



**Northern Ireland  
Assembly**

---

**ASSEMBLY AND EXECUTIVE  
REVIEW COMMITTEE**

---

**OFFICIAL REPORT  
(Hansard)**

---

**Devolution of Policing and Justice  
Matters**

9 November 2009

**NORTHERN IRELAND ASSEMBLY**

---

**ASSEMBLY AND EXECUTIVE  
REVIEW COMMITTEE**

---

**Devolution of Policing and Justice Matters**

---

9 November 2009

**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  
Mr Danny Kennedy  
Mr Alex Maskey  
Mr Alan McFarland  
Mr John O'Dowd  
Mr Paisley Jnr

**The Chairperson (Mr Spratt):**

There is one matter arising, which relates to the Committee motion for the Assembly. We can return to that issue later.

**Mr A Maskey:**

I am happy to discuss it now

**The Chairperson:**

OK. I leave the issue open for members' comments. I also want to establish the next steps, including whether Committee members sign off on the motion, and what advice the Assembly and Executive Review Committee (AERC) wishes to convey to the Business Committee on the

scheduling and duration of the resultant plenary debate. Those issues will then be discussed at the Business Committee, which, as members know, meets on Tuesdays.

A paper has been circulated to the Committee that provides the text of the motion to be tabled. It reads:

“That this 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 devolution of policing and justice matters.”

**The Committee Clerk:**

Obviously, I was unaware that such a motion would emerge from last week’s Committee meeting. Therefore, I drafted the motion as the discussion was ongoing.

In addition to signing off on the formal wording of the motion, it is routine practice for Committees to indicate to the Business Committee a preferred date for its motion to be tabled, and whether the Committee has any preference for the duration of the debate. Otherwise, the Business Committee assumes that the debate will be allocated the customary 90 minutes.

I have re-examined the wording of the motion, and I wonder whether there may be some benefit in inserting the word “relevant” before “memorandums of understanding”. I was approached by officials who were in the public gallery during last week’s meeting, and they pointed out to me that if that word were not included and the if motion were debated, passed by the Assembly and referred to the Secretary of State, he could, in turn, refer various memorandums of understanding, protocols and concordats —

*Committee suspended for a Division in the House.*

*On resuming —*

**The Chairperson:**

Where were we before the Division?

**The Committee Clerk:**

I have looked again at the wording of the motion, and there has been some suggestion that the introduction of the word “relevant” would make the motion more competent. If the Committee

decides to proceed with the motion, normal practice is to submit it to the Business Office for consideration, and to indicate when the debate might be scheduled and the possible duration of such a debate.

**Mr A Maskey:**

I was very surprised when I read how the motion transpired. It does not reflect the discussion in the Hansard report. The import and the intent of the discussion was to expedite the work of the Committee in respect of letters to the Secretary of State, Paddy Ashdown, and others on that list. I suggest that we write to the Secretary of State in as strong terms as we think necessary about the need to have sight of the protocols and memorandums as soon as possible. That was the clear intention behind the motion, as far as I am concerned.

We should return to the question of a motion for debate on the Floor of the Assembly at a later date, because we need to agree a motion and decide on the most appropriate time to have such a debate. The import of our previous discussion was that we need to have correspondence to and from the Secretary of State, and move forward from that point.

**Mr Hamilton:**

I have also read the Hansard report, and have seen what has been agreed. In line with last week's meeting, and going further back, my thinking was that the Committee was agreeing a motion among itself. However, that is neither here nor there.

I have no real concern about the motion or where it is debated, but I concur with the approach that we should write to the Secretary of State in the strongest possible terms. That message should be clear from last week's meeting, when members on all sides made their positions very plain. If that does not yield the result that we wish, which I think is consistent with the tenor of the debate last week, the Committee has the capacity to take matters one step further.

**Mr Attwood:**

I will be pressing for the motion. I do so for three reasons. First, and most importantly, we are five weeks away from recess. We have an obligation, under the mandate given to us by the Assembly, to report to the Assembly.

**The Chairperson:**

That is not the case. That was clarified last week; let me clarify it again. You keep using that argument, and it was pretty well debated last week. I will ask the Clerk to read out again what was agreed.

**The Committee Clerk:**

Paragraph 49 of the ‘First Report on the Arrangements for the Devolution of Policing and Justice Matters’ states:

“The Committee proposes to make a second report on the arrangements for the devolution of policing and justice matters to the Assembly in 2009; that report will address residual issues from the Category One List, as well as those issues on the Category Two List.”

**The Chairperson:**

So, the Committee “proposes”; it is not laid down in tablets of stone.

**Mr Attwood:**

The Assembly approved that report, and therefore —

**The Chairperson:**

The report uses the word “proposes”. Let us not forget the terms under which that was written. You have outlined your interpretation, and others have provided their interpretations of the debate that took place on the motion. That is all that I am pointing out. I want to clarify that point.

**Mr Attwood:**

The use of the word “proposes” is, in my view, very close to our saying that it is our intention. No one disputed the Committee’s intention to put a second report before the Assembly before Christmas. More critically, even if the word “proposes” were not used, are we saying that we are not going to have a report with the Assembly before Christmas? The situation will become much more serious if we are saying that we might not have a report on all those matters before Christmas.

If that is the case, it will cast further doubt on, and create impediments to, the devolution of justice and policing powers. Devolution of policing and justice powers cannot happen unless the Committee presents its report the Assembly. Without breaking any confidences, people in another part of the Building told the SDLP today that they are awaiting the Committee’s report.

That matter was raised with me only today.

As well as dealing with that matter, we need to get our heads around the suggestion that we may now not present a report before Christmas. That is not as consistent with our mandate from the Assembly as some Committee members suggest. More critically, failure to present a report will raise further doubts about the devolution of policing and justice powers.

**Mr Hamilton:**

You will have to change your amendment.

**Mr Attwood:**

We are working to what we hope will be very short time frames. Despite that, another letter is being sent to the Secretary of State. We have already sent four letters to the Secretary of State. If he has not got the message before now, another letter that is a bit more severe in its language will not make much of a difference. Sending another letter will cause only further delay.

In the nine months since we first wrote to the Secretary of State, we have been led a merry dance. The Secretary of State has been telling the Committee that it will receive information in the next few weeks, but, nine months later, we still do not have the information. Another letter will not make any difference. Debating a motion in the Assembly is a much more pointed way in which to communicate a message on a critical issue. The text of a motion was agreed, regardless of whether its meaning has since been reinterpreted. I want to know the identity of the officials involved.

**The Chairperson:**

I do not follow.

**Mr Attwood:**

We were told that officials raised a question about the motion's meaning.

**The Chairperson:**

I was not told that.

**Mr Attwood:**

The Committee Clerk just told us.

The Committee wrote to the Secretary of State on four occasions and made it very clear what it wanted. The Committee Clerk's report last week also made it clear that we wanted four matters settled. We have always been talking about those matters, so the motion's meaning is absolutely clear. To interpret "all the memorandums" as meaning anything and everything is stretching it, because we have it made it very clear what we want, and the Committee Clerk's report outlined what we want. However, I can park that grievance.

Let us be serious. Another letter will mean nothing, because previous letters have meant nothing. Our comments at last week's meeting are in the Hansard report. At that meeting, Simon Hamilton said that the Secretary of State's response was a bit weak, or words to that effect.

**Mr Hamilton:**

I do not disagree with your point.

**Mr Attwood:**

If we need to create certainty, we should do so now. Let us not get into a whimsical discussion on whether we will have a report before Christmas, because that will raise another little question mark about the process.

**Mr McFarland:**

Are there any indications that the NIO understands that we are reaching the end of our tether? I cannot understand why the Secretary of State will not play ball. The information is available. In May 2009, he indicated that the Committee could have the information within a week — he did not apologise and say that it would take months. We asked to have the information at the same time as the First Minister and the deputy First Minister received it. My guess is that they, or their staff, got the information from somewhere. When it appears that the DUP and Sinn Féin are in the final stretch of their discussions, it is discourteous to pretend that the information is not available.

It is unfortunate that we have got to the stage at which we are wasting Assembly time with this. It may be argued, however, that that is what it takes to explain to the Secretary of State that

we are not too amused by his treatment of this Committee. Is there any sense among members that we have come this far, so the Secretary of State should give us the information, and we will save ourselves weeks of messing?

**The Chairperson:**

Well, Alan, you know that the issue of the letters was raised with the Secretary of State in Committee. It has been consistent —

**Mr McFarland:**

Normally, Chairperson —

**The Chairperson:**

I share your frustrations and those of other members.

**Mr McFarland:**

Normally, the staff would have an idea of where we are with all this. Does the Committee Clerk have any inkling at all, or are we just being fobbed off? Where are we at with this?

**The Committee Clerk:**

I am reluctant to comment, because I do not have routine conversations on behalf of the Committee with the NIO or anyone else without the Committee's being aware of it. I have not had any discussions. The suggested adjustment to the wording was fed through the Assembly Liaison Group, and I got the wording at second hand as a result of that group's discussions.

As far as I am aware, officials from the NIO and from other Departments can and do sit in the Public Gallery each week and monitor the Committee's proceedings.

**Mr Hamilton:**

Are there people behind us?

**The Committee Clerk:**

There were people in the Public Gallery last week. Nobody is behind you now, Mr Hamilton, because we are in closed session.

**The Chairperson:**

All right, now that that has been clarified for you, Simon —

**Mr Hamilton:**

Just because they are not there does not mean that they are not there.

**Mr A Maskey:**

I want to make what I hope is a final comment on the matter. I resent the fact that anyone from this side of the table, be it Alex Attwood or anyone else, would interpret anything that I have said to mean that we do not want a report before Christmas. I have never said that, nor has any of my colleagues. Sometimes members deliberately misinterpret what has been said. I want to make it clear that I hope that no member of the Committee is suggesting that we do not want to publish a report before Christmas.

**The Chairperson:**

I certainly never suggested that.

**Mr A Maskey:**

I accept that.

**The Chairperson:**

I asked for clarification of what was in the minutes of evidence. I have made suggestions as the Chairperson, but Mr Attwood made an implication. All that I was doing was clarifying the Hansard report from last Tuesday.

What do members want to do?

**Mr A Maskey:**

We should write to the Secretary of State. The Hansard report of 3 November shows that Mr Attwood proposed that we contact the Secretary of State and that the matter should go to the Secretary of State.

**Mr Attwood:**

Do not try to quote me selectively. Read the full paragraph.

**Mr A Maskey:**

I have not finished speaking.

**Mr Attwood:**

Read to the end of the paragraph.

**Mr A Maskey:**

I have not finished. In the first instance, we should write to the Secretary of State in the strongest language that we can choose. Further to the Chairperson's proposal, we should defer that matter until we can agree the wording of a motion and have an idea of when it might be useful to have the matter debated in the Assembly. We should defer that until we get a reply from the Secretary of State, and we should make our decision on the basis of that response. That was the entire tenor of the debate that preceded the proposing of wording for a motion.

**Mr Attwood:**

It was not the entire tenor. The member should consult the Hansard report, read all the comments that were made and read how he and everyone else in Committee voted. I proposed an amendment to the motion; namely, the words in the Committee Clerk's note.

**Mr A Maskey:**

There was no vote.

**The Chairperson:**

No proposal was made.

**Mr McFarland:**

Is it possible to defer the matter until after tomorrow's meeting with the First Minister and the deputy First Minister? I am curious as to whether they have had access to the memoranda of understanding. We were promised them at the same time as they were to have them. My guess is that the First Minister and the deputy First Minister have those documents. It would be useful to ask them tomorrow whether that is the case. If they have them when we do not, the issue becomes even more complicated. I am not against having the discussion, because it may pay to find out from the First Minister and the deputy First Minister whether they have those documents.

How can they be on the verge of devolving policing and justice powers without having any idea of what the memoranda contain? I am curious to hear their views tomorrow. If we solve that problem tomorrow, it might save time and restart the process.

**The Chairperson:**

Do members agree?

*Members indicated assent.*

**The Chairperson:**

I assume that someone will ask that question tomorrow.

**Mr McFarland:**

I ask that the Committee Clerk remind us about it tomorrow. It will undoubtedly be a busy hour.