



**Northern Ireland
Assembly**

COMMITTEE ON PROCEDURES

OFFICIAL REPORT
(Hansard)

**Standing Orders in Respect of Attorney
General for Northern Ireland**

28 September 2010

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Lord Browne (Chairperson)
Mr Mickey Brady
Mr Paul Butler
Mr Billy Leonard
Lord Morrow
Mr David McClarty
Mr Adrian McQuillan
Mr Ken Robinson

Witnesses:

Mr John Larkin)	Attorney General for Northern Ireland
Mr Maurice Dowling)	Office of the Attorney General for Northern Ireland
Mr Eamonn McConville)	
Mr Tony Canavan)	Office of the First and Deputy First Minister
Mr Noel Lavery)	

The Chairperson (Lord Browne):

On behalf of the Committee on Procedures, I am delighted and very pleased to welcome the Attorney General. He is accompanied by two of his officials, Mr Maurice Dowling and Eamonn McConville. We are pleased to have you at the Committee meeting. We are beginning the initial stages of our inquiry into the proceedings of the Attorney General's arrangements with the Assembly. I ask the Attorney General to address us with the position as he sees it.

Mr John Larkin (Attorney General for Northern Ireland):

First, Chairman, I echo your kind words and formally welcome this, my first opportunity to speak to the Committee. I very much look forward to working constructively with the Committee, both on this issue and generally during my term of office. You kindly mentioned that I am accompanied by two officials, Maurice Dowling and Eamonn McConville. I shall say a little about the responsibilities of the office, and then I will say a little about the interface between the Attorney and the Assembly.

Chief and foremost of my responsibilities is that of guardian of the rule of law. In my view, the Attorney must set the interests of the rule of law above those of government on any occasion that a conflict between them ever comes into being. I am the chief legal adviser to the Executive and to the devolved institutions generally. I am also the Executive's most senior representative in the courts if litigation arises, and I consider the Attorney's services as advocate and adviser to be available from time to time to other public bodies where appropriate.

It is important to emphasise that I am statutorily independent and that my functions and responsibilities are exercised independently of any other person. In particular, the links between the Attorney, Ministers and the Office of the First Minister and deputy First Minister (OFMDFM) are characterised by the arm's-length principle.

I turn to the relationship with the Assembly. As the Committee knows, section 25 of the Justice (Northern Ireland) Act 2002 provides for the Attorney's participation in Assembly proceedings to the extent that is permitted by Standing Orders. That applies to proceedings short of voting, for obvious constitutional reasons. Although no detail is provided in the 2002 Act as to what forms that participation might take, it strikes me that the following are, perhaps, of relevance.

First, under section 11 of the Northern Ireland Act 1998, the Attorney General explains decisions on whether a Bill is within competence and whether a decision has been made to refer a Bill to the Supreme Court. Normally, in practice, I notify the Speaker that a Bill is within competence, and you will be aware of the procedure whereby I now give advice before the introduction of a Bill. Therefore, the jurisdiction under section 11 is, in many ways, an important safeguard, but it is a double safeguard.

Secondly, there is a role for the Attorney General to make statements to the Assembly from time to time. That could be following the publication of my annual report, for example. Thirdly, there is a role for participation in the guidance that I am obliged to produce under section 8 of the Justice (Northern Ireland) Act 2004. That is human rights guidance for certain criminal justice organisations. That also ties in with the responsibility to amend that guidance from time to time and to amend, by Order, the list of organisations that are subject to the section 8 guidance. There is an obligation on me to consult the Advocate General for Northern Ireland before making any guidance or when adding to or otherwise amending any Order with the list of criminal justice organisations. I see that as an important area for interface with the Assembly, not least because the guidance and any Order under section 8 are subject to the negative resolution procedure. Therefore, there would be an important role for participation if the guidance or any Order were prayed against. Fourthly, the role of answering Assembly questions probably speaks for itself.

In addition, Attorneys General in their respective jurisdictions have often had an interface with their local Parliaments. I see my office as being available in appropriate cases from time to time to advise the Assembly. It is important to emphasise that, outwith the formal interface that is contemplated by section 25 of the 2002 Act, there is a huge role for more informal interface with Members and Committees. I look forward very much to developing those relationships during the term of office.

It also occurs to me that the Committee may be interested in the interface with the Director of Public Prosecutions (DPP). That is an important issue to which a good deal of attention has already been given and, I hazard, will continue to be given. It is perhaps worth noting that the present incumbent, Sir Alasdair Fraser, who has given long and selfless service to this jurisdiction, is to retire tomorrow. I wish to put on record my enormous esteem for him and for the huge debt that I consider that the Northern Ireland public owe to him for his selfless service. His departure means that I have another statutory function to perform, which is that of appointing his successor.

Following the devolution of policing and justice powers, the relationship between the Attorney and the director shifted. No longer was it a relationship of superintendence and direction; it became one of a consultative nature. In essence, the Attorney had no responsibility for, or authority over, the director, save that that may have been considered to arise from consultation.

Frankly, it is hard to see what that would be. That meant that the second pair of eyes that we had on a whole range of issues on 11 April ceased to be applicable on 12 April.

There now seems to be a consensus that we need to move back towards the pre-11 April position or to something that is close to it. My understanding is that it is hoped that the Justice Minister will consult on that issue before Christmas. Given the timescales, I would think that it is most unlikely that anything will happen during the lifetime of this Assembly. However, it is to be hoped that something can be done fairly swiftly thereafter, in line with what I perceive to be the consensus.

Until then, and under the present arrangements, which are crystallised in section 42(3) of the Justice (Northern Ireland) Act 2002, the Attorney is not accountable to the Assembly for the director or the Public Prosecution Service (PPS) generally. The Attorney is responsible, however, for laying the annual report of the director before the Assembly. I present my own annual report to the First Minister and deputy First Minister, who are jointly responsible for laying it before the Assembly.

The Chairperson:

I thank the Attorney General for that presentation. You have laid down a firm foundation for the beginning of our inquiry. I will now ask a few questions. During direct rule, the Attorney General responsible for Northern Ireland was Baroness Scotland. How does your role as Attorney General under devolution differ from that of Baroness Scotland?

Mr Larkin:

The first point to note is the enormous shift in statutory responsibility. Whereas Baroness Scotland was responsible for the superintendence and direction of the Director of Public Prosecutions, I am not. That is the obvious statutory difference.

The second difference is that Baroness Scotland was a member of the United Kingdom Cabinet and, as such, had no interface with the devolved institutions. I am the chief legal adviser to the Executive, so I am very much a devolved Attorney General. I think that it is proper to pay tribute to Baroness Scotland, her predecessors and her staff for what they did. However, the long and short of it is that they were not living over the shop in the way that a devolved Attorney can, and, therefore, her ability to involve herself in advising Departments and the Executive was

significantly circumscribed.

The Chairperson:

Thank you. Following on from that, there is an assertion in the concordat that states that:

“The Attorney General will have no power of direction or superintendence over the Public Prosecution Service”.

Do you accept that assertion?

Mr Larkin:

No. That is an accurate statement of the present law, but the law should shift and the Attorney should have superintendence and capacity to give direction to the PPS in appropriate cases.

I say that not least because the director is statutorily disabled from giving an account of himself to the Assembly other than essentially on what might be termed “pay and rations”. The existence of an Attorney with a power to give superintendence and direction and thus explain those decisions and account for them to the Assembly is a valuable constitutional safeguard.

The Chairperson:

We are in the early stages of the devolution of justice matters, and we have the PPS and, indeed, your own office. Do you think that time should be given for those two offices to bed down before any major changes are suggested?

Mr Larkin:

If anything, there is probably a fairly urgent need for change. Change is best when it occurs in deliberation and not in response to a crisis. There have been a number of high-profile cases that, rightly or wrongly, have given rise to controversy. It is better to grasp the issue as one of principle rather than to address it in the teeth of controversy.

Mr Leonard:

Attorney General and gentlemen, you are welcome. I am trying to tease out how the proceedings will work in practice, and I am sure that you have opinions on that. There is the danger that there will be over-bureaucratisation of the procedures and that that will cramp the style of the public’s confidence in the system. What is your vision of the day-to-day business in which you will be

interested and for which you will be required? How do you see that working out on the Assembly Floor and in the different Committees, for example? Will the initiatives come from you or from us? What will be the flow of opinions?

Mr Larkin:

That is an enormously important, and large, question. The short answer, if I may be forgiven for giving a short answer, is possibly both. Much of the impetus will come from the Assembly and its Committees through questions. The issues that arise will be driven by constituents and by the ebb and flow of ordinary Assembly business.

However, there is also a part for the Attorney to play in drawing issues to the Assembly's attention. Obviously, I do not have legislative capacity, save in the very narrow area that is defined in the 2004 Act. Therefore, if I consider that something threatens the rule of law and is otherwise a problem from the point of view of the administration of justice, I can draw that to the Members' attention so that they can consider what appropriate remedial steps should be taken. Obviously, it is not for me to be narrowly prescriptive about how the Assembly should arrange things. I hope that I am in a position to assist the Assembly.

Much is left to custom and practice, and I say that in the presence of parliamentarians. If one looks at the model of ministerial participation, it is essentially the Speaker who has it in his gift to determine whether a statement, for example, is made. I suggest that that is the kind of model that we tend to adopt. We should leave it to the Speaker's judgement as to whether a particular intervention by the Attorney should be permitted. In practice, of course, and as one knows, the convention is that, if there is good reason for the intervention, the Speaker grants permission for it.

Lord Morrow:

I, too, welcome the Attorney to the Committee. Our legal system, with the devolution of justice powers, is quite fragmented and difficult to understand. We have the Chief Constable, who is independent and in charge of the police; the Minister of Justice; your office, which is independent; and the PPS, which is also independent. I heard your views about the PPS. I can see some merit in what you said, although I think that there may also be merit in the other way.

You stated clearly that you are totally independent of the House but that you will come to it to

answer questions from time to time. Your position is somewhat different from other legislators in that you are not a Member of the House. Do you see that as an advantage or a disadvantage? I can certainly see the advantages in that.

Mr Larkin:

I am very grateful to Lord Morrow for his kind words. If another short answer may be permitted, the answer is again probably both. There are obvious advantages to that. I am not a party political Attorney in the same way as Baroness Scotland was and Dominic Grieve is. That is a good thing for increasing public confidence, given that the decisions that I make are not fuelled in any way by party political calculations. On the other hand, not being a Member in the full sense means that one does not have direct contact with constituents. Now that I think of it, Baroness Scotland is a member of an unelected Chamber. For example, the present English Attorney is an elected Member and, therefore, has direct contact with constituents. One cannot ignore the valuable insights that that is bound to give him and that are able to inform his work.

Perhaps for historical reasons, we have gone a particular route in this jurisdiction, and I think that we have probably got the balance right. I think that not without reservations, because there are two sides to the argument. The balance is right in that the Attorney is able to participate, subject to Standing Orders, but he is not party political and is not a full Member of the Assembly.

Lord Morrow:

How do you see the function of answering questions in the House being carried out? Should you be in the House? How would you like that to be done?

Mr Larkin:

I am not sure that I would like to have to answer difficult questions at all, but, setting that to one side, there is a physical issue and a doctrinal issue to consider. We have spoken to the Speaker's Office, and, although the Assembly Chamber is perhaps not ideal from an architectural point of view, the arrangement will probably be that the Attorney will stand, without discourtesy, of course, in front of the Speaker and with his back to the Speaker, facing Members. My present understanding, subject to correction, is that the Speaker's Office is not unhappy with such an arrangement. Of course, there is also provision for answering questions for written answer. That is because Ministers handle a good deal of questions for written answer as well as questions for oral answer. Therefore, there is a balance to be struck.

I anticipate that that would not happen very often. Indeed, I suggest that it is probably best not to introduce a regular slot for that. Instead, the questions could be answered from time to time whenever there is interest. Obviously, if there were a slot for questions for oral answer, there would be an incentive to fill it. I think that those slots should be reserved for truly appropriate and necessary occasions.

Lord Morrow:

Can I just ask one more question? I do not want to hold the meeting up. I think I understand what you are saying about not coming to the Assembly. Do you think that familiarity breeds contempt, and that, therefore, you should not come too often? To me, the Attorney General's office is a very unapproachable one. Perhaps that has more to do with me; it is not because of you, as you have taken up office only recently. However, to me that office has never been approachable to the public at large, or, indeed, to public representatives. Is that the way that you want it to be, or are you saying that your door is open and people can come in for a cup of coffee to talk whenever they want?

Mr Larkin:

I am grateful for the clarification that the unapproachability, as you perceive it, is not of my creation. I am very keen that that particular unapproachable model of the Attorney's office be substantially restructured. It is essential that, in a climate where we have the devolution of policing and justice powers, there is much greater accessibility. I believe that it is absolutely fundamental that the Attorney's office is accessible to Members of the Assembly. I will be keen to do whatever I can to ensure that that occurs.

Mr Butler:

Thank you very much for your presentation. You are saying that there should be a change in the interim to the Public Prosecution Service. It has obviously come under the spotlight a great deal in the past number of years, and, without going into details, the general public have been unable to understand the basis of some of its decisions. Sometimes, even recently, the Public Prosecution Service has not even explained its decisions publicly. How do we get around the public's lack of confidence in decisions and the way in which some trials have gone? People have not been instilled with confidence in the justice system.

Mr Larkin:

I thank Mr Butler for his question. I seem to be giving a succession of short answers that prove on examination not to be that short. However, the short answer is that we need to go back to the position as it pertained on 11 April this year. In other words, we need to restore superintendence and direction so that there is a route whereby, one hopes, the difficult policy issues and things that go wrong from time to time, as they do in any system, can be explained and remedied and that the Assembly can have an appropriate input into that process. It is also fair to say that individual cases will still go wrong. No system is perfect, and it would be wrong to give the impression that restoring the previous regime of superintendence and direction will make everything right. It will not. The problems in the criminal justice system are typically multifaceted and are not usually the work of just one agency. One of the important tasks and challenges in a devolved regime is to try to see the wholeness of the problem and address it from all directions. However, in respect of the PPS, there is a relatively short answer, and that is to restore the previous regime with some modifications and bring that element of continuity and accountability from the Director of Public Prosecutions through the Attorney General to the Assembly.

Mr K Robinson:

Thank you for coming along and bemusing us, somewhat. Obviously, we are teasing out what is possible and the direction in which we would like to go. Are there any helpful indicators from the other devolved Administrations that would help you to find the niche for the Attorney General in Northern Ireland? I am conscious that Members have jealously guarded their Chamber from all outsiders and rarely let anyone who is not a Member on to the Floor of the House. You said that you may come to speak to Members and take questions for oral answer. We think that questions for written answer will take care of themselves, but if you come to respond to questions for oral answer or to make a statement, would you feel awfully put out if Members decided that they did not wish to see you — not you personally, but the person holding your office — in the Assembly Chamber. They may be more than willing to find another Chamber — the Senate Chamber comes to mind — which could accommodate Members, your good self, and your accompanying staff or advisers? Would you feel put out if the protocols and procedures of the House led us to that location rather than the one that we have all been talking about up to now?

Mr Larkin:

I am grateful for Mr Robinson's question. My focus is on substance. I am concerned with

getting the work done effectively. I am not particularly hung up on appearances. However, anyone seeing me in the Chamber would be under no illusion that I would consider myself to be an MLA. I would not attempt to elbow my way into one of the Lobbies, and, even if I were to, presumptuously, attempt to do so, I am sure that I would be hastily stopped. I am open to any way that gets the job done. However, it strikes me that the idea of the entire Chamber having to decamp and take up temporary residence in the Senate Chamber, for example, just for the purpose of hearing from me from time to time might not be particularly desirable, but I have no fixed view on that subject.

The emphasis that I have to place is that both statutes — the 2002 Act and the 2004 Act — plainly contemplate participation in order to get certain tasks accomplished. As long as that happens, the wisdom of the Assembly will find a way in which that can best be done.

Mr Leonard:

I want to follow up on some of the points that you made about public prosecutions. I take it that in bringing greater accountability and coming to the Floor of the Assembly, you would not see any great barriers to the idea of us working on policy, principle, and regulation, as opposed to individual cases? I feel that that could be monitored with a bit of common sense. Are you 100% confident of that as well?

Mr Larkin:

The focus will be on policy and overall approach, rather than individual cases. That is not to say that, historically, some very significant individual cases may not attract attention. However, one must be aware that there is, rightly, a great sensitivity on the part of one of the limbs of government, the legislature, muscling in on another, the judicial. Therefore, for all kinds of reasons, any legislature must always be circumspect when discussing judicial proceedings.

Mr Leonard:

Could it be managed between them?

Mr Larkin:

I am entirely confident that it could.

The Chairperson:

That brings the questioning to an end. I thank the Attorney General, Mr Dowling and Mr McConville for attending the meeting and for starting us off on a firm footing. We regard this as an urgent issue, so we might have to come back to you for further information or written letters. I am sure that all of us will be happy to co-operate.

We are joined now by officials from the Office of the First Minister and deputy First Minister, Mr Noel Lavery and Mr Tony Canavan. We are pleased to welcome you to the Committee. Information relating to this session of the Committee meeting is in members' packs.

Mr Noel Lavery (Office of the First Minister and deputy First Minister):

Thank you for the invitation and for the opportunity to appear before the Committee. I had overall responsibility for the programme of work in delivering justice and policing from the OFMDFM perspective. I am Accounting Officer in the Department and have a responsibility for the sponsorship relationship that the Department has with the Attorney's office. As the Attorney said, because of his independence, it is an arm's-length relationship. Tony Canavan had day-to-day responsibility for delivering the justice and policing projects, with particular emphasis on the legislative aspects. Tony was there from the beginning, and he will provide an overview.

Mr Tony Canavan (Office of the First Minister and deputy First Minister):

From 2007, I led a succession of projects concerned with preparations within the devolved Administration for the possible devolution of policing and justice responsibilities on the basis of prudent preparatory work. One dimension of that was preparing for the implications for OFMDFM in the light of the legislation that would be activated at the time of devolution, notably, the Justice (Northern Ireland) Act 2002. That Act would give to OFMDFM, at the point of devolution, responsibility for appointing a local Attorney General, funding him thereafter and approving the staffing of his office.

The post of Attorney General for Northern Ireland has existed since 1922, but in 1972, at the time of direct rule, the Attorney General for England and Wales took on those functions. That remained the case until May of this year. The Belfast/Good Friday Agreement of 1998 initiated a review of criminal justice to be carried out by the UK Government. That review reported in 2000 and recommended, in the context of prosecutions, that consideration should be given to establishing a locally sponsored post of Attorney General, who, inter alia, would have oversight

of the Public Prosecution Service. The review saw the Attorney as a non-political figure who would be drawn from the ranks of senior lawyers and appointed by the First Minister and deputy First Minister for a fixed term.

The UK Government reflected those recommendations in the Justice (Northern Ireland) Act 2002, particularly in sections 22 to 26 and 41 to 43, none of which were activated at that time and not activated until this year. Those provisions would only come into operation with the devolution of policing and justice responsibilities. As the Attorney has just said, the provisions significantly redefined the relationship between the Director of Public Prosecutions and the Attorney. Section 25 also envisaged participation by the Attorney in Assembly proceedings to the extent permitted by Standing Orders, but he would not be able to vote.

In February 2006, the NIO published a discussion paper on devolving policing and justice, which identified a locally appointed Attorney as part of the institutional framework of justice devolution. His relationship with the DPP would be one of consultation and he would have no powers of direction or superintendence over the Public Prosecution Service, whether in individual cases or on matters of policy.

When the policing and justice sub-group of Transitional Assembly's Committee for the Programme for Government reported in January 2007, it did not query the role of the Attorney or his relationship with the PPS. A draft concordat that had been prepared by the NIO, and which dealt with the independence of the PPS, was included as an annex to that report.

Between March 2008 and March 2010, the Assembly and Executive Review Committee produced three reports on the devolution of policing and justice. The Committee recommended that preparations for the appointment of an Attorney General should be taken forward by the First Minister and the deputy First Minister before devolution. Concern was expressed about the accountability arrangements for the PPS, but that was more about its status and departmental links within the devolved Administration, rather than the relationship between the Attorney and the PPS.

In November 2008, the First Minister and the deputy First Minister indicated that they were minded to appoint John Larkin QC as the Attorney General when policing and justice powers were devolved. During 2009, Mr Larkin was tasked with carrying out preparatory work to

establish the office, and on preparing an initial work programme. He reported in September 2009 and the First Minister and the deputy First Minister responded to his recommendations in March 2010. Copies of both those documents were lodged in the Assembly Library. Mr Larkin was appointed as the Attorney General in May 2010 and has exercised his functions since then. He has a number of statutory and non-statutory functions that were listed in annex c to his report of September 2009. With the agreement of the Executive, the First Minister and the deputy First Minister have also appointed Mr Larkin as the chief legal adviser to the Executive.

I want to say a little about the arrangements in other jurisdictions and the interaction between equivalent office holders and the other Assemblies and Parliaments. As part of the preparatory work for devolution, my team carried out research on the status of office holders in other jurisdictions who are comparable to the Attorney General. None matched exactly the non-political profile of our Attorney. The Irish Attorney General perhaps comes closest, with his insulation from the prosecution service and his role as adviser to the Irish Government. There is an article in the Irish Constitution that deals with the Attorney General, but the only references in the Dáil's Standing Orders are to his role in legislation.

The equivalent post in Scotland, the Lord Advocate, is also the head of the prosecution system. She is appointed by The Queen on the recommendation of the Scottish First Minister and with the agreement of the Scottish Parliament. A specific rule in that Parliament's Standing Orders makes provision for participation in proceedings, but, under the terms of the Scotland Act 1998, she cannot vote.

The Counsel General for Wales has a much more limited role as justice has not been devolved to the Welsh Assembly. Currently, the Counsel General is a Member of the Welsh Assembly and there are extensive references in its Standing Orders on the scope of the Counsel General's participation in proceedings.

At Westminster, the Attorney General always sits in Parliament and is part of the Government. He has a triple role: he has ministerial responsibilities; he is the legal adviser to the Government; and he superintends the prosecution service. Since 2007, there has been considerable debate on the future role of the English Attorney General, with a Constitutional Affairs Select Committee report in 2007, a consultation paper under the banner of the governance of Britain initiative in 2007 and recommendations in a White Paper of March 2008. The main outcome of that activity

to date was the protocol of July 2009 between the English Attorney General and the prosecuting authorities. That establishes lines of demarcation on prosecution decisions, the development of policy and the accountability of Parliament.

The Chairperson:

Thank you. You said that you looked at the systems in Wales, Scotland, Westminster and Ireland. Has that allowed you to come to an official position on the role of the Attorney General for Northern Ireland?

Mr Canavan:

Not on what his relationship with the Assembly should be: that is entirely a matter for the Assembly and not something that we would consider. The statute was inherited, and all the legislation under which we currently operate was passed by Westminster under direct rule. Our preparations for devolution were made in the context of that legislation.

The Chairperson:

Is there a memorandum of understanding in place between the Attorney General and the Public Prosecution Service?

Mr Canavan:

I am not sure about that, as it is a matter for the Attorney General's office. A draft was included in the Attorney General's report of 2009.

Mr Butler:

We asked the Attorney General about the relationship between the Public Prosecution Service and his office. He spoke about changing that relationship. How does our situation compare with that in other jurisdictions? I do not know if you were here when the issue was raised about the Public Prosecution Service and people sometimes not explaining their decisions.

Mr Lavery:

As the Attorney General stated, the current position is an accurate statement of the present law. As Tony Canavan said, we inherited the 2002 position, and the Justice Committee is looking at the situation, which is the appropriate way forward.

Mr Canavan:

The situations in other jurisdictions vary immensely. At one end of the spectrum, there is Scotland, where the Lord Advocate is the head of the prosecution service, in addition to being the Lord Advocate and advising the Scottish Government. At the other extreme, the Irish Attorney General, under statute, can interact with the Director of Public Prosecutions on very few matters.

The situation in England is somewhere between those two; it is probably closer to the Scottish model than the Dublin model. It is still quite a long way from where our Attorney is at the moment, although it is probably closer to the Attorney's position here before April 2010.

Lord Morrow:

You said that you have no views on what the Attorney General's relationship should be with the Assembly. Did you say that, or did I pick you up wrong?

Mr Canavan:

We have statutes, and we have to operate within that context. However, none of those positions are entrenched; it is for the Assembly to change legislation, should it want to do so. As the Attorney was saying, the Department of Justice, which has policy responsibility for the entire justice system, will be consulting in due course on possible changes. As the Attorney also said, that reflects the growing consensus that the arrangements that came into operation under the direct rule statute and came into operation in the early summer of this year are not appropriate for the Northern Ireland conditions.

Lord Morrow:

You must have some views on the most effective and efficient ways of delivering the service that you are going to be delivering to the Assembly. I know that there is a Chinese wall between the Assembly and the Attorney's office, which is understandable. However, you must have views on the most efficient way of delivering the service.

Mr Canavan:

Efficiency is not the sole consideration, because the other issues that come in are the separation of functions, the separation of powers, and having appropriate levels of independence, which, sometimes, can run against efficiency.

Lord Morrow:

Does being independent not necessarily mean that you are efficient?

Mr Canavan:

Being independent means that you may cut corners when it comes to efficiency. However, the two are not necessarily compatible. In re-examining the arrangements, there will be an assessment of efficiency, independence and accountability. Those may be three completely separate issues that need to be balanced.

Lord Morrow:

Accountability is another issue that does not really come into the equation because the Attorney said, and I hope that I am not misquoting him, that he was not accountable. He said that the only issue that he was accountable for was his annual report, which he would lay it before the Assembly. However, he said that he was not really accountable to the Assembly.

Mr Lavery:

I am not sure whether you are quoting him accurately, Lord Morrow, but he is an independent office holder. He can appoint staff, subject to terms and conditions and numbers decided by OFMDFM. Otherwise, he is an independent office holder.

Lord Morrow:

So, he is not accountable to the Assembly.

Mr Lavery:

I mean that he is not accountable to the First Minister or the deputy First Minister. He is accountable to the Assembly in the way that was stated in his report. I am not sure whether I understand your concern.

Lord Morrow:

I am not sure where accountability and efficiency come into play. As Tony Canavan said, the two are not compatible.

Mr Canavan:

I said that they are not necessarily compatible.

Lord Morrow:

Independence dictates, perhaps, that there are certain things that one has to do, which, if set beside an efficiency test, would not be very efficient. That is my understanding of what you said. The Assembly has a responsibility in two fields; accountability and efficiency. However, we might get lost here. I fully understand why you say what you say, because you might have to take a very convoluted route to get to somewhere, which might not be the most efficient route.

Mr Lavery:

From our perspective, the Attorney General is right to say that he is independent. The Assembly is an independent legislature, and, therefore, as officials, we are reluctant to give a view on the relationship between an independent office holder and the Assembly.

Mr McQuillan:

You said that you have looked at three other legislatures, namely Scotland, England and the Republic of Ireland. Which of those three best fits our model? What is your opinion of those models?

Mr Canavan:

I cannot give a view on legislation in other jurisdictions. *[Laughter.]*

Mr Lavery:

In our situation, it is important that the emphasis is on a non-political Attorney General. Therefore, his independence must be absolutely enshrined.

Mr McQuillan:

Is that leaning towards the Scottish model? *[Laughter.]*

Mr Leonard:

I have another angle; you can swerve to the left on this one. I will go back to the points about the PPS. I appreciate what Tony said about the framework of statute as is, and that, if there is to be a change, it is up to the Assembly. From the point of view of accountability and confidence, do you see advantage, even from an official point of view — never mind that it is up to us lot to legislate — in making the PPS more accountable on the Floor of the Assembly?

Mr Canavan:

The PPS's independence is enshrined in legislation. At the same time, legislation seems to envisage the Attorney General speaking on behalf of the PPS. However, the Attorney's current view is that, in the absence of some element of superintendence over the PPS, he cannot be held accountable for it. If that arrangement were to change and if there were to be a greater relationship between the Attorney and the PPS, the Attorney might be the vehicle. However, the Committee needs to ask him that question. He might be the vehicle for the accountability of the PPS.

Mr Leonard:

Given all your work on the introduction of this, that and the other to increase public confidence, you say that the Attorney General might be the vehicle. Could he be a successful vehicle in increasing confidence?

Mr Canavan:

Frankly, I have no idea how that would work. It is a matter for the public and the extent to which the Attorney General will fulfil the function.

Mr Lavery:

If you look at the other jurisdictions, that is the obvious vehicle. At the minute, the PPS is a non-ministerial Department. Therefore, it has no Minister to speak for it, and the Attorney does not have those supervisory rights. As I said before, it is appropriate for the Justice Minister to consult on that, get a broad view and try to get consensus on it.

Mr Leonard:

That was half a swerve. *[Laughter.]*

Mr K Robinson:

My colleagues have asked all the difficult questions: I have a nice easy one for you. It was mentioned that the Lord Advocate in Scotland had participation in Parliament. Can you explain exactly how and where she participates physically in the work of the Scottish Parliament? What is her role, where does she physically position herself and how does her office relate to the parliamentary side of affairs?

Mr Canavan:

Frankly, I have no idea where she locates herself with respect to the layout of the Scottish Parliamentary Chamber. However, unlike the Northern Ireland situation where we have a very broad coalition, she could locate herself with a clear Government Bench. We do not have a Government Bench in the Northern Ireland system because we have Ministers scattered around different parts of the Chamber and from different parties.

Mr K Robinson:

I was not suggesting that she sat with any of the political groupings in Scotland. From my recollection of the Scottish Parliament, there is the semicircle with all the parties represented and then there is the dais with the Speaker and his officials. Does she physically come into that Chamber to deliver her tablets from on high?

Mr Canavan:

I have no idea where she locates herself when the Parliament meets.

Mr Lavery:

Would it be helpful if we were to find out?

Mr K Robinson:

It would be. We are trying to tease out not just the role, but also the location. We may come to that question along the line, so we might as well tease it out at this early stage.

The Chairperson:

All the members have asked their questions. I thank Mr Canavan and Mr Lavery for coming and outlining their position.