



**Northern Ireland
Assembly**

**ASSEMBLY AND EXECUTIVE
REVIEW COMMITTEE**

**OFFICIAL REPORT
(Hansard)**

**Devolution of Policing and Justice
Matters**

13 October 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):

Outgoing and incoming correspondence includes reminder letters to the Northern Ireland Policing Board and the Secretary of State requesting updates on outstanding issues, including an invitation to the Secretary of State or his officials to appear before the Committee. Also included is an invitation asking the First Minister and deputy First Minister to appear before the Committee to give an update on financial negotiations with the Prime Minister and on the role of the Attorney General, as well as to discuss the category 2 list of issues. There is no response to those letters.

The correspondence also includes a letter to the Prisoner Ombudsman for Northern Ireland declining her request to appear before the Committee. Members will also wish to be aware of the

letter to Sir Alasdair Fraser, noting his letter of 30 September 2009, which detailed information that the Committee requested.

Mr Attwood:

I have matters to discuss that arise from the letter of 7 October 2009 to the First Minister and deputy First Minister. Has any indication been given to you or to the Clerk as to when they might come to a Committee meeting? I will discuss another matter once I have heard your reply.

The Chairperson:

There are no indications of exactly when they are coming, but they are coming.

Mr Attwood:

It is probably appropriate to discuss at this point the fact that a letter has been sent from Downing Street to the Office of the First Minister and deputy First Minister (OFMDFM) about the ongoing financial discussions. The Committee is increasingly being put in a prejudicial position on that matter. The First Minister and deputy First Minister are negotiating on behalf of the Assembly about the financial arrangement for the devolution of justice and policing. Therefore, they have an obligation to report to the Assembly on those financial negotiations, and, given that this Committee has a specific mandate from the Assembly to deal with those matters, this is clearly the appropriate, and first, place to go. That principle should be accepted by all. However, we now have a situation in which the First Minister and deputy First Minister are negotiating on behalf of the Assembly, and it appears that they will go first to their parties with letter from Downing Street, not to the Assembly and Executive Review Committee and not to the Assembly.

I think that it is a material matter that people who are entrusted by the Assembly to take forward negotiations report, in the first instance, to their parties. I have no issue with the First Minister and deputy First Minister reporting to their parties in their capacity as party leaders; the parties need to get their heads round the financial matters, as do the Assembly and this Committee.

However, I have an issue, in principle, with the fact that the First Minister and deputy First Minister, who negotiate on behalf of the Assembly, did not refer the Prime Minister's letter to the Committee early and in the first instance. Although I approach media reports cautiously, a report this morning suggested that one party may sign off on the Prime Minister's offer this afternoon at

a meeting in Dublin. I do not know whether that is true. However, it confirms the point that the First Minister and deputy First Minister may have held discussions with their parties to the extent that one party may, in the next number of hours, sign off on an offer from the Prime Minister even though the Assembly and the Assembly and Executive Review Committee has had no sight of that offer. That is not a balanced and proper way to do such business.

The Chairperson:

My understanding is that all party leaders were involved in the negotiations. The First Minister said in the Assembly that he intends to report to the Committee. If media reports are correct, the letter arrived only yesterday. I have not seen its content, and I am not sure that anybody else has. I have heard some of its content, but I have not been briefed fully. Therefore, I am in the same position as you. However, I expect the First Minister and deputy First Minister to brief the Committee, as they have said they will, in the next few weeks. I understand that negotiations are continuing at the minute.

Mr Hamilton:

Our party shares some of Alex's concerns. We are keen for the Committee to see the proposal, because it has a duty to oversee and scrutinise developments.

Mr McFarland:

I am surprised that Alex is even remotely surprised, because the entire process has been conducted by the two largest parties. News reports suggest that the Chief Constable and the head of the Court Service have been briefed.

As Alex said, one of the parties is meeting for the entire day today to deal with the issue. My party has not been involved in any discussion on details. We have not been included in the loop, and our party leader has not been included in the loop. This strange way of doing business continues, despite pleas that the parties should not do it that way and that everyone should be included so that we can all buy in to the process. The party leaders are doing their own thing and sharing with everybody else in the criminal justice system, as far as we can see, ahead of sharing with the Assembly and the other parties. That is no way to do business, but it is the way in which the DUP and Sinn Féin have been operating since day one, and it is wrong.

Mr A Maskey:

There appears to be a very live discussion between the Office of the First Minister and deputy First Minister and the relevant Departments and agencies. One would expect them to get on with their job. I have no difficulty whatever with them sharing that letter, or the upshot of it, with the Committee as soon as that can be done. However, as I understand, that is a matter for them. Media reports were referred to, but I thought that all the party leaders had an opportunity to talk to the British Prime Minister over the last week or whatever. The discussions are ongoing and inclusive, and OFMDFM and the parties that are associated with that office have an obligation to take the matter forward. In my view, they are doing so, that is how it should be, and I welcome it.

Mr Attwood:

I agree, and I have made it clear that the First Minister and deputy First Minister have an obligation to take the matter forward. They may be entitled to have conversations, as Alan said, with the criminal justice agencies. However, they cannot, and should never be allowed to, take the matter forward without our involvement. The people round this table have spent many hours and have put in a lot of effort trying to bore into some of these issues, not least the financial aspect. We now have a situation where other people appear to have been briefed. We have heard that the Court Service and the Chief Constable are satisfied, although I note that there does not seem to have been discussions with the Policing Board to see whether it is satisfied. In my view, statutory responsibility for financing policing resides with the Policing Board.

Nevertheless, if other people are being briefed, the Committee has a minimum entitlement to be briefed. If other people are saying that it is OK, we should also be able to say yes or no. Alan is right; that may be the nature and the character of Government on this matter, but we should not just sign that off lightly and casually as being the right way to do things. Therefore, I propose that we write a letter to the First Minister and deputy First Minister saying that they should release to the Committee without delay the correspondence that it has shared with other people.

The Chairperson:

Are members happy with that proposal?

Mr A Maskey:

I am not so sure whether we can direct them to do that. We may wish to ask them whether they can share sections of the correspondence as soon as possible. I have no difficulty with that, but

we cannot direct what they do with any correspondence that they receive.

Mr Attwood:

I propose that we write to the First Minister and deputy First Minister saying that the information that the Prime Minister shared with them should be released to the Committee without delay.

The Chairperson:

Are there any other proposals? Are members in favour of that proposal?

Mr A Maskey:

No.

Mr O'Dowd:

No.

The Chairperson:

I will put it to a vote.

The Committee divided: Ayes 6; Noes 3.

AYES

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

NOES

Mr McCartney, Mr A Maskey, Mr O'Dowd.

Mr Dodds:

Have the First Minister and deputy First Minister been invited to speak to the Committee?

The Chairperson:

The indications are that they are coming; I said that just before you came in. The letters were sent last week.

Mr Dodds:

It is right that we explore this vital issue fully, not just in this Committee, but with the various stakeholders. I want to debunk any notion that the issue is closed down; it must be examined

carefully, and everybody must ultimately buy in to the process before all those matters can be settled. It is clear that that should be the case.

The Chairperson:

Included in the Committee's incoming correspondence is a letter from Jim Allister QC about the consultation on the Department of Justice Bill. Mr Allister mistakenly sent the letter to this Committee. Although Mr Allister's letter was sent after the consultation period ended, it has been forwarded to the correct Committee for consideration.

Moving to the devolution of policing and justice matters, 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:

Before I go through the category 2 list, I ask parties whether there has been any change on any of those issues.

Mr McFarland:

Chairman, can you please make your weekly single transferable speech?

The Chairperson:

I have just made it; it is getting shorter each week.

Included in the Committee papers is a summary of the status of the various letters that were sent to the Secretary of State. There has been no reply to those letters. That summary is very helpful, and I thank the Committee Clerk for providing it. It is an easy reference both to the category 2 issues and to our position on them.

I go back to what is now my customary speech. Before I go through the individual category 2

issues, parties should indicate whether there has been any movement on any of them.

Mr Hamilton:

No.

Mr A Maskey:

No.

Mr McFarland:

No.

Mr Attwood:

No change.

The Chairperson:

That is the category 2 list dealt with.

We move on to consideration of the SDLP paper on the Public Prosecution Service (PPS). Members received that paper late yesterday evening. Do members wish to consider that paper?

Mr McFarland:

I thank Alex Attwood for the paper. Sadly, I was not able to devote my entire night to it; it is quite chunky and, no doubt, full of pithy and extremely useful comments. I feel that Committee members might need a bit longer to look through it in detail.

Mr A Maskey:

We got the paper yesterday afternoon and have in no way had an opportunity to look at it.

Mr Dodds:

I am quite happy for Alex to introduce the paper and talk to the Committee about it.

Mr Attwood:

I respect what Alex and Alan said, and I will speak very briefly to the paper.

As most people will be aware, criminal justice issues are complex to deal with. A number of years ago when criminal justice was reviewed, people who perhaps have greater minds than ours made their best stab at dealing with the matter, and it took them many months to come up with their recommendations.

When it comes to the administration of criminal justice in the North, the Public Prosecution Service is one of the most important areas that must be addressed. However, that has not happened. There have been various phases of change and reform in many aspects of the criminal justice system in the North, and wide reform, including of the PPS, has taken place. However, in the SDLP's view, the PPS remains the area to which it would be most productive to apply time and consideration. That would help to determine how next to move forward with changes to the PPS, with the purpose of building confidence in the administration of justice, protecting the interests of victims and witnesses and making the body more efficient, effective and accountable. Those would be the objectives of any further consideration of reform of the PPS.

The paper carries a big health warning. It is self-evident that people will understand that the PPS cannot be addressed in isolation from other members of the criminal justice community. The fact that the Criminal Justice Inspection, for example, has produced a range of reports during the past five or six years that deal with the practices of and relationships between members of the criminal justice community only confirms that the PPS cannot be dealt with in isolation.

Bearing in mind the caveat that I just discussed, for the purposes of the paper and the Committee's discussion, I will outline the areas that we might consider first. For simplicity, I will deal with three themes. The first is the evidence base that Criminal Justice Inspection provided in its range of reports, particularly its 2007 baseline report and the updated 2009 version on the conduct of the PPS.

The second theme returns to a pre-devolution issue that the Committee dealt with previously, but did not resolve, namely, the governance and management of the PPS.

Using a series of recent cases but without going into their particular facts or outcomes, the third theme looks at further issues of how the Public Prosecution Service manages cases and how they are then processed to the point where victims, in particular, have been dissatisfied with how the PPS dealt with them. As a consequence, those people have also been dissatisfied with the

cases' outcomes, that is, the courts' judgements.

Touching on those three themes, the Criminal Justice Inspection produced a series of reports during the past six years that featured or dealt exclusively with the PPS. I want to concentrate on its 2007 baseline inspection. That document is appended to the SDLP's report. Basically, the baseline inspection report bored into the PPS's governance and management. That is a dry term that refers to how the PPS does business, how it processes cases, the standard of those cases and the conclusions that can be drawn about people's satisfaction or lack thereof with how those cases were conducted.

The updated 2009 baseline inspection report was published in June and is appended to the document. It raises a wide range of questions about whether the PPS took the baseline recommendations on board. I am mindful of what other members said, so I should say that the updated report is not long. However, it is worthwhile going through it and extracting what Dr Maguire and his colleagues said about the PPS.

We need to assess whether the recommendations of the baseline report are being implemented completely and in a timely manner. Quite bluntly at times, and at other times in code, Dr Michael Maguire and his colleagues ask whether that is the case.

After a series of conversations that we have had during the past three months with a range of people from the criminal justice agencies, our view is that there is a need for input over and above that of a Minister and Ministry with devolved responsibility and a justice Committee. There may be a need for a further dimension through which the recommendations of the baseline report might be implemented. If it is left to the PPS, the Assembly, justice Committee or Minister, there may not be enough hands-on input to ensure that the various recommendations are implemented.

Without being party political, my view is that a panel of people with the necessary expertise must assist the PPS in the short term to bring the recommendations of the baseline and other reports to fruition. That model is outlined in the document.

Another issue is the governance and management of the PPS. The Committee has discussed on previous occasions the best place for the PPS in post-devolution criminal justice arrangements and how it should be managed. Although a range of issues that are connected to those questions

must be considered, we have touched on two for the purposes of the report. The first is to reach a conclusion about the source of funding for the PPS. The Director of the Public Prosecution Service has made it clear that he believes that funding should come from OFMDFM, or, at a stretch, the Department of Finance and Personnel (DFP).

It is interesting that the PPS is the only member of the criminal justice family that suggests that funding should come from a source other than the Department of justice. The PSNI, which has major areas of operational responsibility, does not make that suggestion, nor do any of the other criminal justice agencies. The Department of justice would be the most natural and organic source, because it is best qualified for dealing with any funding relationship with the PPS. However, that is not as significant an issue as others, particularly how the PPS conducts its own affairs.

The SDLP believes that there must be a review of how the PPS conducts its affairs and what its management structure might be. There are various options, including a model that is based on the experience of the Policing Board, whereby operational responsibility for decisions on prosecutions falls to the PPS. That option should include a management structure that has responsibility for managing the organisation's internal affairs. The Policing Board model, or a variation of it, would be a more elaborate way of doing that, but the SDLP believes that it needs to be done anyway. The Committee has had discussions about those matters previously; for example, when the Lord Chief Justice of the time appeared before the Committee and made it clear how he felt that business should be managed.

The third issue, which brings matters home most acutely, is the experiences of victims in a range of recent cases. Many of those cases are well known and some are not, but there are those with which people in my office or party have dealt that have had very little publicity, because that is what victims' families want. They want matters to be conducted privately and in a low-key fashion, even though their dissatisfaction with the way that the PPS has gone about its business may be consistent with that of many other victims' families.

Having been informed by the views of victims' families, we have tried to analyse how the standards in the current PPS code for prosecutors, which the organisation must declare that it is obliged to fulfil, have or have not been met in those cases. Although it was difficult to break down into a concise form — even I decided that I needed to do some further work on it — a

range of themes and patterns arise from those instances that show how the PPS manages cases at the point where charges are preferred through to and after the imposition of sentences.

In one recent case, the fact that the law is very complicated meant that there was, to put it mildly, a muddle about what the sentence meant. The Court Service and the Prison Service had a number of stabs at working out what the true sentence tariff was; indeed, legal proceedings may arise from that muddle. In my view, even after a case has been determined, there is an obligation to communicate with victims what a sentence tariff may mean in circumstances in which a custodial sentence is imposed. In some of the private conversations that I have had with relevant people, the principle behind that has been accepted; the communication should not be just between the Prison Service and the Court Service, but with victims who need certainty about what a sentence may or may not mean. I use that only as a representative example.

There are enormous issues about the practice of what is known as plea bargaining in the Public Prosecution Service. Such issues concern how it arises, the validity of counsel's advice on accepting pleas to lesser charges, how soon victims know that a plea bargain is about to be made and what and how much information is shared with them, including, for example, counsel's advice to the PPS about the right course of action to take. Other matters concern when evidence is or is not presented in court, and there are issues from some families' perspectives about whether evidence has been outlined fully in court, and how the prosecution, in particular, responds to defence submissions, which, obviously, puts its interpretation on the facts of a case. Based on the structures listed in the PPS code of prosecutors, I have tried to outline the areas that families have identified as being the issues of very significant concern that have caused that dissatisfaction.

Finally, and this is a timely point, I understand that this month the PPS will publish an updated code on the giving of reasons. That was announced in July further to the comments of Criminal Justice Inspection in an updated baseline report, which stated that "there remains resistance from prosecutors" for giving reasons. The CJi used the term "resistance". That is a very elaborate term, and based on our conversations with the Director of Public Prosecutions in Northern Ireland, we know that he was having some difficulty with it.

The policy is about to be updated, and I think that that is necessary. However, I do not have much confidence that it will necessarily be the right code. As far as I am aware, families and

victims, among others, who have concerns about that have not been consulted. I have written to the PPS to say that no code should be published until there has been further consultation. Others should think similarly.

Without meaning to make my submission a directive, I have tried to outline how the Committee may take these issues forward. Once other Committee members have had an opportunity to consider the paper, I hope that we can come back to it in the next few weeks.

The Chairperson:

You are drifting into many areas that are not in the Committee's remit. We have to consider a lot of those issues, but they are not in our remit. I do not see any point in having long discussions here about matters that are not in this Committee's remit at the moment.

Mr O'Dowd:

I agree. Many of the issues that the submission covers would be in the remit of any justice Committee, if it is ever formed. Given that, it is unfortunate that Mr Attwood voted against the enabling power that would form a justice Committee and Ministry. If he has serious concerns about those matters, let us get all the other work done and get those bodies established. We can then put those issues at the top of the agenda.

Mr A Maskey:

To follow from your point, Chairperson, the vast bulk of the submission, not all of which I disagree with, is not for the consideration of this Committee.

The Chairperson:

Absolutely.

Mr McFarland:

The paper is a very interesting piece of work. Parts of it are a follow-on to other matters, as Alex said. I read the submission to see what we should be asking, and some of the issues fall under our remit, such as structure, relationships and how the structures are to operate, but other parts are for the attention of the justice Committee in due course. It is a useful piece of work and an interesting topic.

The Chairperson:

To be fair to Sir Alasdair Fraser and the letter that he sent to the Committee last week, I will correct Mr Attwood on one point. Mr Attwood said that he said that finances could be linked to two Departments. Sir Alasdair stated in his letter:

“my preference was to locate the Public Prosecution Service in the Office of the First and deputy First Ministers. This was proposed as an alternative to a linkage to a Department of Justice”.

He also stated:

“one might take the view that the needs of the PPS may also be served if it were placed with the Department of Finance and Personnel.”

To be fair, he mentioned all three Departments in the letter.

Will members note the letter until next week? Given that many of the issues raised are not in our remit, we will not discuss them. It is a broad paper, and a lot of the points raised merit discussion but in another place. We should face the fact that many of them are not devolved matters. Some of the points will be for a future justice Committee to consider.

Mr A Maskey:

Alex and the Committee Clerk should look at the elements of the document that are relevant to the Committee, so that we can know in advance what we will talk about.

The Chairperson:

We cannot ask staff from Research Services to work on material that is not in our remit at present; that would not be fair.

Mr Attwood:

First, what you said about the PPS director is consistent with what I said. He indicated that he would prefer to locate the Public Prosecution Service in OFMDFM or, at a stretch, DFP. That is what he said in the paper, and that is the essential message of his letter.

Secondly, as far as the report is concerned, new issue H of the category 2 list says:

“In the context of Recommendation 27 of the Committee’s original report, about examining the independence and accountability of the Public Prosecution Service, before, and following devolution, what consideration should be to given this matter, pre-devolution?”

Mr McCartney:

None.

The Chairperson:

I accept that. Remember that the various parties raised the issues in the category 2 list.

Mr Attwood:

That is right. Nonetheless, we said that the principle of examining the independent accountability of the PPS, including pre-devolution, could be considered. Based on the authority that the Committee has given to itself from its mandate, I have taken that principle and applied it in my paper. Therefore, I am being completely consistent.

The Chairperson:

Other members obviously disagree with you on that matter.

Mr Attwood:

That is fine; let us have a disagreement. After members have considered my paper, we can discuss that disagreement.

Mr A Maskey:

We have listened to a brief synopsis of your paper for 15 minutes. I said earlier, I do not have any major disagreement with a lot of what you said in your paper. The issues that you raised are of real importance to many people, including my party. However, they are not relevant to the decision that we must make here. The issues are very important, but they are not relevant to the decision that we need to make pre-devolution.

At the next meeting, I do not want to listen to another 30-minute presentation and have another lengthy discussion about matters over which we have no remit. I am suggesting that we work out what the relevant issues are with the Committee Clerk, the Chairperson or the Deputy Chairperson so that we can deal with those.

The Chairperson:

I am happy to do that.

Mr Attwood:

I indicated to the Committee Clerk that I will work with whomever to try to develop this piece of work. Governance and management issues have been flagged up previously as the business of this Committee. Under new issue H of the category 2 list of our work programme, I believe that all those matters are relevant.

I understand that various matters can be defined differently; however, there are structural matters about accountability that need to be considered now. In my report, I have provided hard evidence, including victims' experiences and CJI reports, about what those structural matters might be. I will work with the Committee Clerk over the next week to further enlighten members who feel that all, or part of, the document is not consistent with our work mandate.

Mr McFarland:

That is fair enough. However, it would be useful if we had a chance to read the paper first. It might pay us to have a look at certain issues before devolution. On first reading the paper, there are clearly issues that will lend themselves to a justice Committee.

If we can get some clarity on what the issues are, we can discuss which bits fit where for a justice Committee and for us. That will ensure that we do not miss the boat on getting ourselves organised properly. That seems to be a fair enough topic for discussion next week.

Mr Dodds:

I do not want to be pedantic, as I am sure that none of us does, but the question about what consideration, under the Committee's mandate, should be given to the independence and accountability of the PPS pre-devolution is a preliminary one. However, the paper takes that to the next stage, saying that if we consider the issue, those matters must be examined. I, therefore, think that you are stretching the mandate a bit far. We should first ask what consideration should be given to the matter, and the answer to that question could be none or a little bit. You are taking that mandate and running further down the line. However, I have no difficulty in doing that work.

Mr McCartney:

We await enlightenment.

The Chairperson:

We will wait for the light of next week to shine.