Northern Ireland Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Civil Service (Special Advisers) Bill: NIACRO Briefing

7 November 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mr Leslie Cree
Ms Megan Fearon
Mr Paul Girvan
Mr David McIlveen
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Peter Weir

Witnesses:

Mr Pat Conway	Northern Ireland Association for the Care and Resettlement of Offenders
Ms Anne Reid	Northern Ireland Association for the Care and Resettlement of Offenders

The Chairperson: I welcome Pat Conway and Anne Reid to the meeting. Please make your opening statement.

Mr Pat Conway (Northern Ireland Association for the Care and Resettlement of Offenders): Thank you, Chair and Committee, for inviting the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) to present today. I am responsible for adult services, public affairs, policy and communications at NIACRO. My colleague Anne Reid is a senior practitioner for Jobtrack, which is a partnership between NIACRO, the Northern Ireland Prison Service and the Probation Board for Northern Ireland. Anne is responsible for, among other things, promoting fair recruitment and practice for people who have criminal records. She also oversees NIACRO's advice line.

I will make a few points and set our response in context. First, it is NIACRO's position that people with convictions should not be discriminated against, particularly with regard to access to employment. NIACRO promotes the principle and practice that employment aids resettlement and reintegration. Secondly, denial or restriction of employment is not ordinarily the sentence of a court, but, in certain cases, the outworkings of a disposal have conditions that do have an impact on employment, particularly with regard to public protection matters; for example the sentencing of people who have been convicted of sex offences. Thirdly, NIACRO supports, and is a proponent of, progressive rehabilitation and resettlement. Historically, this took the form of what some people called giving people a second chance. The arguments for rehabilitation were then developed within a human rights construct, and, more recently, there has been discussion about the economic benefits of rehabilitation.

This can be distilled into the idea that successful diversion and rehabilitation lead to a reduction in crime, offending behaviour, rates of recidivism and, ultimately, a reduction in the number of victims. NIACRO subscribes to a hybrid of these three elements: giving people a second chance, the human rights constructs and the economic benefits of rehabilitation.

Fourthly, due to the unique set of circumstances that pertained in and about Northern Ireland, people with conflict-related records should be considered separately from people who have "ordinary" criminal records. Fifthly, currently, politically motivated ex-prisoners and non-politically motivated people with criminal records are subject to the same legislation, namely the Rehabilitation of Offenders (Northern Ireland) Order 1978 and the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979. For more than 20 years, NIACRO has argued that these two pieces of legislation need to be reviewed as they have acted as a barrier to resettlement, given that they are open to interpretation by employers, usually negatively, and that the list of excepted jobs has increased significantly. Very few conflict-related convictions are considered to be spent under these pieces of legislation.

Our seventh point is that, in NIACRO's view, 'Recruiting People with Conflict-Related Convictions', which is the set of voluntary guidelines as published by the Office of the First Minister and deputy First Minister (OFMDFM), have not worked. These guidelines are supposed to be applied with respect to conflict-related convictions. NIACRO has made it clear that any instrument with respect to conflict-related convictions needs to be enacted in legislation. We support a clear, transparent and accountable concept and practice of risk assessment that contributes to public protection. The proposed legislation, the Civil Service (Special Advisers) Bill, is, in NIACRO's view, potentially incompatible with section 75 and the Good Friday Agreement. As an organisation, NIACRO does not support the retrospective elements in the proposed legislation. We believe that all public appointments should be transparent, accountable and published. Appointments should be made on the merit principle, and there should not be a blanket exclusion on any particular or specified group. Finally, in NIACRO's view, it would assist if a wider discussion were to take place addressing issues of employment and conflict-related records, as happened, for example, in South Africa.

The Chairperson: Thank you very much, Pat. Your submission states:

> *"NIACRO believes that the resettlement of people convicted of conflict related offences, and their return to...employment is a essential for any society emerging from conflict."*

Will you elaborate on why that is essential in your view?

Mr Conway: Historically, we were involved in the research that contributed towards dealing with politically motivated prisoners emerging from conflict. That was adopted and incorporated into the Good Friday Agreement. The early release scheme, as it is known, was constructed primarily by research that we carried out approximately 14 years ago and was incorporated into what became the Good Friday Agreement.

To amplify that: in any society emerging from conflict, where there are prisoners' issues, those issues need to be dealt with. We argue that in any conflict, the issue of prisoners needs to be addressed. Not doing so does not assist in concluding the conflict, no matter where it is.

The Chairperson: Are you also concerned about a precedent being set in this case? Obviously, this piece of legislation is about a specific role and is very much focused on that role, but it perhaps sends out a message to the rest of the society that if it is the case for this particular post, then why not for other posts.

Mr Conway: You have to go back to basics and decide whether someone who has a record, whatever that may be, poses a danger to society. It strikes us that perhaps this is really being predicated on political opinion rather than on whether somebody presents a threat or danger to society.

The Chairperson: As far as the economic impact is concerned, obviously the Confederation of British Industry (CBI) was one of the parties involved in drawing up the guidance. Is it your view that there are a number of groups in the business community who would see the benefits of a flexible system rather than one with automatic disqualification?

Mr Conway: I cannot speak for the business community. However, I know that there would be a certain degree of nervousness in what the CBI, as an organisation, might say and what its members might say. Basically, I think that if this were left to the business community, it would rather see the

enactment of voluntary guidelines. However, we have made the point to the CBI at those OFMDFM meetings that the CBI was not keen on the introduction of legislation dealing with disability discrimination or race discrimination. It always opposed that legislation. The argument that you would get from the business community would broadly be that this is another burden for business and that they do not really need to do it because they can deal with things in a voluntary manner. However, if you look at disability, race and religion, legislation has had to be brought in. We argue that, in dealing with people who have conflict-related sentences, as well as what are termed "ordinary", there needs to be legislation to stop what we experience as discrimination against people with records.

The Chairperson: I understand the bone of contention you have with the voluntary guidance, but do you agree with the general thrust of it, except you take the view that it needs to be put on a —

Mr Conway: Legislative footing? Yes.

Mr Weir: Thank you for your presentation. I want to probe a couple of areas. You have highlighted that there is one very obvious distinction between this Bill and other rules or regulations regarding employment, and it is the retrospective element. If we take that as given, are there any distinctions between what is being proposed in this Bill and the rules, regulations and practices that exist for employment in the Civil Service, certainly within the senior Civil Service?

Ms Anne Reid (Northern Ireland Association for the Care and Resettlement of Offenders): I presume, Peter, you are talking about the merit principle?

Mr Weir: Yes, the merit principle, but also, presumably, employment law — and you are more of an expert on employment law, so I will ask you to comment in relation to it. When there is an appointment to the Civil Service, particularly at senior level, what is the current position with vetting, criminal offences and with appointability on the basis of good character and criminal records? Taking that position into account, and leaving aside the retrospective element, which is a separate issue, can you point out the distinction between how this legislation would apply if it were passed and what applies now if there were, for example, a vacancy in the senior Civil Service?

Ms Reid: It is NIACRO's understanding that the Civil Service code would be applied in those other circumstances. That would be the distinction in this, particularly in relation to the proposed five-year disqualification. To NIACRO's knowledge, that is not something that is apparent in the code.

Mr Weir: Forgive my ignorance, but can you spell out the restrictions in the code? We are being asked to adopt, amend or reject this legislation. How will this legislation change things compared to the provisions already in the code?

Ms Reid: It is NIACRO's understanding that the code's merit principle involves identifying the best person for the job and, then, carrying out a risk assessment. We have called for a more transparent and accountable risk assessment process than that which, to our knowledge, is being applied within the code and Civil Service recruitment as a whole. That is slightly different from the Bill.

Mr Weir: At present, would that risk assessment apply? Say, for instance, there was a vacancy in a special adviser's post tomorrow and a new adviser were to be appointed. What is the legal position with regard to that appointment? Does the code apply to that? What restrictions are there, because of the code, to anybody applying?

Mr Conway: At this stage, we are not in a position to answer that. We would have to go off —

Mr Weir: I appreciate that. The nature of questions in Committee is, quite often, to throw a bit of a curve ball, which you will maybe need to come back to us on.

Will you clarify one point for me? Like most of us, I am trying to pick up on the nuances of this, after what was a fairly late night for many of us. Did I pick you up right as to your particular position on what were referred to as "conflict-related" convictions? You drew the distinction between what you would like to see for those and what you would like to see for what are maybe described as "ordinary" crimes. Do you believe that the employment restrictions on somebody with a conflict-related conviction should be less than those for somebody with an ordinary crime conviction? Do you see it as being a category for which the restrictions should be fewer?

Mr Conway: We think that there should have been discourse, around the time of the Good Friday Agreement, to work through the implications of this. One of the key phrases used in the OFMDFM guidelines is "manifestly incompatible". If somebody's offence is manifestly incompatible with the post, they should not be employed. Translate that into the real world. In our view, there is no such thing, for example, as politically motivated rape. There is no such thing as politically motivated drug dealing. However, there were people —

Mr Weir: Sorry to interrupt you, Pat. Would you accept that reference to politically motivated crime, which you referred to, could be interpreted as giving some sort of credence to that crime which puts it on a level of less censure than other forms of crime?

Mr Conway: The reality is that it is not, at the moment.

Mr Weir: You have given evidence on this, and I am trying to determine your opinion. If I picked you up right — and I am sure that the Hansard report will bear out whether I have done so or not, and I apologise if I have got it wrong — you seem to be suggesting that you feel that there should be fewer restrictions on people with what you would call politically motivated convictions than, for example, those who had committed similar crimes that would be classified as ordinary. Did I pick you up correctly on that?

Mr Conway: We treat the two cohorts separately. As an organisation, we always have.

Mr Weir: What is your opinion on the restrictions that should apply? Did I pick up correctly that you feel that the same restrictions should not apply to people with what you would call politically motivated convictions?

Mr Conway: The argument from NIACRO has always been that there needs to be a discussion prior to any legislation being enacted to promote such a separation legislatively.

Mr Weir: I appreciate that you are saying that there should be a discussion. I might have got it wrong, but, if I picked you up correctly, in your evidence you gave an indication that it is NIACRO's position that there should be different treatment. I got the distinct impression you were saying that the levels of employment restriction for someone with a political or conflict-related conviction — however you want to describe it — should be less than those for someone who has been convicted of a non-conflict-related crime.

Mr Conway: It may be so after the discussion that we are arguing should take place, but has not.

Mr Weir: You have indicated NIACRO's position, or the views expressed a number of years ago, as being the genesis of, or at least the forerunner of, the provisions in the Belfast Agreement with regard to the early release scheme.

Mr Conway: Yes.

Mr Weir: It is very good for someone to admit to that. Some of us may not have quite the same level of pride in that regard.

Mr Conway: It was very rational. It was not —

Mr Weir: With respect, some of us take the view that releasing terrorists who committed appalling crimes, at an early release date, is not something with which I, personally speaking, or any organisation would be keen to be associated. I suspect that there may be a difference of opinion on that.

Mr Conway: We wrote the document, and it is in the public domain, so we will not resile from that.

Mr Weir: I give you credit for your honesty. It would be hypocrisy for any organisation or any individual who produced something to pretend that they had nothing to do with it.

Mr D Bradley: The Minister of Finance attempted to deal with the controversy that led to the Bill. He carried out a review of the arrangements for the appointment of people to the Civil Service. Part of the

outcome of that review was the introduction of a vetting or a character-checking process for the appointment of special advisers similar to that which he says applies to all civil servants. I understand that, for spent convictions, that process is not retrospective, and that unspent convictions are taken into consideration on a case-by-case basis. What is your view of the procedures introduced by the Minister?

Ms Reid: I have had experience in liaising with DFP in relation to the risk assessment model that it had applied. NIACRO's view was that the spent and the unspent convictions model was quite restrictive, as was indeed the term "character to access suitability". NIACRO is on record as having challenged that. We feel that there would be room for manoeuvre to readdress that. We can see it being a completely fair and transparent process, and that it should look beyond character.

Mr D Bradley: If it applies to all civil servants, surely it is equal or equitable in so far as it does not single out particular individuals but applies to people from all backgrounds who apply to the Civil Service?

Ms Reid: The flaw that NIACRO has identified is in relation to the risk assessment process, which may not be as stringent, tight or transparent as it could be. It seems to be a very generic model that does not take unique sets of circumstances into account. Every set of circumstances is different. The model seems to be quite arbitrary, and we would like to see it modified in some way.

Mr D Bradley: You said that it is not as stringent as it could be. What do you mean by that?

Ms Reid: "Stringent" may be the wrong word. Perhaps the model is not as detailed as it could be. According to NIACRO's experience, the model seems to be very undetailed. We have dealt with many cases in which people have been refused employment opportunities in the Civil Service because they have not satisfied the criterion of good character. We would like to see more of a risk assessment in relation to identifying the particular barriers and duties of the particular role of the job, but that does not seem to be taken into consideration in great detail, as OFMDFM, NIACRO and, certainly, Access NI would advocate. Therefore, it does not sit well with other guidelines.

Mr D Bradley: You said that the model is not transparent enough. What form would greater transparency take?

Ms Reid: To share NIACRO's model and Access NI's code of practice model with you; it would look at each particular detail in a lot more detail. Those details would include when the offence occurred and the circumstances of the offence, which should look at the individual circumstances, whatever they are. It should also include the nature of the offending history and the duties of the role and what potential conflicts there might be in the role.

It is key that it would be a transparent model that is not left to one particular individual. As an organisation, we advocate, as Access NI would, that there would be a panel of individuals, as representative of community background and gender as possible, which would take the factors into account. In every case, there will be conflicts about, for instance, what I would consider to be suitable or otherwise and what someone else might consider suitable. It is to have an open and generated debate about risk. Hopefully, at the end of that process, there can be a consensus that the risk is minimal, or, if it is the case that the risk is too elevated, there will be a clear and transparent process for reaching that decision that perhaps is not currently in place.

Mr D Bradley: Obviously, you believe that the NIACRO model should be applied across the Civil Service.

Ms Reid: Yes, and we have worked very closely with Access NI on its adaptation of its code of practice. It has adopted our guidance.

Mr D Bradley: Who did you work with?

Ms Reid: Access NI, the body responsible for the criminal record check. We have worked and continue to work closely with it. From the onset of Access NI, it met us and looked at our model and has adopted that guidance, to an extent.

Mr D Bradley: Have you had any discussions with DFP about the new arrangements that the Minister introduced in September 2011?

Ms Reid: Not to my knowledge. Previously, we had.

Mr D Bradley: Why not?

Ms Reid: I am not sure. That would have to be answered at management level.

Mr D Bradley: Surely, if the model proposed by the Minister is at such variance with your model, it makes sense to make representations.

Ms Reid: It is something that, certainly, we will be following up after today.

Mr Girvan: Thank you for your paper. I appreciate that you have a job to do, which is the rehabilitation of ex-offenders. On the basis of that, we deal with certain things, and there is an issue over the tariff set for the crime. If the tariff is set at a level indicating that we are dealing with someone who has denied another person the right to life — whether politically motivated or motivated by other reasons — there is a serious challenge to us as to why that person, irrespective of whether they believe they have a legitimate right, has the right to state that they should take a senior post.

The human right of the person to have employment is there, but another key issue is where they are employed and what they are doing. On that basis, I think that the tariff, and the level of the tariff set, is probably the key to where the legislation, if it gets through, lies. What is your view on that point? I appreciate that you might not necessarily be looking at this from the angle of the human right.

Mr Conway: Our view is that someone commits an offence, goes to court and is dealt with by due process. They are either found guilty or innocent. If they are guilty, they receive a custodial or community-based sentence. Someone who has committed murder is most likely to receive a custodial sentence, and after the sentence is served, that time is then done. That is the sentence by the court. The judge does not say that a person is sentenced to x number of years and that they will not work, and the judge does not determine the place of work. So, in a sense, the person has paid their debt to society, as society demands. After that, it becomes, with a degree of validity, an emotional issue. From our point of view, the issue must be based on risk. After someone has done their time, what risk does that person pose in a particular area of employment?

Mr Girvan: I can understand that you would not give someone who had been guilty of bank robbery the keys and put them in charge of the vaults of the Bank of England. Likewise, the tariff determines the severity of the crime, and, on that basis, you are not distinguishing between one person or another. You are making a generality about a crime that has a custodial sentence of five years, 10 years or whatever that might be, and that is what we should focus on. If you do it, there are other positions that are available.

I am not saying that there is no one in the Civil Service who has not had a custodial sentence, but there might well be good grounds for them not being employed in certain areas in the Civil Service. That is the point that we are making. The Civil Service (Special Advisers) Bill deals with people who will be, effectively, at the centre of government. I appreciate that precedents were set in the way that this Assembly was set up, where, potentially, someone who had committed murder could be the First Minister or hold another post in this current set up. However, those posts are held by people who have been given a political mandate to be here. It is totally different when someone is appointed without having gone through the normal Civil Service appointment procedures.

Although you have a job to do, that does not mean that you have to justify that someone has to have a job in a particular area. We all know that this all came about from the appointment that was made, and the Bill ended up being tabled because of the pain that that appointment caused to victims. That human right has to be considered in this process, and it should be a material consideration.

Mr D Bradley: You mentioned that one of the elements concerning all of this is protection of the public. You talked about the conflict and the background to it. Protagonists were not the only people who were involved in that; there were victims as well. As we have seen recently, some of those victims are highly vulnerable. Does the vulnerability of witnesses not come under the term "protecting the public"? Surely, that vulnerability has to be respected and, to some extent, protected?

Mr Conway: The core of our business is about reducing the number of victims in society. Sometimes, NIACRO is characterised as the prisoners' organisation. What we are actually about is reducing crime, reducing offending and reducing the number of victims. The hurt that is caused to victims is something that we are acutely aware of, and that is at the core of our business. A month ago, we ran a conference on hate crime, and, at the core of that, were victims' groups or proxy victims' groups, who had a panel along with politicians and the criminal justice elements. I bring it back to the fundamental point of public protection. I am talking about someone who has served their sentence, whatever it is and whatever it was for, and is deemed not to be a risk to the public. If they are deemed a risk, that is a different set of circumstances. So, there is an assessment of risk and some idea of locating that in a public protection framework. The release of the prisoners under the Good Friday Agreement caused a lot of offence in a lot of areas and sectors; there is no getting away from that. It was not an easy journey for anyone who saw people being released, and who were affected directly or indirectly by the conflict. However, the agreement was signed and we are where we are. I think that we have got to locate it in the arena of risk assessment and public protection. Once we step outside of that, we will dilute the rehabilitation and resettlement processes.

Mr D McIlveen: Thank you very much for your perspective on this issue. I want to try to understand this. Just because someone goes to jail, that does not mean that they are rehabilitated.

Mr Conway: No.

Mr D McIlveen: That is the concern that I have. There has been quite a lot of discussion on clause 2 of the Bill, and I am conscious that I am veering into a slightly parallel universe. There is a particular individual from the Lurgan area, who has been in the news recently, and who, under the terms of the Bill, could be appointed as a special adviser. Yet there are people who have spent life sentences in prison, who have come out and who have condemned their own actions and shown remorse and repentance for what they have done, and who, under the Bill, would be exempt from appointment.

I want to get your perspective on how, above and beyond a prison sentence, we can demonstrate genuine rehabilitation. There is an elephant in the room. Had the special adviser whose appointment sparked the Bill come out at the time and apologised for the actions that they were involved in and expressed remorse to the family of the people who were gunned down on their way to church, the issue would have been diffused quite quickly. However, the fact that very little rehabilitation was demonstrated by that person in what they said after the event inflamed the whole issue into what it has become today. Outside of gauging a minimum prison term of one, five or 10 years, how we can we demonstrate that rehabilitation has really taken place? That is the key of where we need to get to with this. It is very difficult to put that down on paper, although I accept that, when we are legislating, there have to be very definitive terms in place. However, from the point of view of public confidence, we have to get to the point where a person who is appointed to whatever role demonstrates genuine rehabilitation. Unfortunately, in the case that sparked the Bill, that was not the case.

Mr Conway: That brings us to the core of the discussion — what constitutes rehabilitation, particularly around the conflict. There has not been that discussion. There have been attempts, and NIACRO is keen on some type of truth recovery process, which would provide a platform for people to be able to articulate those views and to come to a determination. I do not want to quote the South African example all the time, but that discussion happened there. There was a determination as to what records could and could not be expunged, and there was a public discourse around that. Our view is that the best vehicle would probably be some form of agreed truth recovery process, which would allow people to amplify those views. We could then introduce whatever legislation was agreed after that discussion.

Mr D McIlveen: I am picking up on the points that were raised earlier by my colleagues. At the end of the day, when there is a judicial process, we will have the truth. It is about how people react after the truth has been exposed. I think that that is where we have the problem. I do not think that the problem is that we have a lack of truth; it is that we have a lack of repentance and a failure to face up to the wrongs of the past. I suspect that that is probably a debate that will rumble on in this place for many months and years to come. I appreciate your perspective.

Mr Conway: As an organisation, we would not be comfortable with the word "repentance", but we would be comfortable with the word "acknowledgement".

Mr Mitchel McLaughlin: Thank you very much for your presentation. I think that David was starting to come on to the issue. Some 14 years after the Good Friday Agreement, we have not even started the discussion about truth and truth recovery. It is ironic that the motivation behind this issue ignores that responsibility — it is a responsibility — between the parties in the Assembly. We had a debate earlier this week that demonstrates that the issue of justice not only deals with the people who went through the justice system but the people who did not.

Mr Conway: Those who were not caught.

Mr Mitchel McLaughlin: Well, OK. If you are talking about the British Army, the RUC and the UDR, we are in agreement. However, if we have a two-tier system, it becomes very problematic. I think that the question of not seeking to establish the truth but seeking to establish blame, really invites us into a continuation of the conflict. That is where the failure is.

The references to South Africa are completely germane and relevant. We might approach it in a different way, and I would be quite content to sit down and have a discussion about how we should approach it and define it to our own circumstances. What I do not understand is people's refusal to engage in that discussion. How can we agree between us the reasons why there was a conflict in the first place, or, to put it more simply, why we had a civil rights struggle in the first place? Those are germane issues when approaching this contentious issue.

There is no question that many, many people have been hurt and damaged as a result of the conflict. How could anybody have difficulty with that? We may struggle for a very long time — it could be cross-generational — before we can even agree and accept that the conflict caused trauma, pain, death and injury. However, we may not agree on why it happened. We certainly will not agree if we do not talk about it, yet, each time the subject is broached, there is a refusal to take it any further or to engage. I think that that creates difficulties for this type of Bill. It is conflict-related legalisation, and it represents the conflict continuing. In my view, it is not an example of conflict resolution.

We have had many examples, even subsequent to prisoners being released, where the sentences and the circumstances of the trials were reviewed and recommendations were made that those sentences should be set aside and, in some circumstances, that compensation should be paid. There are many examples of the stresses and strains applied to the judicial system as a result of conflict, and they also have to be factored in. We had extraordinary legal and judicial processes and laws, which were, if you like, departures from international norms. If that had been applied on the basis that justice was blind and that it was not going to be one-sided, skewed or biased, we might have had to live with that and the outworkings of it. I am quite certain that this would not have been the only judicial system in which anomalies, contradictions or unjust or unsafe convictions were secured.

Whatever the human frailties of any system, it can be easily established that — and would be examined in a challenge to this legislation if we decided to go down this road — if the British Prime Minister can stand up and describe Bloody Sunday as unjustified and unjustifiable and there is no follow-through on the people who murdered unarmed civilians on that day, we are in some difficulty in saying to another category of citizens that they cannot be a special adviser or that their appointment as such causes pain. There are many examples of pain having been caused, and we need to think very carefully before going down this road.

Your presentation is beneficial in that it, at least, it depends on references, including international references, and unless we couple our reactions to the conflict on the basis of the pain, injury and trauma that it continues to inflict on our community — even if we have to do that aside from agreeing on what caused the conflict in the first place — then we will never come up with acceptable responses. That, in my view, is the flaw in this entire process.

The Chairperson: Pat and Anne, do you wish to make any further comments?

Mr Conway: I will just restate that it is pretty clear that we are not in favour of the Bill. As we said in our presentation and submission, we should go back to first principles. That is all that I want to say.

The Chairperson: Thank you very much.