken a review of the factors influencing the increased cost of insurance. Its objective is to identify immediate and long-term measures that can address increasing costs, while bearing in mind the need to maintain a stable insurance sector. The first phase of this work involved an examination of the motor insurance sector. The second phase involved an examination of the employer liability and public liability insurance sectors.

The work of the cost of insurance working group is complemented by the work of the Personal Injuries Commission. I was pleased to submit the second and final report of the commission to Government on 18 September 2018. The publication of this report concluded the challenging work programme of the commission since its establishment in January 2017, on foot of a recommendation in the cost of insurance working group's motor insurance report.

Following publication of its final report, I wrote to the relevant Government colleagues, the

Minister for Justice and Equality and the Minister for Health, and other organisations, including the Garda Commissioner, Insurance Ireland, Law Society, Bar Council of Ireland and Law Reform Commission, LRC, seeking co-operation in advancing the implementation of the recommendations relevant to them. Their implementation will be a matter for each of the bodies responsible.

The Department of Justice and Equality has engaged with PIAB regarding a possible interim process for achieving revised guidelines on the priority soft-tissue or whiplash area. The Minister for Justice and Equality wrote to the Chief Justice on 13 February to ascertain his views as to whether it would be possible, clearly respecting the separation of powers and the independence of the Judiciary, to devise a process involving members of the Judiciary, representatives of PIAB and officials from the Department of Justice and Equality whereby interim guidelines relating to soft tissue or whiplash injuries would be delivered, and this output could be published by PIAB under its existing legislation, as a supplementary or replacement guideline.

The Judicial Council Bill has completed Second Stage in the Seanad and preparations on proposed amendments are being made by Department of Justice and Equality for Committee Stage. We know the legislation is currently going through but, as an interim measure, the Minister contacted the Chief Justice.

I believe that the cumulative effects of the implementation of all of the recommendations from the two reports of the PIC, alongside the reports of the cost of insurance working group, and the measures contained in the Personal Injuries Assessment Board (Amendment)(No. 2) Bill 2018, should bring greater consistency and predictability to awards, faster resolution of claims and, ultimately, a reduction in insurance premiums, which will benefit consumers, businesses and society as a whole.

Question put and agreed to.

Acting Chairman (Senator Frank Feighan): When is it proposed to sit again?

Senator James Reilly: Tomorrow morning at 10.30 a.m.

The Seanad adjourned at 7.15 p.m. until 10.30 a.m. on Wednesday, 20 February 2019.