



**Northern Ireland
Assembly**

**ASSEMBLY AND EXECUTIVE
REVIEW COMMITTEE**

**OFFICIAL REPORT
(Hansard)**

Devolution of Policing and Justice

20 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 Simon Hamilton
Mr Danny Kennedy
Mr Alan McFarland
Mr John O'Dowd
Mr Ian Paisley Jnr

The Chairperson (Mr Spratt):

At last week's meeting, members agreed to write to the First Minister and deputy First Minister. Can we note that letter?

Members indicated assent.

The Chairperson:

We have dealt with our reply to the letter from the Policing Board in closed session. There is a letter from the Bar Council on behalf of its chairman, John O'Hara, and its vice chairman requesting a meeting in relation to proposals for the future of criminal and civil legal aid in Northern Ireland. The letter states:

“As a matter of courtesy I am also writing to the other political parties asking for similar meetings.”

Members may recall that we have already received and discussed a letter from the Prisoner

Ombudsman. As most of those issues are outside the remit of the Committee, I am not sure that it is entirely appropriate for us to deal with the Bar Council. I suggest that we note the letter and reply to the Bar Council to that effect, to keep the continuity of what we have been doing.

Mr McFarland:

Chairman, the tone of the letter and the way that it has been addressed suggest that it was written to you in your capacity as a party member. Although it addresses you as Chairman of the Committee, it looks as if the Bar Council is writing to each party.

The Chairperson:

I have to circulate any correspondence that is sent to me as Chairperson. The letter did come to the Committee Clerk's office, rather than coming directly to me. Can we note that letter and reply to it? Individual parties can have whatever discussions they feel are necessary. Are members content that the Committee send an appropriate letter?

Members indicated assent.

The Chairperson:

The Committee received a letter from the Northern Ireland Office. We have been waiting for that reply, and it covers a number of issues, including the Heywood process.

Mr Attwood:

For completeness, the Committee should copy that letter to the Office of the First Minister and deputy First Minister (OFMDFM). I am not sure what the contents of the letter of 17 September were, but we still have not received any information about the memorandum and protocols in respect of the sharing of information. It is inconceivable that those are not complete, yet we have not had sight of any documentation in that regard, despite repeated requests and fairly consistent pressure from the Committee.

The Chairperson:

We got a reply to some of that before the summer.

Mr Attwood:

Yes, but nothing has been shared with us.

The Chairperson:

My recollection is that we got a reply. I do not have the letter with me.

The Committee Clerk:

Towards the end of June, the Committee looked at a specific reply on the treatment of sex offenders. That memorandum was fairly explicit. The last paragraph of this letter from the Secretary of State refers to:

“finalising the necessary amendments with the Irish Government.”

Mr Attwood:

That is not the point that I raised. The point that I raised was about sharing the protocols and memoranda of understanding around the security services. There have been discussions with OFMDFM on that, and there was some understanding that we would have sight of those prior to devolution. That is not referred to in the letter.

The Committee Clerk:

That is accurate. The summary of the category 2 list of issues states that a reply from the Secretary of State is awaited on issue C about the relationship between the Serious Organised Crime Agency (SOCA) and the security services, the Minister, the Department and the Assembly.

The Chairperson:

Again, we can highlight that again. We know what the issues are.

Mr Attwood:

It is more than highlighting; there has been a chain of correspondence between the Committee and the Secretary of State’s office, and there have been various vague undertakings or obligations to share with us. If we are in the run down to the devolution of justice, which I trust that we are, then we need to see that information. We should be saying that as time is running on, we expect a sharing of information in the very near future. Those documents were completed a long time ago, whatever some people might say. They were ready for consideration some time ago and should now be in a position to be shared.

Mr Paisley Jnr:

It would be helpful if Alex spelt out in detail the documents that he thinks are not available to him. We have vague notions of documents and papers that Alex says are complete; let us spell them out very clearly. This may not be the place; perhaps he needs to write a list and say that these are the precise documents that he thinks he is entitled to see. Some of the material that he is talking about may not be complete or may be available through other channels, such as the Policing Board. I am a bit lost in the vagueness of some of the stuff that Alex is asking for.

Mr Attwood:

I am surprised that anyone has any issue about vagueness. We have written letters that specifically refer —

Mr Paisley Jnr:

The fact that the replies are vague might indicate that we are being vague in what we are asking for. Maybe we need to spell it out a bit more clearly, Alex.

Mr Attwood:

No, I am referring to the correspondence to and from the Secretary of State. The Secretary of State acknowledges that there are memoranda and protocols that are being drafted about sharing information with the devolved institutions. That is what he says, not what I say. Whatever those memoranda and protocols are, he said they would be shared with the Committee prior to devolution. He says that they have issued memoranda and protocols: let us see any and all of them.

The Chairperson:

In fairness, you are suggesting that these protocols are complete.

Mr Attwood:

I am sure that they are.

The Chairperson:

Let us read what the Secretary of State says. We can only go by that:

“Discussions have been ongoing with the Irish Government on what amendments are required to the Intergovernmental Agreement on Cooperation on Criminal Justice”.

That says to me that there are ongoing discussions on the memoranda, and that they are probably not complete at this moment in time. That is how I view it.

Mr Attwood:

I am not referring to that paragraph; I am referring to the correspondence about national security memoranda and protocols. The letter dated 17 September is silent on that point. I think that we should remind them about that issue.

The Chairperson:

I am quite happy to send another letter highlighting that. In fairness to the Secretary of State, he indicated that as soon as those documents were available, they would be shared. I am happy to send yet another letter.

Two letters have been tabled for members to note: one, from Lord Morrow, is in relation to procedures, and the other is from the Prisoner Ombudsman.

Mr Paisley Jnr:

I propose that we note the letters.

The Chairperson:

OK. Is the Committee happy to note those letters?

Members indicated assent.

The Chairperson:

The Committee will now move on to consider the category 2 list of issues in relation to policing and justice. Ian, do you wish to declare your interest?

Mr Paisley Jnr:

I am a member of the Northern Ireland Policing Board.

The Chairperson:

Both Alex Attwood and I already declared our interest in closed session.

Before the Committee moves into the full detail of the category 2 issues, it is customary for me to check if there has been any movement on those matters.

Mr Hamilton:

I am going to send you a message telepathically, Chairperson.

The Chairperson:

OK. I think that I have got that message.

Mr Hamilton:

No.

Mr McFarland:

No.

Mr McCartney:

No.

Mr Attwood:

I will make some proposals with respect to the outstanding matters.

The Chairperson:

Someone has their mobile phone switched on, and it is affecting the recording of the meeting. Can all Committee members, and those in the Public Gallery, please ensure that their phones are switched off?

Mr Attwood:

New issue K deals with the status of the new justice Minister and his or her Executive authority. The issues have been usefully outlined by the Committee staff, who have collapsed all of the issues onto two pages.

There are two issues: the status of the Minister, and whether that Minister is required to bring significant and controversial matters to the Executive. The Committee should at least be able to deal with the first issue:

“the Minister’s position in, and relationship with, the Executive Committee”.

The Committee should be able to deal with that because sections 20 and 21 of the Northern Ireland Act 1998 govern the authority and status of Ministers and describe how Ministers are appointed and states that those Ministers will be members of an Executive Committee, et cetera. That authority and status governs any and all Executive Ministers.

There has been no proposal to amend the 1998 Act in that respect, and any change in relation to the status of any Minister, including a future justice Minister, would require Westminster legislation to be enacted. The political realities suggest that that is not likely to arise. Therefore, in order to create certainty on the future justice Minister’s status, and given that those provisions are governed by law, which would need to be changed before the status could be changed, I propose that the Committee agree that the new justice Minister’s status shall be as under the provisions of the Northern Ireland Act 1998. That would bring the matter to a conclusion, with any other option requiring Westminster legislation.

The Chairperson:

OK. That is a proposal. Are there any other comments from members?

Mr Paisley:

The Committee should note it as a proposal and consider it.

Mr Attwood:

I formally propose it.

The Chairperson:

I have accepted your proposal. You only need to propose it; it does not need to be seconded.

Mr O’Dowd:

I understand the frustration at the slow progress in resolving a lot of the issues. Coming here week after week and reporting no progress is frustrating to us all. However, we have to be mindful that, in other places, discussions are going on to bring the matter to a conclusion, to resolve it, and to ensure that we move forward towards the position that we all want to reach: the devolution of policing and justice.

I listened carefully to what Alex said, and I note his comments about the 1998 Act. It is in the legislation, and there is no proposal, as yet, to change that legislation. For the sake of a few weeks, we would be safer to report, as usual, that there has been no progress, and to allow others a fair wind to bring the discussions to a conclusion.

The Chairperson:

Mr Attwood, will you give us the wording of your proposal again?

Mr Attwood:

That the Committee agrees that the status of the Minister should be as under the relevant sections of the Northern Ireland Act 1998.

Mr McFarland:

From the start, our position has been that the status of the justice Minister should be that of a normal Minister. However, in the end, the two largest parties will decide in secret the status of that Minister, and, eventually, tell us all.

The Chairperson:

Does everybody understand what they are voting on?

Mr Hamilton:

Is there any need to have a vote?

Mr Paisley Jnr:

The proposal is not something around which there is hostility; it is worth considering and factoring in. We will certainly consider the proposal, and we would not want to rule it out at this stage. The point has been made.

Mr Hamilton:

We are not going to endorse the proposal at this stage, but that does not mean that it should be ruled out. I would rather not have to say no and have that be misinterpreted.

The Chairperson:

You understand my position as Chairperson. Are you happy with that suggestion, Mr Attwood?

Mr Attwood:

No, Chairperson. The Committee minutes confirm that, on seven occasions since 26 May, there has been nothing further to report on this and other matters. Although I hear what Ian Paisley Jnr says, there has already been more than enough time to consider and factor in the matter. Therefore, I wish my proposal to stand.

The Chairperson:

I put the proposal to the Committee.

The Committee divided: Ayes 3; Noes 3; Abstentions 2.

AYES

Mr Attwood, Mr Kennedy, Mr McFarland.

NOES

Mr Hamilton, Mr Paisley Jnr, Mr Spratt.

ABSTENTIONS

Mr McCartney, Mr O'Dowd.

Proposal accordingly negatived.

Mr Attwood:

The second proposal is the second part of new issue K:

“would the Minister be required to bring significant, or controversial, matters to the Executive Committee?”

Although I do not like some of the changes that have been made further to the St Andrews Agreement, new mechanisms were created in that agreement, and put into law, whereby all Ministers had less independence and freedom than theretofore had been the case. Therefore, built into how the Executive now conduct their business, are all sorts of mechanisms around what a

Minister does or does not have to bring before the Executive Committee. I am sure that that will be as valid, if not more so, for the proposed justice Minister.

Those mechanisms include the provision that any matter, on the wish of three members of the Executive Committee, can be brought before the Committee. Three is not a very high threshold, given that there will be 13 Ministers around the table. I do not agree with that provision; however, that is the law. Given the powers that are already in law through the St Andrews Agreement, talking further about whether anything else needs to be done to require a Minister of justice to bring significant or controversial matters to the Executive seems, to me, to be a pretty pointless exercise.

In any case, given the nature of the office — for example, how nominations will arise, and how people will be subject to a cross-community vote — it seems that there will be all sorts of inevitable political constraints upon the justice Minister. That is the real political world that he or she will face. Consequently, I propose that the Committee not identify any further requirement for a future justice Minister to bring significant and controversial matters to the Executive Committee beyond that which is already established in law.

Mr O’Dowd:

Again, I do not disagree with Alex. My thoughts on the matter are bound by the fact that we are in a delicate place at the moment. Our objective is to achieve the devolution of policing and justice. Although I recognise the frustration of people around the table, people need a wee bit of space. While the Committee clearly has a role within the Assembly structures and wants to be in a position to publish a report, we have to be sensible. I want to put on record again that, had Alex’s party got its way in the Assembly a number of weeks ago, the devolution of policing and justice would have been scrapped. If the enabling powers that were before the Assembly a number of weeks ago had been voted down, the process would be all over. It would be a done deal; it would be finished. I am asking for a wee bit of common sense, political leadership and patience. Perhaps patience is the wrong word, because people’s patience has been stretched. However, we need more time to resolve the issues.

Mr Paisley Jnr:

I propose that we note the proposal for further consideration at a later date.

The Chairperson:

OK, there are two proposals, one of which is to note the proposal as an amendment. I can put the question on either proposal first. Given John O'Dowd's comments, do you have anything else to say, Alex?

Mr Attwood:

There is a lot of shared frustration around the table. For the record, as John knows, the SDLP opposed a piece of legislation that interferes with the democratic inclusion mechanisms of the Good Friday Agreement and creates an exclusion mechanism for nationalism. That is the only thing that the SDLP opposed, unlike Sinn Féin. The Good Friday Agreement said that the devolution of policing and justice would happen in the context of the implementation of policing and justice change. Between 2002 and 2007, the republican movement did anything but interfere with that outcome through some of its activities, whereas the SDLP, through the Policing Board and its drive to make justice changes in other ways, complied with the wishes of the people of Ireland and their endorsement of the Good Friday Agreement. The proposal on the table stands and has to be voted on first.

The Chairperson:

I am happy to put your proposal first. What is your proposal again, Alex?

Mr Attwood:

I propose that the Assembly and Executive Review Committee agrees that there should be no further or additional requirements on the justice Minister to bring significant or controversial matters to the Executive Committee.

Mr Paisley Jnr:

Why has my amendment not been taken first?

The Chairperson:

I was advised that I could do it either way, and I made the call to take the proposal first. However, I am easy.

Mr Paisley Jnr:

I urge you and the Clerk to consider whether it would be more streamlined to take the amendment

first. If the amendment goes through, the actual thrust of the motion can travel without being ruled out.

Mr McFarland:

It is a question of whether it is a contrary motion or an amendment. It looks like a contrary motion, in which case a vote on the first proposal will achieve the same answer anyway. I presume that that is why the advice was given.

The Committee Clerk:

Equally, there is nothing to prevent the Committee, having taken a vote on Mr Attwood's proposal, taking a further vote on Mr Paisley's proposal.

The Chairperson:

That is the advice that I received, and that is what I am running with. I will take the amendment first.

Mr McFarland:

Is Alex saying, in his roundabout way, that the current procedure for the Executive, which is that Ministers bring significant and controversial matters to the Executive, should remain? Is he saying that the system that is followed by Ministers should remain?

Mr Attwood:

I am saying that the obligations upon the justice Minister should be no more and no less than upon any other Minister in the Executive.

Mr McFarland:

It should be the current system.

Mr Attwood:

I do not like the current system, but I acknowledge that that is the law. The essence of my proposal is that there should be no further burden on the justice Minister to do anything more or anything less than any of his colleagues.

The Chairperson:

I will put the proposal to the Floor. Following that, I will put the question on the amendment.

Who is in favour of the proposal?

The Committee divided: Ayes 3; Noes 3; Abstentions 2.

AYES

Mr Attwood, Mr Kennedy, Mr McFarland.

NOES

Mr Hamilton, Mr Paisley Jnr, Mr Spratt.

ABSTENTIONS

Mr McCartney, Mr O'Dowd.

Proposal accordingly negatived.

Mr Paisley Jnr:

I withdraw my proposal.

The Chairperson:

Mr Attwood, do you have any other issues?

Mr Attwood:

Other matters will be proposed, further to amendments to the Department of Justice Bill. One other issue has arisen from the paper in respect of which Department the Public Prosecution Service (PPS) will be attached to. I will delay that proposal until we discuss the paper.

The Chairperson:

Once we move from the category 2 list of issues, we will be on the PPS paper. Have you more issues on the category 2 list?

Mr Attwood:

I have no other issues, apart from the one that I will raise on the paper in respect of where the PPS is located.

The Chairperson:

We move to the consideration of the SDLP paper on the Public Prosecution Service. Members will remember that, last week, Mr Attwood at some length presented that paper. The Committee decided that parties would look at the paper on their own.

Mr Attwood:

The paper is as it was, and the Clerk has tried to filter its contents. That is useful. I had a conversation with the Clerk in relation to the matter, as I said I would following last week's meeting. As a starting point, I am prepared to accept the paper from the Clerk. We should do all that we can on this critical matter on all the issues that are outlined in the paper. The list of issues is not exhaustive, but, as a starting point, the Committee Clerk's treatment of the category 3 and category 2 issues in the SDLP paper is useful.

In summary, we have to decide what the funding relationship between the Assembly and the PPS will be. Which Department will have responsibility for the PPS? We must also establish what the appropriate management structure around the PPS will be. They are category 3 issues. There is some crossover in the category 2 issues. One of the issues is the future staffing of the Department of justice and how the recommendations of the Criminal Justice Inspectorate will be pursued in order to ensure full implementation of its recommendations. I think that the Committee could take some actions and decisions that could help to inform all of that.

The experience of victims must always be in the forefront, because that is what this is all about; it is about getting the proper governance management and credibility around the PPS so that the experience of victims and witnesses, and all those who go through the public prosecution system, is as it should be. As our paper indicates, there is good evidence from a number of victims that the experience is not all that it should be. That fact should always be in the forefront

of our minds when it comes to understanding the proper relationships between the political institutions and the PPS and how the PPS will conduct its affairs.

The Chairperson:

Are there any comments?

Mr McFarland:

As I understand it, the key part of the Committee Clerk's paper is where it states:

"The issues detailed in Paras 26 onwards"

Those are the only ones that are remotely relevant to the Committee at this time; is that correct?

The Chairperson:

Yes.

Mr McFarland:

OK. So, if we start with paragraph 26 and move forward, we have a couple of pages. Paragraph 27 of the SDLP's paper states:

"Developing new governance arrangements within the PPS...would require new legislation and a period of some delay".

Clearly, therefore, that is not something that we can do now either. It is a question of weeding out from paragraph 26 onwards those bits that we can do something about now, and those bits that are likely to need further thought down the line. Is that where we are?

The Chairperson:

Yes. I think that the Committee should also bear in mind the last paragraph of the Clerk's paper, where it refers to:

"inevitable consequences for the Forward Work Programme of the Committee in terms of any decision taken and Members may wish to keep in mind paragraph 49 of the First Report on the Arrangements for the Devolution of Policing and Justice Matters".

The Clerk has, very helpfully, included the paragraph relating to the second report. Of course, those are issues for the Committee to decide, but it would have an effect, given that we have to make a report to the Assembly in 2009, obviously before the end of December. We have already had a discussion about that as regards the forward work programme.

The Committee is open to comments. Mr Attwood, you want to speak again.

Mr Attwood:

The Committee Clerk's view, which I am not going to challenge, is that paragraph 26 and those thereafter lend themselves to the work of the Committee, and that we should deal with the various recommendations or discuss the recommendations in the SDLP's document. That would be a good starting point and a substantial starting point, as it deals with substantial matters. In order to try to move the situation on, I would like to hear what people have to say about dealing with the issues identified from paragraph 26 onward. Are there any actions that the Committee can take that will help to move the Public Prosecution Service on?

The Chairperson:

Are there any comments?

Mr Paisley Jnr:

I would like the Committee to note the paper. There is stuff in it that is akin to an anti-Civil Service rant. Fair enough, one is entitled to that view if one has that view on the Civil Service currently operating in the Northern Ireland Office. Part of the paper outlines the SDLP's hopes and aspirations, which it is entitled to have; and whether we, as a Committee, agree or disagree is neither here nor there. There are issues that may be of some interest to us regarding management structure, although I imagine that we would have to get to the point of resolving other issues before we can get into the depths of some of the management structures, and that might end up being a matter for the new Minister, if and when he or she is appointed, and the new Department. Therefore, the report lends itself to nothing more at this stage other than the Committee noting its last three pages.

Mr McFarland:

There are issues, such as the setting up of oversight boards. Such boards come with enormous bills for manpower, financial support and secretariat services. In the initial stages, the new justice Minister would, I presume, wish to take a view on where the money will come from to do all that. Those are real issues which need to be discussed. However, it is debatable whether the Committee has the knowledge at present about how a future justice Minister will think about these things. Perhaps the parties who have had discussions with potential justice Ministers know where their minds lie, but the Committee probably does not.

Mr McCartney:

The paper is being considered by Sinn Féin. Alex Maskey made the point last week that although a lot of issues in the paper are worthy of discussion, it is our belief, on first read, and from even the three main themes outlined, that it is not the focus of the Committee's work. Sinn Féin feels that the Committee should be focusing on what is holding up the transfer of policing and justice powers. The other issues can be discussed at a later date, much as the Committee has done with matters such as the Court Service and other models.

Mr Attwood:

I am grateful for what members have said, although it does not stretch us by any means. Recommendation 27 of the Committee's original report, which was endorsed by the Assembly, states:

"The Committee recommends that the independence of the PPS and its accountability to the Assembly should be examined before, and following, the devolution of policing and justice matters to produce recommendations which would, in turn, be considered by the Assembly."

I recall, and I believe that it will be confirmed by the Hansard report, that it was my proposal to insert "before, and following" or at least "before", because at that stage I was anticipating that there was work for the Committee to do before the devolution of policing and justice. Therefore, whether that recommendation is interpreted broadly or narrowly, it is clearly the Committee's responsibility, as well as the mandate from the Assembly, to look at issues surrounding the independence and accountability of the PPS before the devolution of policing and justice.

I make a number of proposals arising from that, none of which should put anyone on the back foot. Rather, they will put the Committee on the front foot. For example, the Committee Clerk, in his paper, says that paragraph 27 of the SDLP document, entitled "Reform of the Public Prosecution Service", falls within the remit of the Committee. The Committee Clerk says:

"Toward the end of the paper there are issues which sit more easily within the remit of the Committee's work both as conducted to date and as outlined in its remit."

He then says:

"At paragraph 27 the SDLP note that their call for changes could slow progress and to prevent this they call for a "Patten" like panel of specialists to ensure changes after devolution."

In order to try to shape that up, it would be useful if the Committee invited the Criminal Justice Inspector to appear before it, because, as the SDLP report outlines, the CJI made a wide range of recommendations about the PPS and agencies that have a relationship with the PPS. The

2007 baseline review in particular, which was updated in June 2009, made some stark reading. In order for the Committee to get a sense of the scale or otherwise of the issues surrounding the PPS, we should listen to one of the best experts and one of the people best qualified to advise us.

If the Committee hears what the CJI has to say — and I have read some of the reports and have met him recently — that would help us take forward a piece of work that is essential and cannot wait. John explained the frustrations surrounding the devolution of justice. Those frustrations may evaporate in the near future, and I hope that they will.

We need to get our heads round this work, because it is the most critical piece of work in respect of the North's criminal justice institutions. It would be worth hearing the views of the CJI on some of these matters, because his perspective is not speculation or a rant. It is informed by the report, and the CJI has made hard, evidence-based, recommendations. In the event of the devolution of policing and justice, the new Department and new Minister will have obligations concerning the CJI's recommendations. I also think that those recommendations alone will not bring about the required level of change to the PPS.

It would be helpful to borrow people from Patten and other panels of experts. It would be great if the PPS could do all the work itself, but that would probably require changes to its governance and management. As was indicated in the SDLP report, that will take a period of time, because new legislation would also be required. However, a lot of good work could be done in the meantime, and we should listen to people to determine what the Committee can do in the context of its mandate. If the CJI were to appear before the Committee, it would be right and proper to invite the PPS also, in order to give us a sense of the nature of the reports, and I will make that proposal in a moment.

While we are waiting for the First Minister and deputy First Minister to come back to us regarding various matters, we should invite the head of Civil Service to appear before the Committee. We could ask him about his understanding about the staffing arrangements in a devolved justice Department. We have had all sorts of discussions on the matter, and the Committee Clerk's report states that staffing arrangements are germane to the Committee's work. Indeed, the First Minister commented on that matter on the Floor of the Assembly in his response to the debate on the Department of Justice Bill.

I have said before that senior posts should be open to public competition. It should not be presumed that those who hold senior posts in the NIO will become senior people in the Department of Justice. Such people should be able to apply for the posts, but it would not be a good way to do business for them to become senior staff as a matter of course. I do not know whether that is the intention, so I would like to hear from the head of the Northern Ireland Civil Service on the matter.

There are other people whose views we should listen to, but I will start with those proposals for the purposes of the meeting and in order to take the work forward. Subject to what the Committee Clerk says, and consistent with his comments on this, I make two proposals. The first is that we invite the CJI's chief inspector and the PPS to speak to the Committee about how the various evidence-based recommendations should be taken forward. The second is that we invite the head of the Civil Service to give his views on the relevant issues while we wait for the First Minister and the deputy First Minister to come forward.

The Chairperson:

I must clarify that the letter from the Secretary of State to the Committee, which we noted earlier, clearly sets out the transfer of assets, staff and accommodation.

Mr Paisley Jnr:

Valid as Alex Attwood's position is, and he is entitled to have that position as a member of the SDLP, I do not know whether pursuing these lines of enquiry is relevant for the Committee. Some of what he said sounds like a major fishing expedition, or justifying positions, or attacking the PPS or Civil Service personnel whom he does not particularly like. That is not what the Assembly and Executive Review Committee is about; we have to focus on what we should do.

All sides have mentioned their frustration in settling some of the issues, but there is a negotiating process ongoing and it is very well documented. Part of that process is being played out in public, and we can see what is going on at Downing Street; but to create a platform where the head of the Civil Service can be brought here and disabused of some of his views is not what this Committee is supposed to be about. Alex is entitled to his views, and some of them are valid for him and his party, but he had an opportunity to debate the issues in the House, and he lost that argument.

We are happy with only one of the four recommendations outlined in the Committee Clerk's paper. Alex is not going to find consensus on the rest, and he knows that. He wants to establish another Patten-like panel of specialists, but in the current climate, do we have the resources to do that? He wants to carry out a staffing search of the PPS and the Civil Service, and he wants to examine other models of operation for the PPS that are similar to the Policing Board. It is fine for Alex and his party to navel-gaze on those issues and talk to other parties behind the scenes, but this Committee should not be the cockpit for such discussions or one-party issues.

I propose that we note Alex's paper and thank him for taking the time to present it to the Committee. There are relevant issues that will come back for discussion, but he is proposing to take the Committee on a huge fishing expedition elsewhere that we do not need.

Mr O'Dowd:

In principle, I have no difficulty with Alex's proposals. The difficulty is that the Committee is working to a time frame and we must produce a report before the end of the 2009 session. That must be our focus now. None of the issues that Alex has raised are an impediment to the transfer of policing and justice powers. There are issues that require further analysis, investigation and scrutiny by a justice Committee. Alex's proposal to set up a panel of specialists is worthy of further consideration, although I note that every time the SDLP runs into difficulty now it wants to set up a panel of specialists. Specialists will be very busy in the coming months if the SDLP has its way. Nevertheless, we would not rule out that proposal.

My party's focus is on completing the transfer of policing and justice. There is a danger that Alex's proposals will open new chapters of negotiation that could further delay the transfer of policing and justice, and could be used by those who are resisting it — *[Interruption.]*

I am sorry, did I say 2010?

Mr McCartney:

You said that the report must be completed before the end of the session. It must be completed before the end of 2009.

Mr O'Dowd:

I apologise.

It is possible that the people who wish to use those issues to resist the transfer of policing and justice powers could lengthen the negotiations. We are trying to close chapters, not open new ones. Although I support Alex's proposals in principle, this Committee is not the place to discuss them. Let us complete our report and get policing and justice transferred so that a justice Committee can examine the issues that Alex has raised.

Mr McFarland:

There has been some useful analysis, but I worry that we are getting ahead of ourselves. It is worth reminding ourselves what it is that we are supposed to be doing. Issue G is the question as to which Department the PPS should be attached. Although Alex seems to suggest that we go into details, recommendation 27 of the Committee's report is about deciding what consideration should be given to the independence and accountability of the PPS pre-devolution? It does not mean that we should examine it pre-devolution: that is not what recommendation 27 says. It says that we are to examine what level of consideration should be given to the matter pre-devolution. We are way ahead of ourselves, even though the SDLP paper is a worthy one.

Mr Attwood:

I tabled a proposal, and I will push it. However one might wish to interpret it, the Committee decided what it decided in its first report. How to take on board the report's findings was not decided unilaterally by me; it was decided unanimously. However, as we know, a number of matters in the first report were not decided —

The Chairperson:

Alex, we are not discussing the first report. Let us get to the nub of the matter. There are three recommendations on the table. I do not want to go through the whole thing again. You have already explained your position on most of those.

Mr Attwood:

And if I am allowed to do so, I will explain and answer the various points that members raised, which, I think, is the minimum to which a Committee member is entitled. Secondly, I did not impose this paper on the Committee. I was asked to look into it by the Committee. It was not my decision. As soon as the Chairperson proposed that I should do so —

Mr McFarland:

To be fair, Alex said that he had a paper, and we asked him to go away and study it.

The Chairperson:

That is more to the point.

Mr McCartney:

We did not want to say no.

Mr Attwood:

You should have said that you did not want to see the paper.

Mr McFarland:

We did not want to be rude.

Mr Attwood:

You cannot complain about discussing a paper if, one way or another, you asked to see it.

Mr McCartney:

You suggested that we asked you to do it.

The Chairperson:

OK folks; please make your comments through the Chair.

Mr Attwood:

I remember the conversation very clearly. The Chairperson said that if I had something I should share it with everyone. Check the Hansard report; but, because I think that I had some further work to do on it and had only given a briefing note to Carmel Hanna. Either way, no one said that they did not want to see it.

Mr McCartney:

We are very polite.

Mr Paisley Jnr:

Now that we have seen it, it has not been worth coming to see it.

Mr Attwood:

Thirdly, in an attempt to get consensus in the Committee, I made narrow proposals today about how to move the matter forward. I could have been, and was inclined to be, a lot more extravagant. However, given my sense of the Committee's position, I made very narrow proposals to hear from three people on matters that the Committee Clerk indicated are consistent with its mandate. My proposals are based not just on what I consider to be appropriate but on what appears to be appropriate to the Clerk.

Mr Paisley Jnr:

Your comments in previous Committee meetings and in the debate let the cat out of the bag about your real agenda with respect to the head of the Civil Service, but we are not here to have a go at him. If you do not like the head of the Civil Service, or his staff, that is an issue for you, but you should not drag the Committee formally into the little invective world that you sometimes inhabit when it comes to civil servants. It is wrong and it is unfair to the Civil Service.

Mr Attwood:

It has nothing to do with —

The Chairperson:

I propose that —

Mr Attwood:

I have a right to reply.

The Chairperson:

One minute, please. I am going to put a number of proposals to the Committee, because we are being drawn further into an argument and into something that is not in the Committee's remit.

Mr Attwood:

That is not what the Committee Clerk said.

The Chairperson:

I do not care what the Clerk said. I am speaking at this second in time, OK.

Mr Attwood:

I am glad that you put that on the record.

The Chairperson:

OK, it is on the record now.

Mr Attwood:

That will impress all the Committee Clerks.

The Chairperson:

Well, it is on the record.

Mr Attwood:

It is, and you cannot withdraw it.

The Chairperson:

Please: are you going to continue?

Mr Attwood:

I would like to continue —

The Chairperson:

I am going to allow you to quickly draw your remarks to a close. Comments from anyone else should be made through the Chair.

Mr Attwood:

This has nothing to do with who is the head of any organisation; it is a matter of attempting to build confidence in the justice Department's staffing complement, particularly its senior staff. The SDLP thinks that there is a way to do that bit of business so that anybody who has an interest can apply, be interviewed and, perhaps, be appointed. This has nothing to do with invective against anybody. It is about trying to judge the best way to structure the justice Department and

living with the outcome of a proper public consultation process.

Regarding a report in 2009, the Committee produced a report previously in which a number of matters were not resolved and to which we said that we would come back. By the end of the year, we will be in a position to produce a report on all the matters that we can conclude, and I hope that we can do so. Today, I made a proposal to try and conclude some of those matters in order to get a report to the Assembly before Christmas.

If there is no agreement on those matters, which may well be the case, they can go into a future report, if that is what the Committee decides. There is absolutely nothing prejudicial about doing this bit of work now that would impede any report going to the Assembly before Christmas. If such an argument is being made, it is completely inconsistent with the fact that we previously adopted a report that went to the Floor of the Assembly and was adopted by a majority vote.

These are pretty basic recommendations about how to deal with some important issues. I made minimum recommendations. If I am able to get these over the line, I assure members that I will make bigger ones next week. However, in any case, I propose that we invite the head of the Criminal Justice Inspection (CJI) to give evidence in respect of his reports on the PPS, invite the PPS to give its perspective on those reports, and, separately, to invite the head of the Civil Service to discuss staffing arrangements in respect of a proposed Department of justice once it is set up.

The Chairperson:

To clarify, the Clerk said that the essential question for the Committee was the extent to which the Committee should examine the independence and accountability of the PPS before and following devolution. He made that point very clearly in the paper, but that has been ignored.

Mr McFarland:

The next time Alex volunteers a paper, my sense is that the Committee may not be minded to receive it.

The Chairperson:

I could not possibly comment.

As I understand it, there are three proposals on the table; two from Alex Attwood and one from Ian Paisley Jnr. The first one is that the Committee should call the chief inspector —

Mr McCartney:

We will also make a proposal.

The Chairperson:

That will be the fourth proposal.

Mr McCartney:

In relation to Alex's proposal, we want to include it at the conclusion of the Committee's second report.

The Chairperson:

Is that on both proposals?

Mr McCartney:

Yes.

The Chairperson:

The first proposal is that we call the chief inspector of Criminal Justice Inspection Northern Ireland and the PPS to the Committee.

Mr Paisley Jnr:

It is that HOCS, PPS and CJI should be brought to the Committee. It is really an amendment to say that we will wait until the conclusion of the report.

The Chairperson:

We will take the proposal first on both of the issues. I assume that that proposal is also in relation to the head of the Civil Service. We will then take a vote on the amendment. Alex, are you happy if we include the Civil Service in one, rather than having two separate proposals?

Mr Attwood:

If people are inclined to go down that road, and given that the structure of the Department is one

of the most germane issues, I suggest to people that they may want to split that issue. The head of the Civil Service should come sooner, even if members want the others to come later.

The Chairperson:

OK. We will vote on them separately. It was just for clarification.

Are members content with the first proposal about the CJI and the PPS?

The Committee divided: Ayes 1; Noes 7.

AYES

Mr Alex Attwood.

NOES

*Mr Hamilton, Mr Kennedy, Mr McCartney, Mr McFarland,
Mr O'Dowd, Mr Paisley Jnr, Mr Spratt.*

Proposal accordingly negatived.

The Chairperson:

OK. Are members content with the second proposal, which is to call the head of the Northern Ireland Civil Service to the Committee?

The Committee divided: Ayes 1; Noes 7.

AYES

Mr Alex Attwood.

NOES

*Mr Hamilton, Mr Kennedy, Mr McCartney, Mr McFarland,
Mr O'Dowd, Mr Paisley Jnr, Mr Spratt.*

Proposal accordingly negatived.

The Chairperson:

We then have the amendment to both of those proposals.

Mr McCartney:

We are going to withdraw the second one, which is in relation to the head of the Civil Service.

The Chairperson:

So it is just the first amendment, in relation to the chief inspector of CJI and the PPS?

Mr McCartney:

Yes.

Mr McFarland:

Can I clarify that that will be after the conclusion of the second report?

The Chairperson:

Yes.

Mr Attwood:

Will it be immediately after the conclusion of the second report?

The Chairperson:

Let us not get into those semantics.

Mr O'Dowd:

He thrives on it.

The Chairperson:

I imagine that another Committee will be formed then. Are members in favour of the amendment?

The Committee divided: Ayes 3; Noes 3.

AYES

Mr Attwood, Mr McCartney, Mr O'Dowd.

NOES

Mr Hamilton, Mr Paisley Jnr, Mr Spratt.

ABSTENTIONS

Mr Kennedy, Mr McFarland.

Proposal accordingly negatived.

The Chairperson:

There is another proposal for the Committee to note the recommendations in the SDLP paper.

Mr Paisley Jnr:

I withdraw that.

The Chairperson:

Therefore, there is no such proposal. Are there any other issues regarding that paper?

Members indicated dissent.