



**Northern Ireland
Assembly**

**ASSEMBLY AND EXECUTIVE
REVIEW COMMITTEE**

**OFFICIAL REPORT
(Hansard)**

**Devolution of Policing and Justice
Matters**

15 September 2009

NORTHERN IRELAND ASSEMBLY

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REVIEW COMMITTEE**

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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
Mr Ian Paisley Jnr

The Chairperson (Mr Spratt):

In incoming correspondence to the Committee, there is an enclosure from Adrian Donaldson, the Chief Executive of the Northern Ireland Policing Board, regarding a requirement to find £17 million of efficiency savings in the policing budget.

Members are reminded that policing remains a reserved matter, and as such, they must be careful about any remarks that they make. However, I will allow some latitude on comments because of the obvious connection to the Committee's work on the financial implications of the devolution of policing, and the implications of the letter.

Mr Paisley Jnr:

I am concerned about the letter from Peter May of the NIO. The Committee is trying to get an accurate handle on the costs that will be involved in the devolution of policing, and that letter represents a provocative interference from the NIO, and an attempt to impact on the budget for policing. That should be noted for the record. That interference jaundices some of the work that the Committee is undertaking, and it is very unhelpful.

Whatever the issues are for the Police Service of Northern Ireland — and those of us who sit on the Policing Board have obviously already held discussions on that point — the issue for the Committee is to get an overview on what is happening with the policing budget. The Peter May letter demonstrates an attempt from the NIO to perhaps tip the pitch a little, and to try to tell the Committee that the policing budget is really not so bad. There are serious and significant financial needs for policing, and the NIO should not be allowed to try to alter the situation by the back door, as it has tried to do with that letter.

The Chairperson:

Thank you, Ian. At this point, Ian and myself should declare that we are members of the Policing Board for the purposes of the Hansard report of this meeting. Are there any other comments from members?

Mr Attwood:

I am also a member of the Policing Board.

The Chairperson:

Yes. Alex Attwood is also a member of the Policing Board.

Mr Paisley Jnr:

Are you back on the board? It was not the same without you Alex — it was better.

The Chairperson:

Are there any other comments in relation to the correspondence?

Mr Attwood:

Will the Committee be copying the NIO's letter to Victor Hewitt? Clearly, that letter has some

marginal relevance, and perhaps more, to the work that he is undertaking.

This is the Committee's first meeting following the summer recess, and because of the content of the correspondence and the other things that have happened since our last meeting, the First Minister and the deputy First Minister have an obligation to inform the Committee about where things now reside with respect to their discussions with the Exchequer. It has been two months since we last met, and the receipt of a stocktaking letter from them would be helpful.

The Chairperson:

The Committee will discuss the financial matters as it proceeds through its agenda.

Mr Attwood:

OK. I will defer any further comment until then.

The Chairperson:

Are there any other comments on that letter from the NIO? Is the Committee happy to copy that letter to Victor Hewitt and make him aware of its contents?

Members indicated assent.

The Chairperson:

Thank you. We now move to item 7 on our agenda: the Department of Justice Bill. I refer members to tab 5 of their packs, which includes a copy of that Bill and related explanatory notes; a covering letter from the First Minister and the deputy First Minister to the Chairperson of the OFMDFM Committee; a copy of the Northern Ireland Act 2009 and related explanatory notes; and a briefing note from the Committee Clerk.

Members should note the timetabling of the Bill and the fact that its Second Stage is due to take place next Tuesday, 22 September 2009, possibly during the time when the Committee is due to meet. I assume that some Members will want to speak during that debate, including members of the OFMDFM Committee and this Committee.

The problem that the Committee has with the Bill is that it is unaware whether any ministerial statements will be made next week. I require some direction from the Committee with respect to

its meeting next week, and whether we should find an alternative time or date to meet, or indeed cancel the meeting. I am quite happy to do either, but I have asked the Clerk to examine members' availability.

Monday is a possibility. On Tuesday, Ian Paisley and the Agriculture Committee have a meeting at 12.30 pm and Raymond McCartney has a meeting with the Procedures Committee at 2.00 pm. On Wednesday, a number of members are tied up in meetings, with John O'Dowd attending the Education Committee; Ian Paisley attending the Finance Committee; Danny Kennedy, Alex Attwood and I attending the OFMDFM Committee at 2.00 pm, and Raymond McCartney attending the Regional Development Committee at 10.30 am. Some of us, myself included, have other outside plans. Thursday is also something of a mishmash, with members involved in various Committees most of the day; and we are not very happy about meeting on Friday, which is traditionally Members' constituency day.

Mr McFarland:

I suggest that we try to stick to Tuesday. We will know by Thursday whether there is extra business and, if there is, we might try to hold the meeting at 2.00 pm, with Raymond getting some sort of exemption from the Procedures Committee. If not, we could meet in the morning.

Mr Paisley Jnr:

I partially agree with Alan. I think that we should stick to Tuesday. However, why not meet at 10.00 am and get that extra hour in the morning?

The Chairperson:

How does that sound to members?

Members indicated assent.

The Chairperson:

We will play it by ear, and if we need to adjourn for the debate, we will. Members who speak in the debate on the Second Stage of the Bill should declare that they are members of this Committee. Danny, you are the Chairperson of the OFMDFM Committee. Have you any comments on the Bill?

Mr Kennedy:

The Bill was reviewed by members of the OFMDFM Committee last Wednesday. There was an initial discussion and an initial vote was taken on a motion that requested the Executive and the Department not proceed with the Bill, and that vote was lost. I expect members of the OFMDFM Committee to contribute to the debate. There will probably be a short statement from me at the outset as Chairman of the Committee, giving the factual position of the Committee's view, but it is likely to be short, given that there may not be unanimity around the table. Nevertheless, the debate will provide an opportunity for the various political parties to set out their stalls.

The Chairperson:

If there are no other comments, are members happy to note and to deal with that matter from our own perspectives?

Members indicated assent.

The Chairperson:

The next item on the agenda is Chairperson's business. Can we defer that discussion until we have discussed the devolution of policing and justice matters?

Members indicated assent.

The Chairperson:

Alex, do you wish to declare your interest as a member of the Northern Ireland Policing Board?

Mr Attwood:

Yes.

The Chairperson:

We move to agenda item 9: the devolution of policing and justice matters. In respect of the financial implications of devolving policing and justice, the specialist adviser has just submitted a further revised version of his paper on additional financial pressures. We asked Victor Hewitt to hold discussions with DFP officials on our behalf.

I seek members' permission to call the specialist adviser, who was not available for today's meeting, and is not available next week either, to the meeting on 29 September, which is the first available date. Are members agreed that Victor should come before the Committee to make a presentation of that paper in closed session, as is normal procedure?

Members indicated assent.

The Chairperson:

I suggest that it would be useful if we wrote to the Secretary of State to ask him to update the Committee on the Heywood report; to ask him to indicate how much of the NIO's existing budget would transfer, should the transfer of policing and justice be requested; and what portion of that would remain to deal with the part of the Northern Ireland Office that will still be intact. Do members agree that a letter along those lines be sent to the Secretary of State?

Members indicated assent.

The Chairperson:

Alex, we will pick your point up in the letter as well. Will you reiterate that?

Mr Attwood:

I would like to have some formal correspondence from the First Minister and deputy First Minister about the point at which they now assess the financial discussions to be.

The Chairperson:

Do members want to raise any other points in that letter? Some issues may come up, for instance the Ashdown report, which I think should be included in a letter to the Secretary of State about the category 2 list of issues. We do not know what the financial implications are of that report, or whether it may have an effect on local government in the future. We need to clarify issues around that.

There is also the memorandum of understanding, which the Secretary of State said that he would share with us whenever it became available. We will discuss that, but those two issues may need to be included in that letter, and I ask members to bear that in mind. Is there agreement that a letter should go to OFMDFM in relation to Alex's proposal?

Mr Paisley Jnr:

What was Alex's proposal?

The Chairperson:

It was to seek an update on what point the financial discussions have reached.

Members indicated assent.

Mr McFarland:

I think that 7 October is the closure date for the Secretary of State's consultation on the Eames/Bradley process, which will affect whether that role will be left with the NIO or will be transferred to us. That would have fairly enormous financial implications. Hopefully, we will get some clarity on that issue some time in October.

The Chairperson:

Do members want that issue to be included in the letter?

Mr Hamilton:

We need to be aware of it.

The Chairperson:

I imagine that there will be questions to ask when the result of the consultation is known. I appreciate that that may well have an impact on the work that we are doing.

Mr McFarland:

Our view was that that role should not be transferred with policing and justice, because it will entail enormous cost, and will trouble us greatly for the next 50 years if it were to transfer here. We were talking about leaving it with the NIO to finance and sort out. The understanding was that the NIO was going to keep the enquiries, but that the rest of the role would transfer.

In my view, that is a really dodgy issue that needs to be sorted out quite clearly before we accept policing and justice. It is on the list of matters on which we need some clarity before we accept.

The Chairperson:

The Secretary of State indicated in his evidence that he recognised that some historical issues would remain in the NIO. If my memory serves me, he included in that group issues around the loss-of-hearing claim cases, for instance.

Mr McFarland:

I think that he is proposing to transfer the Historical Enquiries Team and Eames/Bradley group issues, both of which are fairly toxic.

The Chairperson:

I will now move through tab 7 of members' packs and allow the parties to present their up-to-date positions on the category 2 list of issues. For the purpose of the record, it is necessary to read out the issue. Original issue C reads:

“What should be the relationship between SOCA and the security services and the Minister/Department/Assembly? What needs to be done to ensure that attention is given to having appropriate measures in place to address issues such as the role of the security services?”

Mr Hamilton:

The DUP position remains the same. We are riding blind on this, and we still have not received communication from the Secretary of State in respect of the detail of these memoranda and protocols. We will await receipt of those.

Mr McFarland:

There is no change from the Ulster Unionist Party. We are awaiting the memoranda of understanding and the protocols, and we will have a better idea of what the Secretary of State is proposing once we receive those.

Mr Attwood:

Those memoranda of understanding have been long prepared and long signed off on, and, probably, have had test runs in some sort of fictional world. We should be getting those to let us see what the letter reveals. When we get the memoranda of understanding, what input will we have into adjusting and refining them?

The Chairperson:

It does not matter. We are going round the table. Perhaps I am mixing up everyone.

Mr A Maskey:

You have had too long a holiday.

The Chairperson:

I will get back into the sequence when we go to the next issue, if members are not too cross about being called out of sequence on this one.

Mr A Maskey:

Sinn Féin has nothing further to add. In fact, I will go further and say that we have nothing further to add on any of the outstanding matters. I am happy to deal with it on that uniform basis for today, rather than going through every outstanding item.

Mr Hamilton:

Our position remains unchanged. I will be merely repeating the previously stated position.

The Chairperson:

Are we happy to include of the issues? I was going through them to try to clarify the issues in relation to the letter that will be going to the Secretary of State. Do members accept that the memoranda should be raised?

Mr Hamilton:

They should be raised.

The Chairperson:

Are members content that financial issues and issues around the Ashdown report be raised with the Secretary of State in the letter? I am happy so long as the Committee is clear that all of those issues are raised.

Mr Paisley Jnr:

There is one slight caveat to that, and that is the new item G in the context of recommendation 26 on page 7. The Committee's original report asked:

“To which Department should the PPS be attached?”

We could wait for the Secretary of State, but would it also be useful to write to the current Public Prosecution Service to ask what it believes is a good form of governance for it? That might give us a steer as to where it rests. It would help to inform us.

Mr McFarland:

I thought that we had already asked everyone.

Mr Paisley Jnr:

We did not get a view on that point.

Mr McFarland:

From whom?

Mr Paisley Jnr:

We did not get a view from the PPS.

The Chairperson:

Ian is suggesting that we write to the Director of the PPS about new issue G on page 7 of tab 7 to get a steer and to find out what ideas he might have about where the Department should lie. That would be for information purposes.

Mr Paisley Jnr:

Yes.

The Chairperson:

Given that we are writing to the Secretary of State and to the deputy First Minister and First Minister, we could also seek a response from the PPS. Does anyone have any strong objections to that? Are members happy enough that we do that?

Members indicated assent.

Mr Attwood:

We could usefully probe further on a number of matters in the various categories. In appendix 1, for example, we previously referred to the fact that the role of the Attorney General should be full time, and we are not revisiting that.

Last week, however, Danny's Committee received information that the person identified as the candidate for Attorney General had been asked to produce a scoping paper on his office, and that information was to be contained in a financial report. I was slightly surprised because I presumed that, after we had given our view about the Attorney General, some information would come back to us about what form that office would take. However, we have not received that information. It would be useful, therefore, for us to be copied in on that scoping paper when it is completed. I have no doubt that it will deal not only with financial matters but administrative matters connected to his office and, perhaps, the relationships between his office, the Minister, the Assembly and the justice Committee. That would not surprise me.

The Chairperson:

Will you clarify what you mean? I am not with you. I will ask the Committee Clerk about the scoping paper. I am not aware of any such paper. The person named as the designated Attorney General has not appeared before this Committee.

Mr Attwood:

I note that point, but he has been asked to produce a paper.

The Chairperson:

Will you clarify who asked him to do so?

Mr Attwood:

I presume that OFMDFM made the request because it stated that it wanted that person to be the Attorney General.

Mr Paisley Jnr:

Are you suggesting that he is writing his own terms of reference?

Mr Attwood:

I am not suggesting anything, but I would like to know what he is writing. As I understand it, Danny, he has been asked to produce a scoping paper on the cost of his office.

The Chairperson:

I am not aware that the individual has been asked to produce such a paper.

Mr Attwood:

He has been asked to do so.

The Chairperson:

Is any other member aware of such a request?

Mr Kennedy:

I can confirm that something has been requested, but I am not sure who made that request and whether it was, as Alex said, OFMDFM. I am happy to explore the matter and keep the Chairperson of this Committee informed.

The Chairperson:

Is anyone else aware of the paper?

Mr Paisley Jnr:

No. It would be peculiar for an individual to write his or her own terms of reference.

Mr Attwood:

I was not stressing that point. The report came before the Committee for the Office of the First Minister and deputy First Minister under a financial heading, and it stated that the individual was preparing a paper on the financial requirements of his future office. However, in working out those financial requirements, he would have to work out the structure, requirements and demands that might be placed on his time and that of his staff. Presumably, that would include the relationship with the justice Minister, the justice Committee, the Assembly, and so forth.

It could, therefore, cross from being a purely financial paper into a paper on more material matters on which he should have a view, but for which he could not have responsibility. I am

worried that defining those matters will be done in the absence of an input from this Committee and the Assembly. That is not appropriate. This Committee and the Assembly should have such an input. That is why we should be asking OFMDFM precisely what it has asked of the Attorney General designate, and for a copy of his report. Should we now be making our views known on any of those matters if any are relevant?

The Chairperson:

Is the Member suggesting, therefore, that the Committee asks OFMDFM in the letter whether a paper has been commissioned and whether there have been discussions? Are members happy enough that we go down that route, given that we are asking other questions about financial implications and suchlike?

Members indicated assent.

Mr Attwood:

This matter was, I believe, referred to previously on page 8. The PPS had clearly decided to have a discussion on matters relevant to it. That was scheduled for a meeting, which I was unable to attend because I had to attend funerals. I prepared a briefing note for Carmel, but the Committee decided that it was better to have the conversation when there was a fuller representation. However, we never had that conversation. We now need to have that conversation as a matter of urgency.

The Chairperson:

We never had the conversation because members said that their positions on the category 2 list were unchanged.

Mr Attwood:

We agreed, though, that we would have a dedicated conversation. I suggested an hour to scope out various parties' views on the issues regarding the PPS. The need to have that conversation, as agreed, is now more acute.

Mr McFarland:

As I recall, we were waiting for the visits to conclude. We then tried to have a discussion, but Alex was not able to attend. Given that it was his key subject, so to speak, we did not manage it

before the summer break. Maybe it is now sensible to have that discussion.

Mrs Hanna:

It is my recollection that we agreed to defer it.

The Chairperson:

OK, it has been deferred. The Committee Clerk suggests that there was a conversation on that matter. I am quite happy to have that discussion.

Mr Hamilton:

Can we schedule it in?

The Chairperson:

For the next meeting?

Mr Hamilton:

Yes, and copy any papers into members' packs. We have an infamous folder, do we not?

Mr A Maskey:

We decided to wait until after we completed our meetings and visits to other legislatures before having that discussion. Obviously, in deference that day to Alex Attwood not being able to attend, it was deferred. It was also deferred on the basis that parties, my own included, were not prepared for a discussion in that we had not fully developed our own position that we wanted to expound on. We could have that discussion now, but Sinn Féin would not be adding anything to it.

The Chairperson made the point a moment ago that part of the reason why it was deferred was because parties were not prepared to elaborate on their earlier positions. I am still in that position on Sinn Féin's behalf. We will have that discussion, but I would argue that we have it as part of the ongoing discussion about the remaining category 2 issues. I would wish to have a fulsome debate on all these issues and to have it completed by now, but that is not the case. Sinn Féin is easy about when we schedule such a discussion, but that will be dependent on parties having altered their views on the matter.

Mr McFarland:

There is no point in having a discussion if we are not at a stage when parties can discuss the matter. When the two large parties agree, this, like most other issues before the Committee, will go through. Have we any idea when they might get round to having a talk and agreeing some of this so that we can put clarity on it?

The Chairperson:

I am wearing my chairman's hat. Are there any comments on that?

Mr Paisley Jnr:

No comment.

Mr Hamilton:

No.

The Chairperson:

No answer?

Mr McFarland:

There is no point in having a discussion with Alex if the two largest parties, which will decide this thing in the end, have nothing to add. Alex can chat away; we can all chat away, but nothing is decided until the DUP and Sinn Féin get together and decide what they are doing.

Mr Attwood:

That discussion should be about the independence and the accountability of the PPS; not about structural issues such as where the PPS should be located. We should have a much broader conversation about whether issues around the PPS could be identified now on which cross-party agreement could be found that might inform a further phase of reforms. The discussion should go beyond the immediate hard politics about some of the issues to do with the PPS, over which the DUP and Sinn Féin have a particular influence. We should have that broader conversation.

The Chairperson:

A few minutes ago, we agreed that that could be scheduled into a future programme. It would then be up to members to decide whether they want to have that conversation; I cannot force

anyone to discuss something that they do not have a party position on. I will be guided by a majority of the Committee.

Mr McFarland:

It is fair to say that all of the parties felt the need to discuss this topic further. That is why we decided to have the discussion.

The Chairperson:

There is no argument about having the discussion. I am quite happy that that has been clarified.

Mr McFarland:

Implicit in that was a suggestion that there might be room for some discussion. If more than one party has said that it does not yet have a view on it, it is difficult to have a discussion that might lead to agreement.

The Chairperson:

We shall put it on a future agenda, and it will be up to each party to clarify its position.

Mr McFarland:

May we get sight of Alex Attwood's paper? Is it for general distribution beforehand as a discussion document?

Mr Attwood:

Yes, I will share something with the Committee.

The Chairperson:

If you let the Committee Clerk have it, that paper will be distributed in future members' packs.

I understand that the position on all of the other category 2 issues is unchanged and that members wish to discuss them en bloc. Alex, do you have another issue?

Mr Attwood:

I do not wish to raise it at this meeting. I can understand why people say that other conversations are taking place among people who, potentially, have more authority than the Committee. I am

getting to the point of making formal proposals on some of the outstanding issues to try to define the issues and get some outcomes. It is not credible for us to defer a whole range of matters; we have to get to the point of either agreeing some of those matters or not. I am getting to the point at which we will make hard proposals to try to concentrate minds, rather than continuing to defer to other people.

The Chairperson:

I shall take a decision based on the view of the majority of the Committee. As Chairperson of the Committee, I have tried to steer it in that direction. I thought that we had progressed some of the issues, and a number of letters are being sent to seek clarification. In previous correspondence with the Committee, the Secretary of State said that he would share the memoranda and the protocols with us. He did not see a problem in sharing those, and I do not know whether OFMDFM has seen those yet.

As Chairperson, I contacted Lord Ashdown to ask for material in connection with his review, so there is a whole history and a paper trail on that. It may well have financial implications that the Committee would be interested in looking at.

Letters will be sent to OFMDFM and the Secretary of State's office today or tomorrow. I know that it sometimes takes longer for replies to come back, but I cannot change that. Are members happy that there are no other issues on category 2?

Members indicated assent.