



Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Civil Service (Special Advisers) Bill:
'Recruiting People with Conflict-Related
Convictions'

28 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:

Sir Nigel Hamilton
Sir George Quigley

The Chairperson: I welcome Nigel Hamilton and George Quigley to the meeting. You are both very welcome. Perhaps one or both of you would like to make a short opening statement on the guidance that the Office of the First Minister and deputy First Minister (OFMDFM) produced and on anything that is relevant to the legislation that we are discussing.

Sir Nigel Hamilton: Thank you, Mr Chairman and members. This is déjà vu for some of us. If you will find it helpful, I will take two or three minutes to set in context the background to the work that we did at that time. I know that Sir George would like to do the same.

The genesis of this, of course, was the Good Friday Agreement, which addressed a range of matters and highlighted, as indeed the guidelines record, the importance of dealing with ex-prisoners' issues. Everyone recognised those as complex and sensitive, particularly where the blockages to reintegration to society are concerned, which was the background to this work. Sir George has had a longer history of working on the issue, and we will explain that in a minute.

In early 2006, the Secretary of State asked me and Sir George to co-chair the working party to consider whether we could find a way through some of those difficulties. The working party, co-chaired by Sir George and myself, had representatives from ex-prisoners' groups from all the major paramilitary groups on the loyalist and republican sides, as well as, importantly, the trade unions, the Confederation of British Industry (CBI) and a number of Departments, particularly the Department for Employment and Learning and the Department of Finance and Personnel.

It would be honest to say, George, that when we started that work, we were surprised at the range of issues and blockages to reintegration that there were. I will just mention three or four examples. Ex-prisoners were not being accepted for jobs, for instance, because they had a criminal record; they could not get certain taxi licences; they could not adopt children; they could not get insurance for homes and businesses; and they were having difficulties with criminal injuries compensation. The reason for that was that, in some cases, the Rehabilitation of Offenders Act 1974 applied to convictions but not to lengthy convictions related to the Troubles. Therefore, you almost had a situation in which a young man of 17 would have his conviction expunged after a time, if he had thrown a stone at the Oval, but if he had thrown a stone on the Newtownards Road in a different context, the conviction was there for ever. That was part of some of the issues that we were trying to address.

We looked at a number of models, and Sir George will explain that. As the work progressed, the St Andrews Agreement came on board. This particular reference is not in the guidance, but I thought it relevant to say that when the agreement was made, it was stated:

"The British Government will work with businesses, trade unions and ex-prisoners' groups to provide guidance for employers which will reduce barriers to employment and enhance the re-integration of former prisoners."

So, that was a further impetus as we did our work.

In taking the work forward, it was my role to stay close to the then Secretary of State and David Hanson. As folk will recall, David Hanson was the Minister of State for Police and Criminal Justice at the time and for OFMDFM. He attended the final meeting of the working party before we signed off the guidelines. That was the approval, and I think that it was February 2007 before the guidelines were promulgated.

We produced guidelines for employers and others. We never contemplated those guidelines being anything other than that. In our case, they were not going to be in legislation, nor was the working party going to be the final arbiter of any issues on that. That is because the guidelines were drafted and written in such a way that meant that the employing authority would be the final decision-maker. We also had a mechanism in the guidelines for some independent review in circumstances where there were difficulties.

I hope that that is helpful in setting the context of why and how the work progressed. Sir George has more experience in this, and he will want to pick up on some of those issues.

Sir George Quigley: Thank you for the invitation, and I will be as helpful to the Committee as I can. It may be useful to hear how I got involved in the ex-prisoner issue and how that led to the establishment of the working group that produced the employment guide. I think that it is important to see how and why we got to where we got to.

Some 12 or 13 years ago, I was invited by William Poole, an official working for the CBI, who, sadly, died last week, and the Northern Ireland officer of the Irish Congress of Trade Unions, Terry Carlin, who is also, sadly, no longer with us, to meet them so that they could pick my brains, as they put it, on a particular matter, namely ex-prisoners. They felt that something needed to be done about the issue. Before long, I found myself chairing a group of around 30 people consisting of the representatives of groups whose members had been involved with the IRA, INLA, UDA and UVF. There were also representatives of agencies with relevant interests, such as training, as well as employer and trade union representatives. In fact, some of those meetings were held in Ulster Bank when I was chairman.

Our work quickly focused on analysing the impediments to ex-prisoners becoming reintegrated into society. We drafted a paper, which was thoroughly debated in the group, listing those impediments. One thing that came through to me as I chaired the group was that the ex-prisoner groups had been separately approaching a range of Departments and agencies that were responsible for particular services, and they had been making very little progress. In other words, no co-ordinated approach was being made to the authorities, and there was no co-ordinated effort by the authorities to address integration. So, I felt that the most important recommendation in the draft impediments paper, which we prepared, was for the Government to set up a task force on which the ex-prisoner groups and the Government interests would be represented so that all the issues could be thoroughly and holistically thrashed out.

I am bound to say that, at that stage, I found neither the Northern Ireland Office (NIO) nor the Executive keen to engage, and the initiative ran into the sands, much to my dismay and frustration. Fortunately, the opportunity to revive it occurred around 2002-03 when the task forces to recommend a future programme for the regeneration of greater Belfast, including the Shankill, reported. Those task forces were chaired by Padraic White and John Simpson. They reported very strongly that the ex-prisoner issue should be decisively tackled. I was invited to chair a group that was representative of the ex-prisoner interest. Again, I had that whole range of ex-prisoner interest around the table. We took the earlier work as our starting point. We revised it, updated it and sent it off to the NIO, given that the Executive had collapsed in the meantime. This time, I am bound to say, I was delighted by the response that we received. A lot of that was attributable to the way in which Sir Nigel Hamilton handled the situation from inside the machine. A working group that was exactly along the lines that we suggested was set up. Its importance was recognised by the fact that it was chaired by the head of the Northern Ireland Civil Service, and I gather that I was supposed to be co-chair. I was very glad to be involved in the committee's work.

I got involved, and until I stepped aside about a year ago, I stayed with the issue for at least two reasons. The first reason was that, having come to it fresh, I was astonished by the scale of the issue. The figure that I was given was that there had been some 30,000 of these ex-prisoners, that is, people who had been imprisoned for conflict-related offences. More recent estimates have suggested that that figure could be even higher. If you gross that up to include immediate family members, you probably have well over 100,000 people, and the figure is several times more than that when the extended family is taken into account. So, I felt that if we wished to achieve anything like a normal society, that was not something that could simply be swept under the carpet; it had to be a very important component of the peace process.

The second reason why I stayed with it and was immensely interested in it was that I was enormously impressed by the ability of those erstwhile adversaries to sit around the same table and interact totally civilly with each other and with others who were totally outside the ex-prisoner groups. I was very impressed by the calibre of those people and by their obvious desire to move on and to contribute to shaping a new future for Northern Ireland. So, I asked myself whether it was sensible to deny them the opportunity to contribute and whether it was reasonable for society to expect them to espouse peaceful democratic means to shape the future but, at the same time, refuse them any place in that future, assigning to them the role of permanently idle onlookers and outsiders with all that that would mean later for opportunities for their families and the next generation.

As Sir Nigel said, such thinking was, of course, fully consistent with the Good Friday Agreement and the St Andrews Agreement, which talked about facilitating and enhancing the reintegration of ex-prisoners into the community. It was also, of course, fully consistent with thinking on an international level — that is, at United Nations and World Bank level — which pinpoints the importance of what is being called demobilisation, decommissioning and reintegration as a strategy in conflict recovery and societal healing. Employment and economic well-being are seen as a key framework within which to deliver peace and stability.

All that was very fully debated in the working group that was set up. It resulted in the development of a model, or a principle, that could be applied right across the board not only for employment but where access to goods and services is concerned. Indeed, after issuing its employment guidance, the working group went on to deal with issues such as insurance and the other matters to which Sir Nigel referred. That principle was directed very simply at ensuring that an ex-prisoner with a conflict-related offence would be able to compete with other applicants for employment on a totally level basis, with the employer making his or her decision solely on the basis of the applicant's skill and experience. The guidance is very clear. It states:

"the fact that an applicant has a conflict-related criminal record should"

— the following words are underlined —

"not play a part until the individual has successfully gone through a selection process. In accordance with best practice, application forms should normally not require a criminal record declaration except where"

— for example, it involves working with the vulnerable. The guidance continues:

"Only after an individual has been recommended for appointment and only where relevant to the specific post should a record check be undertaken."

The guidance then goes on to discuss what should happen if there were a conviction and the employer considered that it were or could be materially relevant and manifestly incompatible with the post in question. The guidance is very clear that the onus of proving material relevance lies with the employer. It also makes clear that the seriousness of the offence is not, in and of itself, enough to make a conviction materially relevant. It also underlines that it will be only in very exceptional circumstances that a conviction will be relevant. I think that those are all critical points about the principle that was enunciated.

All the arrangements that I just described were instituted on a purely voluntary basis, although they were, of course, fully endorsed by the main employers' organisations and the central trade union body. The guidance said, however, that the arrangements should be reviewed over time to assess their impact and effectiveness and that, if necessary, the voluntary arrangements should be put on a statutory basis.

The guidance also made provision for the setting up of a tripartite review panel to, inter alia, monitor the working of the arrangements. That review panel has now reported and has recommended that, given the range of impediments and barriers that prevent it from working totally satisfactorily as a voluntary arrangement, the guidance should be complemented by legislative change in line with the possibility that is mooted in the employers' guide itself. In other words, the employers' guide said that, if necessary, the guidance should be translated into legislative form. I have no doubt that a good principled start has been made on what I believe is a very important and necessary journey. The review panel has made a careful and convincing case for starting on the next leg of that journey, and I hope that urgent action will be taken.

I hope, Chairman, that those introductory reflections have been helpful. Thank you very much.

The Chairperson: Thank you very much, gentlemen. You touched on this already, but will you outline why, in your opinion, it is important to us as a society that ex-prisoners reintegrate, particularly with the employment market?

Sir Nigel Hamilton: I think that Sir George just did that. To set it in a wider context, the peace process and all the various parts of both the Good Friday Agreement and the St Andrews Agreement are meant to take us back to a situation where the world is peaceful and where we leave the past behind. That requires the reintegration of ex-prisoners into society and their being enabled to take up employment and have those blockages removed. I think that it is inequitable and something that, from a personal point of view, although I have now been retired for five years, is extremely important as we move back towards a normal society.

Sir George Quigley: It was very much a learning process for me. I had met representatives of all the groups involved in the conflict in the 1990s, but I had never actually sat around a table interacting with people who had been involved in the conflict at the front line, as it were. You could not talk to those people for any length of time and not be impressed by the fact that they wanted to move into an era when they would be making a normal contribution to society. Not only that but they clearly had the capacity to do that in a significant way. I think that it is a rather reckless society that thinks that it can get along without drawing in all its talents. After all, that is one of the main arguments for the full participation of women in society, and I think that one cannot leave out any significant group, particularly, as I said, a group with numbers of this order. That is because, when you talk about extended family, you are talking about quite a significant proportion of the population of a small place such as Northern Ireland. In some areas where the conflict was particularly focused, you are talking about a very significant proportion of the population indeed. So, I do not think that one can simply park all that and go on with life as though it did not count. One really has to take it into account when building that normal society for the future.

The Chairperson: You mentioned the involvement of trade unions and businesses in this process. Would it have been their view that, for purely selfish reasons, employers should have the freedom to choose employees solely on the basis of merit and that that choice should not be removed from them because of a conviction 14, 20, 30 or 40 years ago that is in no way relevant to the job? What was the view of the businesses and trade unions?

Sir George Quigley: Both the social partners were very supportive from the very beginning. As I said, it was quite significant that the people who drew me into the process at the very start were William Poole and Terry Carlin. I pay tribute to William Poole for the role that he played in all this, because he drew me in. If he had not made that call, who knows whether I would have been involved. He was also very keen to get involved in the work of the review panel, which was set up following the work of the working group. He retired from that only because of ill health and, sadly, he died last week. He was an example of an individual who was convinced that this was the right way to go. He stuck with it and made an immense contribution, as did Terry Carlin. So, it was vital that the social partners were involved so that when employers wanted to go down this route, they did not find themselves encountering a whole series of individual difficulties.

Sir Nigel Hamilton: The working party unanimously approved the guidelines that were issued. At that time, that included Peter Bunting or his representatives, as well Nigel Smyth or his representatives, on behalf of those two partners.

Sir George Quigley: We had a number of public meetings at which we presented the results of the working party's work. Employers, trade unions, representatives of the public sector and the various health agencies all attended, and I cannot recall a single example of anyone raising any objection about the course that was being taken.

The Chairperson: You referred to Departments' involvement. What was the Department of Finance and Personnel's contribution?

Sir George Quigley: I must pay tremendous tribute to the response from inside the Civil Service machine. I have said to Sir Nigel on many occasions, and I said in the group itself, that we were served by an incredibly able and dedicated group of people in that working party. The response from the wider machine was very positive, but the great benefit of the working party was that the system as a whole could address the issue holistically. Before that, it was a matter of individual groups going to individual parts of the machine, whether their issues were about criminal injuries compensation or getting licences for taxis or heavy vehicles. Naturally enough, the system was simply looking at it in a narrow context. It had to be looked at in the round, and once the whole issue was opened up to that kind of discussion and with very strong leadership from the individual on my right, the situation was transformed.

Sir Nigel Hamilton: As head of the Civil Service, I had the opportunity to bind my permanent secretary colleagues into this work as well.

The Chairperson: The Justice Kerr case is referenced at paragraph 2.9 of the guidance. Obviously, that is an example of a case where the Good Friday Agreement was referenced as one of the reasons for supporting it. Are you aware of any similar cases that have been brought forward? What is your opinion on the potential for further cases like that to be brought forward where the ex-prisoner concerned would be of the opinion that his rights were being breached and that the Good Friday Agreement were being breached as a result of what was happening?

Sir Nigel Hamilton: Chairman, you will have heard from our opening submissions that my involvement was over a period until I retired. Sir George's involvement has been over a much longer period. I would be misleading the Committee if I were to say that, since I left this place in early 2008, I have been closely aware of what might have happened in other pieces of case law.

Sir George Quigley: On the Kerr judgement, it is very interesting that one of the significant aspects of all of this is that reoffending by prisoners who have been involved in the conflict is much less than for the generality of people who have been in the toils of the justice system. The figures are quite startling in comparison. That is one point that is very much in favour of adopting the kind of principle that we adopted.

The second point is that there was another very significant case of two people who were refused employment, and the case went right up to the House of Lords. I am now searching into the depths of my memory, but I think that I am right in saying that the House of Lords confirmed that the Fair Employment and Treatment (Northern Ireland) Order 1998 would enable, although not compel, an employer to take the view that although he could not take account of religious or political opinion in making appointments to his workforce, he could take account of a political opinion where it condoned violence as a means to the achievement of that political opinion. Therefore, that is one of the reasons

why the review panel has recommended that legislation is needed to give effect to the employer's guidance, because there are barriers of that kind that lie in the way of the full implementation of the employer's guidance. Not only that but, since we did our work, quite an elaborate arrangement has been made for access to records for a whole variety of purposes, to some extent triggered by child abuse issues, and so on.

The Security Industry Authority is now also taking a very active interest in matters so that, in a sense, one could soldier on with the guidance and try to overcome the hurdles as one meets them. In light of experience, the feeling is now that the cleaner solution is simply to give the thing legislative teeth so that everyone knows that that is the position, and to the extent that barriers exist, the legislation should enable those barriers to be struck down. I think that it was right to do what we did, because it really got a principle established. It got the issue into the public domain, and it began to get people thinking within that kind of model. However, you reach the point at which you have a platform from which you can move on to the next stage, and I suspect that moving on to the legislative stage is the right next step. You are right to say that the thing has been tested, and, as I said, that hurdle undoubtedly exists.

Sir Nigel Hamilton: It is worth pointing out to the Committee that when we started in the working party, there was a very strong demand and view from the ex-prisoners groups that all their convictions should be completely expunged at that time. That was the starting point. I do not think that any of us thought at that time that that was a realistic expectation, because that would have required legislation, and so on. That is why we thought that it was much better and more practical and realistic to move down through this particular model of voluntary guidelines built around processes, and so on, to see how effective they were. The ex-prisoners groups did not start with that model; rather, they started with demanding that everything be expunged at that time.

Sir George Quigley: It was a good example of a debate out of which there arose a practical means of moving forward in the here and now. I must say that it seemed to me personally — I think that this view was fully shared by Sir Nigel and, ultimately, all the members of the group — that practical steps needed to be taken in the here and now to show people that, in point of fact, there were very significant interests in society that did want to see ex-prisoners reintegrated. That was a very important message to put out to start the process, rather than start on a long haul, which might last for 15 or 20 years, to get to a destination, the achievement of which was very uncertain.

The Chairperson: I have one final question before I open it up to members. What is your opinion on the Bill and how it relates to the aspirations of the guidance in which you were involved?

Sir Nigel Hamilton: It would be very inappropriate for me to comment on the existing Bill. We drew up guidelines at that time. The Bill is an entirely different model. It is legislative, as I understand it. The guidelines were drawn up for a purpose. We think that they are particularly relevant to employment, but I certainly have no intention of offering any comment on the Bill.

Sir George Quigley: It is implicit in the Bill that there are certain appointments — to wit, special advisers — to which the fact that there has been a conflict-related conviction is materially relevant and that people in that situation should be automatically excluded. That is obviously a totally different model from the one that was emerging from the working group, where each case would be considered by the relevant employer on its own merits, and the onus would be on the employer in each individual case to demonstrate that materiality and that incompatibility with the post in question.

Mr Weir: I will comment briefly on the Chair's previous question. I find it a little bit strange that we are taking evidence on the Bill, yet the one thing that you do not want to comment on is the Bill. That seems to be slightly defeating the purpose of the evidence session.

Sir Nigel Hamilton: Sorry, with great respect, I was invited, through the Committee Clerk, to offer comments on the guidelines, not on the Bill.

Mr Weir: With respect, this is part of the evidence session on the Bill, but we will leave that. I apologise for missing the first couple of minutes. Will you clarify your position on rehabilitation of conflict-related prisoners, as you call them, when it comes to employment rights? Do you believe that there should be any distinction in treatment or rights between anybody who is conflict-related, as it might be described, and anybody who has been convicted of any other crimes?

Sir George Quigley: This was a particular exercise related to the conflict-generated situation. That is what we were concerned with, and that alone.

Mr Weir: I understand that, Sir George. We are obviously considering it from the point of view of employers in a very specific category, but, in the broader sense, do you believe that, when it comes to employment rights, rehabilitation or any other form of rights, conflict-related prisoners should be in exactly the same position as anybody else? For example, if someone were convicted of a murder or robbery, should the position be identical, irrespective of whether it is conflict-related, or do you believe that there should be extra efforts at rehabilitation or extra rights? What is your position on that?

Sir George Quigley: The model that emerged was really saying that the conflict-related offence should not be taken into account at all in the decision regarding appointment, unless it was materially relevant to the job.

Mr Weir: How would that distinguish, or not distinguish, someone who has a similar conviction that is not conflict-related?

Sir George Quigley: I think that the view that was taken — there is a paragraph in the employers' guidance to that effect — was that a great many of those who were involved in conflict-related offences would not have been within the purview of the criminal justice system in a non-conflict situation.

Mr Weir: I am struggling to get a clear-cut answer. Are you basically saying that there should be a degree of differentiation because, as you say, the people would not necessarily have been involved? Should there be differentiation from employers towards someone who has a conviction for a conflict-related offence compared with someone who committed an identical offence but not conflict-related.

Sir Nigel Hamilton: Perhaps I can come back on that. In my opening comments, I said that one of the reasons why we had to do this work was because the Rehabilitation of Offenders Act 1974 did not necessarily apply fully to conflict-related issues. Therefore, we were trying to have a consistency between the two. Therefore, for treatment and for —

Mr Weir: The treatment should be identical is what you are saying.

Sir Nigel Hamilton: Yes, we should get to the point at which it should be similar.

Mr Weir: Obviously, there are sensitivities around the issue. We heard the evidence that was given last week, for instance. Your group comprised you and representatives of Departments, trade unions, the CBI and ex-prisoner groups from both sides of the community. Is that correct?

Sir George Quigley: Yes.

Mr Weir: What representation of victims was on the group?

Sir George Quigley: There was no representation of victims on the group, but I can recall quite a number of occasions on which the point was made, on all sides, that there had to be sensitivity to the difficulties of victims.

Mr Weir: Sensitivity but not inclusion, Sir George. If we are deciding on rehabilitation, surely the views of victims of the Troubles should be very clearly taken into account. There would be a concern that the remit of your group would be somewhat flawed if there was not that voice at its centre.

Sir George Quigley: Implicit in your question is the suggestion that victims would have a particular role in determining what should happen to ex-prisoners.

Mr Weir: Their views should at least be fully taken into account, by way of them being on any group.

Sir George Quigley: There are two issues to be dealt with in a very dedicated fashion in this society. First, what happens to the victims? I would argue that far too little has been done to deal with that question. It is absolutely scandalous that, at this stage, after the conclusion of the period of violence, we have still not addressed adequately the emotional or material needs of victims. Some cases are

an absolute disgrace to our society. I think that that has got to be dealt with, just as much as any other issue. Secondly, there is the issue of ex-prisoners. I am not sure that bringing the two issues together helps the resolution of either.

Mr Weir: Sir George, if you do not see an interaction between the two through bringing them together, do you accept the reason that why we are here is that legislation has arisen out of a particular incident? A victim, Ms Travers, who gave evidence last week, was understandably very appalled by the appointment to a specific post of the person who murdered her sister. Does that not give an indication that there is a high level of interaction between the two issues?

Sir George Quigley: There is nothing in the model, which came out of the working group, that prevents the employer — whoever it may be, whether it is a Minister, the official machine or anybody else — from saying that there is a material circumstance that makes a particular appointment wrong and incompatible with what is required in a particular case. That is catered for in the model. The only difference between the model and the Bill is that the Bill is effectively saying that certain categories of ex-prisoners will automatically be regarded as being in that category of material relevance. That is the fundamental difference.

When the question was asked about what we thought about the Bill, we made the point that that was the fundamental difference between the model and the Bill. The working group did not hypothesise and say that it would be inappropriate to appoint an ex-prisoner in a particular situation because of the materiality. Likewise, in the case of someone appointing anybody in a ministerial office, it is for that individual to take that decision, unless one has a Bill such as this, which makes for an automatic rejection.

Mr Weir: From your experience in public life, and I appreciate that there are particular issues about interactions with Civil Services across these islands, are you aware of whether any of the Civil Services in the rest of the United Kingdom or the Republic would potentially appoint high-level officials who had convictions for murder?

Sir Nigel Hamilton: I was not aware of that during my time in the Civil Service.

Mr Weir: Were you not aware of that in any jurisdiction?

Sir Nigel Hamilton: I was not aware, but I was not necessarily going to look for such situations.

Mr Weir: OK.

Mr D McIlveen: Thank you, Sir Nigel and Sir George, for your presentations. You were involved in the working group, which came out with the guidelines. We talk a lot about a hierarchy of victims. If the accusation were to be levelled to you that potentially what was coming out created a hierarchy of criminals, would that be an accusation that you feel could be defended?

Sir George Quigley: No.

Sir Nigel Hamilton: No.

Mr D McIlveen: Therefore, there is a hierarchy of criminals?

Sir Nigel Hamilton: No. You asked whether it could be defended. I just explained to Mr Weir what we were trying to do. The reason why the model existed was that there was a differentiation between those who were subject to the Rehabilitation of Offences Act and those who were not. We were trying to produce a consistency between those, because there are those who were involved in what you might call ordinary, decent crime and those who were involved in conflict-related crime. We were trying to ensure that both were treated on the same basis.

Sir George Quigley: As the guidance notes make clear, good personnel practice is fully in conformity with what was being recommended. Personnel manuals and all the rest of it now recommend that an application form does not enquire into the position regarding criminal convictions. The appointment is made on the basis of skills and experience — on merit. Then, if there is an issue, which might involve the materiality of a criminal conviction, that is followed up. After that, the employer has to decide not

that the person is out because there is a criminal conviction but ask whether the criminal conviction is relevant and of material significance to the job in question.

It was really underlining that normal, good personnel practice should apply in those circumstances as much as it does in any other circumstances. That was the fundamental message, and that is brought out very clearly in the employment guidance.

Mr D McIlveen: Thank you. Following on from my colleague's points, the reason that the Bill has come about is the fundamental difference between what happens in the public sector with taxpayers' money and what happens in the private sector. I am certainly not one of those people who believes that people should be sent to a life of destitution and isolation, for instance, when they come out of jail. I certainly do not hold that view. However, if we are using the barometer that Sir George used of the number of people who were affected by people who were involved in conflict-related criminality, similarly, there would be the same barometer for the number of victims who have been affected by conflict-related criminality.

At the time of the 1998 Act, Mr Justice Kerr said that these individuals had been adjudged not to be a danger to the public. I accept the fact that, under the terms of the Belfast Agreement, they are probably not a danger, in that they are not going to go out and pull a trigger or plant a bomb in the same way in which they were doing previously. However, I struggle to find anybody with a heart who would look at Ms Travers last week and say that Mary McArdle was not a danger to her emotionally or mentally, because Ms McArdle has very clearly not fully faced up to the crimes of her past, as far as making restitution goes.

I am trying to put myself in Ms Travers's position. I do not think that she wants to see anyone sent to a life of destitution, but, having said that, I think that she, her family and a lot of other people find it very offensive that our money that we contribute to the public purse was being used to pay a very high salary to someone who clearly had not faced up to the woes of her past. The person had served time in jail, but there certainly had been no clear evidence of any sort of remorse for what had happened. If we are to use the barometer of the number of people who have been affected, how can we ignore the barometer of the number of victims affected?

Sir George Quigley: Neither of us is saying that every ex-prisoner should be appointed to every job in all circumstances. That is not what the model said. Obviously, the model differs from the Bill, and it is not for us to say whether the Bill is right or our model is right. That is not what we are here to say. We are here to explain our model and the thinking behind it. It is then for you and your colleagues in the Assembly to decide the way in which you want to go forward. Essentially, the model says that you look at the job and do not automatically rule out an individual because of the fact that he or she has an ex-prisoner record. You say that, in all other respects, the individual is suitable for the job and ask whether the fact that he or she has an ex-prisoner record makes him or her unsuitable for the post. That is what the model says. It is open to any person who appoints someone in the public sector to say that, because of the nature of this job, the kind of interaction that the appointee will have, and so on, this would not be an appropriate appointment. That is the model.

The alternative in the Bill is to say that, in all such cases, it would be deemed to be inappropriate to appoint someone who has a record of five years or more. That is the fundamental difference between the two, and it is really for the political community in Northern Ireland to decide whether it wants to take that route or whether it wants to take the route of having individual assessments in individual cases. I hope that I have explained that right. We are not here to cast any aspersions on the kinds of views that victims will have. Everyone understands the emotional turbulence that must be on victims' minds, and this is why I made the point that, as a society, in conscience, we have a duty to address those issues. Our model did not in any way do any disservice to that ambition, but, equally, it was setting out a very clear path for dealing with the ex-prisoner issue on an individual basis in the light of the circumstances of each particular case. I hope that I have drawn out adequately the difference between the two models.

Mr D McIlveen: Yes. Sir George, if the Assembly were to decide that, on reflection of public confidence and having taken all the evidence in consultation, the terms that are laid out in the Bill in draft form were the road to go down and you were then asked what your feeling was, what would you say?

Sir Nigel Hamilton: Things move on. Do not forget that, as Sir George said, the genesis of this was way back in 2002. This work was done in 2006 in the political context of the time. Peter Hain and

David Hanson were doing the work following on from the Good Friday Agreement. Over time, any model, any legislation and any principles need to be revisited to see whether they are appropriate. All that Sir George and I are saying is that paragraph 5.4 in the guidelines gives three possible scenarios and that the third of those, which could still apply in any situation of the sort that you have raised and referred to, could be materially relevant and manifestly incompatible. It may well be that, in a particular set of circumstances, such as those that you outlined, that could be manifestly incompatible. We tried to set out some principles rather than have things enshrined and that would never change.

Sir George Quigley: One would have to accept that the political community in Northern Ireland, in its wisdom, decided that that was the right way to proceed with those appointments. It would worry me very considerably if it were taken as a precedent as to how to deal with the ex-prisoner issue in general. If everybody with a conviction of five years or more were going to be automatically denied employment anywhere outside the special adviser range in Northern Ireland, that would concern me very considerably, as would the message that that would send out to many interests in the community on both sides.

Mr D Bradley: Good morning, gentlemen. Thanks very much for your presentation on the background to the guidelines. It was very useful. Various pieces of work were done by various people. The work that you did was very valuable. You were coming to terms with a very serious problem that had the potential to impact on the peace process in a very negative way if it were not handled properly. The guidelines were a very sensible way of dealing with the problem, so we owe you and the others involved our thanks.

We have come to a particular set of circumstances, and legislation has arisen out of those circumstances. It applies to a small number of people at the moment. It was probably almost impossible for you to foresee the circumstances arising. You made the point that there are contingencies in the guidelines to deal with the type of situation if people so want to deal with it.

Sir Nigel explained his position: his understanding is that he is going to comment on the guidelines and not on the legislation. I understand that. Coming from the background that you do, Sir Nigel, as former head of the Civil Service, perhaps I can ask you about something that relates to Civil Service appointments. You may be able to help us. As a result of this case, the Minister of Finance and Personnel initiated a review into the appointment of special advisers. He came up with new arrangements that came into force in September 2011. As part of those arrangements, the Minister decided to introduce a vetting/character-checking process for the appointment of special advisers. It is similar to that which is applied to all civil servants. Is the process of vetting for the purpose of appointing people to the Civil Service compatible with the guidelines that you produced on conflict-related applicants?

Sir Nigel Hamilton: Sorry, Deputy Chairman, but I am now retired six years, so I am not aware of the precise detail of whatever has been introduced by the Minister since then. There was a set of issues in recruiting civil servants back in our time. Security vetting was carried out, and that was then changed. It is worth pointing out that the appointment of a special adviser is entirely independent from and different from any appointment of civil servants. A civil servant, from the head of the Civil Service right down, is appointed in an open, normally publicly advertised way, etc. Part of that recruitment process was that, if it were an external appointment, an applicant may be asked for two character references from a previous employer and someone else.

Certainly, in my time, that is not how special advisers were appointed. They were appointed entirely by a Minister. I recall it happening a number of times when a Minister provided a document saying, "Here is the job specification for a special adviser. I have considered x, y and z — a number of potential applications and appointees. I have decided to appoint Mr X, Miss Y or Mrs Y." End of story. So, the appointment of a special adviser was done entirely and exclusively by the Minister. That person, obviously, became a temporary civil servant. However, that system is different from appointment of new folk to the Civil Service from top to bottom.

Mr D Bradley: In your experience of the Civil Service, would the Civil Service guidelines for the majority of civil servants have been compatible with the guidelines for recruiting people with conflict-related convictions?

Sir Nigel Hamilton: Those guidelines applied to the Civil Service because the Minister approved them. It is important to emphasise, time after time, that those guidelines were approved by the

Minister of the day. As you know, Chairman, civil servants do not make policy: Ministers make policy.
[Laughter.]

Mr Weir: Yes, Sir Humphrey.

Sir Nigel Hamilton: Those guidelines were approved by the Secretary of State and David Hanson. I presume that they continue in a sense unless someone has decided on another policy. They were applied to recruitment to the Civil Service at that time.

Mr D Bradley: So, let us say that both are compatible.

Sir Nigel Hamilton: Those guidelines are compatible — certainly, they were in my time — with recruitment to the Civil Service, yes. Well, it would have been very incongruous for us, Sir George and I, to sit on a working party, given our background, and issue guidelines that we expect everyone else to comply with and not to have those apply in the Civil Service and the public sector.

Mr D Bradley: I think that Mr Durkan was the Minister when those guidelines were brought in. I am more interested in the new arrangements for the present Minister.

Sir Nigel Hamilton: I have not read the new arrangements. I would mislead the Committee in commenting on them. I do not want to do that.

Mr D Bradley: That is grand. Thank you very much.

Mr Mitchel McLaughlin: Let me say hello again. I have to say that retirement suits you both.

Obviously, this is an issue that has divided the parties from the very beginning. It is all the more remarkable that you stepped forward to provide assistance on it. It would have been very difficult to contemplate that the parties would be able to work out an agreement. We are in a post-conflict society. We are dealing with this specific aspect of it. Sir George, you gave us some sense of the impact on the community and the community networks. In a post-conflict society, the politicians who manage and are responsible for managing the peace process, ultimately, have to be cognisant of that issue. In my view, it was, at times, a wise enough decision that, by whatever Machiavellian means, we brought in a couple of expert chairs to steer the way through the process. I think that it would have defied the parties. I doubt that any party would disagree with that comment. To this day, it continues to divide political opinion. We, as political parties, have had debates on the issue of who is a victim. That is a challenge that we have not overcome, so you can certainly see the difficulties and the challenge in agreeing who were the perpetrators and protagonists. In the specific circumstances of the Bill, we are dealing with people who have conflict-related sentences, and yet, in our conflict, people who will never see the inside of a prison could, in theory, end up as special advisers and outside the reach of the Bill. It is an unresolved issue. If the Assembly were to take a measured approach, they might wish to consider means by which they could stand back and allow an objective assembly of the arguments.

Your guidance was effective. We are in a situation in which there was huge controversy over the appointment of Mary McArdle. That is against a background of former prisoners serving as special advisers. They are functioning well; the sky has not fallen in. The system works. Indeed, there are ex-prisoners who are MLAs and Ministers. The evidence is that we can manage it, even if there are unexpected circumstances. We need to be very cognisant of individual circumstances. Some may turn out to be more tragic than others, but they were all tragic. At times when we do not have the complete picture, it is very difficult to differentiate among the sufferings. I take the point completely — I am now victims' spokesperson for my party — about there being a lack of progress over 14 years on the issue. We are really nearly starting over again because of the various cul-de-sacs. I think that it is the unresolved issue among the political parties.

I appreciate your presence today. You are still helping us; you helped us then, and you are helping us now. A post-conflict society has to find ways of healing the wounds, binding the community together again and reconciling one with the other. The parties have the absolute lead responsibility, but they may not, given the party political perspectives here, yet be in the space in which we will get satisfactory outcomes.

Sammy Wilson brought in some amended guidance that did not find agreement at the Executive. That demonstrates the issue among the parties. It was a fairly careful approach by Sammy Wilson. He has a different perspective on the issue than I do, for example. I am not a Minister, but there are Ministers around the table who disagreed with him. However, it was not a confrontation; it was not an attempt to divide the Committee. Whereas here, the tail may be wagging the dog in respect of the Assembly, given the authorship of the Bill. We should remind ourselves constantly of our responsibility here to find answers that are equitable. We will never be able to avoid reminding members of our community who are manifestly victims of the circumstances and what happened.

In the advice that you developed, would your conclusion, looking back on that period, be that the reasons why we did not advocate a legislative approach still stand?

Sir George Quigley: I feel that the time is now right to move on to the legislative approach. The model has shown itself to be viable. Without prejudice to whatever the Assembly may decide in relation to this legislation, if one is to get progress across the board, it has to be nailed down in legislation. That can be done pretty readily.

Sir Nigel Hamilton: The guidelines were issued in March 2007 after about a year's work. From a practical point of view, at that time, had it been agreed or decided that those particular guidelines should have been enshrined in legislation, it probably would have taken another two years to make progress.

Mr Mitchel McLaughlin: It might have taken longer.

Sir Nigel Hamilton: It might have taken longer. In light of what Sir George has said and in light of what Ministers were looking for at that time, this was probably a much more practical way forward, which would have enabled things to be done rather than nothing happening until we had legislation.

Mr Mitchel McLaughlin: You have vast experience of the whole process across different political arrangements for governance here, but let us briefly revisit the period post the Good Friday Agreement. Although we got agreement to set up a power-sharing Executive, it was more often down than up as part of that process of people getting together. What some might regard as a remarkable convergence between the DUP and us has in fact produced the stability that has allowed the Assembly to sustain itself. We have our disagreements, but we stay around the table until a solution emerges.

On this issue — this is the relevance of it — it is genuinely very difficult to see how the parties are going to agree. It is not legislation based on your work. It is legislation that departs from the model and, on that basis, nearly has a guaranteed outcome, which, I think, compels those parties that wish to continue to develop the cohesion and coherence of the political structures here between the different parties and traditions that we represent to maybe get some objective advice and assistance. I do not think that we are dealing with it on a legislative basis because we have collectively decided that the political experience and maturity is there to resolve it. It could well unpick some of the progress that has been made. I am not going to invite you to comment on that — it would not be fair — but you are two civically minded gentlemen. You have demonstrated that over and over again. A bit of commentary might help the parties outside the confines of an evidence session at the Finance Committee.

Sir George Quigley: One thing that I feel pretty passionate about is that, if we are ultimately going to have a stable society, there are certain issues that we simply have to address. They do not brook any delay. It is not simply the issue of ex-prisoners — that is one issue, for all the reasons that I mentioned earlier — but is also the victims issue, which is critical. I think that the comment that was made earlier is right. I do not think that victims want their issues to be dealt with in a way that is detrimental to getting ex-prisoners reintegrated into society. I do not think that that is what victims want. They are not asking for that. Likewise, the bulk of ex-prisoners whom I have talked to are sensitive to the fact that there are victims who are hurting as a result of all that happened over the past 40 years. There are two issues there that have to be addressed.

The third issue is linked, and that is the whole question of those in society who have still not acquired any kind of peace dividend and are hurting because of that. Those are three issues that, I think, are to some extent tied up together. How do we get the vast bulk of our society contributing and feeling that they have a role in shaping the future? Sadly, the question that victims are so seldom asked — I think that they would have a tremendous contribution to make if they were — is this: how can we move

forward in Northern Ireland in a way that never results in the past being repeated? I think that there is a whole series of things that can be done. I would very much hope that the political parties could submerge their fundamental differences on many things in a way that would enable those forward-looking issues to be addressed. If that happens, I think that they will be regarded as really having taken a huge leap forward in shaping Northern Ireland's future. I hope that, to some extent, I have covered it.

Sir Nigel Hamilton: Thank you for your comments. One of the great privileges of my life is to have been head of the Civil Service and secretary to the Executive for that period of time. Like Sir George, I have lived my life here. I am passionate, and I want to see things happening. That is one of the reasons why we did this. There is obviously a range of difficult issues, and we have not even mentioned some of the economic, social and community issues that also require resolution.

If you were asking whether we would like to come back and revisit this, perhaps I should say that there is nothing more ex than an ex, and I am happy to contribute to developing this society in the various voluntary and charitable ways that I am contributing. To be serious, when we were invited, we looked at the guidelines individually and obviously had a brief chat. We thought that those were very appropriate at the time and that the principles underlying them were and still are appropriate. However, the whole thing obviously needs to take account of the current political reality and political context.

Mr Mitchel McLaughlin: OK. I might just bank that and leave it at this point.

Mr Cree: Thank you very much, gentlemen. I found the thought process and the work that went into developing the guidance very interesting. Certainly, it has worked in many areas. To sum this up, in my mind, it really boils down to saying that ex-offenders should not have their offence taken into consideration when applying for positions and that it should come down purely to skills and experience, which, I think, everyone would admit is right.

Sir Humphrey — sorry, Sir Nigel — came close to answering my question earlier about policy and who makes policy. It reminded me of that series that, I must say, I found to be an excellent school of learning. The difference, surely, between normal Civil Service recruitment of careers people and special advisers is that, for the special adviser category, it is a selective process; it is not necessarily open to public competition; and skills and experience may not be relevant. Therefore, again with the benefit of hindsight, if you look back at this, you see that it could not possibly cover the McArdle case at all and that we need some system, perhaps legislation, to ensure that people who will be paid from the public purse are, in fact, suitable for the job. I find it very difficult to know how you can divorce that from skills and experience for a particular job. Do you care to comment on any of that?

Sir George Quigley: I am not familiar with the qualities that Ministers look for in special advisers. Nonetheless, it seems that Ministers will look for certain competencies in their special advisers — whether one can describe that as skills and experience. They obviously look for people who will add value to the job they are doing and who will help them to do that job more effectively. So, I think that one could still apply the model. Let us leave to one side for the moment whether there is a conflict-related offence. The Minister will look at an individual and say, "That individual is absolutely perfect for my purpose. They are articulate. They have been around and know the area in which I work. They know a lot of people in the area, etc, etc, etc. This is the ideal candidate." Then, based on our model — I am not suggesting that you should adopt our model — they would say, "They are the perfect individual, but what about the conflict-related offence? Is that a material consideration in making the appointment?" That is the mental process that our model suggests that one would go through, rather than a person being automatically precluded from appointment because they have a conflict-related offence. It is conceivable that, with our model, you might say that the conflict-related offence is not material or is irrelevant to some appointments and you might say — I am not suggesting that you would — that it is relevant to others. The model allows for that degree of individual assessment and an individual decision in light of the circumstances of each case.

Someone with a conflict-related offence may establish themselves in the public mind as someone who has made quite a contribution to the public domain, so much so that people hardly remember what they were because of what they have been doing since. Essentially, our model looks at individual cases in light of individual circumstances. That is the fundamental difference.

We were not trying to duck the question about the Bill. We were simply saying that there are two models. We would not presume to suggest what view the Committee or the Assembly should take.

We are just telling you about the choice that we think has to be made. Politicians will make their own decisions in their own good time.

Sir Nigel Hamilton: I agree. In my response to Mr Bradley, I said that the recruitment of special advisers is entirely different from the recruitment of all other civil servants. That is acknowledged.

Special advisers in Northern Ireland are appointed on exactly the same basis as special advisers in England, Scotland, Wales and the Republic of Ireland. Mr Weir asked about that. The position of special adviser has only been created on these islands within the past 10 or 15 years. In my experience, some of those folk, particularly when we were dealing with national parties, were bright young members of the Labour Party. We can all remember some of those special advisers who were around from time to time.

Mr Cree, I agree that there are two separate appointment systems. All that we were saying — as Sir George said — was that the use of that particular approach of assessment, even in a non-transparent selected system, was "manifestly incompatible" for that appointment. We think that that phrase could still apply.

Mr McQuillan: Sir George, in an answer to Mitchel, you said that sensitivity to victims was very important. If there had been more sensitivity to victims, I do not think that we would be sitting here discussing this Bill. In your opinion, is there anything that we can do, other than the Bill, to ensure that sensitivity is shown to victims with future appointments?

Sir George Quigley: In our model, it would be for the individual employing authority, whether that is an individual in the shape of a Minister or an organisation, to take account of whatever they felt was material to the particular situation. At the end of the day, how we relate to situations is always personal, and we all have to make up our own mind on how we deal with individual situations. The responsibility would be on the employer to make up their mind.

Mr McQuillan: Is there anything that we can focus employers' minds on to make them take account of victims when they are deciding who to appoint?

Sir George Quigley: Putting those issues prominently into the public domain will allow us all to become sensitive to the issues and the question of how we ensure that, for example, the bulk of ex-prisoners have access to employment and insurance and are able to lead a normal life, become a normal citizen, make a contribution, etc. That is what we all want to see in a normal society. Equally, on the victims' side, it will mean that everyone will ask how they can make sure that an individual's needs have been properly addressed, and that that is high on the public agenda. That is how we get sensitivity so that people are setting out a clear programme for dealing with it. That programme is being measured as time goes on, just as this working party decided that it would set up a review group. It did so to monitor what was happening: to get the stories of people who had applied for jobs and were not getting those jobs, and to see the cases of where people got jobs and the success that they made of those jobs. It involves much more case work and really being able to get out into the public domain that success was achieved in those situations. There is so much negative news in the public domain. Anyone who talks about leadership in organisations always says that you set very challenging goals and then look back and say, "Gosh, look what we have achieved in the first three months" and the same for the next six months. We want to get that kind of attitude permeating everything that happens in this society. The issue of victims and that of ex-prisoners can be driven forward together, not in opposition to each other and not conflicting with each other. I do not think that there needs to be any conflict between addressing the two issues, and I do not think that victims or ex-prisoners want a conflict to arise. There is enough sensitivity on both sides to ensure that it can be taken forward successfully.

Mr McQuillan: Yes, all we need is a bit of sensitivity with the political establishment.

The Chairperson: Members, that has been a quite useful insight into the guidance and the thinking and processes behind it. Thank you both very much, gentlemen.