



**Northern Ireland
Assembly**

**ASSEMBLY AND EXECUTIVE
REVIEW COMMITTEE**

**OFFICIAL REPORT
(Hansard)**

Devolution of Policing and Justice

3 November 2009

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Alex Attwood
Mr Nigel Dodds
Mr Simon Hamilton
Mrs Carmel Hanna
Mr Danny Kennedy
Mr Alex Maskey
Mr Alan McFarland
Mr John O'Dowd

The Chairperson (Mr Spratt):

I declare an interest as a member of the Northern Ireland Policing Board.

Mr A Maskey:

I am a member of the Policing Board.

Mr Attwood:

I am a member of the Policing Board.

The Chairperson:

The Committee will now consider the remaining issues on the category 2 list, as detailed in members' papers. Rather than proceed with each issue in turn, I invite members to state whether

there have been developments on any of those matters.

Mr Hamilton:

No, Chairperson.

Mr A Maskey:

Nothing additional.

Mr McFarland:

I have nothing new to report.

Mr Attwood:

As with our previous meeting, I have several proposals to make in respect of the category 2 list of issues. We are six weeks away from the Christmas recess, which means that the Committee must have a report signed off within four weeks so that it can be discussed by the Assembly before the recess. Given the tight time frame within which we are working, in order to honour our Assembly mandate, and with so many issues still unresolved, we must create certainty around some of those matters.

If the Committee were self-serving, there could be a risk that, sooner or later, somebody may claim that the devolution of justice cannot happen because the Assembly and Executive Review Committee has not concluded its business. I would not be surprised if somebody points a finger at the Committee over the coming weeks for not concluding some matters. Whatever the truth of that might be, and wherever else the responsibility might lie, I do not think that the Committee should be exposed to any allegations that we are not trying to conclude our business in a manner that is consistent with our mandate.

Given the direction in which policing issues are now moving, we need to bring clarity to some matters. Therefore, I have some proposals for the Committee. I will begin by addressing issue A.

Although we have decided that the role of the attorney general should be full-time, we still have not received from OFMDFM the report that the attorney general designate was asked to produce in respect of that office. We do not even know whether that report, which was commissioned by OFMDFM, has been produced, although I would be surprised if it has not.

Given that we do not know whether the report has been produced, and, if it has, we do not know what is in it, we should ask the attorney general designate to appear before the Committee.

The role of the attorney general designate will be very important in the context of the devolution of policing and justice, and he has been asked to spend some time considering what that role might be. However, there is a potential conflict of interest when a person designated for a role prepares a document about that person's office. For all those reasons, I think that it would be very useful if the attorney general designate attended a Committee meeting to advise members on how he sees matters in respect of his future office and any other matters he has identified that he thinks should be reported to the Assembly, just as he is reporting to OFMDFM.

I propose that we schedule a meeting over the next four weeks with the attorney general designate so that we can examine those matters.

The Chairperson:

Perhaps the Committee Clerk can provide some clarification on some of those points.

The Committee Clerk:

In his opening remarks, Mr Attwood referred to the timing of the Committee's report. To make it clear to members, in the Committee's first report on the arrangements for the devolution of policing and justice matters, paragraph 49 indicates that:

"The Committee proposes to make a second report on the arrangements for the devolution of policing and justice matters to the Assembly in 2009".

Paragraph 49 goes on to state:

"that report will address residual issues from the Category One List, as well as those issues on the Category Two List."

The first report is no more specific than that about the particular date or time by which the second report should be produced.

In relation to what Mr Attwood said about the attorney general designate, the First Minister and deputy First Minister did indicate in correspondence to the Committee that they had received a paper from the attorney general designate, which they are considering, and, in due course, that they will be in touch with the Committee in relation to that. In its letter of 7 October, inviting the First Minister and deputy First Minister to appear again before the Committee — on a range of issues, including the role of the attorney general — the Committee expressly stated that it requires

more information about the role of the attorney general.

We can conclude from that that the First Minister and deputy First Minister have received a paper and have been considering it. That is the state of play.

Mr Attwood:

Although I was on holiday when the letter was received about OFMDFM having received a paper, I welcome that. However, given that that paper has not been forwarded to the Committee, and given the importance of the role of the attorney general, it seems to me to be entirely consistent for the Committee to ask for a conversation with the attorney general designate around what we consider to be relevant matters arising from his future position.

We do not know when the First Minister and deputy First Minister may, or may not, share that paper with us. The Clerk will also confirm that if we are to comply with the original requirement to report to the Assembly by the end of 2009, we will have to table a document within four weeks.

The Committee Clerk:

The timing will be extremely tight.

Mr Attwood:

It may not even be four weeks, so we have to shift gears very quickly. It would be bizarre if we were to say to the general population that there will be an attorney general in Northern Ireland whom we have never met or had a conversation with about how he sees his office operating. Given the very important relationship that he will have with the PPS and how that will reflect back on the Assembly, it is self-evident that we should invite him to this Committee. Time is of the essence.

The Chairperson:

To clarify the situation in respect of the letter, everyone gets a meeting pack, whether or not they are on holiday. The Clerk's office sends them out to everybody.

Mr Attwood:

I appreciate that, Chairperson.

The Chairperson:

Are there any other comments on Mr Attwood's proposal?

Mr McFarland:

I am amazed that Alex is still surprised, even at this stage.

Mr Attwood:

The outstanding matters —

Mr McFarland:

Those will be decided by the First Minister and the deputy First Minister, and the DUP and Sinn Féin. They can do it in two minutes next week, the week after, tomorrow — or whenever. They will come to this Committee and push them through. The timescale is not an issue because their approach to the SDLP and my party, throughout this process, has been to bulldoze matters through. There is no doubt that that will happen in the case of the rest of the issues.

Alex has a point: it would be quite useful for us to meet the attorney general designate to hear his ideas. It would not do any harm for this Committee to get some sort of heads-up on where he thinks that role is going, if and when he takes it over.

Mr Kennedy:

On a point of clarification in relation to the date on which the second report is due from this Committee, what sanctions are available if we do not meet those deadlines and if there is no report by the end of 2009? Is there a sanction in place that the Assembly or Speaker could impose?

Mr McFarland:

The document uses the word "intends".

The Committee Clerk:

It states that: "The Committee proposes to make a —"

Mr Kennedy:

So it is an intention.

Mr A Maskey:

I do not necessarily support the idea of setting a timeframe within which we want the attorney general designate to appear before this Committee. That is the responsibility of OFMDFM, and we are content for that to continue.

The Chairperson:

Are there any other comments? We have a proposal. Please clarify the wording, Mr Attwood.

Mr Attwood:

I propose that, at a suitable date within the next four weeks, the attorney general designate be invited to attend a meeting of the Committee in order to discuss issues in respect of his future office.

The Committee divided: Ayes 4; Noes 3.

AYES

Mr Attwood, Mrs Hanna, Mr Kennedy, Mr McFarland.

NOES

Mr Maskey, Mr O'Dowd, Mr Spratt.

The Chairperson:

Mr Hamilton and Mr Dodds have abstained. The proposal is passed.

Mr Attwood:

The next issue is the Ashdown report on parading. The category 2 list asks:

“What, if any, consideration should there be of the Ashdown report on parading?”

In recent days, there has been various commentary about the Ashdown review of parading and the Parades Commission. The Secretary of State, in his letter to the Committee two weeks ago, said that even in the absence of the publication of the Ashdown report, which he thought would happen shortly, the British Government would endorse its recommendations, were prepared to pay for its recommendations, and were prepared to claim that it would be a sustainable way forward. Those are the Secretary of State's words, not mine.

We should request that Lord Ashdown attend the Committee, because his report — even though we have not seen its final conclusions — has already been endorsed by the Government, and that seems to be a back-to-front way of doing business. Also, given the political profile that this issue has now achieved, we must cut to the chase, and that requires Lord Ashdown helping the Committee by explaining his proposals and how those may or may not develop thereafter. To create a degree of certainty about the parades issue, I propose that we invite Lord Ashdown to give evidence to the Committee.

The Chairperson:

Mr Attwood is proposing that the Committee invites Lord Ashdown to give evidence.

Mr McFarland:

My understanding is that not all people on Lord Ashdown's committee agreed the report. From recent discussions in the press, it appears that two key players on that committee who represent substantial organisations did not agree it. Is that correct?

The Chairperson:

I remember that last time that the Committee asked me to speak to Lord Ashdown — the conversation lasted all of eleven and a half seconds.

Mr Kennedy:

Oh aye, there was a famous phone call.

The Chairperson:

Yes, and it lasted eleven and a half seconds. He told me that the Secretary of State was still considering the report. I do not know what the response to your letter will be, Mr Attwood, but I will be interested to learn the outcome.

Mr McFarland:

It will be useful to get some clarity on where we are with this issue. My understanding is that the draft report was not agreed by Lord Ashdown's committee. Is that correct?

Mr O'Dowd:

There was a draft report and they are waiting for a substantive one.

Mr Dodds:

It was an interim report.

Mr McFarland:

From our discussions the other day, my understanding was that Mr Murray and another person did not even support the draft report; rather, they supported only bits of it. I think that Mr O'Dowd was one of the people who told me that. So, I am not clear about what the status —

The Chairperson:

Do not look to me for answers. *[Laughter.]*

Mr Kennedy:

You have his number. *[Laughter.]*

Mr A Maskey:

There is not much point in getting one person to tell us what he thinks, when others appear to have other points of view. Therefore, I object to the proposal.

Mr Dodds:

I have no objections to Lord Ashdown coming to the Committee. I do not know whether he will attend in light of the report's current status. However, I have no difficulties with him coming along to discuss the issue, because it is very important.

The Chairperson:

We will put the matter to a vote. The proposal is that we invite Lord Ashdown to discuss his report with the Committee.

The Committee divided: Ayes 7; Noes 2.

AYES

Mr Attwood, Mr Dodds, Mr Hamilton, Mrs Hanna, Mr Kennedy, Mr McFarland, Mr Spratt.

NOES

Mr A Maskey, Mr O'Dowd.

The Chairperson:

The proposal is carried.

Mr Attwood:

The second issue that arises from the letter that the Secretary of State's that was sent to the Committee two weeks ago —

Mr Kennedy:

You are aiming for a hat-trick. It is astonishing.

Mr Attwood:

The Committee should send a letter to the Secretary of State. Lord Ashdown has not published his report, but the British Government endorsed it. They said that they will fund it and that they believe that it is a sustainable way forward.

At long last, the Secretary of State has written to the Committee, and I welcome that. However, the Secretary of State and the British Government must explain how they can endorse recommendations, which, according to other people, have not yet been concluded.

Given the issues that have been raised about who did or did not sign off on the interim Ashdown report, we must find out whether Ashdown has finished his report and has handed it to the British Government. Is that the basis on which the British Government have said that they agree with his recommendations and will fund them, or is it the case that Ashdown has not finished his report and that the members of the Ashdown group have not endorsed any report? If that is the case, how can the British Government say that they endorse its recommendations, never mind that they will fund them or that they are a sustainable way forward? There may be an explanation, and I want to hear it. It does not seem to be consistent for the British Government to endorse a document that has not been agreed, published or forwarded to them. We must find out from them the basis on which the Secretary of State has made those commitments. It does not seem to be backed up by evidence about what stage the report is at.

Mr Dodds:

Alex has set out his position. I have no difficulty with the Committee writing to the Secretary of State. However, if Alex reads the Hansard report from last week, he will know, as I know, the Secretary of State's exact view, as outlined by Mark Durkan. He will also know Paul Goggins's view. Therefore, we can read what will be said; it is already on record. It is not as if a letter will elicit anything new from Sean Woodward.

Mr Attwood:

We will not be asking him to come here, Nigel. We will be asking him how he came to his assertions that are outlined in the penultimate paragraph of his letter of two weeks ago. How could he make those assertions if Ashdown has not yet reported?

The Chairperson:

OK. Will you clarify the wording?

Mr Attwood:

The Committee should write a letter to the Secretary of State to ask him, further to his most recent letter to us, to confirm whether he has received a copy of Ashdown's final report, and if he has not received that report, and it has not been published, how could the British Government commit to its conclusions and recommendations and agree to fund them?

Mr O'Dowd:

Do you mean if an agreed document has not been published?

Mr Attwood:

Any document, whether it is agreed or not.

Mr Dodds:

If we send a letter to ask how the British Government could commit to those recommendations, he will assert that that is not his position.

Mr Attwood:

It is stated in writing, Nigel. It is in the letter that we received from the Secretary of State.

Mr Dodds:

I do not mind.

Mr Kennedy:

Perhaps, it would be easier to ask the Secretary of State to clarify the up-to-date position.

Mr Attwood:

That is fine. I am sure that Hansard report will inform us.

Mr Chairperson:

Are you happy with the proposal that we get clarity on the up-to-date position of the Ashdown report, Alex?

Mr Attwood:

Yes.

The Chairperson:

Does everyone agree?

Members indicated assent.

Mr Attwood:

I want to discuss two other matters that I held back on because I do not think that they will win approval.

The Chairperson:

There were three matters. Now, you are telling me that there are five.

Mr Attwood:

The next one is from the category two list of issues. We have a situation in which the British Government confirm that the existing North/South justice agreement is being reworked so that on the day that policing and justice powers are devolved, the elements in the current agreement that fall to the Dáil and the Assembly will go live. That is the proper way to proceed, but our argument is that there should be a justice sector of the North/South Ministerial Council. My

proposal is that the Committee endorses that sector to ensure that the matters that fall to the Oireachtas and to the Assembly on the day of the devolution of policing and justice powers are all managed through that sector.

We are running out of time on this issue. There will be tension around a new North/South justice agreement between the Oireachtas and the Assembly and not having a parallel mechanism to bring those matters forward through a justice sector of the North/South Ministerial Council. Therefore, to have convergence on a date for devolution of those powers, there should be a requirement to have that sector in place. That is independent of the good grounds for having a justice sector in the North/South Ministerial Council. As a matter of good practice and process, we should aim to have convergence on the day that the devolution of those powers takes place by having the agreement and the sector in place.

Mr McFarland:

We have had this discussion for several years now. We are more than happy to continue with the existing arrangements that were set up some time ago to deal with this issue. There is no reason to increase cross-border activity at the moment. The current system works well, and we are against the proposal.

Mr Hamilton:

Ditto from me in respect of what Alan said. As a party, we are supportive of cross-border co-operation where it is of mutual benefit. There is existing cross-border co-operation on a justice sphere, and it is helpful and useful. Our trip to Dublin was cited as such by the head of the gardaí and by the Minister for Justice, Equality and Law Reform, but we see no argument for or ideological commitment to the North/South Ministerial Council per se, never mind expanding it.

We oppose any extension to include a justice sector, because there is no need for it, and the current arrangements seem to be operating pretty well. It is just a matter of ensuring that those arrangements are kept in place.

Mr A Maskey:

We previously argued for the proposal that Alex Attwood outlined.

The Chairperson:

We will put it to a vote. The proposal is that the Committee endorses a justice sector of the North/South Ministerial Council.

The Committee divided: Ayes 4; Noes 4.

AYES

Mr Attwood, Mrs Hanna, Mr A Maskey, Mr O'Dowd.

NOES

Mr Hamilton, Mr McFarland, Mr Kennedy, Mr Spratt.

The Chairperson:

The proposal falls.

Mr Attwood:

My final issue is about the relationship between the Serious Organised Crime Agency (SOCA) the security services and the new Department, and the fact that we are still awaiting a reply from the Secretary of State about that issue. I propose that the Committee expresses its concern that the relevant memoranda and protocols have still not been shared with the Committee, and that the issue should be rectified by the Secretary of State without delay. If passed, that proposal should go to the Secretary of State.

It is self-evident that those memoranda and protocols are in place. I have no doubt whatsoever that the British Government is already sharing security briefings with people in the North on a private basis. However, the British Government have not shared the information that we requested, which is relevant to the authority of the Assembly. We repeatedly requested sight of the memoranda and the protocols. Consequently, we will be on the back foot if policing and justice powers are devolved quickly, because we will have received documentation very late in the process. The Committee and the Assembly deserve more respect from the British Government. More importantly, we must get sight of the documentation that we requested so that we can critically assess the make-up of future relationships, what will be shared and how it will be shared. To do that, we need to see the memoranda and the protocols. I ask Committee members to think about that issue.

Members of the Policing Board know the importance of handling properly the sharing of

information. In spite of my better self, I am not suggesting that we get involved in issues that we are not meant to. However, information to which the Assembly or this Committee is entitled to should be forthcoming. We should have received that information long before now.

By not giving us that documentation, the British Government are not taking us seriously; it was prepared long ago, and should have been shared with the Committee then. Therefore, I propose a motion that expresses the Committee's concern that the British Government are yet to share that information with the Committee, and urges them to do so forthwith.

The Chairperson:

Before I put the proposal, I draw members' attention to a document that was helpfully prepared by the Committee Clerk. It summarises the position on the information that was sought on memorandums of understanding and protocols. The issue was discussed on 20 October 2009, and the Committee Clerk prepared the document in response to that discussion. I will give members a couple of minutes to read the document, after which, I will invite comments.

Mr McFarland:

In January 2009, we were told that the information would be available in the next few weeks, and in May 2009, we were told that it would be available soon. If the information was ready at that stage, there is an issue as to why the Committee has yet to receive it. I think that it was agreed that we would receive it at the same time as OFMDFM. Therefore, the question is whether the First Minister and the deputy First Minister have got the information, and we have not.

The Chairperson:

I cannot answer that question.

Mr Hamilton:

I never thought that this would ultimately end up as an issue in the Executive, although, maybe Alex wanted it to. Nevertheless, the Committee has shown an interest in the subject, has requested material and has been given some level of assurance that it will receive the material. Considering the chronology, it is poor that we have been led a bit of a merry dance. However, that is not to say where the issue may end up. We have requested sight of the information and we have been assured that we will receive sight of it, and it is only right and proper that we see that the lines that have been suggested.

The Chairperson:

The proposal is that the Assembly calls on the Secretary of State for Northern Ireland to provide to the Northern Ireland Assembly forthwith all the memorandums of understanding and protocols that will apply at the point of the devolution of policing and justice matters.

Mr Attwood:

It may be better to say “protocols and concordats” because that is the words that they use.

The Chairperson:

Do members agree to the proposal with that slight change?

Members indicated assent.

The Chairperson:

If no other member has anything to raise about the category two list of issues, that concludes that part of the meeting.