



**Northern Ireland  
Assembly**

---

**ASSEMBLY AND EXECUTIVE  
REVIEW COMMITTEE**

---

**OFFICIAL REPORT  
(Hansard)**

---

**Devolution of Policing and Justice  
Matters**

24 November 2009

**NORTHERN IRELAND ASSEMBLY**

---

**ASSEMBLY AND EXECUTIVE  
REVIEW COMMITTEE**

---

**Devolution of Policing and Justice Matters**

---

24 November 2009

**Members present for all or part of the proceedings:**

Mr Jimmy Spratt (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Alex Attwood  
Mr Simon Hamilton  
Mr Alan McFarland  
Mr Alex Maskey  
Mr John O'Dowd

**The Chairperson (Mr Spratt):**

We move to discussion of the Committee motion. I ask members to make any declarations of interest. I declare that I am 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:**

I remind members that the rest of the Committee proceedings are being reported by Hansard. It was necessary to return to the matter of the Committee motion at today's meeting. Members have the relevant papers.

### **The Committee Clerk:**

When the Committee discussed this matter last week, it agreed to consider a proposal today to rescind its decision of 3 November to proceed with a Committee motion, and instead to write to the Secretary of State to ask why he had not provided the memoranda of understanding, concordats and protocols as he had indicated previously, particularly in his letter of 31 May, that he would. During the Committee's discussions last week, some other opinions were expressed about holding the motion "in the arsenal", to quote the Hansard report, and parking the Committee motion. However, neither of those suggestions was formally proposed.

The Committee then agreed that, in the first instance, a letter should be sent to the First Minister and deputy First Minister to seek clarity around the fact that the Committee had discovered during a closed session with the First Minister and deputy First Minister that they had in their possession memoranda of understanding, concordats and protocols. The Committee noted that correspondence, which was issued last Tuesday, just a few moments ago. The letter called for a reply from the First Minister and deputy First Minister in time for the Committee's consideration today. There has been no reply, and although my staff have been in touch with OFMDFM, there has been no indication that a letter is forthcoming. Before the Committee decides on any further action on rescinding its earlier decision, it may wish to take into account what the First Minister said yesterday evening in the course of the Further Consideration Stage of the Department of Justice Bill. A note of those comments is being distributed to members.

In essence, the First Minister indicated that he saw no reason why the Committee should not see drafts of those various documents, and that he would do what he could to encourage that to happen. Therefore, in some respects, that represents an answer to the letter that was sent to the First Minister and deputy First Minister last week. That is the background, but I wish to offer procedural advice to the Committee if it wishes to rescind its earlier decision. If that is the Committee's wish, it must be done formally. The wording of the motion to rescind the earlier decision should be along the following lines:

"That the Committee rescinds the decision taken on 3 November 2009 to proceed with the following Committee motion:"

The wording of that motion was:

"That this Assembly calls on the Secretary of State for Northern Ireland to provide, to the Northern Ireland Assembly, all the Memoranda of Understanding, Protocols and Concordats which will apply, at the point of devolution of policing and justice matters, forthwith."

The proposal to rescind the motion must be made formally by a member, and the Committee must agree.

**The Chairperson:**

Members have heard the Clerk's advice on the procedure for rescinding the motion, if that is the Committee's wish. Do members wish to make any comments?

**Mr Attwood:**

There is always more than one way to skin a cat, and those have been explored over the past two or three weeks. These matters were discussed, in one way or another, during yesterday's plenary debate, and at two meetings of the Assembly and Executive Review Committee. I presume that some sense of what was said during yesterday's debate and in Committee has been conveyed to the NIO. The words that were used by the First Minister yesterday also move matters on, because he did not see any reason why the protocols in their current form could not be shared. I am content for the matter to rest. The cat has been well and truly skinned, and I have no difficulty in assenting to the motion to rescind, because the purpose of the prospective plenary debate has been fulfilled.

**The Chairperson:**

Are you proposing that the motion be rescinded?

**Mr Attwood:**

Yes.

**The Chairperson:**

There being no further comments, are members content that the motion be rescinded?

*Members indicated assent.*

**The Chairperson:**

We move to the remaining issues on the category 2 list. As usual, before going through the list issue by issue, I ask members whether there has been any movement. I ask parties to indicate whether they wish to discuss the full list.

**Mr Hamilton:**

I have nothing additional to report at this stage, Chairman.

**Mr A Maskey:**

Nothing additional, Chairman.

**Mr McFarland:**

Nothing additional, Chairman.

**Mr Attwood:**

I have no proposals this week, Chairman, you will be glad to hear. However, I have a number of questions. Has there been an acknowledgement from the attorney general designate to the letter inviting him to come before the Committee to discuss his role?

**The Committee Clerk:**

We have not received an acknowledgement. That letter was issued as a result of a decision of the Committee on 3 November, and it expressly indicated the Committee's wish that he appear before the Committee within four weeks. That four weeks will be up next week, and I have a note in my diary to remind the Committee that there has not been a response, save to say that the First Minister and the deputy First Minister, towards the end of the session that was conducted in private, indicated a willingness to come back to the Committee to discuss the role of the attorney general, as well as the category 2 list of issues.

**Mr Attwood:**

Lord Ashdown went out of his way to respond quickly to the Committee's invitation to appear, and he did so in quite elaborate terms — certainly not in the terms of his previous conversation with you, Chairman. That represented a significant and welcome change of approach. Subject to the caveat that he has received the letter, it is not the best state of affairs that a person suggested to be attorney general designate has not acknowledged or indicated whether he feels it appropriate to come before the Committee within the time frame that was suggested. Matters could be handled a bit better.

**Mr McFarland:**

The word "designate" is one that Alex has applied. My recollection is that the official line was

that the First and deputy First Minister — you or Simon may be able to confirm this, Chairperson — were “minded” to appoint a person. That has been taken to mean that the person involved is likely to be, will be or could be termed the attorney general designate. If the situation has got only as far as being that the First Minister and the deputy First Minister are minded to appoint an individual to the post, a stranger has received a letter from a Committee that has nothing to do with him asking him to do things. If the First Minister and the deputy First Minister are just minded to appoint that individual, and he has not received a letter or something that confirms that he is attorney general designate, it is perhaps not surprising that he has decided to treat the letter as if he officially has nothing to do with us yet, because he remains a normal barrister presumably. Therefore, it would be interesting to clarify the official position.

**Mr Attwood:**

An utterly reasonable explanation could exist for our not having received a response. The reason that Alan suggests may not be an utterly reasonable explanation, because an individual minded to be appointed by the First Minister and the deputy First Minister has, it appears, responded to correspondence from them on the proposed office of attorney general. Furthermore, the First Minister and the deputy First Minister have confirmed that they have received a reply and a report from the person whom they are minded to appoint. Therefore, the individual does appear to accept that there is some intention to appoint him, and he is acting as if that is the case. However, our Committee has yet to receive an answer from him.

**The Chairperson:**

We wrote to the First Minister and the deputy First Minister on 19 November 2009 on the matter. In that letter, I suggested:

“The role of the Attorney General featured as part of these discussions and Members agreed that I should write to you and ask if you were yet in a position to share, with the Committee, the paper submitted to you, sometime ago, by John Larkin QC.” Therefore, we have already written to the First Minister and the deputy First Minister, and I think that it was said earlier that the First Minister and the deputy First Minister indicated that they were happy to come back before the Committee to discuss that issue and the category 2 list of issues. I think that the way in which the language was couched was that that would happen in the near future.

You have raised the issue, Mr Attwood. We will chase up that letter. Is the Committee happy to wait until we see what the position is?

**Mr Attwood:**

Yes, the Committee Clerk may wish to make some contact.

**The Chairperson:**

Do members have any other issues?

**Mr Attwood:**

If it is in order, Chairperson, I have one other comment to make. The Committee has two weeks of work remaining before it breaks for the Christmas recess. If we were to receive any outstanding documentation, be it from the Secretary of State or from the First Minister and the deputy First Minister, that would provide a catalyst for the work that we will do in the next two weeks. The First Minister indicated in the House yesterday that drafts of the documents that he has seen run to many pages. At one stage, I think that that the First Minister referred to one document or another's being 80 pages. Whether he meant that one document is 80 pages long or that all the documents total 80 pages, I do not know. That aside, if we are to progress some of the work very quickly, getting information from the relevant people, be that the Secretary of State or OFMDFM officials, from whom we have to receive outstanding documents, will help to galvanise our work in the run-up to the Christmas recess.

**The Chairperson:**

It was indicated that we should chase some of that information up this week, and we will do that. If we were to obtain documents on the memoranda of understanding, protocols and concordats, I assume that, given the sensitive nature of some of the documents, a discussion on them would have to be held in closed session. Would that be the Committee's view?

**Mr McFarland:**

I would have thought so.

**Mr Hamilton:**

Yes; absolutely.

**The Committee Clerk:**

In the light of what has been discussed, if I am to contact either formally or by telephone

particularly Mr Larkin QC, but also the Secretary of State's office and the Northern Ireland Office, is there a sense that, in order to assist the Committee's consideration of the memoranda of understanding, protocols and concordats, officials may need to appear before the Committee to explain, for example, the subtlety of any possible difference between the present arrangements and the arrangements contained in the various documents, if indeed any changes are to be made?

*Members indicated assent.*

**The Chairperson:**

Any work that can be done on the documents will help. I do not think that anybody would be opposed to your doing that.

**The Committee Clerk:**

It would allow me to convey to officials that the Committee needs that information and allow me time to schedule a meeting.

**The Chairperson:**

We can hope that the Northern Ireland Office will have looked at the documents and read yesterday's Hansard this morning. I think that the First Minister suggested that he hoped that they read Hansard over breakfast each morning. Whether that is the case, I do not know, but I am sure that what the First Minister said yesterday will be fed back to officials shortly after this meeting ends, so perhaps we will receive something in the next few days.

Members have no other issues to raise. I will assume that we agree that we are not going over the category 2 list issue by issue today.