Committee for Finance and Personnel

Report on the Civil Service (Special Advisers) Bill

Together with the Minutes of Proceedings of the Committee relating to the Report, Written Submissions, Memoranda and the Minutes of Evidence

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Mandate 2011-2015

Seventh Report

Committee Powers and Membership

Powers

The Committee for Finance and Personnel is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Finance and Personnel and has a role in the initiation of legislation.

The Committee has the power to;

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Finance and Personnel.

Membership

The Committee has eleven members, including a Chairperson and Deputy Chairperson, with a quorum of five members. The membership of the Committee during the current mandate has been as follows:

Mr Daithí McKay (Chairperson)[1]
Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree MBE
Ms Megan Fearon[2]
Mr Paul Girvan
Mr John McCallister[3] [4]
Mr David McIlveen5
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Peter Weir[6]

1 Mr Daithí McKay replaced Mr Conor Murphy MP with effect from 2 July 2012.

2 Ms Megan Fearon was appointed to the Committee with effect from 10 September 2012.

3 Mr Roy Beggs replaced Mr Ross Hussey with effect from 23 April 12.

4 Mr John McCallister replaced Mr Roy Beggs with effect from 15 October 2012

5 Mr David McIlveen replaced Mr David Hilditch with effect from 1 October 2012

6 Mr Peter Weir replaced Mr William Humphrey with effect from 1 October 2012
Ms Caitríona Ruane was a member of the Committee from 23 May 2011 to 12 September 2011
Mr Paul Maskey was a member of the Committee from 23 May 2011 to 2 July 2012

Table of Contents

List of Abbreviations and Acronyms used in the Report iv

Executive Summary 1

Introduction

- Background to the Bill 2
- The Committee's Approach 2
- Provisions in the Bill 3

Key Issues from the Evidence

- Consideration of the needs of victims 4
- Blanket disqualification versus individual assessment 6
- Compatibility with other human rights requirements 11
- Commitments under the Good Friday/Belfast Agreement and St Andrews Agreement 14
- Transparency on arrangements for special advisers 16
- Secretary of State consent 17
- Drafting and technical issues 17

Clause-by-Clause Consideration of the Bill 18

Appendices

Appendix 1

Minutes of Proceedings (extracts) 23

Appendix 2

Minutes of Evidence 55

Appendix 3

Memoranda and Correspondence from the Bill sponsor 211

Appendix 4

Memoranda and Correspondence from the Department of Finance and Personnel 229

Appendix 5

Written submissions 241

Appendix 6

Other papers 301

Appendix 7

Assembly Research Papers 315

List of Abbreviations and Acronyms used in the Report

CBE	Commander of the Most Excellent Order of the British Empire
CSCNI	Civil Service Commissioners for Northern Ireland
CVS	Commission for Victims and Survivors
DDR	Disarmament, Demobilization and Reintegration
DFP	Department of Finance and Personnel
ECHR	European Convention on Human Rights
GB	Great Britain
GFA	Good Friday Agreement
ICCPR	International Covenant on Civil and Political Rights
MAST	Mourne Action for Survivors of Terrorism
MBE	Member of the Most Excellent Order of the British Empire
MP	Member of Parliament
NIACRO	Northern Ireland Association for the Care and Resettlement of Offenders
NICS	Northern Ireland Civil Service
NIHRC	Northern Ireland Human Rights Commission
OBE	Officer of the Most Excellent Order of the British Empire
OFMDFM	Office of the First Minister and deputy First Minister
OLC	Office of the Legislative Counsel
QC	Queen’s Counsel
QUB	Queen’s University Belfast
UK	United Kingdom
UN	United Nations
UU	University of Ulster

Executive Summary

This report sets out the Committee for Finance and Personnel's consideration of the Civil Service (Special Advisers) Bill, a Private Members' Bill which was introduced to the Assembly by Mr Jim Allister QC MLA (the Bill sponsor) on 2 July 2012. The Bill comprises 11 clauses and one schedule, and its overall purpose is to amend the law on special advisers in the Northern Ireland Civil Service.

Following the Second Stage debate in the Assembly on 25 September 2012, the Bill was referred to the Committee for Finance and Personnel for Committee Stage. As part of its consideration of the Bill, the Committee issued a call for evidence and received written submissions and held oral hearings with key stakeholders, including: the Department of Finance and Personnel; the Attorney General; the Northern Ireland Association for the Care and Resettlement of Offenders; the Commission for Victims and Survivors; the Equality Commission; the Northern Ireland Human Rights Commission; Ann Travers; Coiste na nIarchimí and Tar Isteach; and a number of academic witnesses. The Committee also heard from Sir Nigel Hamilton and Sir George Quigley with specific regard to the Office of the First Minister and deputy First Minister's Employers' Guidance on Recruiting People with Conflict-Related Convictions. Two oral evidence sessions were held with the Bill sponsor and the Committee also received legal advice from Assembly Legal Services.

A number of key themes and issues were identified in the evidence and these are examined further in this Report. These include, for example: consideration of the needs of victims; blanket disqualification versus individual assessment; compatibility with other human rights requirements; commitments under the Good Friday/Belfast Agreement and St Andrews Agreement; and transparency on arrangements for special advisers. In addition, the Office of the Legislative Counsel provided comments relating to drafting and technical issues, but advised that any amendments arising from these would not affect the policy of the Bill.

The Committee notes that there was no consensus in the evidence in respect of most of the themes and issues identified. Similarly, the Committee did not reach a consensus on all of the provisions of the Bill during its clause-by-clause scrutiny, with some clauses and the schedule agreed on a majority basis.[1] Nevertheless, the Committee considers that the substantial body of evidence gathered during the Committee Stage of the Bill offers the reader an insight into the different perspectives on the issues brought forth, and will help inform the contributions of Assembly Members to the remaining Assembly stages of the Bill.

1 For details of divisions see the extract from the Minutes of Proceedings for the Committee for Finance and Personnel meeting on 30 January 2013 at Appendix 1

Introduction

Background to the Bill

1. The Civil Service (Special Advisers) Bill was introduced to the Assembly by Mr Jim Allister QC MLA (the Bill sponsor) on 2 July 2012. The Bill has eleven clauses and one schedule, and its overall purpose is to amend the law on special advisers in the Northern Ireland Civil Service (NICS). In broad terms, the Bill:

   - provides that no person shall hold the post of special adviser if they have what is termed a "serious criminal conviction," which is defined as any custodial sentence of five years or more;
   - requires the Department of Finance and Personnel (DFP) to publish a code of appointment for special advisers, a code of conduct for special advisers and an annual report about the number and cost of special advisers; and
   - removes the Speaker of the Assembly from the list of office holders who are entitled to appoint a special adviser to the NICS.

The Committee's Approach

2. At its meeting on 5 September 2012 the Committee was notified that, should the Bill pass its Second Stage, it would stand referred to the Committee unless the Assembly otherwise ordered. To inform members in advance of the Second Stage debate, the Committee invited the Bill sponsor to give evidence on the provisions of the Bill at the Committee's meeting on 19 September 2012. Evidence was also invited from DFP in view of the functions that the Bill proposes to confer on that Department, and the Attorney General, John Larkin QC, was invited to address early concerns regarding legislative competence. Following the Second Stage debate on the principles of the Bill on 25 September 2012, it was referred to the Committee for Finance and Personnel in accordance with Standing Order 33(1).

3. A public call for evidence was issued following the Bill's referral to the Committee. In response, the Committee received over 860 responses from individuals and organisations (including almost 830 signatories to an online petition opposing the Bill[2])[3]. The written submissions are provided at **Appendix 5**. The Committee invited a range of witnesses to give oral evidence on the Bill, including: the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO); the Commission for Victims and Survivors (CVS); expert academic witnesses on human rights issues; the Northern Ireland Human Rights Commission (NIHRC); Ann Travers; Coiste na nIarchimí and Tar Isteach; and the Equality Commission. In addition, Sir Nigel Hamilton and Sir George Quigley were invited to give oral evidence on the Office of the First Minister and deputy First Minister (OFMDFM) employers' guidance, "Recruiting People with Conflict-Related Convictions," while additional oral evidence was taken from academic witnesses on relevant issues in respect of victims and ex-prisoners (see **Appendix 2**). In line with the normal protocol for an Executive Bill, the Committee also invited the Bill sponsor to respond to any issues raised in the evidence and advice was received on legal issues from the Assembly Legal Services. The Official Reports of the evidence sessions are provided at **Appendix 2.**

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2 The online petition is available at: http://www.change.org/en-GB/petitions/northern-ireland-assembly-vote-no-to-the-civil-service-special-advisers-bill?response=a84820b9d168&utm_source=target&utm_medium=email&utm_campaign=one_thousand (accessed 11 February 2013). The Committee received submissions directly from 826 of the 876 signatories.

3 At its meeting on 17 October 2012, the Committee noted that the Bill sponsor had issued a circular to encourage written submissions in support of the Bill and the Committee agreed to note this in the Report on the Bill.

4. At its meeting on 24 October 2012, the Committee agreed to seek an extension to the Committee Stage of the Bill until 15 February 2013 on the grounds that this would provide sufficient time for the oral evidence to be taken and enable the Committee to consider in detail the issues arising from the evidence. In addition, it would enable the necessary legal advice to be obtained. On 12 November 2012, the Assembly agreed a motion to extend the Committee Stage to 15 February 2013.

Provisions in the Bill

5. The Bill, as drafted, contains eleven clauses and one schedule, the provisions of which are described in the Explanatory and Financial Memorandum as follows:

6. *Clause 1: Meaning of "special adviser".* This clause defines a special adviser as a person appointed to the NICS to advise the First and deputy First Ministers, an Executive Minister or a junior Minister.

7. *Clause 2: Special adviser not to have a serious criminal conviction*. This clause prohibits a person with a serious criminal conviction from being appointed as a special adviser. It terminates the appointment of a special adviser in post who holds a serious criminal conviction and those who incur a serious criminal conviction while in post. Ministers will also be required to inform DFP if a special adviser appointed by them holds such a conviction.

8. *Clause 3: Meaning of "serious criminal conviction"*. This defines a "serious criminal conviction" as one for which any custodial sentence of five years or more, or another specified sentence, was imposed.

9. *Clause 4: Annual Report*. This provision places a duty on DFP to issue, and on the Minister of Finance and Personnel to lay before the Assembly, an annual report about special advisers.

10. *Clause 5: Code of Conduct and Clause 6*: *Code for Appointments* place duties on DFP and the Minister in respect of a code of conduct for special advisers (which will form part of an adviser's contract of employment) and a code for the appointment of special advisers.

11. *Clause 7: Advisers to the Presiding Officer*. This clause amends the Civil Service Commissioners (Northern Ireland) Order 1999 to remove the Presiding Officer of the Northern Ireland Assembly from the list of office-holders who are entitled to appoint a special adviser to the NICS.

12. *Clause 8: Interpretation* states that "Department" refers to DFP; defines a "Minister" as the First Minister or deputy First Minister, a Northern Ireland Minister or a junior Minister; and states that "statutory provision" has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

13. *Clause 9: Transitional provisions* gives effect to termination payments as provided in the *Schedule; Clause 10: Commencement* sets out when the provisions of the Bill will come into force; while *Clause 11* provides for the short title of the Bill.

Key Issues from the Evidence

14. A number of key themes and issues were raised in the written and oral evidence received by the Committee. However, there was no consensus in the evidence received in relation to the majority of these issues. The differing viewpoints are set out below.

Consideration of the needs of victims

15. In his initial evidence to the Committee on 19 September 2012, the Bill sponsor, Mr Jim Allister QC MLA, advised that the catalyst for the Bill was the previous appointment of Mary McArdle as a special adviser, the hurt caused to the Travers family in that case and the public disquiet surrounding the appointment. Mr Allister stated that *"never again should that be capable of happening to a family,"* and that he thought the Bill is a *"modest, proportionate and necessary step".*[4]

16. In her subsequent oral evidence to the Committee, Ann Travers held that the Bill is not about one family, but it is about protecting all victims. Ms Travers stated that *"victims have the very important human right not to be re-traumatised time and again"* and that consideration must be given to the needs of victims. In her opinion, the Bill would be *"a very strong sign that victims are being supported".* While she considered that *"truly remorseful ex-prisoners"* should be able to move on with their lives, she questioned whether *"the rights of perpetrators of violence are more important than, or supersede, those of victims".* Ms Travers further commented that

> *"Victims have rights, too, and they have the right to move on with their lives. While someone who has been convicted of murder may find their life has improved when they are appointed to a high-profile government position, the victim's lives will certainly not have improved. Indeed, it will have been damaged once again through no fault of their own."* [5]

17. A number of those who made individual written submissions also believed it essential to consider the needs of victims.[6] Of those individuals indicating support for the Bill, references were made to the appointment of persons with such convictions as "adding insult to the injury of their victim". Similarly, Mourne Action for Survivors of Terrorism (MAST) stated

> *"We believe it is totally wrong and unacceptable that someone with a serious criminal conviction should be able to hold the position of Special Adviser due to the hurt caused to innocent victims' families."* [7]

18. In her oral evidence, the Commissioner for Victims and Survivors, Kathryn Stone OBE, pointed out that some members of the Victims and Survivors Forum considered that the disqualification of those with serious criminal convictions from the post of special adviser would be *"an active show of support for those who have been victims or have been traumatised."* [8] In subsequent correspondence to the Committee, the Commissioner added that

> *"Whether or not the current Bill…becomes law…I would impress upon all Ministers and their respective political parties the imperative of exercising responsibility and display[ing] empathy to the plight of all victims and survivors who have been affected by the conflict."* [9]

4 Oral evidence from Jim Allister QC MLA, 19 September 2012, Appendix 2

5 Oral evidence from Ann Travers and Catherine McCartney, 21 November 2012, Appendix 2

6 Written submissions from individuals are provided at Appendix 5

7 Written submission from MAST, Appendix 5

8 Oral evidence from CVS, 14 November 2012, Appendix 2

9 CVS Correspondence, 6 December 2012, Appendix 6

19. In its written submission, NIHRC noted that the Bill has implications for victims and survivors,[10] and in oral evidence the Chief Commissioner, Professor Michael O'Flaherty, stated that it was necessary for victims

> *"to be heard in the context of your review and in the application of whatever procedures might be adopted, be they procedures based on the Bill, or otherwise."* [11]

Professor O'Flaherty advised that NIHRC believed that there is scope to consider victims in the vetting procedure, and that, in the first instance, the Commission for Victims and Survivors should bring forward suggestions as to how this might be done.

20. While there was general consensus in the evidence that more needs to be done to address the needs of victims, the Committee noted that there was some divergence on how this is best achieved. For example, Dr Máire Braniff and Dr Cillian McGrattan from the University of Ulster (UU) and Swansea University respectively, contended that victims had been marginalised or rendered almost voiceless, and were supportive of the Bill as they considered it would redress a sidelining of victims which takes many forms, including, inter alia, *"the idea that everyone was in some way responsible and, therefore, no one is culpable."* [12]

21. In his evidence to the Committee, Sir George Quigley considered it

> *"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…I think that has to be dealt with, just as much as any other issue."*

Sir George went on to say, however, that bringing together the issues of victims and ex-prisoners may not help the resolution of either, and that there need not be a conflict in addressing both.[13] In addition, it was his view that victims did not wish for their issues to be addressed in a manner detrimental to the reintegration of prisoners into society.

22. Concerns were also raised in some of the evidence from individuals and organisations that, rather than considering the needs of victims, the purpose of the Bill was as a punitive measure against one specific section of society. In her evidence to the Committee, the Commissioner for Victims and Survivors advised that a member of the Victims and Survivors Forum believed that the Bill

> *"is not about victims per se but seeking to deny political prisoners the right to enjoy full citizenship (and access to employment)…This ought not to be a case of either/or – but more importantly there is no contradiction supporting the human rights and citizenship of political prisoners and advocating and supporting victims' rights."* [14]

23. In the follow up correspondence, the Commissioner for Victims and Survivors stated that a Victim and Survivors Forum member believed that consideration should be given to the impact an appointment may have on a victim, and that the family concerned should be contacted prior to an appointment *"not to ask their permission but to pre-warn them…before hearing from the media, another source or accidentally at a later date".*[15]

24. In their oral evidence to the Committee, Coiste na nIarchimí and Tar Isteach agreed that sensitivity must be shown to victims, but pointed out that this should include all victims. Thomas Quigley, Tar Isteach, stated that:

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10 Written submission from NIHRC, Appendix 5

11 Oral evidence from NIHRC, 21 November 2012, Appendix 2

12 Oral Evidence from Dr Máire Braniff and Dr Cillian McGrattan, 16 January 2012, Appendix 2

13 Oral evidence from Sir Nigel Hamilton and Sir George Quigley, 28 November 2012, Appendix 2

14 Oral evidence from CVS, 14 November 2012, Appendix 2

15 CVS correspondence, 6 December 2012, Appendix 6

"there are people who committed crimes and were not brought to court, right from the lower levels of the state forces to the top of the state…we work for people who were victims of their actions, and there is very little sensitivity towards their views on any of those acts."

25. Michael Culbert of Coiste na nIarchimí noted that the needs of victims are being catered for by the Victims Service *"to some degree."* [16] In their written submission, Tar Abhaile considered that *"the Bill is based on the presumption that Ex-Prisoners cannot be victims, and promotes a 'hierarchy of victims'."*[17]

26. In his oral evidence, Professor Peter Shirlow, from Queen's University Belfast (QUB), questioned the assertion that victims are voiceless, and pointed to the funding that has been given to victims' groups.[18] He emphasised, however, that there is no unified victims' voice and that *"legislation such as this will not create a uniform voice"*. Referring to his research, he pointed out that *"it is not just simply a case of perpetrator and victim"* as one third of republican and loyalist ex-prisoners had lost a direct family member while 50% had lost a relative during the conflict, a level of loss *"mirrored by only the prison officer/security force community",* and which has resulted in victimhood being embedded in those communities. Professor Shirlow contended that victims are still being used as *"political footballs"*, and that the issue became an *"ideological battle as opposed to what we should have been doing"* in terms of meeting victims' needs, such as medical care and emotional support.

27. In considering the aforementioned views, the Committee notes that there has been general agreement that the needs of victims must be considered. However, there has been no consensus in the evidence received on who should be regarded as a victim, how their needs would be best addressed, or whether the Bill will make a positive or negative contribution in that regard.

Blanket disqualification versus individual assessment

28. The evidence to the Committee raised a number of issues under this broad theme, as detailed below. Opinion was mixed both on the issues falling under this theme and on whether the term "blanket disqualification" is indeed applicable in relation to the Bill.

Rehabilitation of Offenders Legislation

29. NIACRO noted in its written submission that a matrix of disclosable convictions and guidance for circumstances by which a conviction should be considered spent are set out in the Rehabilitation of Offenders legislation (1978 and 1979 Orders). Its view was that

"the proposal within the Bill to set any such threshold for disqualification would not be in line with rehabilitation periods for custodial sentences detailed in the Rehabilitation of Offenders (NI) Order 1978, and is unlikely to be considered legislatively competent by the Attorney General".

30. NIACRO also contended that the Orders tend to be interpreted negatively, and are therefore a barrier to resettlement. Additionally, *"very few conflict-related convictions are considered to be spent under these pieces of legislation"* .[19]

31. In his oral evidence on 19 September 2012, however, the Bill sponsor advised that, under the Rehabilitation of Offenders Act 1974, only convictions of 30 months or less are capable of being spent; convictions of 5 years or more will never be spent.

16 Oral evidence from Coiste na nIarchimí/Tar Isteach, 28 November 2012, Appendix 2

17 Written submission from Tar Abhaile, Appendix 5

18 Oral evidence from Professor Peter Shirlow, 16 January 2012, Appendix 2

19 Written submission from NIACRO written submission, Appendix 5

32. The Committee took and considered legal advice on this issue from the Assembly's Legal Services Office.

Individualisation

33. The provisions in clause 2 which place a bar on a person who has a serious criminal conviction from holding a special adviser post have been referred to in some of the oral evidence as a blanket ban, prohibition or exception, in that it does not allow for individual circumstances to be taken into consideration. The Bill sponsor, however, advised that it is not a blanket ban as it applies only to a specific post in the NICS, and not across the NICS as a whole. Furthermore, it does not prevent all persons with a criminal conviction from becoming a special adviser, but is focused on those with a serious criminal conviction as defined by clause 3 of the Bill.[20]

34. Nonetheless, members noted that a number of concerns were raised with regard to this issue. NIHRC advised that there have been cases where the European Court of Human Rights has made it clear that blanket prohibitions will normally be inappropriate, unless a convincing argument can be made that *"an individualised approach is impossible and that a right of appeal is inconceivable."* The Committee heard that the relationship between the nature of a post and the conviction should be taken to consideration, and that those blanket prohibitions which have survived tend to be those with obvious relationships. NIHRC cited the prohibition of someone with a criminal conviction from being able to run as a candidate for police commissioner in GB as an example in this regard, but did not believe that there was *"such [an] intimate nexus in a blanket prohibition on the function of special adviser in any Ministry on the basis of having previously had a conviction."* The Commission advised that its general conclusion was that *"the absence of individualisation in the Bill is undoubtedly problematic and might lead to trouble down the road in the ECHR context."* [21]

35. Members noted, however, that, while raising the above concerns, NIHRC also drew attention to the fact that the European Court does not always wish to become involved in a state's civil service recruitment issues. It is therefore not certain whether a case brought as a consequence of the Bill's enactment would be considered by the Court. A similar point was made by Dr Rory O'Connell of QUB, who advised that it is difficult to predict *"how much respect, deference or margin of appreciation [the European Court] will want to show democratically legitimated decision-makers."*[22]

36. In their testimony to the Committee, Dr O'Connell and Professor Brice Dickson agreed that an individualised approach would be more likely to comply with human rights requirements. In this respect, Professor Dickson argued that the inclusion of provisions to allow for an appeal mechanism or to challenge the ban would assist its compatibility with European Convention standards. Dr Anne Smith of UU also drew the Committee's attention to the fact that the European Court had very recently

> *"held that the fact that there was no mechanism to individually review a person's circumstances gave rise to a violation of the European Convention of Human Rights."*

37. Dr O'Connell also suggested, however, that hard-and-fast rules are not necessarily disproportionate, but each instance would require to be considered on its own merits.[23]

38. The Committee heard, in evidence from DFP, that the revised arrangements for the appointment of special advisers include a mechanism for appeal where a candidate disagrees with the outcome of the vetting/character checking process (see paragraphs

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20 The Explanatory and Financial Memorandum states that "Clause 3 defines 'serious criminal conviction' as one for which a sentence of imprisonment of five years or more, or another specified sentence was imposed." See Appendix 3.

21 Oral evidence from NIHRC, 21 November 2012, Appendix 2

22 Oral evidence from Professor Brice Dickson, Dr Rory O'Connell and Dr Anne Smith, 21 November 2012, Appendix 2

23 Ibid.

46-49 below for more information on the DFP code). An appeal would be undertaken by an independent panel, and criteria such as the following would be applied:

(i) *"An expression of remorse/regret;*

(ii) *The absence of a pattern of repeat offending;*

(iii) *The relevance of the conviction to the post to be filled;*

(iv) *The nature of the offence and the severity of the sentence;*

(v) *Evidence of rehabilitation and contribution to the community; and*

(vi) *Third party references regarding the individual's character."* [24]

39. The Equality Commission also raised concerns regarding blanket prohibitions in terms of equality legislation, and that they should not be used unless they can be objectively justified; that is, it is a proportionate means of achieving a legitimate aim. The Equality Commission considered that an individualised approach should be taken, with

> *"Each person ...assessed on their own merits and employers...consider the material relevance of any conflict conviction to the post to be filled, rather than rely on a blanket exception."* [25]

40. As noted above, the Bill sponsor has contended that the provisions in the Bill do not constitute a blanket ban. In addition, due to the targeted nature of the Bill, he considered that it is *"quite proportionate not to have a review [mechanism]."* That said, while not persuaded of the need for such a mechanism, the Bill sponsor advised that he would be willing to discuss this if the Committee reached the conclusion that there was such a need. In this regard, he held the view that the following concepts must be considered in a review process:

> *"significant regard to the question of contrition, the views of the victims of those being sought to be appointed, and the extent to which those being sought to be appointed to such a public office have been of assistance in the solving of the crime for which they were convicted."* [26]

Lustration

41. NIHRC drew the Committee's attention to the following criteria of the European Court in relation to lustration (the removal of certain individuals from public office) to ensure compliance with human rights:

(i) *"Lustration law should be accessible to the subject and foreseeable as to effects;*

(ii) *Lustration should not exclusively serve the purpose of retribution or revenge;*

(iii) *If domestic law allows restrictions on ECHR rights, it must be precise enough to allow for the individualisation of the responsibility of each person affected thereby and contain adequate procedural safeguards;*

(iv) *National authorities must keep in mind that lustration measures are temporary, and therefore their necessity diminishes with time."* [27]

42. In subsequent oral evidence to the Committee, the NIHRC's Chief Commissioner, Professor O'Flaherty, advised that the Bill would comply with criterion (i) above, but that it would fail criterion (iii). He also advised that the decisions on whether the Bill would pass criteria (ii) and (iv) were political decisions.

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24 DFP Review of Arrangements for the Appointment of Ministers' Special Advisers, http://www.dfpni.gov.uk/special-advisers-review-of-arrangements-for-the-appointment-of-ministers

25 Oral evidence from the Equality Commission, 5 December 2012, Appendix 2

26 Oral evidence from Jim Allister QC MLA, 12 December 2012, Appendix 2

27 Written submission from NIHRC, Appendix 5

43. In his oral evidence on 12 December 2012, the Bill sponsor noted the evidence that the Committee had received in relation to lustration and *"soft law"*. He went on to state that

> *"soft law is all very interesting, but it does not actually apply, apart from the scene-setting; it is not binding in regard to any of these matters...it does not really inform very much what a legislator can do."*

44. Mr Allister also contended that the Bill is not a punitive measure, but creates eligibility criteria for a small number of posts. He stated that *"it is not retribution. It is justice."* [28]

45. The Committee took and considered legal advice on this issue from the Assembly's Legal Services Office.

DFP code of practice on the appointment of special advisers

46. The Committee heard from a senior DFP official that the Minister of Finance and Personnel issued revised arrangements for the appointment of special advisers in September 2011, and it was indicated that they were taking immediate effect. The Departmental official advised that, in proceeding to implement the arrangements, the Minister was using the authority provided for in the Civil Service (Northern Ireland) Order 1999 regarding the general management of the civil service.[29] It was also explained that the DFP code recommends that the vetting/character checks in place for all civil servants should apply to the appointment of special advisers, which includes, inter alia, a risk assessment matrix and an appeal mechanism.

47. On this latter point, however, NIACRO initially raised concerns regarding the DFP risk assessment matrix in its oral evidence session on 7 November 2012,[30] and subsequently wrote to the Committee with additional information in this regard. In its view, the matrix is discriminatory and promotes exclusion rather than inclusion. NIACRO also highlighted its concern about *"the arbitrary application of the grid used to reject suitable candidates"* and called for more transparent application of the Civil Service Commissioners' recruitment code.[31] NIHRC, for its part, considered that the matrix set out guidelines as opposed to prohibitions. It also noted that, on the information available, there did not seem to be provision for an individual to appeal a decision to reject their application, but *"there appears to be potential for some consideration of the particular circumstances of the individual."*[32]

48. The concerns raised by NIACRO were refuted by DFP in a further evidence session on 12 December 2012, which focused mainly on the DFP code. The Committee heard that, where a risk is identified following application of the matrix, the individual is provided with an opportunity to bring forward a statement of disclosure (regarding their conviction), which the DFP official considered to be an inclusive process. In addition, a conviction will be considered against the nature of the post applied for. The Departmental official also pointed out that the detailed recruitment policy and procedures manual are available online, and therefore refuted the lack of transparency regarding the process.

49. In his oral evidence to the Committee on both 19 September 2012 and 12 December 2012,[33] the Bill sponsor contended that the DFP code was not being fully implemented and that, to put the code for appointment, the code of conduct and vetting on a statutory footing and to introduce reporting would ensure that

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28 Oral evidence from Jim Allister QC MLA, 12 December 2012, Appendix 2

29 Oral evidence from DFP, 19 September 2012, Appendix 2

30 Oral evidence from NIACRO, 7 November 2012, Appendix 2

31 Correspondence from NIACRO, 22 November 2012, Appendix 6

32 Correspondence from NIHRC, 11 December 2012, Appendix 6

33 Oral evidence from Jim Allister QC MLA, 19 September 2012 and 12 December 2012, Appendix 2

"the ground rules are firmly set, they cannot be changed on a whim, and that the next Minister does not come along, tear up the existing guidance and reignite the existing controversy."

OFMDFM Employers' Guidance

50. The Committee noted that a number of individuals and organisations contended in their written submissions that the Bill contradicts the OFMDFM *Employers' Guidance on Recruiting People with Conflict-Related Convictions* in both intention and spirit. Published in May 2007, this voluntary guidance aimed to fulfil UK Government commitments to ex-prisoners in the Good Friday/Belfast Agreement and the St Andrews Agreement (see paragraphs 75-82 below). It was developed by a working group chaired by Sir George Quigley and Sir Nigel Hamilton, and included representatives from Government departments, the Irish Congress of Trade Unions, the Confederation of British Industry as well as ex-prisoner representatives. The overarching principle arising from the working group was that

"any conviction for a conflict-related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought." [34]

51. In this regard, in his oral evidence to the Committee, Sir George Quigley pointed out that, while it aimed to assist employers in the recruitment of those with conflict-related convictions, the model did not say that *"every ex-prisoner should be appointed to every job in all circumstances"*.[35]

52. In its evidence, NIHRC considered that the OFMDFM guidance was broadly consistent with human rights standards, whereas it cautioned that the prohibition included in the Bill may not be consistent with UN standards (see paragraphs 71-74 below).[36] In its written evidence, the Equality Commission agreed with the approach in the OFMDFM guidance that the material relevance of a conviction to a post should be considered. It pointed out, however, that a review of the OFMDFM guidance found that *"a large range of impediments and legal barriers have prevented the Guidance from working as a voluntary arrangement."* [37] In this regard, the Equality Commission pointed to Article 2(4) of the Fair Employment and Treatment (NI) Order 1998, which does not protect a person whose political opinion supported the use of violence, and contended that *"it seems that this exemption no longer makes sense."* [38] It was also noted that, in March 2012, the Review Panel on the OFMDFM Guidance, which was chaired by Professor Shirlow, recommended that the Guidance is complemented by legislative change.[39]

53. A senior Departmental official confirmed in his oral evidence to the Committee on 12 December 2012 that the OFMDFM Employers' Guidance had not been applied in NICS following a decision not to do so in September 2007 by the then Finance Minister, on the basis that the existing arrangements *"were appropriate, adequate and dealt with all convictions, including conflict-related convictions."* [40]

Assessing the risk of reoffending

54. Concern that the Bill is predicated on political opinion rather than on whether someone represents a threat or danger to society was raised by NIACRO in its oral evidence to the

34 OFMDFM Employers Guidance on Recruiting People with Conflict-Related Convictions, http://www.ofmdfmni.gov.uk/1.05.07_ex_prisoners_final_guidance.pdf

35 Oral evidence from Sir Nigel Hamilton and Sir George Quigley, 28 November 2012, Appendix 2

36 Written submission from NIHRC, Appendix 5

37 Written submission from the Equality Commission, Appendix 5

38 Oral evidence from the Equality Commission, 5 December 2012, Appendix 2

39 Report of the Review Panel, Employers' Guidance on Recruting People with Conflict-Related Convictions, March 2012, http://www.ofmdfmni.gov.uk/final_review_panel_report_2012.pdf (accessed 25 January 2013)

40 Oral evidence from DFP, 12 December 2012, Appendix 2

Committee.[41] In its written submission, Tar Isteach drew attention to the judgement of Mr Justice Kerr (McComb, re an Application for Judicial Review [2003] NIQB 47) which stated that *"particular attention should be paid to the fact that a prisoner released under the terms of the Northern Ireland (Sentences) Act 1998 has been adjudged not to be a danger to the public".*[42] Also, on this issue, Sir George Quigley, in his oral evidence on the OFMDFM guidance, stated:

> *"on the Kerr judgement…one of the significant aspects…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 by comparison."*[43]

55. In his initial evidence to the Committee on 19 September 2012, the Bill sponsor responded to a reference to the Kerr judgement by pointing out that a prisoner released under the Northern Ireland (Sentences) Act 1998 is released on licence and contended that the reason for that

> *"is to provide for any danger that might emerge. I do not think that you can say that they have been adjudged not to be a danger to the public if they have been released on licence".*[44]

56. On a point of clarification, the Committee heard from the Attorney General that, as far as adjudication by the Sentences Review Commission is concerned, the condition that a prisoner would not be a danger to the public if released was considered only in respect of life sentence prisoners. Prisoners with fixed-term sentences would not have been subject to this criterion.[45]

Precedent for other employers

57. Members noted that some concerns have been raised that the Bill may set a precedent for other areas of employment. In his evidence to the Committee, for example, Sir George Quigley advised that it would worry him "very considerably" if the Bill was to set a precedent with regards to how the ex-prisoner issue is dealt with generally. A number of organisations (such as Tar Anall and Tar Isteach) and individuals believed that the Bill will:

> *"Add to the number of legal ways in which former political prisoners can be excluded from employment and it will reinforce the discriminatory attitudes and practices with which former prisoners have to contend."*[46]

This point was echoed in the online submission opposing the Bill, which attracted over 870 signatories.

58. The Bill sponsor, on the other hand, reminded the Committee during the evidence session on 12 December that the Bill applies solely to special advisers in the NICS and that

> *"the Bill does not apply to the private sector; it applies to a minute section of the public sector. It has no bearing on what the private sector does or does not do."*

Compatibility with other human rights requirements

59. From the evidence received by the Committee other human rights-related issues were identified for consideration, including in relation to property and privacy rights, the question of

41 Oral evidence from NIACRO, 7 November 2012, Appendix 2

42 See written submission from Tar Isteach and written submissions from individuals opposing the Bill at Appendix 5

43 Oral evidence from Sir Nigel Hamilton and Sir George Quigley, 28 November 2012, Appendix 2

44 Oral evidence from Jim Allister QC MLA, 19 September 2012, Appendix 2

45 Oral evidence from the Attorney General, 19 September 2012, Appendix 2

46 Written submissions, Appendix 5

retrospective penalisation, and consistency with UN standards and guidance on transitional justice and the treatment of former combatants. The Committee noted the divergence of views on these matters as detailed below.

Article 6 and Article 1 of the first protocol of the ECHR

60. A number of those who made written submissions contended that the Bill is contrary to the ECHR, with particular reference being made to Article 6 of the Convention and Article 1 of the first protocol.[47,48] In his testimony to the Committee, Professor O'Flaherty (NIHRC) advised that, as a consequence of the blanket prohibition, there was a "likelihood" that protections in relation to property rights of those already in post and privacy rights for those applicants not in post would be engaged, but the Commission could not say this for sure. Professor O'Flaherty also cautioned that, should the rights be engaged, it does not automatically mean there has been a violation of the Convention, and the principle of proportionality would have to be demonstrated.

61. The Bill sponsor stated that he is satisfied that the Bill is compliant with human rights obligations. The inclusion of provision for payments to individuals whose appointment may be terminated is to ensure compliance in relation to interference with the right to property. The Bill sponsor also pointed out that, unlike other jobs, there is no security of tenure with a special adviser post.[49]

62. In his evidence to the Committee, the Attorney General also considered that Article 1 of the first protocol would not be breached, given the compensation arrangements provided for in the Bill. It was also his opinion that Article 6 is not engaged.[50]

Retrospective penalisation

63. In his initial evidence to the Committee on 19 September 2012, the Bill sponsor advised that the Bill is not retrospective, but is prospective in that it takes effect from the date that it is made. He advised that

> *"a change in the law is not objectionable merely because it takes note that a past event has happened and bases new legal consequences on it. That is well established in law."* [51]

64. The Bill sponsor cited the Estate Agents Act 1979, the Solicitors (Amendment) Act 1956 and the Police Reform and Social Responsibility Act 2011 as examples of previous legislation with provisions similar to that proposed in his Bill. Nevertheless, concerns were raised in written evidence from individuals and organisations, including Tar Anall, Tar Isteach and Coiste na nIarchimí, that the Bill may retrospectively penalise special advisers currently in post and, as such, would be a contravention of domestic and international human rights provisions. It was NIACRO's opinion that the Bill *"would clearly breach the common law principle of opposing ex post facto laws."* [52]

65. In his evidence to the Committee, the Attorney General noted that two of the Acts quoted by the Bill sponsor antedate the Human Rights Act 1998 and the provisions that deal with retrospectivity. Therefore, he did not consider *"that those old statutes offer…any assistance about what might happen now."* In addition, it was noted that the Police Reform and Social

47 Article 6 of the ECHR is the Right to a Fair Trial; Article 1 of the First Protocol is the Protection of Property (see http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf, accessed 31 January 2013)

48 Issues raised with regard to Article 7 of the ECHR (No Punishment Without Law) are considered separately at paragraphs 66–70

49 Oral evidence from Mr Jim Allister QC MLA, 19 September 2012, Appendix 2

50 Oral evidence from the Attorney General, 19 September 2012, Appendix 2

51 Oral evidence from Mr Jim Allister QC MLA, 19 September 2012, Appendix 2

52 Written submissions are provided at Appendix 5

Responsibility Act 2011 referred to elections to newly created posts, and the immediate read-across to what might happen with this Bill is not evident.[53]

66. The Attorney General discussed his concerns regarding the Bill in respect of Article 7 of the ECHR, which prohibits an increase in penalty or imposition of a penalty more severe than was available at the time of the conviction.[54] He advised that the severity and purpose of the penalty must be considered and that the cases which have introduced retrospective measures which have survived scrutiny by the European Court have been those with public safety or public interest purposes, rather than purely penal purposes. In this context, the Attorney General advised that, while he was not fully aware of the purpose of the Bill, he noted that the Bill sponsor had told the Committee that the catalyst for the Bill was the public reaction to people with serious criminal convictions being appointed as special advisers in the past. He highlighted the first policy objective of the Bill as set out in the Explanatory and Financial Memorandum,[55] and stated that

> *"That is the point of the Bill and that is why, I think, there are dangers in relation to the competence of clauses 2 and 3 as they stand at present."*

67. NIHRC also advised that, should it be determined that the Bill is punitive and constitutes a penalty, then Article 7 of the ECHR and Article 15 of the International Covenant on Civil and Political Rights (ICCPR)[56] would be violated. However, it was also suggested that it would be necessary in this regard to distinguish between those applying for a post, for whom it is unlikely to be considered punitive, and those who are in post for whom it may have a punitive quality. Even so, the fact that the Bill includes compensation provisions for someone removed from post makes it

> *"all the harder to argue that that is intended as punishment if you… give people a financial reward if they are removed from office."* [57]

68. In his oral evidence to the Committee, Professor Brice Dickson advised that he did not consider that the Bill is inconsistent with Article 7 of the ECHR as currently interpreted by the European Court of Human Rights. Professor Dickson explained that the European Court tends towards a criminal law interpretation of a 'penalty', for example a fine, a confiscation of assets or custody, but a disadvantage such as ineligibility for employment is not covered. Dr Rory O'Connell also pointed out that the right to work is not included as an explicit right in the convention.[58]

69. In her oral evidence, Ann Travers considered the Bill to be human rights-complaint at present.[59] In his final evidence session on 12 December 2012, the Bill sponsor referred to the evidence provided to the Committee by Professor Dickson and Professor O'Flaherty and suggested that *"the preponderance of views from the experts is that the Bill does not violate article 7."* He went on to say that the *"measure is characterised properly as introducing eligibility for a post rather than as a punishment."* [60]

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53 Oral evidence from the Attorney General, 12 September 2012, Appendix 2

54 Article 7 of the ECHR – no punishment without law (see http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf, accessed 31 January 2013)

55 The Explanatory and Financial Memorandum states that "The first objective of the Bill is to provide that no person shall hold the post of special adviser if they have been convicted of a criminal offence for which they received a custodial sentence of five years or more." See Appendix 3

56 Article 15 of ICCPR (See http://www2.ohchr.org/english/law/ccpr.htmhttp://www2.ohchr.org/english/law/ccpr.htm, (accessed 1 February 2013).

57 Oral evidence from NIHRC, 21 November 2012, Appendix 2

58 Oral evidence on Human Rights Issues – Professor Brice Dickson, Dr Rory O'Connell and Dr Anne Smith, 21 November 2012, Appendix 2

59 Oral evidence from Ann Travers and Catherine McCartney, 21 November 2012, Appendix 2

60 Oral evidence from Jim Allister QC MLA, 12 December 2012, Appendix 2

70. The Committee took and considered legal advice on this issue from the Assembly's Legal Services Office.

UN guidance on standards for Disarmament, Demobilization and Reintegration

71. In its written submission, NIHRC advised that guidance on transitional justice and treatment of former combatants had been issued by the United Nations, which includes the "Standards for Disarmament, Demobilization and Reintegration of ex-combatants", known as DDR. This states that:

"DDR supports and encourages peace-building and prevents future conflicts by reducing violence and improving security conditions, demobilising members of armed forces and groups and providing other ways of making a living to encourage the long-term reintegration of ex-combatants into civilian life."[61]

NIHRC suggested that the prohibition in the Bill may not be consistent with UN Standards.

72. In his oral evidence, Professor Shirlow emphasised the importance of Northern Ireland society engaging in conflict transformation and contended that the Bill is *"quite clearly contrary to that."* He accepted that there are difficult political decisions to be made, not least because significant numbers of people feel harmed and not listened to. However, he stated that

"DDR is successful when it is based on inclusion. Any form of demobilisation, disarmament and rehabilitation works though inclusion and not by excluding people from society." [62]

73. In response to concerns raised on a range of human rights issues, the Bill sponsor stated that

"whatever other plethora of human rights covenants and declarations there are, the statutory obligation for the Assembly relates only to compatibility with the European Convention on Human Rights." [63]

74. The Committee took and considered legal advice on this issue from the Assembly's Legal Services Office.

Commitments under the Good Friday/Belfast Agreement and St Andrews Agreement

75. A large number of those who opposed the Bill stated that it is contrary to the ethos of conflict-resolution and, indeed, contravenes commitments given by the UK and Irish Governments in the Good Friday Agreement (GFA)/Belfast Agreement and the St Andrews Agreement. These commitments, referred to in the written evidence, are set out below:

"The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, retraining and/or reskilling, and further education." GFA/Belfast Agreement, Annex B, Prisoners, point 5, 10 April 1998.

"Governments will work with business, trade unions and ex-prisoner groups to produce guidance for employers which will reduce barriers to employment and enhance re-integration of former prisoners." St Andrews Agreement, Annex B, October 2006.

76. It was argued in both written and oral evidence that ex-prisoners have played a significant role in the peace process, and continue to work towards reconciliation. Concern was expressed

61 Written submission from NIHRC, Appendix 5

62 Oral evidence from Professor Peter Shirlow, 16 January 2013, Appendix 2

63 Oral evidence from Jim Allister QC MLA, 12 December 2012, Appendix 2

that *"putting up barriers"* would suggest that the international agreements were effectively worthless, and *"could undo at least a decade of building relationships in our society."* [64]

77. In the view of the Equality Commission, it was anticipated that those prisoners with conflict-related convictions released following the GFA/Belfast Agreement would become *"good citizens"* who would make a contribution to Northern Ireland. Concern was therefore expressed that:

> *"Exemptions in legislation that prevent those individuals from becoming good citizens and contributing to Northern Ireland do not seem to rest easy with the intention at the time."* [65]

78. NIACRO stated that it considered that the Bill is potentially incompatible with the GFA/Belfast Agreement and section 75 of the Northern Ireland Act 1998.[66] Similarly, in its evidence, the Equality Commission noted that the Northern Ireland Act 1998 requires all legislation to be considered for equality ramifications, and advised that caution should be exercised with regard to specific criteria which might directly or disproportionately apply to persons with certain characteristics. For instance, a potential applicant to a special adviser post may consider that men would be more likely to have a serious criminal conviction and would therefore be disproportionately excluded by the Bill. If this was found to be the case, *"it would be for the employer to objectively justify that the criterion was a proportionate means of achieving a legitimate aim."* [67] The Committee took and considered legal advice on this issue from the Assembly's Legal Services Office.

79. In his oral evidence, Sir Nigel Hamilton, while not expressing an opinion on the Bill itself, advised the Committee that the genesis of the OFMDFM Employers' Guidance (see paragraphs 50-53 above) was in the GFA/Belfast Agreement, with further impetus provided by the St Andrews Agreement. Sir Nigel also advised that the then Minister of State for Police and Criminal Justice, David Hanson, attended the final meeting of the working group before the OFMDFM Guidance was signed off.[68]

80. In response to subsequent correspondence from the Committee, Mr Mike Penning, the Minister of State for Northern Ireland, advised that the interpretation of the GFA/Belfast Agreement and the St Andrews Agreement and related guidance is a transferred matter. It is therefore for the Assembly and the Executive to consider compatibility of the Bill with these Agreements.[69]

81. In her testimony to the Committee, Ms Travers noted the references in the evidence received by the Committee to the commitments made in the GFA/Belfast Agreement in respect of ex-prisoners. As noted at paragraph 16 above, Ms Travers did not suggest that ex-prisoners are not entitled to work. She questioned, however, *"where…is the spirit of the Good Friday Agreement for the benefit of victims?"* [70] Similarly, Dr Braniff noted that the Committee had received a great deal of evidence regarding the requirements on the state to rehabilitate ex-prisoners and reintegrate them into society. She pointed out, however, that the GFA/Belfast Agreement also stated that the best way to honour the dead is to

> *"dedicate ourselves to the achievement, reconciliation, tolerance, and mutual trust…of all."*
> GFA/Belfast Agreement, Declaration of Support, paragraph 2.

It was the opinion of Dr Braniff and Dr McGrattan, that the Bill is *"a belated attempt to honour that pledge."* [71]

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64 Oral evidence from Coiste na nIarchimí and Tar Isteach, 28 November 2012, Appendix 2

65 Oral evidence from the Equality Commission, 5 December 2012, Appendix 2

66 Oral evidence from NIACRO, 7 November 2012, Appendix 2

67 Written submission from the Equality Commission, Appendix 5

68 Oral evidence from Sir Nigel Hamilton and Sir George Quigley, 28 November 2012, Appendix 2

69 Correspondence from Minister of State for Northern Ireland, 7 December 2012, Appendix 6

70 Oral evidence from Ann Travers and Catherine McCartney, 21 November 2012, Appendix 2

71 Oral evidence from Dr Braniff and Dr McGrattan, 16 January 2013, Appendix 2

82. The Bill sponsor advised that he did not consider the Bill to be contrary to the St Andrews Agreement, and pointed out that guidance (such as the OFMDFM Guidance referred to at paragraphs 50-53 above) is not a barrier to legislation. He advised that he did not see

> *"any impediment in the Belfast Agreement, the St Andrews Agreement or the guidance that Sir George Quigley and others spoke to that prevents the Bill from taking its course and, if it is the will of the Assembly, becoming law."* [72]

Transparency on arrangements for special advisers

83. As a consequence of the nature of the post, special advisers are exempt from the merit principle of appointment. In the view of the Bill sponsor, however, they should be subject to the same rules and constraints as other civil servants. The Bill therefore includes provision for a code of conduct and a code for appointment of special advisers (clauses 5 and 6 respectively). The Bill sponsor also advised that, as special advisers are paid out of public funds, the public has a right to information such as costs. The Bill therefore introduces a requirement for an annual report on special advisers to be laid before the Assembly (clause 4). The Committee heard that this measure will also bring Northern Ireland into line with procedures in Great Britain.

84. Not all of those who provided written or oral evidence commented on the provisions in the Bill regarding the annual report, the code of conduct or the code for the appointment of special advisers. Those who did, however, were supportive of these measures as it was considered that they would increase transparency on this issue. In its written submission, for example, MAST indicated support for the clause 4 provisions for the production of an annual report, stating that it believed

> *"that the public have a right to know how much of their money is going to Special Advisers and this requirement is already in place in the rest of the UK."*

MAST was also supportive of the statutory provision for a Code of Conduct and for a Code for Appointments, in clauses 5 and 6 respectively, commenting that *"this will introduce greater regulation to the issue."* [73]

85. The Committee similarly noted that a number of the submissions from individuals agreed with the Bill sponsor that the publication of an annual report would enable tax payers to see the cost of special advisers and, in terms of the code for appointment, considered that special advisers should be subject to vetting procedures in the same way as other civil servants.

86. In its written submission to the Committee, the Equality Commission agreed in principle with the provisions relating to transparency regarding the conduct, recruitment, selection and remuneration of special advisers and considered that there is *"value in putting in place the most open and transparent arrangements possible."*[74] In respect of the appointment of special advisers, however, the Commission noted that the exemption in respect of political opinion based on *"the essential nature of the job"*, as provided for in fair employment legislation, may be invoked, but that this should only be done after careful consideration. Even if invoked, however, the Commission contends that there is still a requirement to apply all other aspects of equality law and employment legislation.[75]

87. In its written submission, NIACRO also stated that it was, in general, supportive of increased transparency and accountability across the public sector. However, it also noted that it was

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72 Oral evidence from Jim Allister QC MLA, 12 December 2012, Appendix 2

73 Written submission from MAST, Appendix 5

74 Written submission from the Equality Commission, Appendix 5

75 Oral evidence from the Equality Commission, 5 December 2012, Appendix 2

> *"opposed to the automatic extension of legislation from any other jurisdiction without appropriate consideration of the local issues by the Northern Ireland Assembly, so local policy proposals would need to be developed."*[76]

88. The Committee was mindful that the provisions in the Bill relating to the annual report, the code of conduct and the code for appointment will place statutory duties on DFP. In its written briefing, dated 13 September 2012, DFP advised that, while it is not currently centrally collated, much of the information regarding special advisers is included in each department's Annual Resource Accounts.[77] It was also noted that both a code of conduct and the code of practice on the appointment of special advisers currently exist, although neither are on a statutory footing. In subsequent oral evidence to the Committee, a senior DFP official advised that these documents could "easily be placed on a statutory footing". Furthermore, it is not anticipated that doing so would incur any additional costs for the Department.[78]

89. The Committee notes that there was general consensus in the evidence received and support for the issue of transparency on the arrangements for special advisers.

Secretary of State consent

90. In oral evidence to the Committee on 19 September 2012, the senior DFP official noted that the Bill proposes to amend the Civil Service Commissioners (Northern Ireland) Order 1999, which is a reserved matter, and consequently the Secretary of State's consent may be required. This matter had been raised in written submissions, including those from Tar Isteach and Tar Anall, who noted that that the Bill sponsor had not provided details of any discussions with the Secretary of State on this issue.[79] In his oral evidence subsequent to the DFP testimony, the Attorney General advised that more consideration would need to be given to the issue but, in his opinion, the Bill did not take away from the Commissioners' power.[80]

91. The Committee wrote to the Secretary of State and the Civil Service Commissioners for Northern Ireland (CSCNI) to seek clarity on this issue. In response, the Minister of State for Northern Ireland, Mr Mike Penning MP, advised that the Secretary of State had not received a request for consent with regard to the Bill. However, he advised that the question of whether its provisions deal with a reserved matter will be considered prior to Royal Assent, together with the Bill's compatibility with the ECHR. In his response, Mr Brian Rowntree CBE, Chairperson of CSCNI, advised that, while responsibility for the Civil Service Commissioners is a reserved matter, it does not appear that the provisions of the Bill impact on the work of the Commissioners.[81]

    The Committee took and considered legal advice on this issue from the Assembly's Legal Services Office.

Drafting and technical issues

92. A number of drafting and technical issues relating to the Bill were raised by the Office of the Legislative Counsel (OLC), which were forwarded to the Committee by DFP on 19 November 2012. A copy of the correspondence is provided at Appendix 4. In his subsequent response to the points made by OLC, the Bill sponsor agreed to bring forward a number of amendments at Consideration Stage, an outline of which is provided at Appendix 3. These have been taken into account by the Committee during its clause-by-clause scrutiny of the Bill.

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76 Written submission from NIACRO, Appendix 5

77 Written briefing from DFP, 13 September 2012, Appendix 4

78 Oral evidence from DFP, 19 September 2012, Appendix 2

79 See written submissions at Appendix 5

80 Oral evidence from the Attorney General, 19 September 2012, Appendix 2

81 Correspondence from the Minister of State for NI and CSCNI is provided at Appendix 6

Clause-by-Clause Consideration of the Bill

93. Having reviewed the substantial body of written and oral evidence received on the Bill, together with the legal advice received from the Assembly's Legal Services Office, the Committee deliberated on the clauses and schedule to the Bill at its meeting on 23 January and undertook its formal clause-by-clause scrutiny of the Bill at its meetings on 30 January and 6 February 2013. The Committee carried out formal clause-by-clause consideration of the Bill as follows:[82]

94. Clause 1 – Meaning of "Special Adviser"

Agreed: that the Committee is content with clause 1, subject to the proposed technical amendment from the Bill sponsor.

95. Clause 2 – Special Adviser not to have a serious criminal conviction

Mr McLaughlin indicated that he would be tabling an amendment to this clause for Consideration Stage of the Bill.

As consensus could not be reached on this clause, the Chairperson, Mr McKay put the following question:

"That the Committee is content with clause 2 subject to the proposed technical amendments from the Bill sponsor"

Question accordingly agreed to on a majority basis (for details of divisions see Minutes of Proceedings of 30 January 2013 at Appendix 1).

96. Clause 3 – Meaning of "serious criminal conviction"

Agreed: that the Committee is content with clause 3, subject to the proposed technical amendments from the Bill sponsor.

97. Clause 4 – Annual Report

Agreed: that the Committee is content with clause 4, subject to the proposed technical amendment from the Bill sponsor.

98. Clause 5 – Code of Conduct

Agreed: that the Committee is content with clause 5, subject to the proposed technical amendments from the Bill sponsor.

99. Clause 6 – Code for Appointments

Mr McLaughlin indicated that he would be tabling an amendment to this clause for Consideration Stage of the Bill.

As consensus could not be reached on this clause, the Chairperson, Mr McKay put the following question:

"That the Committee is content with clause 6 subject to the proposed technical amendments from the Bill sponsor"

Question accordingly agreed to on a majority basis (for details of divisions see Minutes of Proceedings of 30 January 2013 at Appendix 1).

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82 An extract from the Minutes of Proceedings for the Committee for Finance and Personnel meeting on 30 January 2013 is provided at Appendix 1.

100. Clause 7 – Advisers to the Presiding Officer

Agreed: that the Committee is content with clause 7 as drafted.

101. Clause 8 – Interpretation

Agreed: that the Committee is content with clause 8 subject to the proposed technical amendment from the Bill sponsor

102. Clause 9 – Transitional provisions

Agreed: that the Committee is content with clause 9 as drafted.

103. Clause 10 – Commencement

Agreed: that the Committee is content with clause 10 subject to the proposed technical amendment from the Bill sponsor.

104. Clause 11 – Short title

Agreed: that the Committee is content with clause 11 as drafted.

105. The Schedule: transitional provisions: termination payments.

Mr McLaughlin indicated that he would be tabling amendments to the Bill, which may lead to consequential amendments to the Schedule.

As consensus could not be reached on the Schedule, the Chairperson, Mr McKay, put the following question:

“That the Committee is content with the Schedule as drafted”

Question accordingly agreed to on a majority basis (for details of divisions see Minutes of Proceedings of 30 January 2013 at Appendix 1).

106. Long Title of the Bill

Agreed: that the Committee is content with the Long Title of the Bill as drafted.

Appendix 1

Minutes of Proceedings Relating to the Report

Wednesday, 5 September 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Mr Paul Girvan MLA
Mr David Hilditch MLA
Mr Mitchel McLaughlin MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mrs Patricia Casey (Bill Clerk) (Agenda items 4-7 only)
Mrs Kiera McDonald (Legal Adviser) (Agenda item 4 only)
Mr Colin Pidgeon (Assembly Research and Information Service) (Agenda item 6 only)

Apologies: Mr William Humphrey MLA

10:06am The meeting opened in public session.

10. Correspondence

Members noted the following items of correspondence:

12:18pm Mr Girvan left the meeting.

- Correspondence from Clerk Assistant: Civil Service (Special Advisers) Bill;

Agreed: to schedule evidence sessions from the sponsor of the Private Members' Bill, Mr Jim Allister QC MLA, DFP officials and the Attorney General at the Committee's meeting on 19 September 2012, for the purpose of informing members' contributions to the Second Stage debate on the Bill.

[EXTRACT]

Wednesday, 12 September 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Miss Megan Fearon MLA
Mr Paul Girvan MLA
Mr David Hilditch MLA
Mr William Humphrey MLA
Mr Mitchel McLaughlin MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mrs Patricia Casey (Bill Clerk) (Agenda items 4 & 5 only)
Mr Bob Harper (Assembly Research and Information Service) (Agenda item 6 only)

Apologies: Mr Adrian McQuillan MLA

10:06am The meeting opened in public session.

3. **Matters Arising**

10:07am Mr Bradley and Mr Girvan joined the meeting.

Civil Service (Special Advisers) Bill

The Committee noted correspondence from the Attorney General indicating that he is not available to give oral evidence to the Committee on the Civil Service (Special Advisers) Bill at next week's meeting and correspondence from Mr Jim Allister QC MLA advising that he will be available. Members also noted that DFP officials will be in attendance to give evidence.

Agreed: to seek written briefing from the Attorney General on the Bill, including on the issue of legislative competence.

[EXTRACT]

Wednesday, 19 September 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Ms Megan Fearon MLA
Mr Paul Girvan MLA
Mr David Hilditch MLA
Mr William Humphrey MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)

10:05am The meeting opened in public session.

5. Civil Service (Special Advisers) Bill – Evidence from Mr Jim Allister QC MLA

The Committee took evidence from the Bill Sponsor, Mr Jim Allister QC MLA, on the provisions of the Civil Service (Special Advisers) Bill. The evidence session was recorded by Hansard.

10:25am Mr Humphrey joined the meeting.

10:48am Mr Girvan joined the meeting.

Agreed: Mr Allister will provide additional information on the public consultation undertaken on the proposals for the Bill, as agreed during the evidence session.

6. Civil Service (Special Advisers) Bill – Evidence from DFP

The Committee took evidence from Mr Derek Baker, Director, Corporate HR, DFP, on the implications of the Bill for the Department. The evidence session was recorded by Hansard.

11:01am Ms Fearon left the meeting.

11:05am Ms Fearon returned to the meeting.

Agreed: to copy the DFP briefing paper to Mr Allister for information and in line with normal protocol.

7. Civil Service (Special Advisers) Bill – Evidence from the Attorney General for Northern Ireland

The Committee took evidence from Mr John Larkin QC, Attorney General for Northern Ireland, on the Bill. The evidence session was recorded by Hansard.

11:42am Mr McQuillan left the meeting.

11:43am Mr McQuillan returned to the meeting.

11:43am Mr Humphrey left the meeting.

11:44am Mr Humphrey returned to the meeting.

11:49am Mr McLaughlin left the meeting.

11:57am Mr McLaughlin returned to the meeting.

12:00pm Mrs Cochrane left the meeting.

12:05pm Mr Humphrey left the meeting.

12:05pm Mr McQuillan left the meeting.

Agreed: the Committee will consider requesting legal advice on the Bill from Assembly Legal Services in the event of the Bill being referred for Committee Stage.

[EXTRACT]

Wednesday, 26 September 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Ms Megan Fearon MLA
Mr Paul Girvan MLA
Mr William Humphrey MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)

Apologies Mr David Hilditch MLA

10:04am The meeting opened in public session.

In the absence of the Chairperson, the Deputy Chairperson took the Chair.

3. Matters Arising

Civil Service (Special Advisers) Bill

The Committee noted correspondence from the Bill Sponsor, Mr Jim Allister QC MLA, regarding the exact dates of the consultation period for the Bill.

Agreed: to publish a call for written evidence on Monday 1 October and that members will advise the Clerk individually of any stakeholders they wish to have notified directly of this opportunity to provide written evidence on the Bill.

Agreed: to commission a background research paper on the Bill, which should include an examination of the human rights issues and identify potential expert witnesses on human rights; and that, following receipt of the evidence, the Committee will consider what issues require legal advice from Assembly Legal Services.

[EXTRACT]

Wednesday, 3 October 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Roy Beggs MLA
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Ms Megan Fearon MLA
Mr Paul Girvan MLA
Mr David McIlveen MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA
Mr Peter Weir MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mr Gavin Moore (Bursary Student)
Mr Michael Potter (Assembly Researcher) (Agenda Item 10 only)

10:05am The meeting opened in public session.

10. Civil Service (Special Advisers) Bill – Assembly Research Briefing

The Committee received a briefing from Assembly Research on the Civil Service (Special Advisers) Bill.

The Committee noted that the call for written evidence on the Bill was published in newspapers on Monday 1 October 2012. Members were reminded that they should provide Committee staff with details of any stakeholders they wish to be notified about the opportunity to respond to the Bill or, alternatively, that they could do this directly.

Agreed: to commission further research to (a) examine how employers take OFMDFM guidance on conflict-related convictions into consideration, and (b) provide background information on the contributions of government and political parties to the discussions on the release and reintegration of paramilitary prisoners in the lead up to the Belfast/Good Friday Agreement.

Agreed: to schedule oral evidence from human rights academics identified in the research paper.

[EXTRACT]

Wednesday, 17 October 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Ms Megan Fearon MLA
Mr Paul Girvan MLA
Mr John McCallister MLA
Mr Mitchel McLaughlin MLA
Mr Peter Weir MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Ms Heather Graham (Clerical Officer)
Mr Gavin Moore (Bursary Student)

Apologies: Mr Adrian McQuillan MLA

10:12am The meeting opened in public session.

8. Committee Work Programme

Members considered a draft of the Committee work programme.

Civil Service (Special Advisers) Bill

The Committee noted written submissions received to date on the Bill and agreed that all written submissions are published on the Committee's website in line with previous calls for evidence.

Agreed: that, once the evidence has been received, the Bill Sponsor will be asked to respond to any issues raised.

Members also noted that the Bill Sponsor had issued a circular to encourage written submissions in support of the Bill. It was agreed that this will be noted in the Committee's report on the Bill.

Agreed: that the Northern Ireland Association for the Care and Resettlement of Offenders, the Northern Ireland Human Rights Commission and the Commission for Victims and Survivors be invited to give oral evidence on either 7 or 14 November 2012. It was further agreed that additional oral evidence sessions with other stakeholder organisations could be scheduled for a later date and once the Committee has considered the written submissions.

Agreed: that the Committee work programme is amended to reflect decisions made today, and that the revised programme is published on the Assembly website.

[EXTRACT]

Wednesday, 24 October 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mrs Judith Cochrane MLA
Ms Megan Fearon MLA
Mr Paul Girvan MLA
Mr John McCallister MLA
Mr David McIlveen MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA
Mr Peter Weir MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mr Gavin Moore (Bursary Student)
Dr Robert Barry (Senior Statistician) (Agenda Item 5 only)

Apologies: Mr Leslie Cree MBE MLA

10:02am The meeting opened in public session.

3. Matters Arising

Civil Service (Special Advisers) Bill

The Committee noted written submissions and correspondence and considered timetable options and a draft motion for extending Committee Stage.

Agreed: to consider scheduling additional oral evidence at the meeting on 7 November and in light of having received any further written submissions.

10:05am Mr McIlveen joined the meeting.

Agreed: that the motion will be laid in the Business Office seeking Assembly approval to extend the Committee Stage of the Bill until 15 February 2013, while the Committee will endeavour to conclude its report on the Bill in advance of this date.

[EXTRACT]

Wednesday, 7 November 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Leslie Cree MBE MLA
Ms Megan Fearon MLA
Mr Paul Girvan MLA
Mr David McIlveen MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA
Mr Peter Weir MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mr Gavin Moore (Bursary Student)
Mr Gareth Brown (Bursary Student) (Agenda Item 4 only)
Ms Eileen Regan (Senior Research Officer) (Agenda Item 4 only)

Apologies: Mrs Judith Cochrane MLA

10:06am The meeting opened in public session.

Agreed: that Agenda item 5 is recorded by Hansard and the Official Report published on the Assembly website.

5. Civil Service (Special Advisers) Bill – Evidence Session with the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO)

The Committee noted a submission from NIACRO and Assembly Research papers provided in follow up to previous Committee requests.

The Committee received oral evidence from the following representatives of NIACRO: Mr Pat Conway, Director of Services and Ms Anne Reid, Senior Practitioner. The evidence session was recorded by Hansard.

Agreed: that the representatives from NIACRO will provide further information to the Committee in relation to restrictions in the application of the Civil Service Code and vetting procedures compared to the proposed provisions within the Bill.

11:00am Ms Fearon left the meeting

11:05am Ms Fearon joined the meeting

11:07am Mr McQuillan left the meeting

11:14am Mr Weir left the meeting

11:16am Mr Weir joined the meeting

11:20am Mr McQuillan joined the meeting

11:39am Mr Bradley left the meeting

The Committee noted the forthcoming scheduled evidence sessions with the Commission for Victims and Survivors, the Northern Ireland Human Rights Commission and a panel of expert academic witnesses on human rights issues.

Agreed: to schedule briefings from Coiste na nIarchimí and Ann Travers who had previously requested/offered to give oral evidence on the Bill.

Agreed: to invite oral evidence from the Equality Commission on equality considerations arising from the Bill and from Sir George Quigley and Sir Nigel Hamilton who had been tasked by Government with convening a working group which led in 2007 to the OFMDFM guidance for employers on "Recruiting People with Conflict-Related Convictions".

The Committee noted that the motion to extend the Committee Stage of the Bill would be debated on Monday 12 November 2012.

[EXTRACT]

Wednesday, 14 November 2012
Room 29, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Ms Megan Fearon MLA
Mr Paul Girvan MLA
Mr John McCallister MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA
Mr Peter Weir MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mr Gavin Moore (Bursary Student)

10:06am The meeting opened in public session.

In the absence of the Chairperson, the Deputy Chairperson took the Chair.

Agreed: that Agenda item 4 is recorded by Hansard and the Official Report published on the Assembly website.

4. Civil Service (Special Advisers) Bill – Evidence session with the Commission for Victims and Survivors

The Committee received oral evidence from Kathryn Stone, Commissioner for Victims and Survivors and Adrian McNamee, Head of Policy, Commission for Victims and Survivors on the Civil Service (Special Advisers) Bill. The evidence session was recorded by Hansard.

10:10am Mr McQuillan joined the meeting

10:18am Mrs Cochrane joined the meeting

10:32am Mr McKay joined the meeting and took the Chair.

10:44am Mr McCallister joined the meeting

Agreed: that the Commissioner for Victims and Survivors will provide follow up information as discussed during the evidence session.

[EXTRACT]

Wednesday, 21 November 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Ms Megan Fearon MLA
Mr Paul Girvan MLA
Mr John McCallister MLA
Mr David McIlveen MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA
Mr Peter Weir MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mr Gavin Moore (Bursary Student)

10:02am The meeting opened in public session.

Agreed: that Agenda items 4, 5 & 6 are recorded by Hansard and the Official Report published on the Assembly website.

4. Civil Service (Special Advisers) Bill – Evidence Session with Expert Academic Witnesses on Human Rights Issues

The Committee received oral evidence from Professor Brice Dickson, School of Law, Queen's University Belfast, Dr Rory O'Connell, School of Law, Queen's University Belfast and Dr Anne Smyth, Transitional Justice Institute, University of Ulster. The evidence session was recorded by Hansard.

10:07am Mr Weir joined the meeting

10:08am Mr McIlveen joined the meeting

10:20am Mrs Cochrane joined the meeting

10:41am Mrs Cochrane left the meeting

10:43am Mr McCallister joined the meeting

Agreed: to write to the Secretary of State and the Civil Service Commissioners for their views on issues relating to the Bill, particularly given that some of the provisions may deal with reserved matters. The Committee will also obtain legal advice on issues arising from the evidence on the Bill from Assembly Legal Services as necessary.

5. Civil Service (Special Advisers) Bill – Evidence Session with Northern Ireland Human Rights Commission

The Committee noted a submission from the Northern Ireland Human Rights Commission provided in advance of today's session.

The Committee received oral evidence from the following representatives of the Northern Ireland Human Rights Commission: Professor Michael O'Flaherty, Chief Commissioner, Dr

David Russell, Deputy Director and Colin Caughey, Policy Worker. The evidence session was recorded by Hansard.

11:11am Mrs Cochrane joined the meeting

11:29am Ms Fearon left the meeting

11:33am Mr Weir left the meeting

11:34am Ms Fearon joined the meeting

11:40am Mr Weir joined the meeting

11:45am Mr Girvan left the meeting

Agreed: that the Northern Ireland Human Rights Commission will provide follow up advice, including on whether it provided comment on the Bill previously.

6. Civil Service (Special Advisers) Bill – Evidence Session with Ann Travers

The Committee noted a written submission from Ann Travers provided in advance of today's session.

The Committee received oral evidence from Ann Travers and Catherine McCartney. The evidence session was recorded by Hansard.

11:50am Mr Girvan joined the meeting

12:02pm Ms Fearon left the meeting

12:17pm Ms Fearon joined the meeting

The Committee noted correspondence received from the Office of Legislative Counsel, through DFP, which would be added to the evidence base and reflected in the Committee's report on the Bill.

[EXTRACT]

Wednesday, 28 November 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Leslie Cree MBE MLA
Ms Megan Fearon MLA
Mr Paul Girvan MLA
Mr David McIlveen MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA
Mr Peter Weir MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mr Robert Barry (Senior Research Officer) (Agenda item 6 only)

Apologies: Mrs Judith Cochrane
Mr John McCallister

10:05am The meeting opened in public session.

Agreed: that Agenda items 4 and 5 are recorded by Hansard and the Official Report published on the Assembly website.

4. Civil Service (Special Advisers) Bill – Evidence from Sir Nigel Hamilton and Sir George Quigley

The Committee took oral evidence from Sir Nigel Hamilton and Sir George Quigley on the Office of the First Minister and deputy First Minister's (OFMDFM) guidance for employers on "Recruiting People with Conflict-related Convictions". The evidence session was recorded by Hansard.

10:07am Mr Girvan joined the meeting.

10:08am Mr Weir joined the meeting.

10:15am Ms Fearon joined the meeting.

10:30am Mr McQuillan joined the meeting.

10:44am Ms Fearon left the meeting.

10:45am Ms Fearon returned to the meeting.

10:56am Mr McIlveen left the meeting.

10:57am Mr Weir left the meeting.

11:00am Mr Weir returned to the meeting.

Agreed: to issue the draft letters to the Secretary of State and the Civil Service Commissioners requesting their views on matters relating to the Bill.

The Committee noted correspondence from the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) in follow-up to the evidence session on 14 November.

Agreed: to forward the correspondence to DFP and the Northern Ireland Human Rights Commission for comment.

Agreed: that, at its meeting on 12 December, the Committee will review the issues arising from the evidence, and will identify and define any issues on which it wishes to seek legal advice from Assembly Legal Services. In advance of that meeting, members will also give consideration as to whether they think that the Committee should propose any amendments to the Bill or if they are content with the provisions of the Bill as drafted.

5. Civil Service (Special Advisers) Bill – Evidence Session with Coiste na nIarchimí and Tar Isteach

The Committee noted submissions from Coiste na nIarchimí and Tar Isteach which were provided in advance of the evidence session.

The Committee took oral evidence from the following witnesses: Michael Culbert, Director, Coiste na nIarchimí; and Thomas Quigley, Tar Isteach. The evidence session was recorded by Hansard.

12:01pm Mr McQuillan left the meeting.

12:05pm Mr McQuillan returned to the meeting.

12:06pm Mr Weir left the meeting.

12:20pm Mr Girvan left the meeting.

12:20pm The Chairperson left the meeting.

12:20pm The Deputy Chairperson took the Chair.

12:22pm Mr Weir returned to the meeting.

Agreed: that the Committee will invite representatives of loyalist ex-prisoner groups to give oral evidence on the Bill.

[EXTRACT]

Wednesday, 5 December 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Mr Paul Girvan MLA
Mr John McCallister MLA
Mr David McIlveen MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA
Mr Peter Weir MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mr Colin Pidgeon (Research Officer) (Agenda items 5 & 6 only)

Apologies: None

10:10am In the absence of the Chairperson the deputy Chairperson opened the meeting. in public session.

Agreed: that Agenda item 4 is recorded by Hansard and the Official Report published on the Assembly website.

4. Civil Service (Special Advisers) Bill – Evidence from the Equality Commission

The Committee took oral evidence from Eileen Lavery, Head of Advice and Compliance and Jacqui McKee, Director of Advice and Compliance, Equality Commission. The evidence session was recorded by Hansard.

Members noted a written submission from the Equality Commission which was provided prior to the evidence session.

10:15am Mr McLaughlin joined the meeting.

10:24am Mr McCallister joined the meeting.

10:24am Mr McKay joined the meeting and took the Chair.

10:24am Mr Weir left the meeting.

10:26am Mr McQuillan joined the meeting.

10:42am Mrs Cochrane and Mr Weir joined the meeting.

10:44am Mr Girvan left the meeting.

Agreed: to confirm the request for DFP officials to provide a final oral briefing on the Bill at next week's meeting.

Members noted that, at its meeting next week, the Committee will consider the issues arising from the evidence, including any issues requiring legal advice from Assembly Legal Services. The Committee will also consider whether any draft amendments to the Bill should be prepared for consideration following Christmas recess.

[EXTRACT]

Wednesday, 12 December 2012
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Mr Paul Girvan MLA
Mr John McCallister MLA
Mr Mitchel McLaughlin MLA
Mr Peter Weir MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mrs Patricia Casey (Bill Clerk) (Agenda Items 4-6 only)

Apologies: Mr David McIlveen MLA
Mr Adrian McQuillan MLA

10:30am The meeting opened in public session.

Agreed: that Agenda items 5, 6 & 7 are recorded by Hansard and the Official Report published on the Assembly website.

4. Civil Service (Special Advisers) Bill – Consideration of issues arising from evidence

The Committee noted responses from the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) and the Commission for Victims and Survivors in follow up to previous evidence sessions.

The Committee considered a table summarising the key themes and issues arising from the evidence received to date on the Bill.

Agreed: to seek advice from Assembly Legal Services on a range of issues highlighted in the table.

Agreed: to provide the Bill sponsor with a copy of the table of issues in advance of the forthcoming evidence session.

5. Civil Service (Special Advisers) Bill – Evidence from DFP

The Committee took oral evidence from Derek Baker, Director of Personnel for the NICS, Corporate HR, DFP. The evidence session was recorded by Hansard.

10:40am Mr McCallister joined the meeting.

10:54am Mrs Cochrane joined the meeting.

10:55am Mr Girvan joined the meeting.

Agreed: that the DFP official will provide additional information as requested during the evidence session.

6. Civil Service (Special Advisers) Bill – Final Evidence Session with the Bill Sponsor

The Committee took oral evidence from the Bill sponsor, Mr Jim Allister QC MLA, on the issues arising from the evidence on the Bill. The evidence session was recorded by Hansard.

11:20am Mr McCallister left the meeting.

11:45am Mrs Cochrane left the meeting.

11:57am Mr Weir left the meeting.

12noon Mrs Cochrane joined the meeting.

12:05pm Mr Weir joined the meeting.

12:06pm Mr McCallister joined the meeting.

12:12pm Mr McLaughlin left the meeting.

Agreed: that Mr Allister will provide a written response to the points raised by the Office of Legislative Counsel.

[EXTRACT]

Wednesday, 09 January 2013
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Ms Megan Fearon MLA
Mr Paul Girvan MLA
Mr John McCallister MLA
Mr David McIlveen MLA
Mr Mitchel McLaughlin MLA
Mr Peter Weir MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mr Gavin Moore (Bursary Student)
Mr Hugh Widdis (Director of Assembly Legal Services)
(Agenda Item 4 only)

10:05am The meeting opened in public session.

Agreed: that Agenda items 5 & 6 are recorded by Hansard and the Official Report published on the Assembly website.

10:06am The meeting moved into closed session.

4. Civil Service (Special Advisers) Bill – Legal Advice

The Committee received legal advice from Hugh Widdis, Director of Assembly Legal Services on a number of issues relating to the Bill.

10:06am Mrs Cochrane joined the meeting.

10:12am Mr Girvan joined the meeting.

10:14am Mr Weir left the meeting.

10:16am Mr Weir returned to the meeting.

10:20am Mr Weir left the meeting.

10:29am Mr Weir returned to the meeting.

10:50am Mr McLaughlin left the meeting.

10:51am Mr McCallister joined the meeting.

Agreed: that the Assembly Legal Services will provide follow up information as requested during the briefing.

The Committee noted a written submission from Dr Máire Braniff and Dr Cillian McGrattan, entitled The Civil Service (Special Advisers) Bill: Democratic Implications and Considerations.

Agreed: that the Committee will invite Dr Braniff and Dr McGrattan to give oral evidence on the Bill.

Agreed: that the Committee will also invite Professor Bill Rolston and Professor Peter Shirlow to give oral evidence on the Bill, in view of their work in relation to employment issues affecting loyalist and republican ex-prisoner groups.

10:55am The meeting moved into public session.

[EXTRACT]

Wednesday, 16 January 2013
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Ms Megan Fearon MLA
Mr Paul Girvan MLA
Mr John McCallister MLA
Mr David McIlveen MLA
Mr Mitchel McLaughlin MLA
Mr Peter Weir MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mr Gavin Moore (Bursary Student)

Apologies: Mr Adrian McQuillan MLA

10:04am The meeting opened in public session.

Agreed: that Agenda items 4, 5, 6 & 7 are recorded by Hansard and the Official Report published on the Assembly website.

6. Civil Service (Special Advisers) Bill – Evidence Session

The Committee took oral evidence from Dr Máire Braniff, University of Ulster, and Dr Cillian McGrattan, Swansea University, on issues relating to the Bill. The session was recorded by Hansard.

The Committee noted a written submission provided by Dr Braniff and Dr McGrattan in advance of today's session.

12:05pm Mr McKay joined the meeting and took the Chair

12:13pm Mr Girvan left the meeting.

12:16pm Mr McCallister joined the meeting.

12:17pm Mr McIlveen left the meeting.

12:18pm Mr Girvan joined the meeting.

7. Civil Service (Special Advisers) Bill – Evidence Session

The Committee took oral evidence from Professor Peter Shirlow, Queen's University of Belfast, on issues relating to the Bill. The session was recorded by Hansard.

The Committee noted various reports provided by Professor Shirlow in advance of today's session.

12:30pm Mr Weir left the meeting.

12:36pm Mr Girvan left the meeting.

12:49pm Mr Bradley left the meeting.

12:49pm Mr Weir joined the meeting.

12:50pm Mrs Cochrane left the meeting.

12:53pm Mr McCallister left the meeting.

[EXTRACT]

Wednesday, 23 January 2013
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Ms Megan Fearon MLA
Mr Paul Girvan MLA
Mr John McCallister MLA
Mr David McIlveen MLA
Mr Mitchel McLaughlin MLA
Mr Peter Weir MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)

Apologies: Mr Adrian McQuillan MLA

10:24am The meeting opened in public session.

Agreed: that Agenda item 6 is recorded by Hansard and the Official Report published on the Assembly website.

4. Civil Service (Special Advisers) Bill

Members discussed potential proposals for amendments to the Civil Service (Special Advisers) Bill.

Agreed: that any member intending to propose amendments through the Committee will liaise with the Bill Clerk, Patricia Casey, urgently, with a view to tabling draft amendments for consideration at the next Committee meeting and before formal clause-by-clause scrutiny of the Bill.

[EXTRACT]

Wednesday, 30 January 2013
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Ms Megan Fearon MLA
Mr Paul Girvan MLA
Mr John McCallister MLA
Mr David McIlveen MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA
Mr Peter Weir MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Kathy O'Hanlon (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mr Gavin Moore (Bursary Student)
Mrs Patricia Casey (Bill Clerk) (Agenda Item 4 only)
Mr Simon Kelly (Assistant Legal Adviser) (Agenda Item 4 only)

Apologies: Mr Dominic Bradley MLA (Deputy Chairperson)

10:05am The meeting opened in public session.

Agreed: that Agenda items 4, 5 and 6 are recorded by Hansard and the Official Report published on the Assembly website.

4. Civil Service (Special Advisers) Bill – Clause-by-clause scrutiny of the Bill.

10:06am The meeting moved into closed session to consider follow-up legal advice in line with normal protocol. Mr Simon Kelly, Assistant Legal Adviser, Assembly Legal Services addressed the meeting.

10:06am Mr McQuillan left the meeting.

10:10am The Committee moved into public session.

10:11am Mr McQuillan joined the meeting.

10:15am Mr Weir and Mr Girvan joined the meeting.

The Committee carried out formal clause-by-clause consideration of the Civil Service (Special Advisers) Bill as follows:

Clause 1 – Meaning of "Special Adviser"

Agreed: that the Committee is content with Clause 1, subject to the proposed technical amendment from the Bill Sponsor.

Clause 2 – Special Adviser not to have a serious criminal conviction

Mr McLaughlin indicated that he would be tabling an amendment to this clause for Consideration Stage of the Bill.

As consensus could not be reached on this clause, the Chairperson, Mr McKay put the following question:

"That the Committee is content with Clause 2 subject to the proposed technical amendments from the Bill Sponsor"

Question put

The Committee divided: Ayes 5; Noes 3; Abstentions 0

AYES
Mr Cree, Mr Girvan, Mr McIlveen, Mr McQuillan, Mr Weir

NOES
Ms Fearon, Mr McKay, Mr McLaughlin

ABSTENTIONS
None

Question accordingly agreed to.

Clause 3 – Meaning of "serious criminal conviction"

Agreed: that the Committee is content with Clause 3, subject to the proposed technical amendments from the Bill Sponsor.

Clause 4 – Annual Report

Agreed: that the Committee is content with Clause 4, subject to the proposed technical amendment from the Bill Sponsor.

Clause 5 – Code of Conduct

Agreed: that the Committee is content with Clause 5, subject to the proposed technical amendments from the Bill Sponsor.

Clause 6 – Code for Appointments

Mr McLaughlin indicated that he would be tabling an amendment to this clause for Consideration Stage of the Bill.

As consensus could not be reached on this clause, the Chairperson, Mr McKay put the following question:

"That the Committee is content with Clause 6 subject to the proposed technical amendments from the Bill Sponsor"

Question put

The Committee divided: Ayes 5; Noes 3; Abstentions 0

AYES
Mr Cree, Mr Girvan, Mr McIlveen, Mr McQuillan, Mr Weir

NOES
Miss Fearon, Mr McKay, Mr McLaughlin

ABSTENTIONS
None

Question accordingly agreed to.

Clause 7 – Advisers to the Presiding Officer

Agreed: that the Committee is content with Clause 7 as drafted.

Clause 8 – Interpretation

Agreed: that the Committee is content with Clause 8 subject to the proposed technical amendment from the Bill Sponsor

Clause 9 – Transitional provisions

Agreed: that the Committee is content with Clause 9 as drafted.

Clause 10 – Commencement

Agreed: that the Committee is content with Clause 10 subject to the proposed technical amendment from the Bill Sponsor.

The Schedule: transitional provisions: termination payments.

Mr McLaughlin indicated that he would be tabling amendments to the Bill, which may lead to consequential amendments to the Schedule.

As consensus could not be reached on the Schedule, the Chairperson, Mr McKay, put the following question:

"That the Committee is content with the Schedule as drafted"

Question put

The Committee divided: Ayes 5; Noes 3; Abstentions 0

AYES
Mr Cree, Mr Girvan, Mr McIlveen, Mr McQuillan, Mr Weir

NOES
Miss Fearon, Mr McKay, Mr McLaughlin

ABSTENTIONS
None

Question accordingly agreed to.

Long Title of the Bill

Agreed: that the Committee is content with the Long Title of the Bill as drafted.

Agreed: that, as some of the decisions on the clauses and schedule to the Bill were reached on a majority basis, rather than by consensus, references will be included in the Report on the Bill to the Minutes of Proceedings of the clause-by-clause scrutiny for details of the divisions on the questions put.

[EXTRACT]

Wednesday, 6 February 2013
Room 30, Parliament Buildings

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mrs Judith Cochrane MLA
Mr Leslie Cree MBE MLA
Ms Megan Fearon MLA
Mr Paul Girvan MLA
Mr John McCallister MLA
Mr David McIlveen MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA
Mr Peter Weir MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mr Gavin Moore (Bursary Student)
Mrs Patricia Casey (Bill Clerk) (Agenda Item 4 only)

Apologies: None

10.06am In the absence of the Chairperson the Deputy Chairperson opened the meeting in public session.

Agreed: that Agenda item 5 on the Review of the Efficiency Delivery Programme is recorded by Hansard and the Official Report published on the Assembly website.

6. **Civil Service (Special Advisers) Bill – Initial Consideration of draft report.**

The Committee considered a working draft Report on the Civil Service (Special Advisers) Bill.

10.16am Ms Fearon joined the meeting.

Agreed: Members will forward any comments they have in relation to the draft report to Committee staff by noon on Friday 8 February 2013, following which the final draft report will be issued for formal consideration and agreement on 13 February.

The Clerk informed members that agreement to clause 11on the Short Title of the Bill had been omitted from the formal clause-by-clause consideration of the Bill at last week's meeting. The Chairperson accordingly put the question.

Clause 11 – Short Title of the Bill

Agreed: that the Committee is content with clause 11 on the Short Title of the Bill as drafted.

10.20am Mr McQuillan left the meeting.

[EXTRACT]

Wednesday, 13 February 2013
Clare House, Airport Road West, Belfast

(UNAPPROVED)

Present: Mr Daithí McKay MLA (Chairperson)
Mr Dominic Bradley MLA (Deputy Chairperson)
Mr Leslie Cree MBE MLA
Ms Megan Fearon MLA
Mr Paul Girvan MLA
Mr John McCallister MLA
Mr Mitchel McLaughlin MLA
Mr Adrian McQuillan MLA
Mr Peter Weir MLA

In Attendance: Mr Shane McAteer (Assembly Clerk)
Mrs Clairita Frazer (Assistant Assembly Clerk)
Mrs Kathy O'Hanlon
Mr Jim Nulty (Clerical Supervisor)
Ms Heather Graham (Clerical Officer)
Mr Gavin Moore (Bursary Student)

Apologies: Judith Cochrane MLA
David McIlveen MLA

10.10am The meeting opened in public session.

Agreed that Agenda item 5 on the Flexible Working Inquiry is recorded by Hansard and the Official Report published on the Assembly website.

4. Civil Service (Special Advisers) Bill – Final Consideration of Draft Report

Members considered the Committee's draft report on a paragraph-by-paragraph basis, as follows:

Agreed: that paragraphs 1 – 13 stand part of the Report;

Agreed: that paragraphs 14 – 27 stand part of the Report;

Agreed: that paragraphs 28 – 40 stand part of the Report;

Agreed: that paragraphs 41 – 62 stand part of the Report;

Agreed: that paragraphs 63 – 92 stand part of the Report;

10.14am Mr McCallister joined the meeting.

Agreed: that paragraphs 93 – 107 as amended stand part of the Report;

Agreed: that the Appendices stand part of the Report;

Agreed: that the Executive Summary stands part of the Report.

Agreed: that the Report on the Civil Service (Special Advisers) Bill be the Second Report of the Committee for Finance and Personnel to the Assembly for session 2012/13.

Agreed: that the Report on the Civil Service (Special Advisers) Bill be printed.

Agreed: that an extract of the draft minutes of today's proceedings relating to the report is titled "unapproved" and checked by the Chairperson before being included in

the Committee report, which will be sent for printing before the next Committee meeting.

10.16am The meeting was suspended.

[EXTRACT]

Appendix 2

Minutes of Evidence

19 September 2012

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mr Roy Beggs
Mrs Judith Cochrane
Mr Leslie Cree
Ms Megan Fearon
Mr Paul Girvan
Mr David Hilditch
Mr William Humphrey
Mr Mitchel McLaughlin
Mr Adrian McQuillan

Witnesses:

Mr Jim Allister MLA *Northern Ireland Assembly*

1. **The Chairperson**: I welcome Jim Allister to the Committee. Jim, I invite you to make an opening statement addressing the principles of the Bill.

2. **Mr Jim Allister MLA (Northern Ireland Assembly)**: Good morning. I will take this opportunity to give a quick overview of the Bill. By way of introduction, I will say that the Bill came about because of the appointment of Mary McArdle as a special adviser and the disquiet that that created, and, in particular, the public hurt that it created for the Travers family in respect of the murder of young Mary Travers. Mary McArdle had been convicted of that heinous crime, and that was the catalyst for causing me to think about this issue and, ultimately, to bring forward this proposed legislation.

3. The Bill directly addresses that issue. Clause 1 defines a special adviser. Everyone in this Committee is probably familiar with who and what special advisers are and what they do, so I will not labour that. Clause 2 goes on to specify that someone shall not be eligible to be appointed as a special adviser if they have a serious criminal conviction. Therefore, the Bill is introducing ineligibility for the holding of the post and is grounding that in a serious criminal conviction, making such a conviction a barrier either for anyone in the future or anyone in the present. Anyone who is in office and incurs such a serious criminal conviction, likewise, would have their appointment terminated.

4. In clause 2(3), where on the date of coming into operation of this section a person holds an appointment as special adviser and has before that date incurred a serious criminal conviction, that person's appointment would terminate immediately by virtue of this Act. That subsection would come into effect two months after Royal Assent. Therefore, in the normal process, after Royal Assent, there would be two months before that clause would come into effect, which is, de facto, two months' notice to the person.

5. I will skip to the schedule to the Bill. If there is a person in such a position, they may then be entitled to compensation or a termination payment akin to that which they would achieve under the contract, or at least three months' salary. The purpose of that is to make sure that the Bill is human rights-compliant in respect of interference with right to property, etc. Therefore, there is a generous provision made in the schedule for some termination payment, with a backstop of six months; there would be nothing beyond that. That is how it is measured.

6. It hinges on a serious criminal conviction. In essence, a serious criminal conviction is then defined as any sentence of five years or more. There is nothing magical about five years; I am not hung up on that. In criminal law, five years is a benchmark, which often distinguishes the more serious from the less serious. However, there is nothing magical about it. Indeed, various views were given in the consultation, although five years seemed to be a medium that met with

considerable approval. Therefore, that is the figure that was chosen.

7. The Bill then takes the opportunity to tidy up a number of other matters pertaining to special advisers and, in places, to bring us into line with what exists in the rest of the United Kingdom. For example, clause 4 indicates that there should be an annual report laid in the Assembly. That is almost a direct lift from section 16 of the Constitutional Reform and Governance Act 2010, which has some sections dealing with special advisers in the rest of the United Kingdom. It seems to me that, since special advisers are a matter of public interest, the public are entitled to know something of the cost of them. They are paid by public funds, so the public need to know something of the number of them. Therefore, a modest report is requested each year to be laid in accordance with the procedures elsewhere.

8. Clause 5 comes to the code of conduct. Clauses 5 and 6 come into effect immediately upon Royal Assent in order to give time for matters to be set up so that the issue flows properly. It requires the issuing of a code of conduct for special advisers. That, again, is modelled on section 8 of the 2010 Act in the UK. I do not think that it deals with anything terribly controversial; it simply sets out some modest limits as to what they can and cannot do, but requires that code to be laid again before the Assembly, giving it statutory authority and putting it on a statutory footing rather than on a guidance footing. I believe that there is a departmental code of conduct. I am not faulting it or saying that it is wrong or inadequate; I am simply saying that it is better to have that on a statutory footing, as it is elsewhere. I think that opportunity should be taken if we are legislating on special advisers.

9. In clause 6, the code for appointments is also put on a statutory footing, whereby the Minister for Finance and Personnel would lay a code before the Assembly. It does not specify what must be in it, but includes the phrase:

"Without prejudice to the generality of subsection (1)"

10. to ensure that anything over and above that can be included. It does specify that vetting for special advisers should be akin to that for other senior civil servants. This issue has given rise to some controversy. As I understand it, the Minister purported to amend the code for appointments to introduce vetting, but that has not been implemented or accepted by all parties and, therefore, is in a form of limbo. I want to end that limbo by putting the code on a statutory basis. Again, I am not saying that the code as presently drafted is inadequate; I am simply saying that it would be better if it were on a statutory footing so that everyone knows where they stand and so that the particular requirement for vetting in clause 6(2) can only be subsequently changed by the Assembly. That is the proposition there.

11. A special adviser is a special person in that they have the status not just of a civil servant but a senior civil servant. They have access to all government papers and advise at the highest level. Indeed, some might say that, on some occasions, they effectively are the Government, because they almost make governmental decisions. They advise the Ministers, and many of the arrangements made are probably the product of agreements between special advisers. Therefore, if they are as significant as that and are right at the heart and the top of the Government, it seems unconscionable to me that they should exercise all the privileges of a senior civil servant, including a salary of up to £90,000, the pension rights, the access and the privileges of that, and yet not meet the basic requirements that any other senior civil servant would meet, including vetting. They already have that special exemption of not being appointed on merit, unlike every other senior civil servant, and I would say that that is a big enough concession to the uniqueness of their position. Therefore, they should, in all other circumstances, be subject to the rules and constraints that apply to senior civil servants. That is why the code governing their

appointment and conduct should be placed on a statutory basis and should include the requirement that their vetting be the same as applies to other senior civil servants.

12. The last thing the Bill does is to tidy up what I think is an anomaly relating to the Speaker. Historically, under the Civil Service Commissioners (Northern Ireland) Order 1999 whereby special advisers are appointed, the Speaker also has the right to appoint a special adviser. That has been overtaken by events, in that, for some years now, the Assembly Commission has appointed an adviser to the Speaker who fulfils that role. He fulfils that role independent of who is Speaker; he does not come and go with a change of personnel in the Speakership, unlike special advisers. He is a fixture and he is fulfilling the role of providing advice to the Speaker. If that is so, it seems superfluous to have the additional, unexercised power of the Speaker to appoint someone else, in addition to a special adviser. The time has come to end that. It should be changed for two reasons. First, it is no longer necessary: the Speaker has a fully paid special adviser who is employed by the Assembly Commission. Secondly, it is inappropriate, given the Speaker's independent role, that he should have powers of appointment on the basis of political patronage. Therefore, it is right and proper that that function be removed because, in any event, it is derelict and is not being used.

13. That is the essence of the Bill. Of course, before it got to this stage, it was subjected to the various forms of advice and assistance that is provided to a private Member. I am certainly satisfied, as I declare, that it is within the competency of the Assembly. I say that from my own belief and on the basis of advice that has been tendered by Legal Services, which was provided to me by the Assembly for the drafting of the Bill. I also note that the Speaker has permitted the Bill to proceed. Therefore, he, too, must be satisfied about its competency. Undoubtedly, he will have taken Legal Services' advice on the Bill's competence, which would include its compliance with human rights obligations.

14. That is a quick overview of the Bill. I am very happy to deal with any issues that arise.

15. **The Chairperson**: Thank you very much, Mr Allister. I note that there were 818 responses to the consultation process, of which 808 were for the Bill and 10 were against. Can you give us an overview of issues that were raised, both for and against?

16. **Mr Allister**: Yes. The consultation process was publicly announced. Various newspapers carried information on how you could access it. It was on my website, and so on. I was pleasantly surprised by the interest in it. The figures are as you have said. There was minimal opposition. I suppose that, in a way, I paid more attention, perhaps, to the people who raised opposition, lest there was any substance to their objections.

17. I have to tell you that only one organisation raised any significant points. That was the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO), which took the view that it was wrong to put any barriers in place of anyone. However, in its reply, it was quite muddled in its understanding of the Rehabilitation of Offenders Act 1974 and how it applies to spent convictions. The Act makes only a conviction of 30 months or less capable of being spent. Therefore, a five-year conviction is never spent under the Rehabilitation of Offenders Act 1974. To some extent, NIACRO got the wrong end of the stick. However, I was grateful to receive and consider its representations. As I said, that was the only objection of any significance.

18. All parties and MLAs were afforded a copy of the consultation. Very few took the opportunity to object; in fact, I do not think that any did. Therefore, I draw some conclusions from that as well.

19. **The Chairperson**: Did the Human Rights Commission and the Equality Commission pass any comment?

20. **Mr Allister**: I invited both to do so, of course. They said that they would comment at the stage when the proposed Bill became a Bill and went out in the normal processes. Therefore, they declined to give me the benefit of their opinion at the consultation stage.

21. **The Chairperson**: I have one final question before I open the floor to other members. Clause 3 refers, as you did, to how the Bill would apply to sentences of five years or more and life sentences. My understanding of the Bill is that it would apply, essentially, to convictions that have been received anywhere in the world. Should any flexibility be included in it, given that some countries might not have a high standard of human rights, for example?

22. **Mr Allister**: The Bill does say:

"This section applies whether the person —

(a) was convicted in Northern Ireland or elsewhere".

23. I suppose I am thinking primarily that within the Northern Ireland situation, there could be a conviction that could equally arise in the Republic of Ireland or GB. I am primarily interested in those. I would certainly be open to discussion with the Committee, if the Bill progresses, as to whether that needs any fine-tuning. It would not be an easy operation to pick and choose as to which convictions you would accept and which you would not, but I am certainly open to discussion on that.

24. **Mr D Bradley**: Morning.

25. **Mr Allister**: Morning.

26. **Mr D Bradley**: During your preamble, you gave the impression that the review undertaken by the Minister of Finance into the appointment of special advisers had not been agreed by his Executive colleagues. Yet, the information that we had from the Department implies — well, states clearly — that the new arrangements for appointing special advisers were effective from September 2011. If those new arrangements are effective, why is there a need for your Bill?

27. **Mr Allister**: There may be a difference in the language of being effective and being in effect. I think the Finance Minister would say they are in effect from the day you quoted, but whether they are being implemented is a different matter. Certainly, my knowledge comes from the public media, where there has been indication of dissent. I certainly read of Sinn Féin saying that it did not accept the changes and that, party-wise, it was paying a special adviser appointed after those changes came into effect. So, it does seem to me that there is a question about whether they are being implemented. I am simply saying that, rather than play around with this issue, let us put it beyond doubt by putting it on a statutory basis. Let the Assembly see the code of appointment and let the Assembly accept or reject it, if that is necessary.

28. Let us simply put it beyond doubt so that everyone knows where they stand and it is on a statutory footing and not at the whim of a Minister simply to change with the wind. That is the essential reasoning behind that.

29. **Mr D Bradley**: At the same time, your belief that the changes implemented by the Minister are not in effect seems to be based on hearsay. Surely, hearsay is not good grounds for bringing forward legislation.

30. **Mr Allister**: I am sure the Committee will interrogate about that and ask is everyone who purports to be a special adviser being paid from public funds, or are there some or have there been some who are being paid from party funds because the Department of Finance has not accepted that their appointment has been regular? That is my belief. If I am wrong about that, I am wrong about it, but certainly that is my belief based on what is in the public domain. However, there is no one better placed than this Committee to establish what, precisely, is the position.

31. Even if it is now accepted and being implemented, I am simply saying there was controversy about it. So, let us remove the controversy by putting it on a statutory footing and making it something that this Minister or a future Minister cannot just change on a whim. It has this statutory basis. For example, vetting is a statutory requirement. That is the only statutory requirement that I want to put into the code. I am not saying the rest of the code is inadequate. I am simply saying that it is a controversial issue, let the Assembly decide on it, and let the Assembly, if it takes my advice, put that into the legislation. Then, whoever the Minister is, he can work around that with the code of appointment but that is laid down in law that that should be a statutory requirement of vetting, just as vetting is a requirement for every other senior civil servant. I am back to the point: why should special advisers be different? They have all the privileges and position of a senior civil servant; why should they be exempt from that basic fundamental requirement, which probably applies to senior civil servants across most of the world?

32. **Mr D Bradley**: The Minister will probably argue that he has introduced vetting. In any case, what you are proposing goes beyond the current Civil Service vetting procedures by automatically placing a bar on anyone who has been appointed or is to be appointed as a result of a serious criminal conviction that has received a five-year sentence. Your proposals do not allow for the usual mitigating factors to be taken into consideration. Why are you proposing to single out the special advisers in this way beyond the policy on convictions that is current Northern Ireland Civil Service recruitment policy and procedure?

33. **Mr Allister**: I suppose because of the controversy brought upon the issue by the insensitive appointment of Mary McArdle, which stirred such public disquiet and brought such hurt to the Travers family. I am simply saying that never again should that be capable of happening to a family. Someone who is convicted of murder or serious offences relating to a family should never be put in such a high-profile position and paid from the public purse to exercise the high-level powers of a special adviser. Therefore, to make sure that that, in no circumstances, can happen again, I propose that we make it a qualification for the job that you do not have a serious criminal conviction. That is across the board. It could be a serious criminal conviction, terrorist or a non-terrorist. It could be from any source whatsoever. However, I think that the level of public unease was such that we need to address it.

34. It is not the first time that there has been legislation that has a qualification that says that people with criminal convictions cannot hold office. I take you back, for example, to the Estate Agents Act 1979, which provides that a person with certain criminal convictions cannot be an estate agent. I take you to the Solicitors (Amendment) Act 1956, which had a similar provision. A clerk who was in post had a conviction before the Act was made, and yet was disqualified from acting under the Act. That case went to the Court of Appeal, and the Court of Appeal upheld the law.

35. To bring it right up to date, just last year in 2011, we had the Police Reform and Social Responsibility Act 2011 in GB, which provides for the election of police commissioners; it provides that anyone with a conviction for a criminal offence — what it calls an imprisonable offence, so it virtually embraces every criminal offence — is disqualified from being a police or crime commissioner.

36. There is nothing novel about interposing as a qualification for a job a prohibition on having a criminal conviction. My proposed legislation is not novel at all in that regard. In fact, it is falling in a line of statutes that have done exactly that. They have all done it on the basis of saying "Here are the qualifications for the job, and one of them is that you cannot have a criminal conviction". That seems to me right and proper for a position of the nature of special adviser. It is not that — as indeed turned out in

the Mary McArdle case — such people cannot be accommodated elsewhere within their party's structures and processes, but the Bill simply says that it is a step too far to put such a person in such a high-profile, publicly paid position, bearing in mind the adverse impact that that can, and did, have, in that case, on the grieving family who had been her victim.

37. So I think that this is a modest, proportionate and necessary step.

38. **Mr D Bradley**: Your opponents on this issue might take a different view. In any case, we all recall the reaction that there was to the appointment of Miss McArdle to that position and the type of emotion that was expressed and on display in the aftermath of it. Many of us had great sympathy with the plight of Miss Travers. However, as I say, your opponents might argue that a wave of emotion is not a solid basis for bringing forward legislative change.

39. **Mr Allister**: No, but it highlighted a gap in the law in a very dramatic fashion. Therefore, as legislators, our challenge is whether we will face up to that or ignore it. It is a matter for each and every Assembly Member to weigh and decide whether it is right that someone with a serious criminal conviction, which can include murder, should hold a position, not only to which they are not appointed on merit, but to which they are appointed in spite of the pain and anguish that that brings, and they are appointed to a post that is one of the most seminal posts that can be held in public administration in respect of power and influence, and paid for out of the public purse. It is a matter for each Assembly Member to weigh. Are they comfortable with an arrangement that allows that to happen, or are they sufficiently exercised about it to want to do something about it? This is a way of doing something about it, so that it will never happen again.

40. **Mr Cree**: Good morning. I have a couple of points. I have read the raft of questions that you addressed to Ministers about this whole issue. How important was it in your decision-making that the code was not adequate in itself and would not be adequate in the future? There is quite a lot about the GB equivalent, the Constitutional Reform and Governance Act 2010. Are there any other parts of the main GB Act that, perhaps, should be included in this? I have not had time to study the whole thing yet.

41. **Mr Allister**: In the 2010 Act, the three sections that are relevant are sections 8, 15 and 16. Section 8 deals with the definition of a special adviser. What I have in clause 1 is pretty akin to that; it is modelled in part on that. Section 15 deals with the — sorry, section 15 is the definition of a special adviser. Section 8 is the one about the code of conduct, and my clause 5 is modelled on that. Section 16 is the one that deals with the annual report, and my clause 4 is modelled on that. I do not think that there are other provisions in that Act that struck me as relevant or necessary. The 2010 Act deals with a vast range of issues, not just special advisers.

42. You referred to the questions I have asked. I have had an ongoing interest in this matter. I have had a bit of a struggle to try to unearth some of the detail and found a reticence to provide answers on certain points, all of which has contributed to my belief that it is time to reform the law on special advisers, though the primary driver has always been the McArdle episode. It is opportune to take the opportunity, through the legislation, to put the code of conduct, the code for appointments and an annual report on a statutory basis so that there can be a bit more transparency and people can see exactly where things stand on all those issues. Yes, my involvement in the past and all the questions that I have asked has not raised my level of confidence in the present arrangements — let us put it like that — and, therefore, has strengthened my view that the Bill is an opportunity to improve the situation.

43. **Mr McQuillan**: Is the difference between the current code and the Bill mainly making it statutory?

44. **Mr Allister**: It will make it statutory and put vetting on a statutory footing so that it must be done and that nobody can change it without the Assembly's approval.

45. **Mr McQuillan**: Can I touch on the retrospective dimension? You mentioned, when you were talking about that, that there would be some sort of payment if somebody was made redundant from a position now. Can you explain that a bit more?

46. **Mr Allister**: There are 19 or 20 special advisers. We are talking about a small number, and, therefore, the potential negative impact, if you want to talk about that, is very small in that it is a very select group of people. However, there may be someone in position at the moment who falls foul of the Bill because they have a relevant conviction. They would have two months' notice that their job is coming to an end. Let us remember that we are talking about people who have no security of tenure in their job. They are attached to a Minister and are only in office as long as he is in office and as long as he wants them in office. So, if he or she leaves office, they leave office, or if he or she sacks them, they are sacked. Unlike with most jobs, there is no security of tenure.

47. **Mr McQuillan**: If one was to be sacked now, what sorts of arrangements are there for them, compared with those in the Bill?

48. **Mr Allister**: Before the Bill?

49. **Mr McQuillan**: Yes.

50. **Mr Allister**: They are subject to the Finance Minister's code of appointment. However, it seems to me, from what I understand, that it is not being implemented by a certain party, which has boasted of that. Unless that has changed, the Minister is saying, "This is how it should be done and, if it is not done this way, I do not pay." I understand that he has already said that it has not been done that way, and, therefore, he is not paying in the case of a recent appointment. If that has changed, I do not know about it.

51. If the Bill is passed, the code would be statutory and would have to be followed. It would be a breach of the ministerial code for a Minister not to follow the law and not implement the code. It would be foolproof in that regard. If the Assembly decided to introduce a clause that required a statutory code and required, within that, vetting equivalent to senior civil servant vetting, no Minister or special adviser could avoid that. We should be at that position so as to remove the doubt, the wriggle room, all of that. We should get to a point where it is black and white and it is in the law. If you want to be a Minister, that is the law and you have to operate it, and if you want a special adviser who is paid out of public funds, that is how it will be done. It is far better to put it on a statutory basis and beyond dispute and doubt.

52. You raised the point earlier about compensation. Under some of the protocols in the European Convention on Human Rights, there are reservations about interfering with people's property rights etc, which can be extended to the fact that someone has a job that they are going to lose. Certainly, there would be an expectation that someone should be compensated for that in some way. That is why, as a belt-and-braces exercise, I have gone to the termination arrangements in the schedule and said, "OK, if you are put out of your job because of the Bill, not only will you get two months' notice but you will get a package that will accord with whatever package you are entitled to in your contract or a basic three months' salary if there is no such provision in your contract." I think that that is not unreasonable, particularly for a job that never had any security of tenure in the first place.

53. **Ms Fearon**: My question is about the consultation period. Are you able to clarify the dates and how long it lasted for?

54. **Mr Allister**: It lasted for six weeks. I simply followed the advice that the Bill Office gave me. I believe that the consultation happened about this time last year. I think that it ended in October, if I recall correctly, so I think it straddled

September and October. I am depending on my memory in that regard, but it certainly was for the recommended and required six-week period. If that detail is important, I can get it to the Committee.

55. **Mr Cree**: The deadline was 30 November.

56. **Mr Allister**: Thank you very much. Then I am out; it straddled October and November. I am obliged, Mr Cree. I can get the actual date of publication and supply that to the Committee.

57. **Mr Beggs**: Thank you for your presentation, Jim. This is certainly an important area, and you have looked it at very carefully. That is very evident.

58. In respect of the role and responsibility of a special adviser who is paid by public funds, I think it is important that there are high standards for people who take up that position, particularly given the access to information and influence they have.

59. My question is about the cut-off period. You picked five years. Someone who commits the most heinous crime of murder would get much more for that. I am trying to get a feeling for why you picked the figure of five years. Perhaps you can give some examples of the sentences given for certain types of crimes, if you have that information. I am just trying to judge whether five years is right.

60. **Mr Allister**: I have already indicated that there is nothing magical about five years. In my experience, it tends to be a significant threshold between what is thought of as really serious crime and other crime. Obviously, there are certain crimes for which there are statutory life sentences, and that is all included in the Bill. You would certainly expect more than five years for rape, robbery, serious assault and offences of serious financial irregularity, such as serious fraud. The range of sentences below that, as you go down the scale, is for lesser offences, in the public eye. Five years represents a relatively tough sentence for a relatively bad crime. Therefore, it struck me that rather than simply saying, as the current police commissioners Act does, “any imprisonable offence”, which could be for assault, we should draw some measure of seriousness into it and say that five years might be a marker. As I indicated, however, I am not wedded to that. If the Assembly thinks that five years is too high, I do not have a problem with that.

61. **Mr Beggs**: That is a reasonably good answer. Thank you.

62. **Mr Hilditch**: Thank you for your detailed presentation, Jim. You mentioned legislation elsewhere; I take it that you meant Parliament. Does the Bill draw any parallels with any legislation in the other devolved Administrations?

63. **Mr Allister**: Interestingly enough, the 2010 Act, which is a Westminster Act, makes provision, for example, for the Scottish First Minister and the Welsh First Minister, if that is his correct title, to make annual reports on their special advisers. When you look at it, it is quite noticeable that Northern Ireland is the one absentee. So, the provisions of the 2010 Act straddle, in that particular regard, the entirety of GB. It is a good idea to bring us into line on issues such as reports, etc.

64. **Mr Mitchel McLaughlin**: Good morning. In your evidence on the Bill, it was clear that the catalyst for drafting it was the appointment of Mary McArdle. I have a number of questions about that. Do you accept that any person who was released under the terms of the Northern Ireland (Sentences) Act 1998 — all of this, of course, flows from and gives purpose to the Good Friday Agreement — has been adjudged not to be a danger to the public?

65. **Mr Allister**: Any person released under that Act is released on licence. That is to provide for any danger that might emerge. I do not think that you can say that they have been adjudged not to be a danger to the public if they have been released on licence.

66. **Mr Mitchel McLaughlin**: Well, in fact, they would not have been released if there had been any concerns that they were a danger to the public.

67. **Mr Allister**: If there then were any present concerns, they might not have been released, although I think one is mindful of the political expediency driving the release at that particular time. That, for me, is not the point. The point is whether someone, if you want to personalise it, like Mary McArdle should be in a position such as this, with all the hurt and anxiety that that brought to the Travers family. My conclusion is that she should never have been capable of being appointed to that position and, therefore, I want the law to provide that such a thing could never happen again.

68. **Mr Mitchel McLaughlin**: OK. That is not really news to me. Although I do not agree with you at all, I understand exactly your perspective on the matter, but my question, which I think you have avoided answering, is this: do you accept that any person who was released was, in fact, adjudged under the relevant legislation not to be a danger to the public?

69. **Mr Allister**: I accept that, for the purposes of release, that was the box that was ticked, but they were released on licence with the capacity for recall, and I can make my own judgement, as can the public, as to whether I think that such persons are suitable to hold such a prestigious office. My judgement on that is that they are not suitable persons and that we should have a qualification in that regard.

70. **Mr Mitchel McLaughlin**: OK. I do not need you to rehearse your opinions, because we have all listened to you time and time again banging on about that particular issue. We are dealing with the Bill that you are presenting today. I am asking questions and I am entitled to responses.

71. You indicated what the catalyst for the Bill was and the purpose of introducing it. You did not indicate that any act or behaviour by Mary McArdle, in your view, would have been a catalyst for producing it. You are not making any accusation that she has, in any sense, contravened the conditions of her release from prison.

72. **Mr Allister**: That is not for me to do, although I do note the absence of remorse in the various interviews with her in regard to the heinous crime of which she was convicted.

73. **Mr Mitchel McLaughlin**: You have noted and commented on a range of issues in respect of the Travers case. I am dealing with the special advisers Bill, and I really would appreciate it if you would address that, since it is for that purpose that you are here today.

74. In respect of this additional punitive measure, which is being introduced retrospectively, do you see a danger of —

75. **Mr Allister**: Sorry, it is not being introduced retrospectively. My Bill is prospective; it is not retrospective. The Bill is prospective as it applies from the date it is made. If it were retrospective, it would take effect before it was made and would be deemed to have always had effect. That is what retrospective means. My Bill is prospective: it is effective only from the date it is made. It does not change the legal nature of a past event, it simply makes a past event a condition of current eligibility for a job.

76. **Mr Mitchel McLaughlin**: I am quite certain that that is something that will be tested legally, given the explanation that you have offered this morning, which is on record, and the fact that your Bill, if accepted, will permit immediate dismissal of someone who is already in post. It will be a very interesting discussion as to whether that is an additional penalty being applied on the basis of retrospective —

77. **Mr Allister**: I have to say that a change in the law is not objectionable merely because it takes note that a past event has happened and bases new legal consequences on it. That is well established in law.

78. **Mr Mitchel McLaughlin**: OK. Given the significance of this, I can predict that the legal opinion will be very thoroughly tested. I put my question directly to you: if this is tested against all the provisions of the European Convention on Human Rights —

79. **Mr Allister**: Well, it has been.

80. **Mr Mitchel McLaughlin**: Sorry; let me finish. If it is tested and found, in fact, to contravene that, will you accept that position?

81. **Mr Allister**: The position is that the Bill would not have got this far without the Speaker having taken advice from Legal Services that it was within the competence of the Assembly. It could not be within the competence of the Assembly if it was thought to be non-human-rights-compliant. Indeed, it would not have reached its final draft stage if I had not been satisfied that those who were advising me were satisfied. If the Bill successfully makes its way through the Assembly, there is a provision whereby it could be referred by the Attorney General. It could be tested in that regard, or it could be tested by someone affected by it in its ultimate implementation. I cannot forecast whether there will be good, bad or indifferent challenges, or any challenges. If you are asking me to comment on whether there will, ultimately, be a successful challenge to it, I cannot see that happening because it is totally human rights-compliant. It is just as human rights-compliant as the 2011 police commissioners Act that I referred to. If, ultimately, there is a challenge that strikes it down, I will have to accept that, but I see no basis on which that could happen.

82. **Mr Mitchel McLaughlin**: OK. Thank you.

83. **The Chairperson**: Thank you very much, Mr Allister. You have agreed to provide some additional information.

84. **Mr Allister**: I agreed to provide the precise date on which it went out to consultation. Was there anything else?

85. **Mr Mitchel McLaughlin**: I beg your pardon, Mr Allister, but there is one thing. The normal practice in consultation, the best practice, would argue for a 12-week consultation period. The minimum, as far as I understand, is eight weeks. Will you explain why there was a six-week consultation?

86. **Mr Allister**: I went for the consultation period that I was advised to go for by the Bill Office.

87. **Mr Mitchel McLaughlin**: Were you aware that —

88. **Mr Allister**: I was open thereafter to anyone making representations, and if anyone had had something further to say, it would have been considered, because, as you may know, the drafting process is a protracted one. It is not an overnight job, by any means. It went on interminably, it seemed, for many months.

89. **Mr Mitchel McLaughlin**: Were you advised specifically to take six weeks, or were you advised that it is best practice to take 12 weeks and that the best practice minimum would be eight weeks?

90. **Mr Allister**: My recollection is that I held a consultation in accordance with the advice I was given.

91. **Mr Mitchel McLaughlin**: By?

92. **Mr Allister**: The Bill Office.

93. **Mr Mitchel McLaughlin**: Thank you.

94. **The Chairperson**: Mr Allister, I thank you very much for your presentation.

19 September 2012

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mr Roy Beggs
Mrs Judith Cochrane
Mr Leslie Cree
Ms Megan Fearon
Mr Paul Girvan
Mr David Hilditch
Mr William Humphrey
Mr Mitchel McLaughlin
Mr Adrian McQuillan

Witnesses:

Mr Derek Baker — *Department of Finance and Personnel*

95. **The Chairperson**: I welcome to the Committee Derek Baker, director of corporate HR in the Department of Finance and Personnel (DFP). Derek, do you want to make an opening statement? Perhaps you could outline some of the implications of the Bill.

96. **Mr Derek Baker (Department of Finance and Personnel)**: Thank you very much, Chair. Hopefully, the Committee will have received a letter from the Department that summarises the main changes between the proposals in the Bill and the current arrangements. I will not rehearse those.

97. I will make three brief points, two of which pick up on comments by Mr Allister. The first is a very small point. Mr Allister referred to clause 6, which is about the vetting arrangements for civil servants, quite rightly. I would just make the comment that there are no vetting arrangements that are peculiar to senior civil servants. They apply to all civil servants regardless of rank. That is only a minor technical point.

98. The second point relates to clause 7 and, again, is really confirmation of what Mr Allister says. There does seem to be an anomalous position in the Civil Service Commissioners (Northern Ireland) Order 1999 that allows the Presiding Officer of the Assembly to appoint a special adviser to the Civil Service, which does seem odd. I do not think that provision has ever been invoked. I think any advisers whom the Presiding Officer has appointed have been employees of the Assembly. It does seem odd that the Presiding Officer would appoint a civil servant as a special adviser. So, the tidying-up provision in Mr Allister's Bill would appear to address what is an odd position. I do not quite know why it exists — you would have to go back to those who made the legislation in 1999.

99. The third point, Chair, picks up on your opening question. I will not go through my letter in detail, but with regard to practicality — I am not commenting at all on the policy in the Bill or the appropriateness of the Bill; that is not my role — and the requirements that the Bill would place on the Department of Finance and Personnel in laying documents, reports, codes, and so forth, before the Assembly, from my perspective as an administrator, that does not appear to present any difficulties at all. As Mr Allister quite rightly said, it would place on a statutory footing documentation that exists on an administrative basis. There may be changes to those documents subject to Ministers' will, but they could easily be placed on a statutory footing. Please do not take that as any comment on the policy behind the Bill. That is all I will say at this stage, Chair.

100. **The Chairperson**: Thank you very much, Mr Baker. Do you foresee any significant cost to this Bill?

101. **Mr Baker**: I do not see any significant cost whatsoever, certainly no more cost than the current arrangements incur.

102. **The Chairperson**: You make reference to clause 4 of the Bill and the provision of

an annual report on special advisers. Do you sense that there is no real need for that given that that is already published by each respective Department?

103. **Mr Baker**: No, that was not the intent behind the letter. I am not going to comment on the policy behind the Bill; that is not my job. All I was saying is that that information is available in various forms but it is not brought together. Bringing it together should not be a particular difficulty, and, as Mr Allister said, the Constitutional Reform and Governance Act 2010 made provision for the publication of that information in Great Britain. I am not saying whether there is a need for it or not.

104. **Mr D Bradley**: Morning.

105. **Mr Baker**: Good morning.

106. **Mr D Bradley**: While I was questioning Mr Allister, there were some semantics around the word “effect”. The Department’s paper said that the new arrangements introduced by the Minister were in effect from September 2011. I think what Mr Allister was saying, if I understood him, was that they may have been effective from then but they were not in effect. In any case, can you clarify the situation? Since the regulations have been introduced, has any new special adviser been employed?

107. **Mr Baker**: The Minister of Finance and Personnel issued a communication to his ministerial colleagues in September 2011 informing them that his new arrangements were taking immediate effect from that date and that he would expect compliance with those arrangements. There were no appointments, to the best of my knowledge, during that financial year — the year ended March 2012. However, I am aware that, during the current financial year, a number of special advisers have been appointed or are in the process of being appointed. The Minister’s new arrangements will require me or my unit in the Department of Finance and Personnel to report to him on compliance with the new arrangements. I would not want to talk about any individual special advisers at this stage. Any special adviser appointment arrangements that have been completed — by that I mean run from a to z, right through from a vacancy being identified to the end of the process, which involves the salary being agreed in accordance with the current arrangements and the salary being paid — have been made in accordance with the Minister’s new arrangements. However, I am aware of some appointments that have not completed that process.

108. I am aware of the public, political controversy around the issue, and Mr Allister alluded to that. I am not privy, however, to any engagement between Ministers, between politicians or, indeed, between special advisers on those issues. So, you are taking me into potentially difficult political territory that I, as a civil servant, would not wish to get into. That is really as much as I would say on that point at this stage.

109. **Mr D Bradley**: I can reassure you that I am not trying to take you into any potentially difficult political territory.

110. **Mr Baker**: I know.

111. **Mr D Bradley**: I am just trying to establish the facts of the matter. As I said in my questioning earlier, there seemed to be a lack of clarity around that. Basically, are you saying that no special adviser has been appointed under the new system to date?

112. **Mr Baker**: No, that is not what I am saying. Some special advisers have been appointed. The process has been completed, the salaries have been agreed and they are in post, and those appointments have been fully in compliance with the arrangements issued by the Minister last September. Some have not reached the end of that process, so I cannot comment on them.

113. **Mr D Bradley**: One of the other points that arose from Mr Allister’s evidence was that he seemed to imply that there was not Executive agreement on the new arrangements introduced by the Minister. Does the Minister require

Executive agreement for these changes to be effective?

114. **Mr Baker**: The Minister will take his own counsel on that. The Minister issued his report of his review of arrangements for appointing special advisers to all his ministerial colleagues in June 2011. To the best of my knowledge, he got no responses to that, certainly not in writing, or none that I have seen. So, the Minister presumably took silence as indicating consent and then, in September, issued another piece of correspondence to his ministerial colleagues saying that he was proceeding to implement these arrangements. I suppose, in doing so, the Minister was taking his authority from the Civil Service (Northern Ireland) Order 1999, which vests statutory power in the Department of Finance and Personnel for the general management of the Civil Service. It vests power in the Department to give directions on recruitment to posts in the Civil Service. Given that the Department of Finance and Personnel operates under the direction and control of the Minister, that was his authority for issuing his new arrangements in September. Now, whether the Minister should or should not have formally gone to the Executive is not a matter for me; it is a matter for the Minister.

115. **Mr D Bradley**: Yes, but you are a senior person in the Department with direct responsibility for this. I asked you a factual question: does the Minister require the agreement of the Executive in order to make effective the changes that he has brought about regarding special advisers? Your response was that the Minister will take his own counsel on that. Surely there is more clarity around the situation than “The Minister will take his own counsel”?

116. **Mr Baker**: No. Ministers make policy, and I implement policy determined by Ministers, so I —

117. **Mr D Bradley**: Yes, but the question I am asking you is whether the Minister has the power to do it without reference to the Executive.

118. **Mr Baker**: The Minister believes that he does, and what the Minister decides —

119. **Mr D Bradley**: Believing he has the power and having it might be two different things.

120. **Mr Baker**: I do not have an independent view on that. My view is the Minister’s view.

121. **Mr D Bradley**: Surely the Department has taken legal advice on this?

122. **Mr Baker**: Actually it has not.

123. **Mr D Bradley**: So you do not know whether the Minister has the power?

124. **Mr Baker**: The Minister has done what the Minister has done, and I operate under the direction of the Minister. That is always the way. I have quoted the statutory power that vests authority —

125. **Mr D Bradley**: This is an important point in the Committee’s deliberations. If there is a lack of clarity on that, members might decide that there is a need for Mr Allister’s Bill. If the Minister has the power, some members might decide that, since the power is vested in the Minister, there is no need for Mr Allister’s Bill. So it is an important point.

126. **Mr Baker**: The Minister is very, very clear that he has the power.

127. **Mr D Bradley**: He may be, but as a senior adviser to the Minister —

128. **Mr Baker**: I am quite content with the Minister’s opinion on this.

129. **Mr D Bradley**: You do not seem to be. You suggested that the Minister could take his own counsel on it.

130. **Mr Baker**: The Minister always takes his own counsel. The Minister makes policy and he directs me to implement his policy.

131. **Mr D Bradley**: Yes, but surely he does so within a legal framework that gives him the power?

132. **Mr Baker**: Yes, and I have quoted the statutory framework within which the

Minister operates. It is the Civil Service (Northern Ireland) Order 1999.

133. **Mr D Bradley**: Yes, but you cannot tell me definitively whether he needs Executive approval.

134. **Mr Baker**: I am sure that there are lots of things that Ministers do at their discretion and on the basis of the policy decisions that they make. It is not for me as a civil servant to gainsay anything that a Minister does or say that they do or do not have the power to do that. It would be quite wrong of me to do that.

135. **Mr D Bradley**: Even if you knew that he had not the power?

136. **Mr Baker**: I would never gainsay a Minister. As a civil servant, it is not for me to gainsay a Minister, and certainly not in front of a Committee. When I am at this Committee, I am representing my Minister.

137. **Mr D Bradley**: I am not asking you to gainsay him. I am trying to establish facts here, but it is proving very difficult.

138. **Mr Baker**: I have quoted the statutory authority under which the Department of Finance and Personnel can issue directions regarding recruitment to appointments in the Northern Ireland Civil Service. A special adviser is a civil servant; a very special civil servant, but a civil servant. In exercising those powers, every civil servant in DFP operates under the direction and control of the Minister. So, that is the statutory authority under which the Minister issued his guidance on the appointment of special advisers. I cannot be any more definitive than that.

139. **Mr D Bradley**: I take that as a yes then?

140. **Mr Baker**: A yes to what? [Laughter.]

141. **Mr D Bradley**: That is how I feel in relation to some of the stuff you have said to me. In any case —

142. **Mr Baker**: Sorry; let me be very clear. The Minister issued guidance on the appointment of special advisers. The power to issue directions regarding the appointment of any civil servant is vested in DFP by dint of the legislation to which I have made reference. There is no question about that in my view; I am crystal clear about that. Therefore, that is the statutory authority under which the Minister issued that guidance. I am crystal clear that there is a statutory authority for the Minister to do that. Beyond that, what goes on at the Executive, what goes to the Executive or what does not go on at the Executive is not my territory at all. That is what I meant when I said that the Minister will take his own counsel on that.

143. **Mr D Bradley**: Yes, but I was not asking you about what goes on or does not go on at the Executive. I asked whether the Minister needed the agreement of the Executive to introduce these reforms. I take it now, from what you have said, that he does not need agreement for them because he has the legal power to do it.

144. **Mr Baker**: I am satisfied that he does.

145. **Mr D Bradley**: OK. That is clearer than it was previously. I thank you for that.

146. **Mr Baker**: Thank you.

147. **Mr Cree**: I am certainly reminded of ‘Yes Prime Minister’. It is getting more and more like that.

148. **Mr Baker**: I know; I apologise for that, Chair. *[Laughter.]*

149. **Mr Cree**: I take it that it is all good training, Chair.

150. I have two points. First, the letter to which we are, hopefully, all referring is that dated 13 September. I think that you have partially answered my question, and you touched on this already, but, where clause 4 is concerned, the letter says that there is no “central collation of information”. That can be done without significant cost. Is that true?

151. **Mr Baker**: That is correct. That should not be difficult at all. There are only 18 or 19 special advisers, and that information is readily available.

152. **Mr Cree**: My second question was prompted by Dominic’s inquisition. For a

while, I have been interested in the fact that some Departments say about their organisational structures that they are headed by a permanent secretary; they use that phrase. Others are headed by a Minister. Which do you think is correct?

153. **Mr Baker**: I do not want a rerun of the previous engagement, Chair. [Laughter.]

154. **Mr Cree**: Perhaps you could come back to me on that.

155. **Mr Baker**: Maybe you would need to take legal advice on that. I know that you are taking evidence from the Attorney General. He might be able to shed more light on that than I could. In layperson's terms, I would say that the permanent secretary is the administrative and managerial head of a Department. Obviously, he is the accounting officer for the management of resources in the Department. Everything that a permanent secretary does — indeed, this is the case for every other civil servant in that Department — is under the direction and control of the Minister for that Department. So, the Minister is the political head. Ultimately, the Minister makes policy, and civil servants have to operate in accordance with the Minister's policy. That is a bit of a long-winded answer, but that is how I understand it.

156. **Mr Cree**: Thank you for that.

157. **Mr Beggs**: Thanks for coming along today. You indicated in your evidence that statutory authority rests with the Finance Minister. Certainly, the current Finance Minister believes that he has the statutory authority to introduce the new regulation. Might that change if there were a different Finance Minister? Might a new Finance Minister adopt a different interpretation, meaning that, therefore, a different set of regulations might apply or that we might revert to the previous regulation?

158. **Mr Baker**: You are asking me to speculate and predict what stance a new Minister might take on any particular issue. I suppose that the answer is yes: any new Minister who comes in could adopt a new policy on any issue whatsoever. As a consequence, new directions could be issued under the authority of the legislation to which I referred. So, the answer is yes; quite possibly. Ministers come and go, and they have different policy approaches. That is what happens.

159. **Mr Beggs**: In my mind, that points to why legislation would make everything much clearer.

160. My second issue relates to special advisers and annual reports. Earlier in the summer, the issue of the salaries that are paid to special advisers was in the media. Civil servants have had their salaries frozen. Some lower-paid members of the Civil Service have received minimal increases. There is a lack of clarity on how wages are determined and on reporting how significant increases were awarded to, as I understand it, two special advisers. What reporting mechanism is there in the current system for accounting for those very significant increases? Does that not point towards a need for the type of reporting mechanism that is indicated in the proposed legislation?

161. **Mr Baker**: I cannot inform the Committee of either the salaries or increases received by any particular special advisers quite simply because I do not know them. However, I know that that is not what you are asking.

162. **Mr Beggs**: Can you advise us of the process for determining those advisers' salaries?

163. **Mr Baker**: I can. The general process for determining a special adviser's salary is based on a three-way decision between the permanent secretary of the Department involved, the Minister involved, and the head of the Northern Ireland Civil Service, who tends to operate in a sort of moderating role to make sure that there is some consistency across all Departments. When a Minister is going through the process of appointing a special adviser, they will make what is, perhaps, slightly grandly called "a business case" for which of two salary bands a special

adviser should be on and where that special adviser should be placed on a particular salary band. That will depend very much on the nature of the job and on a person's experience and expertise, and if they were previously in employment, their previous salary. That is agreed on a tripartite basis among all the parties, and any change to that will have to be agreed on a tripartite basis as well.

164. Special advisers' salaries are reported in each Department's annual resource accounts. However, only the total salary band is included. The resource account will indicate on which of the two salary bands an adviser or advisers in that Department are paid. Those salary bands are quite broad, and an individual could be at the bottom or the top, but it is reported in the context of salary bands. For other senior staff in a Department, the same resource account will report salaries. For example, my salary is available for all to see in the DFP resource account. That is in bands of £5,000, which is a somewhat narrower band. That is a common accounting convention in most public bodies and maybe even in private bodies. The reporting arrangements for special advisers are different, in that the whole band is reported, because, to the best of my recollection, that is what Ministers decided.

165. **Mr Beggs**: My very particular question was about significant salary increases for special advisers since their original appointment. Under clause 4, a very significant explanation would be justified if that occurs. What is the process for when there have been very significant increases, particularly at a time when there is a freeze on other civil servants' pay?

166. **Mr Baker**: I will revert to Sir Humphrey mode again. When is a freeze not a freeze? The vast majority of civil servants are on what are called pay scales, and even though those pay scales might be frozen, they move up incrementally during the year. It is not as though everybody is paid the same today as they were last year; they might have moved up. However, that is just context.

167. A decision on an individual special adviser's remuneration is taken by the relevant Minister and permanent secretary, with the involvement of the head of the Northern Ireland Civil Service. It does not come my way.

168. **Mr Beggs**: A 10% increase was reported earlier this year. Are you saying that that has not caused discontent in your Department among other civil servants?

169. **Mr Baker**: Civil servants are always a discontented bunch, but, most of the time, there is no justification for such discontent. You are asking me to comment on a very personal issue, and I do not think that it is fair for me to comment on that.

170. **Mr Beggs**: I think that, when everyone else's salary has largely been pegged, there should have been an explanation for such a significant increase. That is why a reporting mechanism as per clause 4 would be justified.

171. **Mr Baker**: As I said at the start, it is not for me to comment on the policy in the Bill. That is for politicians, particularly as it is a private Member's Bill. So, I will not comment on that point.

172. **Mr Beggs**: In your experience, is there a danger of senior civil servants having over-cosy relationships with Ministers, in the sense that everybody can have a nice cosy relationship if you agree to give their special adviser an above average increase?

173. **Mr Baker**: No, I do not think so.

174. **Mr Beggs**: Are you telling me that the person who works for the Minister — his permanent secretary — has a significant input into deciding significant salary increases for his special adviser?

175. **Mr Baker**: Correct, and moderated by the head of the Northern Ireland Civil Service. The Executive agreed the arrangements for remunerating special advisers back in May 1997. Whether those were the right arrangements is definitely a matter for the Executive to

consider and change if they feel that they should be changed. They are what they are, and they have been signed off by the Executive. That is how they operate. I know that I appear to be defensive, but it is not for me to gainsay an Executive decision. I remember that there was much debate about the point. It was when devolution was returning in early 1997, and a lot of paperwork was done on arrangements for remunerating special advisers. It culminated in a paper to the Executive in, I think, May 1997. The reason that I recall that is that I was drafting all of it. The Executive signed off on a policy for remunerating advisers.

176. **Mr Beggs**: I have a final question: who moderates the situation for OFMDFM when the permanent secretary is the head of the Civil Service?

177. **Mr Baker**: That is a very good question. Nobody moderates it; the head of the Civil Service has nowhere further to go on that point, so it is just the permanent secretary in that Department.

178. **Mr Humphrey**: Thank you for your evidence this morning. In your answers to Mr Bradley, you said that some special adviser appointments have not yet completed the process. Can you advise us when that process will be completed and whether you believe it will be compliant?

179. **Mr Baker**: Quite honestly, I cannot advise you on that because I do not know when they will be complete. That is outwith my control and knowledge. Whether they will be compliant is also outwith my knowledge and control; it will depend on the actions of others.

180. **Mr Humphrey**: How many are we talking about?

181. **Mr Baker**: I would be very loath to talk about actual numbers, because when you are talking about a very small number of appointments, such as those that have been made this financial year, it would start to be easy to identify individuals. We are talking about very small numbers. The total number of special adviser appointments that I am aware of this financial year is five, although it is a number smaller than five.

182. **Mr Humphrey**: During his evidence, Mr Allister talked about a six-week consultation process. He got advice from the Bill Office. Do you believe that that is consistent with advice that would have come from the Bill Office? Would that be legal and correct?

183. **Mr Baker**: I honestly have no idea what kind of advice the Bill Office gives or what the normal protocols are for consultation on a private Member's Bill, so I really could not comment on that. All I know is that if we, as a Department, were going to consult on an issue, we would probably be looking at a 12-week period as a minimum if that could be accommodated within the timescale for taking action. However, there may be entirely different arrangements for —

184. **Mr Humphrey**: You are not aware of it?

185. **Mr Baker**: I am not aware of it.

186. **Mr Humphrey**: Obviously, if the advice came from the Bill Office, it would be right?

187. **Mr Baker**: I assume that any advice from the Bill Office is right. Why would I question it in any way? I am sure that the advice is good.

188. **Mr McQuillan**: Derek, can I ask you about the retrospective dimension of the Bill? Would the two months' notice and the three months' payment after that cause the Department any problems? What normally happens?

189. **Mr Baker**: No. As Mr Allister said, the schedule to the Bill, which sets out the proposed severance arrangements, is pretty much in line with the current arrangements for special advisers. I see no difficulty with that whatsoever.

190. **Mr Girvan**: Thank you, Derek. The second paragraph of the letter dated 13 September states:

"for the appointment of Special Advisers similar to that which is applied to all other civil servants."

191. It does not say "the same"; it just says "similar". On that basis, I am wondering about employer guidance. We know that the word "guidance" can be used and set aside, as happens on many occasions. It can be applied where they want to use it, and we know how many occasions that happens. I wonder why the term "similar" is used as opposed to "the same as", which, I understand, would be a slightly firmer way of putting it. By using the term "similar", it gives the impression that wriggle room is coming somewhere.

192. **Mr Baker**: You are absolutely right: there is a small difference. So far as the initial vetting process is concerned, the arrangements introduced by the Minister in September 2011 for special advisers were identical to those that would apply to any other civil servant. The one difference is that, in his proposals, the Minister included the possibility of appeal should a Minister or, indeed, a special adviser, not be satisfied with the outcome of the initial vetting process. They could then appeal against that to a third party, who we would have to identify to deal with the appeal. That appeal mechanism does not exist in the current recruitment policy and procedures manual, which applies to all other civil servants. So, if you like, the Minister's new arrangements for special advisers offer a bit more latitude, in that there is a built-in appeal mechanism.

193. **Mr Girvan**: The issue is with the application of the current guidance. How effective has that been? Am I to understand that, under the current Civil Service code, no one with a serious conviction is employed?

194. **Mr Baker**: I am sorry; I cannot answer that question. I just do not know.

195. **Mr Girvan**: I appreciate that you cannot answer that. That is why I am leaving it hanging in the air. I have concerns that, on a lot of occasions, the guidance has not been properly applied, and that leads me to ask whether it is firm enough to ensure that that situation does not happen.

196. **Mr Baker**: It would be very difficult for us to find out. Part of my unit carries out the vetting process and takes the decisions on allowing someone's recruitment to proceed. Occasionally, it takes a yes decision, and, occasionally, it takes a no decision. After that process is completed, we destroy all the records relating to criminal convictions that are received from Access NI. We do not keep records of the criminal convictions. I take your point, but I cannot tell you how many such people have got into the Civil Service.

197. **Mr Girvan**: You mentioned Access NI, and we are all aware of the delays that can happen in getting those reports back. That has been a big issue until now. I have known that people have been in post but the report has still not been received. Ultimately, the Civil Service is waiting on Access NI and is relying on the person's word that they have no skeletons in their cupboard.

198. **Mr Baker**: There are two issues there. Sometimes, the issue of delay has come up. On occasions, we can, to use the vernacular, pull a few strings with Access NI to get a very quick referral done should we need to. We work closely with it to try to speed things up because, when we do a big-volume competition, a lot of people go through the process.

199. Secondly, if we have to make an appointment before we get the report from Access NI, we can make an appointment at risk. In the appointment letter, we can make it crystal clear to the individual that the appointment is subject to the full vetting procedure's being completed so that it can be written into their contract of employment. I have never been aware of a case where that has happened, but if something were to show up that was of very serious concern, we could invoke that clause in the contract of employment.

200. **Mr Girvan**: Is the tariff mentioned in the 1999 Act?

201. **Mr Baker**: No, those kinds of issues are not mentioned in the Civil Service

Commissioners (Northern Ireland) Order 1999.

202. That reference reminds me of one other point that I meant to make at the start. The issue of competence is outwith my competence, because I am not a legally qualified person. I am sure that the Attorney General will be able to offer help to the Committee. Simply because of my job, I have a fair amount of contact with the Civil Service Commissioners, who regulate what we do in recruitment. I have some familiarity with the Civil Service Commissioners (Northern Ireland) Order 1999, which clause 7, I think, of the Bill would amend. I have a wee question mark over that, in that my recollection of that order is that it is a weird and wonderful piece of legislation that goes under the name of a prerogative order made by the Secretary of State under a letter of patent from Her Majesty. That obviously goes way back in the mists of time. The order is, I think, made by the Secretary of State for Northern Ireland. So, given that the Bill would amend the order, the Secretary of State's approval would perhaps be needed to give effect to that clause. I do not know; that is an issue of legislative competence that others will investigate. From looking at the order in the past, I know that it transpired that it is very peculiar legislation in that it does not go through any legislature. It does not go through Parliament or the Assembly but sits outside that kind of process. That is just a little technical quirk.

203. **Mr Girvan**: My understanding is that the issue that we are dealing with is totally devolved, so we should be able to —

204. **Mr Baker**: Fine; that is OK. I am not a legally qualified person.

205. **Mr Mitchel McLaughlin**: Hello, Derek, or is it Sir Humphrey? I do not know which is the most appropriate.

206. **Mr Baker**: I would like his salary.

207. **Mr Mitchel McLaughlin**: Did the review that your Minister conducted and in which you were involved examine individual Ministers' competency and authority to identify and appoint their own special advisers?

208. **Mr Baker**: No, it did not touch on that.

209. **Mr Mitchel McLaughlin**: OK. I would just like a second piece of information. In the past year, the Committee has discussed an issue of some significance: the Senior Civil Service disciplinary process and demotion. That led us to a considerably confused and grey area with the role of the head of the Civil Service and who they are appointed to. You referred to the Minister's statutory authority. Has he ever considered what his relationship is with the Senior Civil Service, given that the salaries for these posts are akin to Senior Civil Service salaries?

210. **Mr Baker**: Are you talking about Ministers' ability to exercise discipline?

211. **Mr Mitchel McLaughlin**: No; I am talking about your Minister's responsibility for the Civil Service, specifically senior civil servants.

212. **Mr Baker**: I do not think that that issue has arisen.

213. **Mr Mitchel McLaughlin**: You did not think that that was relevant?

214. **Mr Baker**: The statutory authorities to which I referred also cover the determining of standards of conduct for civil servants. I think that that is mentioned explicitly in the Civil Service Commissioners (Northern Ireland) Order 1999. I think that the answer to your question is no. I do not think that, in our deliberations, we brought into play the specific role of the Minister of Finance and Personnel where disciplinary action against an individual civil servant is concerned, if that is what you are asking me.

215. **Mr Mitchel McLaughlin**: That is exactly what I am asking.

216. **Mr Baker**: My answer is no, then.

217. **Mr Mitchel McLaughlin**: OK. Thank you.

218. **The Chairperson**: OK. You are free to go.

219. **Mr Baker**: Thanks.

19 September 2012

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mr Roy Beggs
Mrs Judith Cochrane
Mr Leslie Cree
Ms Megan Fearon
Mr Paul Girvan
Mr David Hilditch
Mr William Humphrey
Mr Mitchel McLaughlin
Mr Adrian McQuillan

Witnesses:

Mr John Larkin *Attorney General for Northern Ireland*

220. **The Chairperson**: John, you are very welcome.

221. **Mr John Larkin (Attorney General for Northern Ireland)**: Thank you, Chairman. It is a pleasure to be here. I think that this is my first engagement with the Committee, and I am delighted to be here. I see this as an aspect of my engagement with the Assembly and with individual Committees. I was going to give an overview of what I think the Bill does, but it occurs to me that because the Committee had a very full presentation of the Bill from its author, Mr Allister, I might dispense with that and simply make myself available for any questions that the Committee may have.

222. **The Chairperson**: Before we do that, it may be useful if you outline to the Committee your role and functions.

223. **Mr Larkin**: I am a statutorily independent law officer and chief legal adviser to the Executive. Specifically, in the context of Bills, I have a jurisdiction under the Northern Ireland Act 1998 to refer, if I think it appropriate, a Bill or any provision thereof to the UK Supreme Court for a determination on whether it is within the Assembly's competence, particularly under the principal competence-limiting measures in section 6.

224. **The Chairperson**: In the paper that we received from the Department, the author referred to the fact:

"The Bill contains a retrospective dimension".

225. Members have been questioning how that may apply to past appointments. Mr Allister's presentation referred to legislation from, I think, the 1950s, under which someone had his contract terminated because of a previous offence. Do you have a particular view of that or of how competent the legislation would be?

226. **Mr Larkin**: I see that there is a discussion in paragraph 17 of the explanatory and financial memorandum, which Mr Allister produced, in which he looks at retrospectivity. He referred to three Acts. Two of them, of course, antedate the Human Rights Act 1998 and particular provisions in that that deal with retrospectivity. So, I do not think that those old statutes offer us any assistance about what might happen now. He also referred to the 2011 UK Act, which is about elections to newly created posts, so I do not see the immediate read-across with what is happening or what would happen in this Bill.

227. **The Chairperson**: The departmental official's last comment referred to the Civil Service Commissioners (Northern Ireland) Order 1999, which, in his view, is a prerogative order. This may need the Secretary of State's approval. Would that be the case? It is certainly something that I have not seen before.

228. **Mr Larkin**: I have to say that it was hugely valuable for me to listen to Mr Baker's evidence. He raised a very important and interesting point. The one thing that one can be absolutely clear about is that, under the Northern

Ireland Act 1998, the Civil Service Commissioners are a reserved matter. I would need to look more closely at precisely what is proposed in clause 7 to see whether it might offend that. On the face of things, it does not look as though it takes away from the commissioners' power, but I want to reflect on that a little more.

229. **Mr D Bradley**: What is your responsibility in relation to statutory Committees of the Assembly such as this?

230. **Mr Larkin**: In what sense?

231. **Mr D Bradley**: You said that you had a statutory responsibility to provide legal advice to the Executive.

232. **Mr Larkin**: No, I did not. I said that I was chief legal adviser to the Executive. That particular function is not on a statutory basis. The reference to "statutory" was that I am a statutorily independent law officer. My engagement with the Assembly Committees is not, at present, regulated by statute. Standing Orders can provide specifically for my participation in the Assembly, which, I suppose, means plenary sessions, but those Standing Orders have not been made yet. So, this is simply part of what I see as good governance arrangements, whereby I am happy to give as much assistance as I can to the Assembly and its Committees.

233. **Mr D Bradley**: Does that assistance extend to individual Members?

234. **Mr Larkin**: I think that, from time to time, it could; yes.

235. **Mr D Bradley**: Why, then, did you decline to give me your advice on the Autism Bill when I asked for it?

236. **Mr Larkin**: That is a very good question, but there are all kinds of reasons, which I cannot go into now, why I cannot answer it.

237. **Mr D Bradley**: Right. I thought that we had enough of that this morning in the earlier session.

238. **Mr Larkin**: I will not beat around the bush: I cannot answer that question for a variety of reasons that —

239. **Mr D Bradley**: Maybe you will write to me and explain.

240. **Mr Larkin**: I am not even sure that I can do that. I will see. If you write to me, I will see whether I can answer your question.

241. **Mr D Bradley**: I did write to you, and you wrote back but did not answer my question.

242. **Mr Larkin**: That is right, but you got an answer. It was not the answer that you were particularly thrilled at. [Laughter.]

243. **Mr D Bradley**: It was a non-answer. However, I will take the time to write to you again just to clarify that point. I just thought that, since you have come this far, I would take the opportunity to ask you that question.

244. **Mr Larkin**: It is a free shot, so why not?

245. **Mr D Bradley**: Exactly. That is fine, Chair.

246. **Mr Cree**: John, following on from that, perhaps you could clarify something for me. It is really to do with your role vis-à-vis the Bill Office and the normal progress of legislation through the House. Do you, at any stage, impinge upon that, or is your advice sought?

247. **Mr Larkin**: To answer the question in the abstract, as you know, most Bills are Executive Bills. Therefore, without going into any particular detail or any concrete instance, there would, very often, be engagement between me and the relevant Minister before a Bill is introduced. That is non-statutory engagement. The formal statutory role that I have is at the very end of the process when the Speaker writes to me to ask me whether, essentially, I am going to refer the Bill or any provision thereof to the UK Supreme Court. There is the additional element — I think it has been touched on this morning — that the Assembly's own legal advisers would, from time to time, reassure the Speaker as to the competence of any proposed Bill.

248. **Mr Cree**: So, there is no formal structure. If, for example, I were to put forward a private Member's Bill — I may well do that next week — can I discuss the generalities of that with you?

249. **Mr Larkin**: Yes, you can.

250. **Mr Cree**: Thank you.

251. **Mr Mitchel McLaughlin**: Good morning. This Bill will obviously be of huge significance, not just in public interest terms, but it may go to the core of the principles and foundations of the peace and the political process that emerged from it. As the Attorney General, do you subscribe to the view that prisoners who were released under the 1998 sentences Act did so on the basis of the Good Friday Agreement, which was the catalyst for that particular piece of legislation, and were released because they were adjudged not to be a danger to the public?

252. **Mr Larkin**: I think that it is important to clarify something that may have been discussed earlier. The adjudication by the Sentence Review Commissioners that someone was not a risk to the public would have undoubtedly occurred, and I do not think that it would be right, in fairness, to the commissioners to describe that simply as a box-ticking exercise. That applied only to life sentence prisoners, so fixed-term prisoners would not have been subject to the additional criterion in the Northern Ireland (Sentences) Act 1998 that they would be of no danger to the public if released.

253. **Mr Mitchel McLaughlin**: OK; that is important information. I am not a lawyer. That would, in fact, apply to the case that was described as the catalyst for this Bill?

254. **Mr Larkin**: Yes; I am sure that is right.

255. **Mr Mitchel McLaughlin**: Quite clearly, the Bill has implications for domestic law and European human rights law. Do you have any concerns that if the Bill is passed by the Assembly, that decision could render the Assembly vulnerable to European human rights law?

256. **Mr Larkin**: Obviously, the Bill has been very carefully considered. It is important to point out — he is probably too modest to do so himself — that Mr Allister and I took silk at the same time. Of course, there are also legal advisers to the Speaker.

257. Paragraph 15 of the Bill's explanatory and financial memorandum discusses the human rights issues. For reasons that I am happy to go into in greater length if required, I think that it is correct, in view of the compensation arrangements, that article 1 of the first protocol to the European Convention on Human Rights would not be breached by the passage of the Bill. I also agree with the author of the explanatory and financial memorandum that article 6 would not be engaged.

258. My concerns stem from article 7 of the convention. That does two things, one of which is relevant, potentially, to this Bill. First, article 7 of the convention prohibits retrospective penalisation, so one cannot retrospectively render criminal that which was not criminal at the time. Secondly, and, perhaps, more relevantly for this discussion, it prohibits an increase in penalty or the imposition of a heavier penalty than was available at the time. If the question is asked whether the disqualification that is introduced by clauses 2 and 3 of the Bill constitutes a penalty in domestic law terms, the answer is quite clearly that no, it does not, because our criminal law would not recognise that as a penalty. For the consideration of this issue, it is vital to recall that "penalty", as used in article 7, has an autonomous convention meaning, and that has been clarified in a number of Strasbourg cases.

259. It strikes me that in taking guidance as best one can from the Strasbourg authorities, one starts with the dominant question in seeing whether article 7 applies. Does the measure, to use a neutral term, follow on as a consequence from a criminal conviction? I think the answer here is that what happens in clauses 2 and 3 does follow on as a consequence of a criminal conviction. You also consider its

classification as a matter of domestic law. Again that points the other way. However, you then look at a purpose and its severity. It strikes me that in the cases where retrospective measures have been imposed throughout Europe, in France and the UK — cases that have survived scrutiny at Strasbourg — have been measures that, although retrospective in their effect, have been typically for a public safety purpose. For example, preventing people convicted of serious sexual offences from working with children or issues about measures to enforce the payment of certain sums of money due to Government, as in France, have served a broader public safety or public interest purpose rather than a purely penal purpose.

260. I am not fully aware of what the purpose may be, but, as I listened, at least partly, to Mr Allister, it seems that that does loom large. It is based, at least in part, on the idea of the public, or a large section of the public, recoiling from the presence of certain people who have serious criminal convictions in the past being in these important posts. If one looks, for example, at the policy objectives, paragraph 3 of the explanatory and financial memorandum states:

"The first objective of the Bill is to provide that no person shall hold the post of special adviser if they have been convicted of a criminal offence for which they received a custodial sentence of five years or more".

261. So, there is a certain circularity. That is the point of the Bill and that is why, I think, there are dangers in relation to the competence of clauses 2 and 3 as they stand at present. It would be perfectly possible, for example, to have provisions that were regarded as harsh. There is an old Latin tag, dura lex sed lex, but if they are prospective and apply only in the future, no issue arises under article 7.

262. **The Chairperson**: John, just in terms of process, if this Bill does go through the Assembly, and there are still concerns about the retrospectiveness of it, and it goes then to the Supreme Court, and if it is not turned down at that stage and is taken to the European Court, what will be the consequences? Could you perhaps explain that a bit more?

263. **Mr Larkin**: In terms of procedure, if the Bill makes its way through the various Assembly stages, it may change. Therefore, anything I say today is to be grounded solely on the text of the Bill as it now stands. Obviously, I would consider the issue then. However, if the Bill or any part thereof were to be referred, the Supreme Court decision would, as far as the domestic legal system be concerned, be absolutely final. So, there would be no question, for example, of me taking it to Strasbourg, because Strasbourg is a court open primarily to private citizens and not to public authorities such as me in that context. So, it would, of course, be open to individuals adversely affected by the Bill to seek to have Strasbourg look at this.

264. **The Chairperson**: If a citizen were to take it to Strasbourg, how lengthy would the process be?

265. **Mr Larkin**: If one assumes that the Bill had been referred and that the Supreme Court had considered the provisions referred to be nonetheless satisfactory, I suspect that the individual citizen adversely affected would not be obliged to do what she or he would usually be obliged to do in those circumstances, which is to go through the full domestic process herself or himself. Therefore, there might be a direct application to Strasbourg. However, Strasbourg takes quite a long time to determine these issues. It is a hugely overburdened court, as anyone who works for it will tell you.

266. On the other hand, the UK Supreme Court is very efficient. The Supreme Court is dealing with a referral by the Attorney General for England and Wales of the first Bill passed by the National Assembly for Wales. That was referred at the start of the summer, and the case will be heard at the beginning of October. The Supreme Court prioritises references under the respective devolved constitutional statutes as best it can.

267. **Mr Beggs**: Just for clarification, if, for some reason, the Bill were referred to the Supreme Court, which were to come to the decision that it breached human rights legislation in some fashion, would it strike off the entire legislation or just that element of it?

268. **Mr Larkin**: No. First, it would be only the provisions that were referred. For the sake of argument, and just to illustrate the point, let us look at clause 3(2)(b). The Supreme Court might say that there is a problem with retrospectivity and take out the words “before or”. That would leave the clause reading:

“(2) This section applies whether the person —

(b) was convicted after the coming into operation of this Act.”

269. So, with the excision of a couple of words, that provision might well be saved in European Convention terms.

270. **Mr Beggs**: In legislators’ coming to a judgement as to whether it was appropriate, they have to consider the human rights of every citizen; those whom it might affect and those who might have been affected in the past by other instances. That is obviously a political judgement, but subsequent to that, there would also be a legal judgement. Is that a correct summation of what would happen?

271. **Mr Larkin**: There are undoubtedly political judgements, as you all know infinitely better than I do. However, in terms of the convention, there is a series of legal judgements. First, there would be a legal judgement on whether the Bill or any part thereof is within competence. A decision would then be made, if it was judged at that time that certain provisions were without competence, whether to refer it to the Supreme Court. You then have the views of the individual justices of the UK Supreme Court, and, increasingly, you have split decisions. Therefore, you could have a plurality of perfectly respectable legal views.

272. **Mr Beggs**: We are expecting a departmental review at some point, whether in two months’ time or a year’s time, but certainly by the end of this Assembly mandate. You indicated that, if there were to be a European court case, it could be years before the final decision might be made. Does the temporary nature of the employment of those affected have any bearing on the huge cost of taking or defending a case at European level? Is any regard given to the temporary nature of the post?

273. **Mr Larkin**: That is a very important point. First, although the court takes a long time to decide, it is often quite cheap to litigate in Strasbourg. To give a personal example of that, a journalist contacted the office because they had heard that we had made an intervention in Strasbourg. They asked how much it had cost, obviously expecting to hear a figure of many thousands of pounds. However, the cost was in the region of £60, which was the cost of couriering the submission to Strasbourg. Now, that is a small example, but Strasbourg is not particularly expensive as a place in which to litigate.

274. The larger question, which is implicit in what you have raised, is whether the nature of the post and the severity of the penalty is sufficient to engage article 7. That is an important consideration. A counterweighing factor against that would probably be the factual position that, in theory, the tenure of an ordinary civil servant is pretty fragile, but, in practice, we know that it is, in colloquial terms, more or less a job for life. One imagines that this would be for the duration of this Assembly term, so although an adviser might come and go with a Minister, if, for example, the Bill came into force fairly quickly, there would be quite a stretch of employment that otherwise one would reasonably expect would continue, although, all things being equal, it would be brought to an end.

275. On the other hand, an interesting question might arise were the position to be terminated anyway as the Minister went out of office with a new Assembly coming in and the Bill just about made it within the life of this Assembly. In that

instance, an evaluation might be carried out at that stage.

276. **Mr Beggs**: My point is that, even if it were the result of a departmental reorganisation, each of those jobs is temporary and would end. Therefore, the employment is of a temporary nature.

277. **Mr Larkin**: It is, and that is an important factor. That is happening for a reason other than a previous conviction.

278. **Mr Beggs**: Yes, but then your only argument over human rights was on the retrospective element. At that point it would not be retrospective.

279. **Mr Larkin**: If a special adviser lost his or her job as a result of a Department vanishing, for example, does that bring the European Convention on Human Rights into play? I would have thought not.

280. **The Chairperson**: Clause 3(2)(a) refers to whether the conviction took place locally or elsewhere. I raised that with Mr Allister earlier. Would that be a typical clause in other legislation, or would other legislation be more flexible on a case-by-case basis? Obviously, if there is carte blanche, there would be a number of cases.

281. **Mr Larkin**: As you know, there is also a presumption that an Act of the Assembly is to be interpreted in a way that brings it within competence rather than without. So if, for example, someone was convicted in — I was about to name a country, but perhaps I should not — a country that was completely disrespectful of modern international human rights standards, in the most obvious and most grotesque of show trials that would not remotely comply with article 6 of the convention, I suspect that the Bill would not be interpreted as to embrace such a conviction. So, “convicted” would be read, even though the word may not be inserted, as “duly convicted”, for example. It is not at all uncommon to find that effects are given in this jurisdiction to events such as convictions that occur elsewhere.

282. **The Chairperson**: This legislation would obviously set special advisers aside from the rest of the Civil Service. Would it be a cause for concern that the Bill would apply only to certain civil servants rather than the Civil Service as a whole?

283. **Mr Larkin**: As I understand it, the nature of the special adviser post is already somewhat apart, given the mode of their appointment and in their tenure, so that concern already exists. I suppose that the larger policy question that might be asked is that if it is thought worthwhile to do some of these things, why not do them across the board?

284. **The Chairperson**: OK, John, thank you very much.

285.

7 November 2012

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*
Ms Anne Reid	*for the Care and Resettlement of Offenders*

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

287. **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.

288. 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.

289. 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.

290. 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.

291. **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."

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

293. **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.

294. **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.

295. **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.

296. **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.

297. **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?

298. **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.

299. **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 —

300. **Mr Conway**: Legislative footing? Yes.

301. **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?

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

303. **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?

304. **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.

305. **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?

306. **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.

307. **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?

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

309. **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.

310. 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?

311. **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 —

312. **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?

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

314. **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?

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

316. **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?

317. **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.

318. **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.

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

320. **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.

321. **Mr Conway**: Yes.

322. **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.

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

324. **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.

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

326. **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.

327. **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?

328. **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.

329. **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?

330. **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.

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

332. **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.

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

334. **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.

335. 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.

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

337. **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.

338. **Mr D Bradley**: Who did you work with?

339. **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.

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

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

342. **Mr D Bradley**: Why not?

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

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

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

346. **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.

347. 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.

348. **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?

349. **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.

350. 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.

351. 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.

352. **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?

353. **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.

354. **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.

355. **Mr Conway**: No.

356. **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.

357. 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.

358. **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.

359. **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.

360. **Mr Conway**: As an organisation, we would not be comfortable with the word “repentance”, but we would be comfortable with the word “acknowledgement”.

361. **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.

362. **Mr Conway**: Those who were not caught.

363. **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.

364. 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.

365. 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.

366. 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.

367. 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.

368. 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.

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

370. **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.

371. **The Chairperson**: Thank you very much.

14 November 2012

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree
Ms Megan Fearon
Mr Paul Girvan
Mr John McCallister
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Peter Weir

Witnesses:

Mr Adrian McNamee	*Commission for Victims*
Ms Kathryn Stone	*and Survivors*

372. **The Deputy Chairperson**: I welcome Kathryn Stone, the Commissioner for Victims and Survivors, and Adrian McNamee, the head of policy at the Commission for Victims and Survivors. I ask you to make your opening statement, please.

373. **Ms Kathryn Stone (Commission for Victims and Survivors)**: Thank you and good morning. The Commission for Victims and Survivors welcomes the opportunity to come before the Committee to comment on a number of issues relating to the Civil Service (Special Advisers) Bill. As commissioner, my primary statutory duty is to promote the interests of victims and survivors as outlined in the Victims and Survivors (Northern Ireland) Order 2006. Significantly, where my appearance before you today is concerned, I have a duty to keep under review the adequacy and effectiveness of law and practice affecting the interests of victims and survivors.

374. I am aware that, as part of your consideration of the Bill, you have received oral and written evidence from a number of witnesses, including the sponsor of the Bill, Mr Jim Allister MLA, the Attorney General, the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) and the Human Rights Commission. Equally, I am aware that a public consultation was held last year and that the Bill's having reached this stage of the legislative process means that MLAs from all political parties have had an opportunity to debate its content. Therefore, rather than engage in a detailed consideration of the Bill, I would like to focus on the general principles of the proposed legislation and on a range of concerns that victims and survivors expressed on the appointment of special advisers. In preparation for meeting you today, I asked the 25 members of the Victims and Survivors Forum to express any issues that they may have in support of or, indeed, in opposition to the Bill. I will expand on those shortly, and I would like them to form the basis of my comments in this opening statement.

375. In his presentation to the Committee, Jim Allister noted that the genesis of the Bill emerged from the appointment of Mary McArdle as special adviser in May 2011 and from the considerable distress and anxiety that that brought upon the Travers family. Since coming into post in September, I have met Ann Travers through the forum's work. I understand the deep pain and hurt that that particular appointment created for her and her wider family circle. Of course, I have had permission from Ann to mention her name today. I know that Ann has been invited to contribute to the Committee in an individual capacity.

376. As some or all of you may know, the Victims and Survivors Forum, which met in its current composition for the first time in June this year, represents an important body that has two primary functions. First, it will be a place of consultation and discussion with victims and survivors of the Northern Ireland conflict, and, secondly, it will provide advice to the Commission for Victims

and Survivors. It was in that capacity that I asked members to outline their views on and concerns about this Bill. I will briefly share some of the views on and experiences relating to the Bill and the wider context in which it was introduced.

377. Forum members who are opposed to the Bill contend that, if implemented, the legislation will be a source of division and that it will not promote the understanding and reconciliation that are required to build a progressive society that is emerging from decades of conflict. Several members expressed strongly their view that the Bill is singularly focused on discriminating against former republican prisoners, and they questioned the motivation and intent behind the initiation of the Bill. According to one forum member:

"This is a complex Bill that goes to the core to an understanding of the conflict. It is not about victims per se but seeking to deny political prisoners the rights to enjoy full citizenship (and access to employment) … This ought not to be a case of either/or – but more importantly there is no contradiction supporting the human rights and citizenship of political prisoners and advocating and supporting victims' rights."

378. Meanwhile, forum members who are in support of the broad principles of the Bill argue that, in disqualifying prospective and existing special advisers with serious criminal convictions, it could prevent the fallout that was experienced previously. Some forum members argue that, in doing so, the Bill would ensure that the victims of violence that was perpetrated by former prisoners are not re-traumatised. Further, forum members who share that view have argued that victims' rights should be considered just as much as those of ex-prisoners, who are referred to explicitly in the Good Friday Agreement. One forum member has argued:

"I feel that politicians who supported the use of violence in the past now have a duty of care towards the victims created by such violence. It is within their power not to re-traumatise these victims … There are thousands like me who hurt quietly at home, forced to relive the day evil visited their lives because of arrogance that ex-prisoners somehow have more human rights or [are] protected more from the Good Friday Agreement than the very victims they created."

379. The different opinions that forum members expressed represent a microcosm of some of the views and arguments that your colleagues expressed during the Bill's Second Stage debate. As I mentioned, I have not sought to comment directly on the legislative provision that relates to the disqualification of prospective and existing special advisers with serious criminal convictions as provided for in clauses 2 and 3. Rather, my focus has been on highlighting forum members' views on and concerns about the Bill.

380. In closing, I would like to make a number of wider points relating to the proposed legislation. A commission report, which was completed in partnership with Queen's University in April this year, examining the potential impact of transgenerational trauma on young people who are affected by the conflict in Northern Ireland, revealed two important contributory factors in the transmission of conflict-related trauma across the generations. First, the lack of effective communication, or silence, about the traumatic events can be a significant factor in the transmission of trauma from the initial survivor generation to their children and their children's children. Secondly, the report discovered that the consequences of trauma can affect a parent's ability to interact with their children, resulting in their experiencing an absence of emotional support.

381. There is clearly the potential for hurt and distress to be caused to the families of victims who suffered bereavement or injury as a consequence of the actions of those who are appointed. Part of that distress has the potential to cause severe emotional difficulties for not just those who experience the initial trauma but other family members. Often, many victims and survivors continue to carry debilitating physical and psychological injuries that were sustained during

the conflict. Equally, as our research indicated, there is growing awareness about the potential transgenerational impact of the conflict on adults today who were children when they first experienced a conflict-related event and on some of our young people who continue to be impacted by the enduring legacy of the conflict.

382. Therefore, an important lesson that must be learned from the repercussions of previous appointments is the need for all Ministers and their respective political parties to consider carefully the appointment of special advisers in the future. Given the significant psychological trauma that many victims and survivors of the conflict experience, it is incumbent on all political representatives to exercise responsibility and to display empathy to the plight of all individuals and families who are affected by the Troubles.

383. **The Deputy Chairperson**: Thank you very much. Adrian, do you have anything to add?

384. **Mr Adrian McNamee (Commission for Victims and Survivors)**: No.

385. **Mr Weir**: I have a brief question. Thank you for the evidence. To some extent, what you told us does not particularly surprise us. I assume that, in getting that range of views in the forum, there was no attempt to quantify the balance of opinion. Was it simply about allowing people to express their particular views and recording them? What way was that handled?

386. **Ms Stone**: We gave forum members an outline of the Bill's context. We sent them a copy of the Bill and other information to inform their responses, and we allowed them to make their responses based on their own experience. There was no attempt either to quantify that or to push it in a particular direction. It was a genuine opportunity for them to share their views.

387. **Mr Weir**: To paraphrase what you said in your closing remarks, is the issue really that, irrespective of whatever legislation is there, when making appointments, political parties should show responsibility and sensitivity? Is that more or less the gist of where you are coming from?

388. **Ms Stone**: Absolutely.

389. **Mr Mitchel McLaughlin**: Good morning. Can I start by congratulating you on your appointment? I wish you well. The position that you now occupy will be very challenging and complex. I think that it is very helpful that you took the time to come here, because this is also a very sensitive and complex issue.

390. As you will be aware, ours is a post-conflict society, and there are many unresolved issues. Quite significant, and, at times, breathtaking, progress has been made on a range of issues. Despite that, many issues, including, perhaps, some of the core points that led to the conflict, are still unresolved between those who may have different perspectives on the British state in Ireland and Irish self-determination. So, this has a historical context.

391. Over a long period, many people have been traumatised, bereaved or injured as a consequence of the conflict. In the absence of what might be regarded as effective reconciliation processes, avoiding the continuation of people's victimisation, even if such a continuation is not the intention, is a difficult and perhaps impossible task. In my view, we certainly had that situation in the circumstances of the appointment that caused such a furore. Clearly, Ann Travers and the wider Travers family were re-traumatised, which, I would imagine, was not the intention of anybody who was involved in making the original decision.

392. The agreement on which the Assembly is founded addressed the issue of prisoners. It clearly dealt with many issues, including those where the justice system had not addressed all the circumstances of injury and bereavement. We know that many people who were involved in a combatant role, if I could describe it as that, were, in fact, arrested, charged and imprisoned under the emergency

legislation that existed. Others were not. That did not apply to some people as a result of policy, particularly those who were, perhaps, in the service of the British Government and were involved in collusion. Those are well-established circumstances. Of course, there are many victims of collusion in the community who have never had redress. Given the British Government's current stance, they may never have redress. In many circumstances, they know, if not the personality —

393. **The Deputy Chairperson**: Mitchel, are we getting to a question here?

394. **Mr Mitchel McLaughlin**: I am sorry; that is not the purpose of the meeting. We are discussing the matter, if you do not mind.

395. **The Deputy Chairperson**: We have witnesses who are here to be questioned.

396. **Mr Mitchel McLaughlin**: Sure. So, I would like to be able to develop my point.

397. **The Deputy Chairperson**: Within reason.

398. **Mr Mitchel McLaughlin**: OK. Within reason. However, I will not be silenced. I will just make you aware of that.

399. **The Deputy Chairperson**: It is not a question of that.

400. **Mr Mitchel McLaughlin**: I will deal with it. I recognise and respect that Kathryn Stone has joined us and is involved in this issue very soon after her appointment. I certainly do not intend to trap you or to create any difficulties on top of what I think is a very challenging position. So, I want to set out my position very carefully. It is a complex issue, as I said. I want to make the point that there are victims and that they are on all sides. That is the point that I was developing. Some of them have had what they might regard as justice, but, for a variety of reasons, many of them have not. In some circumstances, the investigating authorities were not able to identify people and bring them to court. In other circumstances, they made no real attempt to do so. There are victims in that category as well.

401. So, in proceeding, let us do so with sensitivity and on the basis of the negotiations of the Good Friday Agreement, recognising the very influential role that prisoners played in getting support for the agreement. We made special arrangements and addressed the issues of rehabilitation and providing guidance. For example, the Office of the First Minister and deputy First Minister has produced its guidance after specifically drawing on the Good Friday Agreement and the St Andrews Agreement. I contend that all involved, including Ministers, agencies and people who are coming to the special advisers issue — just as Jim Allister is with this Bill, which is what he is entitled to do, as people are allowed their views — need to take account of the consensus that was arrived at in the agreement. That position very specifically addressed the issue of rehabilitating people who have been imprisoned as a result of the conflict. That is what I want to put to you. None of the people imprisoned during the past 30 years started that conflict. It started generations ago. You referred to transgenerational issues in your presentation. What I have just described is one particular aspect of that, which I think that we all have to be very conscious of.

402. So, I am making a point to you, as Victims' Commissioner, and I would like you to reflect on it. I am not going to insist that you answer a question here today, but, having taken some advice, you might wish to correspond with the Committee. I say that on the basis that you have only just been appointed. You have a responsibility to all victims, whatever agency caused that victimhood in the first instance. That work will involve state forces as well as paramilitary organisations. We have a responsibility to them all.

403. We had two very interesting outcomes to the Saville inquiry into Bloody Sunday. First, a number of witnesses stepped forward to say that they were in the IRA and had joined the IRA because of what

happened on Bloody Sunday. So, they became involved in political violence not because they supported it but because of what happened. Indeed, I am a survivor of Bloody Sunday.

404. Secondly, the British Prime Minister said that it was “indefensible”. However, none of the people who fired the guns and murdered 14 people and wounded 14 others that day has ever been charged. So, that is another example of victimhood.

405. In addressing this issue, I would like you to think about coming back with a carefully considered position on your responsibility, as you see it, for all the victims.

406. **The Deputy Chairperson**: Thank you, Mitchel.

407. **Ms Stone**: May I respond to that?

408. **The Deputy Chairperson**: Of course.

409. **Ms Stone**: First, I thank you for your good wishes. You are absolutely right; it is an interesting and challenging role. Every day brings new challenges and new degrees of interest. I was absolutely clear in a number of media interviews that I gave last week that my role is to serve all victims. That is in the definition that is set down in legislation. It is not within my gift to change that legislation, however difficult or problematic that might be for some communities. My responsibility is to all victims. I think that the opportunities that I have had to meet and speak with forum members, as well as other victims and survivors privately, has demonstrated the complete division that exists. I am completely confident that that will be expressed in the Committee and by your other colleagues as the Bill proceeds. Those who oppose the Bill believe absolutely that it is about not the impact on victims but the human rights of former political prisoners. Those who support the Bill believe that it would show an active demonstration of support for those who have been victims or have been traumatised. The point was made by one of the forum members, whom I quoted earlier, who felt that it should not be an either/or situation. There is an opportunity to demonstrate acceptance, acknowledgement and promotion of the human rights of former political prisoners and greater sensitivity — as Mr Weir suggested — to victims in the future when other political special adviser posts are made. I will go back and get some more information for you.

410. **Mr Mitchel McLaughlin**: Thank you.

411. **The Deputy Chairperson**: There is a clash of rights here. As has been pointed out, there are the rights of ex-prisoners and perhaps the need to integrate them into society and give them a constructive role, and, as you said yourself, there is the issue of the rights of victims and sensitivity to their trauma, and so on. Some people might say that the Bill does not achieve that balance and is a bit of a blunt instrument that comes down more strongly on one side than the other. What is your view on that?

412. **Ms Stone**: The commission was thinking about how provision could be built into the Bill to ensure that victims and survivors’ interests are properly represented and that opportunities for re-traumatising and people revisiting the experiences that they have had are lessened. I think that it will be very difficult. The trans-generational research shows that people’s experiences are, by necessity, very individual. Their reactions are very individualised and very specific. One of the things I would like to do is go back to the victims’ forum. We did not specifically ask our colleagues to comment on that, but we could go back to the victims’ forum to ask it for specific information on that.

(The Chairperson [Mr McKay] in the Chair)

413. **The Chairperson**: Kathryn, you are very welcome. Apologies for my lateness this morning. We will move on to Leslie.

414. **Mr Cree**: Thank you, Chair, and welcome. Despite Mitchel’s myopic view of history, there can be no justification for violence, and certainly no justification for murder. He referred to Bloody Sunday. Many

people were killed by the IRA prior to that occasion. You have got to put it in context. I believe that there can be no justification for murder at all. The innocent murder in the Travers case is really what has prompted this. In dealing with victims, have you detected any particular hierarchy in the types of events that caused their particular trauma?

415. **Ms Stone**: If I interpret your question to be asking whether, in the commission's view, there is a hierarchy of victims — perhaps that is a wrongful interpretation of your question — the answer is that we are acutely conscious that there is a perception that there is a hierarchy of victims.

416. Referring back to my previous response, the commission's role is to provide support to promote the interests of all victims and survivors. In individual responses to trauma and the events that trigger that trauma, again, those responses are hugely individualised. In my previous experience, working for many years with victims of sex crime and people who have had family members murdered in other circumstances, people's reactions and responses were very different. I am aware that, currently, there is a lot of talk in the media. I understand that the famous — or should I say infamous — Mr Nolan is debating post-traumatic stress disorder (PTSD) on his show today. The commission has previously worked with David Bolton, a very eminent researcher in that area, who argues that, for many people who experience PTSD, it can take them between 15 years and 22 years to come forward to ask for help.

417. This is a hugely unidentified population of people who need very sensitive and careful mental health support. It is something that we, as a society, need to think very carefully about in how we support those individuals who have waited many years to come forward, as a consequence of the trauma that they have experienced.

418. Responses to trauma are very individualised, and it can take a very long time for people to come forward. Their needs will be specific and individual. It is very difficult to make judgements on what is a higher level trauma or a lower level trauma, because individuals will respond in very different ways.

419. **Mr Cree**: Are you aware that Northern Ireland has the highest rate of PTSD of any country in the world, including those that could be termed war zones? Are you aware of that statistic?

420. **Ms Stone**: I am aware that PTSD is a significant problem in Northern Ireland. Steps are being taken to address not only the extent of the problem, but what resources are needed to effectively provide support to those individuals. It is right to say that there are many thousands, if not tens of thousands, of people who will require that degree of support because of the experience of not only the incidents or events that they have been involved with, but of simply living in a society that is riven by conflict.

421. **Mr Girvan**: Thank you, Kathryn, for coming along this morning. I appreciate that we know exactly why this issue came about; it came about as a result of a lack of common sense in relation to dealing with the sensitivity of that appointment. I want to come at this on the basis of the debate that might have happened within your organisation. Have you discussed what is and is not suitable? The only tool and mechanism that I can see is the tariff associated with a particular crime, whatever that might be. Somebody who was found guilty and who got three years for something terrorist-related could be acceptable, but somebody found guilty of murder and who got a life sentence could be ruled out. Has that debate taken place in your organisation?

422. **Ms Stone**: I think that those debates are best left to the lawyers and the judiciary. It would be very difficult for the commission to comment on sentences

and tariffs and the impact, or otherwise, on individuals.

423. **Mr Girvan**: There is probably not a person in this room who has not been affected by the conflict in one way or another. Some will have been affected to a greater degree than others. As a result, even those who did not suffer family loss as a result of murder are victims. Some of us have family members who have probably lost the majority of their lives because they have not been able to contribute to family life. It is not necessarily an individual who caused that trauma; a conglomeration of events may well have added to it. As the Victims' Commissioner, what is your view on that? An individual may well not have lost their life, but they might have had a total nervous breakdown and, as a result of that, been unable to contribute to society or family life. How can you make a measure to say that the people who caused that have the right to take up a senior position? We are not talking about junior posts; we are talking about a senior position within government in Northern Ireland.

424. **Ms Stone**: I think that the two things are separate. I have had the opportunity to meet many individuals and families who, as you rightly say, have been deeply traumatised and affected in a range of ways. We need to make sure that they are properly supported and that we acknowledge the trauma that they have experienced. However, I think that the opportunities for making decisions about the cut-off point for seriousness, whether cases are not quite so serious or have less impact on people's employment opportunities, are for the judiciary and lawyers. I am aware of the judgements of, now, Lord Justice Kerr and about the employment regulations, guidance, requirements, and so on. I think that if you were to ask those individuals and families who have been traumatised, their responses and experiences would be as divided as the responses that we have had from members of the victims' forum.

425. **The Chairperson**: Kathryn, there is, obviously, a divergence of views in the Committee and in the commission itself. In more general terms, what views are there in the commission about how to move society forward, communal healing, and what steps can be taken? Is there any agreement or discussion about that particular aspect of the commission's work?

426. **Ms Stone**: I am very pleased to say that our forum is now working very carefully on a range of aspects that includes dealing with the past, such as the level and type of services required to meet the needs of victims and their families. We are also looking carefully at how we build for the future. The forum has to meet a timetable to provide advice to the commission. That will provide the basis for information to be proposed to Ministers about building for the future. So, we are optimistic that, as an organisation and a commission, with informed, lived experience from members of the forum, we will be able to provide advice to Ministers on that particular matter.

427. **The Chairperson**: What is that timetable?

428. **Ms Stone**: The timetable is delivery of advice to me by the end of March 2013. Hopefully, we will turn that round quite quickly to provide advice to Ministers within the next session.

429. **The Chairperson**: What is your view on the current situation with regard to the services on offer for victims? I can think of a number of cases in which there is a deficit. There is a feeling among many victims that they have been left behind with regard to having somewhere to go to, to deal with their particular trauma.

430. **Ms Stone**: I have had the opportunity to visit a large number of groups and services that provide a range of opportunities for victims and survivors. It is important to say that those groups and services have been there, in some cases, for decades providing support in communities to individuals. There is a large number of what are called "hidden victims" — people who have not used those services or availed themselves of

those groups. A contributory factor of that might be the 15 years to 22 years that people wait before they seek help. It might be that they feel that those services are not available for them.

431. Committee members will be aware of the creation of the victims and survivors' service, which is a new opportunity for people to be assessed and directed towards services that are most relevant to them. The commission has a close watching brief on the development of that service. We are tasked to provide a quarterly monitoring report on the development and progress of the service. We have just delivered our first quarterly monitoring report to the Department. We will be watching with interest not only the development of the service, but the impact on individual victims and survivors, and, looking further than that, the impact on groups that are already established.

432. **The Chairperson**: We have had a considerable response so far to the Committee's consultation from ex-prisoners and ex-prisoners' groups. What work have you been doing with that section of society? It is a section that is cross-community, with many republican and loyalist ex-prisoners' groups. Have you had much consultation with them?

433. **Ms Stone**: In arranging our visits and consultation meetings with groups and services, we have been clear that we want to meet representatives from all communities in the programme of visits that we have up until the end of December and, again, in the new year. We have done that in the programme of visits that we have completed to date. I can only reiterate that I believe that the role of the Commissioner for Victims and Survivors is to support all victims and survivors, from whatever community they come.

434. **The Chairperson**: Kathryn and Adrian, thank you very much.

21 November 2012

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree
Ms Megan Fearon
Mr Paul Girvan
Mr John McCallister
Mr David McIlveen
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Peter Weir

Witnesses:

Professor Brice Dickson Dr Rory O'Connell	*Queen's University Belfast*
Dr Anne Smith	*University of Ulster*

435. **The Chairperson**: I welcome Professor Brice Dickson and Dr Rory O'Connell, who are both from the school of law at Queen's University. I also welcome Dr Anne Smith from the Transitional Justice Institute at the University of Ulster. I invite you to make an opening statement, and I will then open the meeting to members for questions.

436. **Professor Brice Dickson (Queen's University Belfast)**: Thank you, Chair. I do not have a prepared statement. I am here in my capacity as a so-called human rights expert, and I am happy to try to deal with your questions. I cannot speak for Rory or Anne.

437. **Dr Anne Smith (University of Ulster)**: Likewise. Thank you very much for the invite.

438. **The Chairperson**: We have already received some evidence from different parties, including the Attorney General. When the Attorney General made his submission, he had a number of concerns that stemmed from article 7 of the European Convention on Human Rights (ECHR). He said:

"it prohibits an increase in penalty or the imposition of a heavier penalty than was available at the time."

439. He went on to say that that retrospective aspect "does loom large" in the legislation as proposed. Are you aware of any cases where such retrospective penalties in legislation have been permitted recently?

440. **Professor B Dickson**: Yes, Chairperson, I know of some cases that have gone to the European Court of Human Rights on that kind of issue. They tend to turn on whether the disadvantage suffered by the ex-prisoner is a penalty as interpreted by the European Court. It tends to adopt a criminal law approach to the word "penalty", in the sense that it denotes a punishment, a fine, a confiscation of assets, or, perhaps, a deprivation of liberty. It does not cover all disadvantages, such as ineligibility for employment as such. My estimation is that if the clause were to see its way to a court in the UK or in Strasburg where the European Convention was applied — courts can change their views over time — on current law, there would not be an inconsistency or an incompatibility between what is proposed in the Bill and the current interpretation of article 7 given by the European Court of Human Rights.

441. **The Chairperson**: Obviously, a number of different countries or areas globally are emerging from conflict. The obvious one that is always cited is South Africa. Are you aware of any examples in those countries where such a retrospective penalisation of offences has been introduced within that context? Obviously, in this legislation, it arises from one particular case from our recent conflict and where a sentence has already been served. Would it be a given, or would it be the case that, in most of those situations and the respective peace processes in those countries, the general view would be

that this would be a punitive measure and that it would undermine the peace processes that are being undertaken?

442. **Professor B Dickson**: That is something that my colleagues would want to comment on. My view is that international human rights law, as such, although it contains a thrust towards the rehabilitation of offenders — all offenders, including murderers — it does not lay down hard and fast rules for those states that have ratified the treaties in question. In other words, it gives some discretion to those states to decide whether a particular individual needs to be rehabilitated in the sense of being given eligibility for a certain job. At the same time, in those countries where there have been conflicts, it is common for the peace processes to contain provisions, as the Good Friday Agreement does, to encourage the rehabilitation of offenders or of all of those who were involved in the conflict in one way or another. However, again, they have tended not to lay down any hard and fast rules. I cannot, offhand, give you any particular examples, from South Africa or other countries where there have been recent conflicts, of particular legislation that would be analogous to the Bill that we are looking at today. However, there is certainly a tendency in those peace agreements to rehabilitate those who were involved in the conflict.

443. **The Chairperson**: How will this Bill rest with the UN standards of human rights? Is it compatible with those standards?

444. **Professor B Dickson**: The UN standards are not that detailed on that issue. Article 10 of the International Covenant on Civil and Political Rights (ICCPR) places an obligation on states to seek the reformation and rehabilitation of prisoners. That refers to all prisoners and not just those who were imprisoned during the conflict. However, again, that is a rather vague standard and, as far as I know, the International Covenant on Civil and Political Rights does not go beyond that.

445. Other so-called soft law documents, which are not binding on states, have emerged from the UN that encourage the rehabilitation of prisoners. However, as far as I know — my colleagues can supplement this if they wish — there are no precise standards on whether someone should be rendered ineligible for a particular appointment, especially such an appointment as we are discussing today, as a special adviser.

446. **The Chairperson**: Two pieces of legislation that have come to our attention are the European Convention on Human Rights and the International Covenant on Civil and Political Rights, which the Executive and the Assembly are subject to. I found the UN Human Rights Committee's comments on compliance with the ICCPR interesting. It stated that article 15 includes a requirement for:

"liability and punishment being limited to clear and precise provision in the law that was in place and applicable at the time the act or omission took place".

447. Given that perspective from the UN on a set of standards that the Executive and the Assembly have to comply with, surely that makes this piece of legislation non-compliant? It is reliant on what was in place at the time, as opposed to what is now being applied in regard to past offences.

448. **Professor B Dickson**: I am not sure that that follows, Chairperson. The word "punishment" is used in article 15, and I do not think that you can categorise the rendering of someone as ineligible for a position as a punishment as such. It may be a disadvantage to that person, but I do not think that the UN Human Rights Committee or the European Court of Human Rights would regard it as a "punishment" or a "penalty", which is the word that you will find in article 7 of the European Convention on Human Rights.

449. **Dr Rory O'Connell (Queen's University Belfast)**: May I comment on article 7 of the European Convention on Human Rights? As the Attorney General pointed out in his evidence, the European

Court has said that there are about four different factors to think about in deciding whether something is a retrospective penalty. The first one that is mentioned by the European Court of Human Rights is something that follows upon a conviction, which seems to be the case here. The other factors include the purpose of the measure and its severity. On the point about severity, the exclusion from a relatively small number of offices might not be thought to be a particularly severe penalty. The purpose of the measure is a bit nebulous, because it is very easy to characterise it differently. You could characterise it as a question of what the necessary qualifications are to hold this particular post, and that is not in the nature of a penalty. I suppose it could also be seen as having an element of punishment in it and that the purpose is one of retribution, and that steers us back to a possible problem with article 7.

450. As Brice indicated, you are never entirely sure which side of the question a judge will come down on. There have been cases in which people have been deprived of their driving licences because of previous motoring convictions, and that has been found to be a retrospective penalty that is in breach of article 7. On the other hand, where measures — I think the Attorney General referred to these — have been introduced that require people who have been previously convicted of, say, sexual offences to report to the police and to keep the police informed of their whereabouts, that is seen as a penalty. The aim of it is not punishment, but rather to prevent the future commission of crime. That just gives a bit more detail on how the European Court of Human Rights approaches the article 7 question.

451. You referred to the international covenants. As well as the ones that deal with rehabilitation of offenders, there are also issues about the right of access to the public service, which is a right that is explicitly set out in article 25 of the International Covenant on Civil and Political Rights. There are also questions about the right of access to employment or the right to work, which is a right under the International Covenant on Economic, Social and Cultural Rights. I suppose that the key thing is that the right to work and the right of access to public service are not absolute rights, whereas the prohibition on retrospective criminal legislation is. The right to work and the right of access to public service can be limited where there is objective and reasonable justification to do so, or where the European Court of Human Rights finds that there is a reasonable, proportional relationship. That would suggest that the attention should be focused on the purpose of the measure and whether it is relatively necessary to adopt that measure to achieve that legitimate purpose.

452. **The Chairperson**: On that final point, Rory, you referred to the right to seek employment. There has been some discussion that the right to seek employment forms part of the right to a private life. Do you have a view on that?

453. **Dr O’Connell**: Yes. That issue has become quite lively in European Convention on Human Rights case law. The starting point is that the convention does not include an explicit right to work or an explicit right of access to the public service. You will find comments from the European Court of Human Rights that stress those points. However, there are circumstances in which prohibitions on access to employment may be so wide-ranging that they affect the right to have a private or personal life. The European Court of Human Right’s reasoning is that, for many people, the forum in which they develop relationships with others is, frequently, employment and to exclude people from wide areas of employment may affect their private life.

454. That came up in Sidabras and Dziautas v Lithuania, which concerned a rule that excluded former agents of the committee on state security in Lithuania from a range of employment in the public sector and, crucially, in the private sector. That was held to be such a sweeping prohibition because it affected

private sector employment, which was a breach on the non-discrimination principle and the right to a private life. Subsequently, the same argument has been made in relation to rules in Italy that deal with people who have been declared bankrupt. As part of that, they were denied the opportunity to engage in various professional activities.

455. A key point about that argument is that most of the cases that I am aware of involved fairly sweeping exclusions from ranges of employment, much more so than is the case in the Bill you are considering, which concerns only a small number of offices.

456. There is also the Irish precedent of Cox v. Ireland. It stated that people who had been convicted under the Offences Against the State Act in the Special Criminal Court could not be employed in the Civil Service for a period of seven years. That was found to be a breach of an enumerated right in the Irish constitution to earn a livelihood.

457. **Dr Smith**: In the cases that Rory referred to, article 8 was argued in conjunction with article 14, which, as you may know, is the non-discrimination provision of the European Convention on Human Rights. As it stands, in the UK, because article 14 is a non-independent right, it has been referred to as a parasitic right. In other words, it cannot be argued alone and has to be argued in conjunction with another convention right. The Council of Europe recognised that weakness and introduced protocol 12, which makes article 14 a stand-alone right. However, the UK has not signed or ratified that protocol. So, at the moment, article 14 has to be argued in conjunction with another ECHR right. In the employment cases that Rory mentioned, article 8 was argued in conjunction with article 14.

458. The European Court of Human Rights has stated that the wording of article 14 prohibits discrimination on a number of grounds. Criminal record or criminal conviction is not listed as one of those grounds. The phrase “other status” is included in the wording of article 14. The European Court of Human Rights has held that a criminal record comes under the phrase “other status”. So, there is precedent for criminal conviction to be regarded as “other status” to prohibit discrimination. However, as Rory said, it would come down to the whole issue of proportionality. At times, the European Court of Human Rights has given what is known as the margin of appreciation to member states; i.e. they give them a certain degree of discretion in determining whether or not certain legislation or a certain policy is compliant with the European Convention on Human Rights.

459. **The Chairperson**: The Office of the First Minister and deputy First Minister (OFMDFM) issued guidance for employers on the recruitment of people with conflict-related convictions back in 2007. Do you have a particular view on its compliance with the aforementioned conventions?

460. **Dr O’Connell**: As I understand it, an individualised approach is required for decisions in this area rather than applying a hard-and-fast rule. An individualised approach is probably a more proportionate response in that it could be tailored to particular circumstances. That is not to say that hard-and-fast rules are necessarily disproportionate. It would have to be looked at in the particular circumstances of each case. For instance, there was a High Court decision in England and Wales concerning the denial of licences to door supervisors or bouncers who have had a criminal conviction within a certain number of years. In that case, the High Court said that it would not be practicable to have an individualised assessment, given the sheer number of people who would be involved. So, in that particular case, the High Court did not think an individualised assessment was necessary.

461. **The Chairperson**: Might it be more proportionate because, in the case of this post, we are talking about a relatively small number of people?

462. **Dr O’Connell**: Yes; it is a small number of people. You might also to look to

see whether it works for analogous office holders other than those who cannot work in this case; that is the proportionality argument. Having said that, as we have already indicated, it is always difficult to predict what courts will decide and, in particular, how much respect, deference or margin of appreciation they will want to show to democratically legitimated decision-makers. Courts are sometimes wary of insisting that policies or legislation be absolutely perfect, and they recognise that that is an unreasonable expectation on legislators and decision-makers.

463. **Mr D Bradley**: Anyone who applies for a job in the Civil Service is subject to vetting, and the new regulations that the Minister has brought in will also subject special advisers, who are classified as civil servants, to vetting. Anyone who is rejected on the basis of that vetting has the right to appeal. Is that approach and that system compliant with human rights legislation?

464. **Professor B Dickson**: As Rory said, the more attention that is given to individual circumstances, the better it is from a human rights point of view. The European Convention and the European Court do not like absolute rules, particularly absolute bans. They do not like absolute restrictions on people's rights, as we will no doubt see in the next couple of days when Westminster considers the right-to-vote issue, because the European Court has made it quite clear that absolute bans on prisoners voting are not acceptable. In so far as the guidelines that OFMDFM has issued allow for that individualised approach, I and other human rights lawyers would approve of that. If the Bill could somehow provide for an appeal mechanism or for some sort of challenge to the ban that it seems to impose automatically, that would no doubt assist its compatibility and make it more likely that it is compatible overall with European Convention standards.

465. **Mr D Bradley**: According to the briefing from the Department, the new regulations recognise that people change, that they may not have reoffended in the interim and that they possibly express remorse about what they have done in the past. All those are mitigating circumstances, and, as I say, an appeals mechanism is included in it as well. That applies to all civil servants. Is it not the case that if a group that is classified as civil servants were excluded from that mechanism, there would be an inequality in that approach?

466. **Professor B Dickson**: It is possible to argue that. However, it is clear that although special advisers are civil servants, they are in a subcategory in that they are not appointed on merit, and that could have knock-on consequences for other aspects of their appointment. Yes, potentially, your point about equality might come in, but there are existing differences between special advisers and other civil servants, and that implies that other differences could be permissible as well.

467. **Dr Smith**: Last week, the European Court of Human Rights held that the fact that there was no mechanism to individually review a person's circumstances gave rise to a violation of the European Convention on Human Rights. That case came from Northern Ireland. So, to make the Bill human rights compliant, it is essential to have a mechanism to ensure that there can be a right of appeal or to enable an individual to review his or her position.

468. **Mr Weir**: I apologise for being a minute or two late. A lot of the ground has been covered, but, in summary, the position, the validity and, indeed, the case law has tended to hang on the scope or range of any level of restriction. The wider that is, the less likely it is to be legal, and there is the matter of context. Would that be a fair comment?

469. **Professor B Dickson**: Yes, I think so.

470. **Mr Weir**: You mentioned a couple of examples of recent European case law in relation to restricting from employment people who had been involved previously in totalitarian state security regimes and where the blanket ban was found to be unlawful

on the grounds that it was a complete restriction. You mentioned another example in relation to the bankruptcy situation in Italy. You have taken examples from one end of the spectrum. Have there been examples at the other end, where there have been restrictions on a particular form of employment for someone who is a convicted criminal and where the restriction has been tested and been held to be lawful?

471. **Dr O'Connell**: I cannot come up with a particular example of that.

472. **Professor B Dickson**: No. There are situations where the court has said in relation, for example, to sex offenders — I am not sure whether there was a European Court decision, but there are UK court decisions — that the requirements to notify an address and movements to an authority, even if it is a very long-lasting requirement, are acceptable. A lifelong requirement is unacceptable, but long-lasting is acceptable. That kind of restriction or disadvantage is lawful. I do not know of any particular cases relating to employment as such.

473. **Mr Weir**: Let us look, then, at the two examples that you gave. In the court ruling, was there any specific mention in the judgement that the scope of the restriction was unlawful?

474. **Dr O'Connell**: This goes back to the Lithuanian and Italian cases that I mentioned. By scope, do you mean the breadth of employment opportunities?

475. **Mr Weir**: Clearly, when a ruling was made, a judgement arising from that was issued. That will have gone through the interpretation of the law. Did that specifically make reference to the scope? Was there any commentary around it that implied either that any form of restriction would be wrong or that the restriction goes too far because of its very wide-ranging nature? Can you expand on any commentary that was made in the judgement? I appreciate that that involves an element of detail, and I do not know how much detail you have in relation to those cases.

476. **Dr O'Connell**: There was an issue of scope in both those cases, and the European Court pays attention to that. In the Lithuanian case, which is different from the Bill that you are considering, there was a particular problem because there was a prohibition on employment in quite a few areas of the private sector as opposed to the public sector. The European Court thought that that particular measure was about ensuring the loyalty of public servants, and so it did not really apply to private sector employment. There is a question about the breadth of employment opportunities that would be curtailed and in which sector they would be curtailed.

477. **Mr Weir**: So was that specifically targeted at the fact that it was the private sector restriction that was particularly wrong? Was there any comment on the public sector restriction on that basis?

478. **Dr O'Connell**: The Sidabras judgement was particularly focused on the private sector. There have been other cases. In the Thlimmenos case in Greece, the court found a violation but in passing judgement seemed to accept that, in relation to employment as an accountant, you could have a rule prohibiting people with serious criminal convictions. However, it then found that, in the particular circumstances of that case, that rule was disproportionate because it was being applied to somebody who had, for religious reasons, refused to wear a military uniform and had been punished. That was the nature of the conviction in that case.

479. **Mr Weir**: So, that case was largely struck down because of the nature of the conviction, which was relatively minor, and because the response was disproportionate?

480. **Dr O'Connell**: It was specifically because it was related to a person having been convicted, essentially, because of his religious beliefs. The court thought that an exception should have been made for that circumstance rather than the application of a blanket ban of the nature described.

481. **Dr Smith**: To go back to your earlier question, there is a UK case that may be relevant to what you were asking, which is the case of McConkey and Marks, who applied to work for the Simon Community. It came to light following pre-employment checks that they had serious criminal convictions. I think that one served a prison sentence for murder and the other for conspiracy to murder. They were offered jobs, but when it came to light that they had those previous convictions, the offers were withdrawn. They brought a case under article 2(4) of the Fair Employment and Treatment (Northern Ireland) Order 1998. The Fair Employment Tribunal, Court of Appeal and House of Lords held that there was no discrimination. I do not know whether that answers your question.

482. **Mr Weir**: That may not be European law, but at least —

483. **Dr Smith**: No, it is not European law, but it is domestic and still relevant.

484. **Mr Mitchel McLaughlin**: Thank you very much. You are very welcome.

485. What are your views on the post — as opposed to personalities — that we are discussing? Is there anything in relation to that post that you think would have legal significance or any impact on the rights of any individual appointed to it? Clearly, a number of special advisers are appointed by Executive Ministers across the piece. I suspect that most, if not all of them — with the exception of Mary McArdle — would be completely unknown. It is not a high-profile post. Those people do not issue statements, deliver policy positions or engage in overt political discussion across the political spectrum. They act with and on behalf of a Minister engaged in that fairly close, collaborative process. Would a court, such as a European court, consider that there is something of significance in the post that would create an unusual or unique set of circumstances in coming to a view on whether there should be restrictions on employment opportunities?

486. **Dr Smith**: The European Court of Human Rights looks at the nature of the job. That helps to determine whether a person is suitable, if you like, for the job. Generally, the important point is that the principle of non-discrimination is about providing everyone with equal opportunity to access employment. At the same time, however, there has to be a balance between the rights of that individual and the rights of the wider public. We then go back to what was said about the balance and proportionality of the issue. So, it is hard to give a definite yes or no, but the nature of that particular job would be a determining factor, as would the issue about proportionality and the balance between the rights of the individual to access employment as opposed to the rights of the wider public.

487. **Professor B Dickson**: I agree with what Anne said. Clearly, the reason behind the disadvantage imposed on an ex-prisoner must be considered in connection with the particular job that that ex-prisoner wants to do. Most people released under the Good Friday Agreement are deemed not to be a danger to the public, for example. If the job that the person was claiming to do involved potential danger to the public or was connected to those sorts of issues, you could not say that the ex-prisoner was ineligible for that job, because they have already satisfied the law that they are not a danger to the public. However, the European Convention's standards in article 7 are broader than just matching the particular job with the particular individual or offence that the individual has committed previously. You have to look at the whole nature and purpose of the ineligibility. So, in the case of special advisers, you might say, for example, that part of the purpose of the ineligibility is to reassure the public in general and victims or families of victims that people of influence at the top of the Civil Service do not have a particular attitude, background, mentality or approach to, for example, the use of violence for political ends that would render them unacceptable to the majority of people in the community.

That kind of overall purpose of the ineligibility requirement would, I think, be taken into account by a court of law.

488. **Mr Mitchel McLaughlin**: If we were to consider, for example, that people with conflict-related convictions could stand for election, be elected and, indeed, become Ministers, as opposed to the virtually private function that a special adviser would conduct, how do you think that sits with the European Court and human rights law?

489. **Professor B Dickson**: That is a completely different situation. The European Court and the convention uphold quite staunchly the right to free elections. So, if people with that kind of background are elected by the people, they have full legitimacy in the eyes of the law and should be able to exercise their functions accordingly. You might argue that special advisers are, in a sense, closer to elected officials than they are to people who compete for employment because they do not compete for employment. They are chosen by elected Ministers and others. Nevertheless, I think that because their role is similar to that of other senior civil servants and they do not have the democratic legitimacy that elected people have, the European Court would have regard to the public acceptability of giving that kind of senior appointment to somebody with such a background and would allow states a certain margin of appreciation to decide who should be eligible for that kind of position.

490. **Mr Mitchel McLaughlin**: Let us consider, for example, the position of the Civil Service Commissioners. Taking account of the Good Friday Agreement and the St Andrews Agreement, it issued guidance on the employment and rehabilitation of former prisoners that made provision for and reference to best practice for employers in those circumstances. Does that represent the use of that appreciation that Governments can apply in how they address the rehabilitation of former prisoners or individuals with conflict-related offences in a post-conflict situation?

491. **Professor B Dickson**: Are you referring to guidance that has been issued by the Civil Service Commissioners?

492. **Mr Mitchel McLaughlin**: Yes.

493. **Professor B Dickson**: I am not totally familiar with that, I have to say.

494. **Mr Mitchel McLaughlin**: Is any member of the panel familiar with that guidance?

495. **Dr O'Connell**: Perhaps I might reiterate that, looking at this from a European non-discrimination perspective, there are a couple of questions. One of them is whether the particular people who are affected are in an analogous position to others who have been treated differently. There is an argument with regard to special advisers, who say that they are, of course, in an analogous position, but are subtly different from elected politicians and senior civil servants. Looking at the European Court's past practices, one possibility is that it just leaves it at that and says that, because they are in a different position, no issue of discrimination arises. That approach is sometimes criticised because it is argued that you should really look a bit more closely to see whether there is proportionality — a reason to treat people differently other than just the fact that they are so situated. That goes back again to what we said earlier: if there is some other mechanism for dealing with the legitimate concerns of the public authority that would be less restrictive of the rights, there is an argument for saying that there is a lack of proportionality. Again, all this is subject to the recognition that domestic courts and the European Court of Human Rights are sometimes quite wary about treading on the toes of elected politicians.

496. **Mr Mitchel McLaughlin**: Yes; and a couple of references have already been made in this session to the fact that it is very difficult to have a blanket position. One of the anomalies is that Mary McArdle, who is the particular personality in question, could have stood for election, been elected and then been nominated a Minister. Yet, in

her case, the Bill would retrospectively require her dismissal. That is one of the anomalies that I envisage being tested by this.

497. It is also the case that it was through no act of Mary McArdle that this issue became such a cause célèbre. I accept, and we will hear from witnesses, that non-combatant victims, of which there are many in our community, can be re-traumatised. I am mindful that not only do we have responsibility for managing the political process, as represented by the various parties in the Assembly, but there is a wounded and divided community that we have to try to heal. So, the situation is that we have tried to remove all the barriers to equality of opportunity. We have attempted to address the issues. Although we have not succeeded in all of them, we have made progress on issues that gave rise to the conflict in the first instance.

498. This particular appointment attracted widespread media coverage, debate and discussion that drew in the political parties. More than anything that Mary McArdle said — because she did not say anything and went through a torrid time herself when the Travers family was drawn into and was deeply impacted by the controversy — the media reaction and the publicity that was generated confronts us with a real challenge. We have great sympathy with and sensitivity for the individuals who have been hurt as a result of the actions of others, but we also have an absolute duty to try to move beyond post-conflict into reconciliation processes such as truth recovery to deal with the fact that there are many victims in our community who have never had redress.

499. The authorities have pursued, arrested, charged and sentenced some but not all of the combatants. Certainly, people who were involved in state killings, which have proven controversial and, in the case of Bloody Sunday, have been demonstrated to be illegal, have never seen the inside of a prison, and there is nothing in the Bill that would disbar them from being ministerial special advisers. Is this exercise not taking us into a situation in which there is a form of continued victimisation and discrimination? Or do we say that everyone is equal before the law and that law is genuinely blind as to whether people were wearing a British Army uniform? Does the Human Rights Commission have a view on that?

500. **Professor B Dickson**: We are not with the Human Rights Commission; we are independent academic so-called experts in human rights law. I, for one, came here today to try to explain the current state of the law and the trends in the law rather than to get involved in the politics of all this.

501. **Mr Mitchel McLaughlin**: I would not invite you into the politics of it. It is a simple statement of whether, in a situation in which the actions of combatants were adjudged not to be compliant with international human rights standards, they were pursued with the same vigour and focus as others. Is that the background, or not, of our recent history? Bloody Sunday is a very easy example, but there are many examples. Consider state agents in paramilitary organisations who were being quite blatantly protected through the legal process here. What about the victims? If the Bill were passed by the Assembly, it would extend that protection, because they could emerge, in theory, as special advisers and no one could do anything about it.

502. **Mr D Bradley**: Mr McLaughlin has now been speaking for longer than the witnesses whom we invited here to hear from.

503. **The Chairperson**: To be fair, I allow all members to —

504. **Mr D Bradley**: Fifteen minutes is quite a long slot. If we all get 15 minutes, we will be here all day.

505. **The Chairperson**: — ask all their questions. Mitchel, are you finished on that point?

506. **Mr Mitchel McLaughlin**: No. I am sorry if Dominic is bored, but he will have to just put up with it.

507. **Mr D Bradley**: He has already had 15 minutes.

508. **Mr Weir**: Chair, just —

509. **The Chairperson**: Hold on; Mitchel is speaking. Peter, I will let you in in a minute.

510. **Mr Mitchel McLaughlin**: I do not mind how long other members wish to speak for; I will not attempt to curtail their particular line of questioning. I am very passionately committed to the peace process and the reconciliation and truth-recovery processes. I believe that all of this has direct implications for those. I say that by way of explanation to you. It is not an attempt to entrap anyone. I am very conscious that there are very strongly held and divided opinions. The physical conflict, when we were hearing reports of bombings and shootings on a daily basis, is behind us, but only a foolish person would say that we have healed the divisions that caused that. I intend to do my utmost to ensure that we do not return to it. There are some issues that just have to be confronted.

511. Some people appeared before the courts, and some people did not and, quite probably, never will. That is an issue that the Assembly should be challenged to think about. That is why I am taking this particular approach. I would respect it if you declined to answer any of the points that I made or if you needed some time to consider them. We are going to have to explore the guidance that was produced by OFMDFM and the responses that were developed by the Civil Service Commissioners. Those took account of the OFMDFM process and the Good Friday Agreement, which was ratified by the people of this island. We should explore the international agreements involving both Governments and the subsequent agreements, including St Andrews, which dealt specifically with the issue of persons with conflict-related convictions. The Assembly is going to have to take its time to work through those issues. If that takes 15 minutes of this meeting, it is a small enough price. We are in danger of simply keeping the conflict going and passing it on to another generation, unless we get to the point at which there is reconciliation and a genuine, across-the-board exchange of the truths, the information and the perspectives that people across the political spectrum here in this region and at governmental level are prepared to join. So, rather than attempting to invent ways and means of excluding people or continuing to punish people, we would be better off getting on with the job of reconciliation.

512. **Mr Weir**: I want to raise a procedural issue, in line with what the Deputy Chair said. I will be brief, and I will not comment on the content of Mr McLaughlin’s comments. I am a little concerned that when we have witnesses, it should be on the basis that those witnesses are here to be questioned. Members will have the opportunity, very legitimately, to put across their points when we are deliberating on these issues. I am bit concerned that we have strayed beyond simply putting things in context to effectively giving a speech and asking the witnesses whether they agree. With respect to Mr McLaughlin or anyone else, we need to keep largely focused on asking questions. If we get a very lengthy context, preamble or whatever, it somewhat defeats the purpose of having witnesses and asking them the questions. I wanted to express that concern.

513. **Mr Mitchel McLaughlin**: OK. I understand exactly what Peter is addressing here. I want to put two suggestions to the Committee and to you, Chair. In evidence on the Bill in September, the Department of Finance and Personnel (DFP) and then John Larkin, Attorney General, pointed to the possible need for the Secretary of State to consent, as the Bill amends the Civil Service Commissioners legislation. That is why I was labouring the point. That is a reserved matter. So, I propose that the Committee seeks clarity around this and related matters by two forms of correspondence, and we may need to speak to people about that.

514. First, I propose that we seek clarity from the Secretary of State to establish whether any necessary consent has been provided, given that the Bill includes provision dealing with a reserved matter, and also ask for the Secretary of State's views on the compatibility of the Bill with the fulfilment of British Government commitments. That includes, I think, international obligations on political ex-prisoners that were made in the Good Friday Agreement and the St Andrews Agreement. It includes the implications for the ability to apply the best practice employers' guidance on recruiting people with conflict-related convictions, which was published in 2007 and was expressly designed to fulfil those commitments. I will supply that in writing.

515. The second letter should be to the Civil Service Commissioners. That is an independent body, and we should ask for its view on the Bill, given that it would have an impact on the legislation under which it operates. We should seek clarification on the extent to which that body's mandatory recruitment code for appointments throughout the wider Civil Service takes account of the best practice employers' guidance on recruiting people with conflict-related convictions, which was published by OFMDFM in 2007, in light of the fact that the guidance expressly aims to fulfil British Government commitments on political ex-prisoners that were made in the Good Friday Agreement and the St Andrews Agreement.

516. **The Chairperson**: Are members content with those information requests?

517. **Mr Weir**: Chair, at some stage we will have to check out compatibility. We need clarification on the legitimacy of this by getting a view from Legal Services in the Assembly before we take the next step. I am not that long in the Committee, so I do not know whether we have got that internal advice already.

518. **The Chairperson**: The other concern about completion of this work is with time. Could we do the three requests in parallel?

519. **Mr Weir**: I appreciate where Mr McLaughlin is coming from. The only slight exception that I take is that I would like it written in slightly more neutral terminology than the use of "political ex-prisoners". I am happy enough for us to write to each of those to see what the scope of the compatibility is.

520. **The Chairperson**: The key thing is to get the information.

521. **Mr Weir**: Yes, on that side of things, I agree.

522. **Mr Mitchel McLaughlin**: Obviously, I will not die in the ditch over the use of the term "political ex-prisoners". If we are looking for a term that satisfies the breadth of opinion on the Committee, let us talk about "persons with conflict-related convictions". I am perfectly happy to use that term.

523. **Mr Weir**: Chair, I think that we are looking to see whether it is compatible in that regard. Does the Bill not cover all convictions in that regard, beyond just conflict-related convictions?

524. **Mr Mitchel McLaughlin**: Let me explain. These are reserved matters. In September, DFP advised us that this is an issue that could go to the Secretary of State for consent because it affects powers that are reserved to the British Government. I am simply saying that we follow that up with correspondence to say whether —

525. **Mr Weir**: I have no problem with that, provided that the language is put in a neutral way that asks whether the provisions of the Bill are compatible with a reserved point of view.

526. **The Chairperson**: OK, agreed?

527. **Mr Cree**: No. Chair, may I make a point? I think it is, at least, discourteous that we should be discussing possible actions here in the middle of an evidence session, with other people still waiting. I think this is the sort of thing we should do when we have completed taking the evidence, which could be later this morning. This is simply extending

the time and is very discourteous towards people who are here to give evidence.

528. **Mr Weir**: I am happy to come back to it, if Mitchel is. I am content to wait until we have completed all three evidence sessions.

529. **Mr Mitchel McLaughlin**: I will explain why I did move to that, Leslie, because it was not intended to be discourteous in any way. Dominic was getting a bit agitated as to why I was setting out my case. I think I have given you an explanation. My intention was, in fact, to be courteous, by explaining why I was taking such time.

530. **The Chairperson**: Members, can we park this now? Rory, you wanted to make a comment.

531. **Dr O'Connell**: It is OK.

532. **The Chairperson**: No other members have questions. Brice, Anne, Rory, thank you very much.

533. **Mr D Bradley**: For the record, Chair, I was not getting agitated, and I was not bored during Mitchel's long diatribe. I was pointing out that there are procedures that the Committee should follow. I think that Mr Weir reflected my views.

534.

21 November 2012

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Ms Megan Fearon
Mr Paul Girvan
Mr John McCallister
Mr David McIlveen
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Peter Weir

Witnesses:

Mr Colin Caughey Professor Michael O'Flaherty Dr David Russell	*Human Rights Commission*

535. **The Chairperson**: I welcome Professor Michael O'Flaherty, Dr David Russell and Colin Caughey from the commission. Michael will make an opening statement.

536. **Professor Michael O'Flaherty (Human Rights Commission)**: Thank you very much, Chair. This is our first time before the Committee. I thank you warmly for inviting us. We speak as the Human Rights Commission; it has finally arrived.

537. **Mr Mitchel McLaughlin**: Yes. My apologies.

538. **Professor O'Flaherty**: I make that point because it is very important to understand that when we speak as the commission, it will only be on matters of law; on the application, as we see it, of international human rights law and related standards to the Bill that you are considering. That is the confines of our observations. When we talk of the application of human rights law, we are referring to the application of that law with regard to all categories of victim, and, in the first place, the victims of conflict-related crime.

539. We followed with great interest the words of the Victims' Commissioner to you yesterday. We would like to associate ourselves with the high importance that the Victims' Commissioner has given to the need for you to take account of the human rights of victims as you proceed with your deliberations. We applaud you for inviting the voice of victims to the Committee. We think that that is necessary; they have to be heard in the context of your review and in the application of whatever procedures might be adopted, be they procedures based on the Bill, or otherwise.

540. I turn now to the narrow areas of law. To some extent, we will cover ground that you have already addressed this morning. Let me preface anything we say by sharing our view that the law is rather grey on what is before you. It is very much a case of, "On the one hand; on the other hand", which means that, ultimately, to a large extent, the law is not going to be able to tell you what to do. We are going to have to ask you, the politicians, to make the determination based on a review of the varying perspectives of the law in the absence of clear court guidance across many of the questions that you are exploring. When I say court, I am referring, of course, to the European Court of Human Rights (ECHR), and, to a lesser extent, to the monitoring body for the relevant UN standards — the UN Human Rights Committee, of which I am a member.

541. We would like to take the issues distinctly. If we can disaggregate the issues, it will perhaps make it easier for us all to deal with them. The first issue has to do with what we might describe as the proposed blanket prohibition. There has been a lot of discussion around that this morning. We would like to flag a few dimensions of that blanket prohibition related to the European Convention on Human Rights. In the first place, we have to get over the question as to whether the court would ever deal with a case that might arise

under the application of the Bill. It is not clear, albeit that we are inclined to think that it would consider that the blanket prohibition engages protections under the European Convention on Human Rights, particularly property rights in the context of people already in post, and privacy rights with regard to applicants not yet in post. We think that there is a likelihood, based on the jurisprudence, that the court would recognise that, at a minimum, those rights are engaged, but we cannot say for sure.

542. Secondly, if those rights are engaged and the European Court were to say that, at a minimum, there is a property issue here and a privacy issue here, that does not automatically mean that there is a violation of the convention. You would have had to demonstrate that there was a violation of the principle of proportionality. Again, I refer to what our expert colleagues just before us said, and we largely endorse the views that they expressed to you. We agree that the court does not like blanket prohibitions of anything, unless there is a compelling reason as to why the prohibition has to be blanket, such as the security sector example that you heard of this morning.

543. There have been a few cases where the court has made it abundantly clear that blanket prohibitions are a crude tool that fails to do justice at the individualised level. So, if this thing were to get to the European Court on a matter of law, there is a fair probability that a blanket ban would be deemed to constitute a violation, but would it even get that far? Again, we have to take account of the fact that the European Court does not like dealing with Civil Service recruitment matters. It feels that it is properly a matter that should be left to the state. The technical term for that approach of the court, as you heard this morning, is the so-called margin of appreciation. Again, we cannot say for sure that the court would invoke that margin of appreciation. That is why we are left with an ambiguity, all the more so in the context of a post-conflict society, because the court has been willing to look at some public service matters, but when they have been presented to the court, they have been argued in the particular circumstances of a transitional society.

544. We draw to your attention the manner in which the matter was handled when a Latvian case came before the court. It had nothing to do with employment; it was about gaining access to candidacy for election, but the court laid out a number of rules with regard to when it may or may not be permissible to prohibit somebody from participating in an election because of their association with unsavoury practices in the past. This is what is called the principle of lustration, but that is just the technical term for it. What is very interesting is that the court provided a helpful checklist of elements that need to be taken account of in impeding access, in the Latvian case, to the electoral process, and in our case, to recruitment in the context of a transitional society.

545. First, the court said that the law that embodies the prohibition should be accessible to the subject, and it should be foreseeable as to its effects. The Bill would pass that test. Secondly, the law should not exclusively serve the process of retribution or revenge. You will determine whether the Bill falls into that category. Thirdly, the law must be precise enough to allow for the individualisation of the responsibility of each person affected thereby and must contain adequate procedural safeguards. As has already been discussed this morning, the Bill would not pass that test. Fourthly, and interestingly, the court said that national authorities must keep in mind that lustration measures for prohibitions such as this must be temporary and, therefore, their necessity diminishes with time. In other words, if you were going to rely on that post-conflict lustration context, you would need to ask yourself whether it is too late to invoke them and whether the temporary space has already closed. That is a political reflection, not a legal one, I would suggest.

546. I will turn to the issue of the blanket prohibition and the application of the International Covenant on Civil and Political Rights, which also binds the United Kingdom. It ratified the treaty in 1976. The approach of the monitoring body for that treaty, the Human Rights Committee, would be more or less the same as that of the European Court of Human Rights.

547. Staying with the International Covenant on Civil and Political Rights, there is a separate provision — it may have been addressed; we came in late this morning, so forgive me if you have heard reference to it — that raises different issues to the blanket prohibition in the covenant. It is contained in article 25 and is a guarantee of non-discriminatory access to public service. You do not find a provision like that in the European Convention; you find it in the international covenant, which remains binding under international law for this jurisdiction. I have heard it suggested that article 25 might apply here. There is no jurisprudence on the matter, and I have to say that any reflections of that type are speculative. Although the monitoring body, the UN Human Rights Committee, does not apply the European margin of appreciation approach, it does approach public service recruitment matters with great discretion and has identified that not every distinction is a discrimination. I would venture to suggest — I, too, am being speculative — that, in this case, the distinction that the Bill is seeking to impose would be considered by the Human Rights Committee to be a non-discriminatory distinction. As I say, we all have to speculate on that.

548. I will turn to an issue that you are very familiar with, which is whether we have a retroactive penalty here that would trigger violations of article 7 of the European Convention on Human Rights and article 15 of the International Covenant on Civil and Political Rights. As you know, the key question is this: is the prohibition a penalty? If it is a penalty, we have a problem; there is a clear violation. Is the primary purpose or a prominent purpose of the prohibition punitive? If the answer is yes, articles 7 and 15 are engaged. If the answer is no, they are not. You have to make that determination based on all the circumstances and all the facts before you, including the origins of the Bill, its stated purpose, its application, and so forth. Again, I would suggest that that is not for us to call on.

549. The only thing I would say is that in making the determination on whether the Bill is punitive and constitutes a penalty, it would be helpful to distinguish between people already in post and candidates for special adviser positions. Let us take the second group first: the candidates. I find it hard to see that the Bill would constitute a penalty in the context of candidates; they are not in post and there is no immediate victimisation of them to the extent that it is punitive. For them, it has a rather abstract quality. However, with regard to those in post, there is arguably a closer fit, but the provision in the Bill for compensation somehow diminishes the punitive quality. It is all the harder to argue that that is intended as punishment if you will give people a financial reward if they are removed from office. So, again, we cannot give you an answer on that; we can simply point out some of the elements.

550. The final point that the commission wishes to put to you has to do with what is accepted as a matter of international law, be it ECHR or UN treaty law. There is a generally accepted responsibility on the state to support the rehabilitation of prisoners. The United Nations standards, which are distilled from the treaties, particularly the International Covenant on Civil and Political Rights, are found in a UN document called ‘Standard Minimum Rules for the Treatment of Prisoners’. I will quote one brief paragraph:

“The duty of society does not end with a prisoner’s release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of

prejudice against him [or her] and towards his [or her] social rehabilitation."

551. So, you need to ask whether the Bill is consistent with the UN standard minimum rules, and there are equivalent, more recent Council of Europe standards.

552. As you ask that question, you may also want to consider the application of those standards for the rehabilitation of prisoners in the context of post-conflict societies. Here, too, the United Nations delivers specific guidance in the form of the UN guidance on the standards for the disarmament, demobilisation and reintegration (DDR) of ex-combatants. Many of you will know the acronym. The United Nations standards have less compelling authority than the minimum standards with regard to prisoners, because it is an emerging area. Nevertheless, the standards are indicative of the direction in which the UN monitoring bodies are going. They state:

"DDR supports and encourages peace-building and prevents future conflicts by reducing violence and improving security conditions, demobilizing members of armed forces and groups, and providing other ways of making a living to encourage the long-term reintegration of ex-combatants into civilian life."

553. I suggest that the standards do not provide a specific answer for the Bill but they indicate the direction of international discourse around such matters. I think, at a minimum, it has relevance for your considerations. Thank you.

554. **The Chairperson**: Thank you very much, particularly for your comprehensive submission to the Committee. It flags up risk — to be interpreted, obviously, by different members of the Committee — in regard to the European Convention on Human Rights and the International Covenant on Civil and Political Rights, to which the Executive and Assembly are, of course, subject. In the course of your work on this area to date, have you been asked for or offered any advice on this, for example, by the Bill's sponsor?

555. **Dr David Russell (Human Rights Commission)**: No, not to date.

556. **Professor O'Flaherty**: I saw, though, that the sponsor of the Bill mentioned that the commission was invited to give information over a year ago. That was before I took up office. Notwithstanding what we have just said to you, I would like to check that with our colleagues to make sure that we are not misleading you.

557. **The Chairperson**: OK; will you get back to us on that?

558. **Professor O'Flaherty**: Yes.

559. **The Chairperson**: You referred to the convention and the covenant. Will you comment further on the Supreme Court's previous findings of disproportionality, which you highlight in point 12 of your submission? It says that the restrictions:

"represent an interference with the right to private life … where there is no provision for an independent review".

560. Obviously, the legislation is blanket in its application. Do you agree that there needs to be flexibility in any legislation that relates to penalties for prisoners or ex-prisoners? The Bill does not have that. In your opinion, how would the Supreme Court view the legislation?

561. **Professor O'Flaherty**: The question of proportionality is engaged only if human rights are at issue. We have to keep that in mind throughout. We believe that the direction of jurisprudence suggests that human rights, particularly privacy rights, are at issue in the context that you are dealing with in the Bill, but that remains an ambiguous matter. Let us assume that it does apply — and we think that the preponderance of evidence suggests that it does — it is then and only then that we engage with the matter of proportionality. The Supreme Court would be required to follow the clear line of jurisprudence emanating from Strasbourg. Strasbourg has made it clear that blanket prohibitions will always be suspect and will normally be inappropriate, and that unless there is some overwhelmingly compelling argument to be made on particular facts that an individualised approach is impossible and that a right of appeal is

inconceivable, the blanket prohibition would be in trouble.

562. **The Chairperson**: In regard to the Welch case, there is reference to the factors that may be taken into account as relevant. Included in that is the nature and purpose of the measure in question. Clearly, there are different views regarding the nature and purpose of this. What view would the European Court or the Supreme Court take if they viewed this legislation as stemming from one particular case? If they viewed it as being punitive and as "revenge", would they take a less than favourable view of it?

563. **Professor O'Flaherty**: Let me first note, for the sake of colleagues, that we are moving to a separate point. This is no longer about the blanket prohibition; this is about whether the prohibition would constitute a penalty for the purposes of the treaties, which is a separate ground of concern. How can one speculate? It would all turn on how the matter was argued before the judges on any given day. They have erected the criteria, and that is very helpful. I suggest that the Committee needs to assess the Bill in light of the criteria set out by the court. Frankly, your conclusion as to whether the court would go one way or the other is as good as mine. We are just speculating.

564. As for the practice of the United Nations, the International Covenant on Civil and Political Rights and the work of the UN Human Rights Committee: I have been a member of that committee for eight years and we have never had to deal with this issue in those eight years. So, we would struggle with this. I have discussed the matter informally with committee members, and there is a general view that they would love this case to come before them because they need to clarify their practice, but nobody would be able to anticipate the outcome before the discussion and the debate.

565. **The Chairperson**: I have one final question. In your opinion, are any aspects of the European Convention on Human Rights and the covenant engaged in regard to the issuing of guidance from the Office of the First Minister and deputy First Minister (OFMDFM)? If that guidance were to be made into legislation, would anything in those two ratifications be engaged?

566. **Professor O'Flaherty**: It is our considered view that the OFMDFM guidance and the current vetting procedures are compliant with the international standards. They could be improved by better introducing the voice of victims into the application of the procedures, but the absence of that element now does not render them in non-compliance with the treaties. However, I do think that they would be better human rights tools if we could create a space within them where the voice of the victim is heard in some appropriate fashion.

567. **Mr Weir**: Thank you, Michael, for your evidence. I listened carefully to what you said about evidence, and you have been very honest with us in trying to scope out the issues. It has become very clear to me that there is a lack of direct jurisprudence on the issue. To some extent, there can be informed speculation on the way forward, but in predicting how courts would deal with it, while they could draw out general principles, there seems to be a lack of certainty in that regard. Would that be a reasonable summation of what you have said?

568. **Professor O'Flaherty**: There is a big space between a lack of certainly and just speculation —

569. **Mr Weir**: To be fair, I did say that it was informed speculation. I will give you credit for that. I must confess that when you mentioned DDR, I thought for a moment that you were talking about the East German Republic. Obviously, your informed speculation may be better than my informed speculation. The point that seemed to come across fairly clearly from your evidence was that, on a range of issues, there were certain balances of probability, and you could say what was a potentially likely outcome in some respects, but that was perhaps countered by a different aspect where

the outcomes were likely to be of a different nature. You seemed to be very heavily in the realm of speculation as regards a lot of this.

570. **Professor O'Flaherty**: No; not very heavily in the realm of speculation but certainly in the realm of interpreting law in the absence of absolutely to-the-point, clear judicial guidance on the specific matter before us. However, that does not preclude us from drawing a general conclusion that the absence of individualisation in the Bill is undoubtedly problematic and might lead to trouble down the road in the ECHR context. There is also the conclusion that the direction of the Bill is inconsistent with the discourse and emerging standards at the United Nations level.

571. **Mr Weir**: OK. You mentioned — maybe differing at least in tone from the previous evidence we got from some of the experts — what a court will look at in blanket prohibition. I suppose, again, there are two sides to this: there is blanket prohibition on the basis of a complete blanket ban on people having particular jobs and whether that counts as blanket prohibition, or there is the fact that the amount of jobs that we are talking about is very limited in scope. The previous examples of case law that were given, for example in Lithuania and Italy, seemed to draw in a very wide range of employment law and a very wide prohibition in the sense that there was a large section of the employment sector that people were banned from. Where do you see the issue of blanket prohibition in that context? That could be interpreted in one of two ways.

572. **Professor O'Flaherty**: It certainly could be interpreted in that way. I would not buy the interpretation myself because the basis on which the blanket prohibition will be tested is probably going to be that of privacy. I cannot see how the size of the pool or employment area could be relevant to the issue of privacy. I see your argument, but let me put it this way: if I were a judge with the European Court, I would not be won over by it.

573. **Mr Weir**: Fortunately enough, I am not being hired as a lawyer to argue the case in connection with that. Would you accept, though, that there are a lot of examples of where high levels of criminal conviction can lead to complete prohibition as regards a particular job and maybe particular relevant circumstances? That has been the case in quite a lot of cases. Would that be correct?

574. **Professor O'Flaherty**: There is no doubt that criminal convictions will be relevant to recruitment to any manner of employment. What is important is that the individualised criminal conviction is taken account of in light of the specific job in question. The issue of individualisation or of taking a more subjective approach is the issue that we and those who have gone before us have been speaking to.

575. **Mr Weir**: Finally, Michael, you gave the case law example of qualification for election. I can appreciate that some useful general principles came out of that that are maybe worth bringing forward. Do you think, however, that that is an entirely fair analogy to draw, given that the courts are likely to take a different stance — a lot less restrictive stance — on restrictions on who can run for election than they would take on restrictions on who can specifically be employed? There is a qualitative standard that is different, and the courts would be extremely reluctant to impose a larger level of restriction on people standing for election. That would be a clear potential restriction of democracy, and a safeguard is already built into an election in that the people can ultimately decide. There is a qualitative difference between that and a restriction in employment law.

576. **Professor O'Flaherty**: There I would agree with you. There is a qualitative difference, and I brought it to your attention more as an interesting, indicative set of guidelines from a different context that you may choose to apply in this. I do not know what the court would do if it were seized with that matter, but I entirely take your point.

577. **Mr Weir**: On that rare note of agreement between the Human Rights Commission and myself, I will leave it there. *[Laughter.]*

578. **Mr D Bradley**: Good morning. I was interested in what you said about the vetting process. You said that that could be strengthened by giving a stronger voice to victims. Can you indicate to us the ways in which that might be done?

579. **Professor O'Flaherty**: The Victims' Commissioner, I understand, raised this issue with you yesterday and, in fact, offered to give you some thoughts on this herself. In operating as various commissions, we feel it is very important not to trip over each other's toes unnecessarily. We think it is better that the Victims' Commissioner takes the first stab at suggesting guidance on that, and then we will come in in support of her as best we can. I would be pre-empting her inappropriately if I were to try to speculate on that today.

580. **Mr D Bradley**: Can I just clarify with you that, in your view, the vetting procedures that the Department has introduced are compliant with human rights obligations and laws?

581. **Professor O'Flaherty**: Yes, that is our view, certainly as applied to the specific context in which we have reviewed them, which is, of course, this Bill. We have not done a comprehensive analysis of vetting for full human rights compliance, but, in the context of our discussion today, we think the vetting procedures are fine.

582. **Mr Girvan**: Thank you for your presentation. I appreciate that an awful lot of the emphasis has been in relation to the employment and potential employment of someone. First, in your submission, what emphasis did you put on the victim and on ensuring that the victim is considered in all cases? Secondly, is there not a ban — I am not talking about a blanket ban — in many areas of employment in the public sector for people with convictions? Take the Ministry of Defence (MOD), in particular, where you will be excluded from taking a position, even should that be as a mere private in the army, if you have any conviction. There are other areas as well. It is the tariff that has been set aside. A five-year tariff would indicate a fairly severe issue; somebody who commits a fairly serious crime will get a tariff of five years or more. On the basis of that, are there not sufficient grounds?

583. I appreciate that you mentioned blanket bans. I would like to widen that out. We are dealing with a specific sector within the Civil Service, but the same rules seem to apply in many areas of the Civil Service, as it stands. We are not trying to include it for the private sector, as was included in the previous evidence session, at which there was evidence that people who had a conviction were being denied the opportunity of employment in both public and private sector. We are not looking at that; we are looking at one sector within the public sector. There are a number of points there.

584. **The Chairperson**: Michael, before you answer that, there is interference from someone's mobile phone. It is interfering with the recording equipment for Hansard. Please check your phones, because we want to get an accurate report of the session.

585. **Professor O'Flaherty**: First, I entirely agree that victims have a vital, central role to play, and that is why I began by making reference to them.

586. **Mr Girvan**: No, but —

587. **Professor O'Flaherty**: I have not even begun to answer you yet. We think that there is space for a better capacity to listen to victims in the vetting procedure. We think that the Victims' Commission should come to you first with suggestions as to how that might be done. We would like to see ways in which recruitment in the private sector could take better account of the situation of victims, perhaps through some special convening of the victims' forum, for instance. In light of private sector recruitment, that would be very important. We recognise that if

this Bill were not adopted, that might cause grave offence to victims and the relatives of victims. We recognise that, and we acknowledge, with the deepest respect, the pain that those individuals must, and would, feel. However, we can only reflect back to you today international human rights law as we know it. Ultimately, you will have to decide whether to proceed. You are the policymakers; you are the decision-makers. The international human rights standards cannot provide an answer for everything. All I can do is present it to you as best I can, with all its gaps, and then you, sir, and the Committee, will have to make the decision yourselves.

588. I move now to the blanket prohibitions and their existence in other forms of law. You will recall that you raised that matter with the Attorney General. He gave a large part of the answer, which was that a number of the blanket prohibitions are in old statutes that pre-date the Human Rights Act 1998 and that he was not, therefore, willing to make an assessment of their human rights compatibility. I give you the same answer. There is a lot of law on our statute books that needs to be improved. We speak of blanket prohibitions; I cannot do a blanket sweep of all old law. Nevertheless, I associate myself with what the Attorney General said to you.

589. With regard to more recent blanket prohibitions, one has always to take account of the particular function to which the prohibition is being applied. For example, the prohibition on people with criminal convictions being able to run as candidates for police commissioners in Great Britain — that would probably pass the test if it ever found its way to Strasbourg, because there is such an obvious relationship between combating crime and there being a criminal conviction. That nexus is very intimate. I see no such intimate nexus in a blanket prohibition on the function of special adviser in any Ministry on the basis of having previously had a conviction; there is not the intimacy of relationship.

590. **Mr McQuillan**: What about justice?

591. **Professor O'Flaherty**: You could find that intimacy of relationship only if you individuated the process. The member mentioned justice. I do not argue with that at all, but at least allow for a vetting procedure by which the particular individual with the particular record is vetted in light of the particular functions at issue, such as justice. It may be that that person will not succeed. Introducing an individuated vetting procedure is not introducing a guaranteed open door for everybody who wants to be a special adviser; there would still be vetting, but it would be fair vetting that was based on individual circumstances.

592. **The Chairperson**: OK, Paul?

593. **Mr Girvan**: No, I am somewhat confused about what is deemed to be fair vetting. We are dealing with a political appointment, so it is up to the political party to do the vetting for those appointments. It was the insensitivity of how this case was dealt with that brought about this whole issue. We would not be here today had common sense prevailed and sensitivities been taken into account in the way in which it was brought forward. We are legislating because it was abused; that created the problem. That is why the Bill is being brought forward.

594. We are trying to establish whether what we are bringing forward breaches or contravenes any European law or, as some people have suggested, UN conventions. I do not believe that it does, but you have alluded to some areas that we have to focus on. Are there any other cases that you can cite in which those have been implemented? Maybe I am not talking about Northern Ireland; maybe other areas where there are bans on people who have a criminal conviction — I am not saying politically or otherwise — and so cannot take jobs. By that, I mean senior posts in government which are paid by the public. I disagree with you that we are legislating for the private sector. It is not the public purse that is paying their wages; it is where you are dealing

with people who are being paid from the public purse. That is all that this legislation is covering.

595. **Professor O'Flaherty**: I have a few points. A number of the issues that were raised actually cover ground that I have already spoken to, and I have nothing further to add to them. With regard to the suggestion that the appointment of a special adviser is a political matter that should not be subject to a regulatory framework, we have to disagree. Our understanding is that special advisers are civil servants, technically, so they have to be subject to the Civil Service regulatory framework. More generally, as a matter of the international practice at the United Nations level and the European court in the light of the Latvian case that I mentioned to you, it is clear that, in a post-conflict context, account has to be taken on an individual basis of the story of any person who is seeking, as it was put, high office, be it in government or in the Civil Service.

596. I suppose it is not quite the point of today's discussion, Chair, but as to the private sector dimension, let me just clarify. I only raised the matter of the private sector because there is a gap in delivering justice for victims if people reach high places in the private sector. If you have the head of a private company appearing on television every day, and that person has done some dreadful acts in the past, that is no less distressing for a victim than if we are talking about a special adviser. So, I was simply alluding to the utility of the Victims' Commission and the victims' forum leading us in reflection on how the private sector could address this area in a more fruitful way. It was no more than that.

597. **Mr Mitchel McLaughlin**: Do you regard the post of the special adviser as being akin to the rank-and-file Civil Service or to the Senior Civil Service?

598. **Professor O'Flaherty**: I am going to turn to my colleagues. That is a technical question.

599. **Mr Colin Caughey (Human Rights Commission)**: From reading the review that was carried out, we understand that they are considered similar to the Civil Service. The same vetting procedures that apply to the general Civil Service are applied to the special advisers, as we understand it from reading the review document.

600. **Mr Mitchel McLaughlin**: Is that the report that was prepared on behalf of OFMDFM or the Department of Finance and Personnel?

601. **Mr Caughey**: No, it was the Department of Finance and Personnel guidance.

602. **Mr Mitchel McLaughlin**: That guidance was not accepted at the Executive. So, the one that —

603. **Mr Caughey**: Returning to Michael's point on the political issues, that is not something that we comment on.

604. **Mr Mitchel McLaughlin**: OK, but that is the authority on which you would view that special advisers should be regarded as ordinary rank-and-file civil servants and subject to the same vetting procedures.

605. **Professor O'Flaherty**: I am not familiar with the category of ordinary rank-and-file. There are civil servants —

606. **Mr Mitchel McLaughlin**: I suspected as much, but you might be surprised to find that there are no vetting procedures to be a member of the Senior Civil Service. You could have a conviction and be a senior civil servant.

607. **Mr Caughey**: Presumably, you enter into the Civil Service before you get into the Senior Civil Service.

608. **Mr Mitchel McLaughlin**: Yes, or you could be appointed. That may well inform deliberations and discussions. I was particularly interested in the very valid point, which I strongly endorse, that we should take account of the views of victims at all times, and we should find a way of reflecting that. I have made that point to previous witnesses. There are many victims in our community, right across the various political opinions and

community spectrums. Some of them have had the experience where people have been before the courts, convicted, released under the terms of the Good Friday Agreement and covered by the provisions developed in the subsequent negotiations at St Andrews, etc. Some, maybe many, have not had that particular experience, in that the people that they would regard as responsible never appeared before the courts, either because they evaded arrest or because there was no particular attempt to pursue them or apprehend them. Particular people who might have been involved in infamous circumstances such as Bloody Sunday, the Ballymurphy massacre, the murder of human rights lawyer Pat Finucane, where there were court proceedings; there were very dubious arrangements in respect of British state agents who were involved in the commissioning of that particular murder.

609. When it comes to the appointment of special advisers and the issues around re-traumatising victims, do you see a need to reflect the views of the spectrum of victims — those who have had the experience of court proceedings and early release mechanisms, and those who never got that far?

610. **Professor O'Flaherty**: You ask me to go well beyond the framework of the law on which the commission works. I am not competent to answer your question in the way that you put it, sir.

611. **Mr Mitchel McLaughlin**: I am trying to establish whether there is a hierarchy of victims' voices that you would consider, or do you think that the conflict has created for all of us this legacy of victims and people who have been terribly traumatised?

612. **Professor O'Flaherty**: The Human Rights Commission can only, and will only, speak to matters of international human rights law as it applies in the United Kingdom. You raise issues more generally around how Northern Ireland deals with its past — what is commonly referred to as transitional justice. It raises any number of human rights issues. Right now, the commission is seeking to find an appropriate rule- and law-based role to contribute to the process of Northern Ireland dealing with its past. However, beyond telling you about that process, I am not confident of going any further in responding to you today.

613. **Mr Mitchel McLaughlin**: I perfectly understand that. For the benefit of the Committee, its deliberations and the advice that it will subsequently offer, I am illustrating that there will be issues. It is likely — as I think you mentioned — that some of the aspects of the Bill will be examined by the Supreme Court and/or the European Court of Human Rights.

614. The Bill clearly addresses the issue of people who had convictions for conflict-related actions and were subsequently appointed as special advisers to a Minister. Of course, the Bill cannot and does not deal with those who will never appear before a court, but who could, in theory, be appointed as special advisers. I accept that it is an undeveloped issue and that there may not be the necessary jurisprudence. However, that jurisprudence may be there before this issue is formally concluded. I just want to draw that to your attention.

615. **The Chairperson**: Michael, thank you very much for your presentation. It was quite useful.

21 November 2012

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree
Ms Megan Fearon
Mr Paul Girvan
Mr John McCallister
Mr David McIlveen
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Peter Weir

Witnesses:

Ms Ann Travers
Ms Catherine McCartney

616. **The Chairperson**: I welcome Ann Travers and Catherine McCartney. You are both very welcome. Ann, thank you for your written submission to the Committee. I invite you to comment on the legislation, and I will then open it up for questions.

617. **Ms Ann Travers**: Mr Chairman and Committee members, thank you very much for inviting me to speak to you today. I am unused to such formal occasions, so please excuse my nerves.

618. On Wednesday 25 May 2011, my day started as normal. I got up early, I organised my children for school and managed to get them all there safely. I arrived home around 9.30 am, and I had just made myself a cup of coffee when my phone rang and my world came crashing in. A BBC researcher from Radio Ulster's 'Talkback' programme asked me whether I was aware that Mary McArdle had been appointed as special adviser to the Culture Minister. In those few seconds, my stomach heaved and I felt like I was going to be sick. My head whirled and I remember panicking and saying, "No, no, no". It was like I was being told that Mary was dead again. That was the first time that I had heard Mary McArdle's name mentioned by someone other than my family since her trial, even though, in the past 28 years, Mary Ann McArdle has haunted the recesses of my mind. To regain my composure, I asked the researcher to phone me back in five minutes and I hung up.

619. As a direct result of that appointment, I found myself unable to speak about my sister Mary without crying. I found myself frozen and reliving running down Windsor Avenue; my mum leaning over my dad saying, "My poor husband, my poor husband; somebody please help my poor husband"; dad mumbling and trying to take off his watch; and Mary lying on the gravel, head turned awkwardly and gurgling. Ambulances, police cars, chaos.

620. Recently, I was driving down the N11 in Wicklow, and I suddenly found myself sitting in my car outside my house. I do not know how I got home safely. I had spent the 30-minute journey reliving every moment of 8 April 1984. Those flashbacks continue in other places: the supermarket, my home, and while out with friends. On more than one occasion, my youngest daughter has said to me, "Mum, mum", and I have come around from one of those flashbacks. Prior to the appointment, I had not had any flashbacks for about 20 years.

621. All the behaviours and patterns that I had developed after my sister's murder came back to haunt me. I became depressed, then hyperactive. My children saw their usually controlled mum weeping uncontrollably one moment and getting cross with them over very small things the next. This appointment has made my family and me revisit something so dreadful, which we never wished to revisit.

622. Much has been said about ex-prisoners' rights to work and the spirit of the Good Friday Agreement. Never, for one moment, have I said that ex-prisoners are not entitled to work. In fact, it is

the contrary. I believe quite strongly in rehabilitation and allowing truly remorseful ex-prisoners to move on with their lives. Everybody deserves a second chance. Mary McArdle has shown no remorse. The Historical Enquiries Team wrote to her, and she ignored its letter. I and my brother Paul have asked her, through the media, to tell us who else was involved in Mary's murder and the attempted murder of our parents. She has told us, via the media, that Mary's murder was a tragic mistake that she regrets, yet if she was to explain why it happened, she would only compound my hurt. That is, in my mind, still justifying it.

623. I know that some of you know Mary McArdle quite well. I plead with you to speak with her after this meeting and ask her to tell me who else was involved in the planning and execution of the murder of my sister and the attempted murder of my parents. Surely that would be the greatest restorative justice of all. I am happy to wait here afterwards until an intermediary can come back to me.

624. Where in this is the spirit of the Good Friday Agreement for the benefit of victims? The job of special adviser is very important. It is at the very heart of government and it is unlike the role of an MLA, because it is not elected by the people. Special advisers have no mandate, posts are not usually up for open competition and they are usually appointed by a Minister. However, in this case, Mary McArdle was appointed by the party, as the Culture Minister said in a 'Spotlight' documentary. In my view, the appointment that has caused us to be here was for a job well done: a reward.

625. Some have suggested that the Bill cannot be based on one family. However, any Bill has a catalyst, which is usually one case or one individual. An example of that is the present abortion debate in the South due to the death of Savita Halappanavar, or indeed the X case. However, you are right. The Bill is not about one family; it is about protecting all victims. I do not want to see another family go through what we went through.

626. As the position of special adviser is taxpayer-funded, victims find themselves in the surreal position of contributing to the salary of the person who destroyed their family. That is wrong. Victims have rights, too, and they have the right to move on with their lives. While someone who has been convicted of murder may find their life has improved when they are appointed to a high-profile government position, the victim's lives will certainly not have improved. Indeed, it will have been damaged once again through no fault of their own

627. Victims deserve the very important human right not to be re-traumatised time and again. For those who do not support the Bill, I ask one simple question: do you believe that the rights of perpetrators of violence are more important than, or supersede, those of victims in today's civil society?

628. **Mr Weir**: Ann, first, thank you for your evidence. I appreciate that these are very difficult circumstances for you, and I salute your courage in trying to raise this issue that was thrust on you and in speaking to us today.

629. I do not want to add to your trauma, so I will just ask you two simple questions. In your evidence, you say that, for you, the purpose of the Bill is not about revenge but about protecting innocent families in the future. Can you expand on that statement?

630. **Ms Travers**: Many people have spoken privately to me since all this has come about. It has become so obvious to me that so many families, sitting in their homes, are being hurt by the things that are said and done nearly every day in Northern Ireland. They are trying to get on with their lives, but sometimes a thoughtless remark can bring back to them exactly the hurt and the pain that they initially went through. I had got on with my life. I have five children, and I was doing well with everything. This has thrown me into the middle of something that I thought I had dealt with. So, no, it is not about revenge, and it is not about saying that somebody does not have the right to work or to move on. It is about

having thought and treating victims as equally as those who made them victims in the very first place.

631. **Mr Weir**: Finally, we as a Committee have obviously received quite a bit of correspondence in relation to this. Perhaps not surprisingly, a large volume of those who are critical of the Bill made very similar points and wrote very similar letters. To pick out a phrase or theme, they talk about their opposition — as they put it — to discrimination and the "further punishment" of former prisoners. What is your reaction to that? What are your views?

632. **Ms Travers**: I feel that I have been punished. I feel that my family has been punished. I know that my brother over in Australia is watching this today. He was most certainly punished by that appointment last year. We did not do anything wrong. My dad did not do anything wrong, and my sister Mary did not do anything wrong. They were walking home from Mass.

633. I welcome and embrace how far Northern Ireland has moved on, but there has to be some form of consideration to the victims of violence. I do not really know what else to say about that. It really upsets me. I wish I could just say to the ex-prisoner groups, "I have no problem with you, if you are remorseful and if you are getting on with your life, earning a wage and supporting your family. That is how society works and grows. But, surely, there must be a duty of care towards your victims when deciding what post or position to go for".

634. **Mr D McIlveen**: Ann, thank you very much for your presentation. Just to echo Peter's words, the courage and dignity that you have shown from the start of this has been incredible, and that is a real credit to you and to what your family has been through.

635. You mentioned the term "truly remorseful". I am trying to get my head around whether any course of events would have got you to the stage where you were able to accept the appointment of Mary McArdle. Could she have taken an action that would have made you think that you could deal with it and that, ultimately, you could get on with your life and accept it?

636. **Ms Travers**: There were quite a few people involved in my sister's murder, not just Mary McArdle. Yes, Mary McArdle stood trial. However, there were two gunmen, there were people who sat around a table and decided that they would target my family, and there was the place where the gunmen went afterwards. If Mary McArdle could have come to me and told me the details down to the very minutiae, that, for me, would have shown remorse. It is very easy to say sorry. It is simple. I can say it: "Sorry". You have to mean it. Actions show that you mean that you are sorry.

637. **Mr D McIlveen**: Ann, if any of us ask you anything that you do not feel comfortable with, please just avoid it. I am not trying to take you down a path that you do not want to go down.

638. Let us move to a parallel universe in which those actions took place but Mary McArdle has acknowledged that what she did was beyond regrettable and wrong and is prepared to co-operate with the investigative authorities, such as the Historical Enquiries Team, and name the people involved. Would you then be able to draw a line under that and say that there was demonstrable evidence that she has moved on and acknowledged the wrongdoings of the past? Would you feel that that would free her from the bonds that this legislation would attempt to put on her?

639. **Ms Travers**: If she could do that and not justify the attempted murder of my dad, well, I am a Christian and a human being, and I just want to be able to go and visit my sister's grave and get on with life.

640. **Mr D Bradley**: Good morning, Ann and Catherine. Thank you for coming here today. I know that it is very difficult for you. You have given us a very clear picture of the effect that this has had on your life and how it has led you to relive a very traumatic experience, the loss of

your sister. We very much respect you for giving of your time today.

641. You may have heard some of the evidence from the previous witnesses, who were from the Human Rights Commission. Before that, there were three academic lawyers from Queen's University. We discussed ways in which the Bill, as it is at present, might offend against human rights. Some issues mentioned were that one clause implies a blanket prohibition on a certain group of people and that some aspects of the Bill are retrospective and seem to punish people twice for a crime for which they may already have served a sentence.

642. The commissioner who spoke during the previous session said that the vetting procedures that the Department had developed were compliant with human rights, although he thought that they were weak from the point of view of the voice of victims. He mentioned that the Victims' Commission is working on that to come up with some ideas on how to strengthen them. What would be your view if the Bill were to be amended in some way to ensure that it was human rights-compliant?

643. **Ms Travers**: Personally, I think that it is human rights-compliant at present. My worry is that because murders like my sister's are still justified, the Bill will be manipulated in some kind of way. At the moment, what are the human rights for the victim? Where does the victim come into this? I heard Mitchel speak earlier about a hierarchy of victims, but I feel that, as a victim of the IRA, I am down here, and those in the IRA are up there. That is all that I can see. All that I can see is reward after reward after reward. We can go into the arguments of why it all happened, why people went into the IRA and whatever, but, at the end of the day, when somebody is convicted of murder, surely it is the victim who should be considered. Mary McArdle and other prisoners were released under the Good Friday Agreement and are now able to get on with their lives. I think that some feel abandoned by the groups that they were once in, and they have different problems and issues, but others do not. Others are able to move on and get on with their lives, and they are doing very well, thank you. My life has not improved. It certainly has not improved since this appointment came about last year. I am sorry if that does not really answer your question, Dominic.

644. **Mr D Bradley**: I understand what you are saying. In fact, I said in my speech in the Assembly that it looked very much like the perpetrators were being rewarded and the victims were being punished again, as it were — made to suffer again, in any case. That does not seem to be as it should be, to most of us anyway. That said, we cannot pass legislation that is not human rights-compliant. If legislation offends against human rights conventions, standards or laws, we have to take that on board.

645. **Ms Travers**: Surely there are certain jobs that people who have certain convictions could not do. Ex-prisoners frequently talk about how their crime is different from that of the common, or Joe Soap, criminal. I do not really understand what they are saying. They say that if Mary had been battered over the head, mugged and murdered on her way home, and Mary McArdle was involved in that, she could not get that position. However, because she was involved in taking guns and in Mary being shot, she should be able to get the position. It just does not make any sense to me.

646. **Mr D Bradley**: I understand what you are saying all right. You feel that the Bill, as it stands, upholds victims' rights.

647. **Ms Travers**: I feel that it does. I feel that it protects victims and that, as long as murders in the past are still being justified, it is all that victims have to cling to. Being told, "We are really sorry that your dad was shot or that your son was blown up, but let's just think about everything else that is going on" does not really wash with victims.

648. **Mr Cree**: Thank you very much, Ann. You are a very brave woman, and thank you for coming this morning. I know that it cannot be easy. You touched on the

question of whether there are competing rights between offenders and victims. This case probably highlights that as well as any case possibly could.

649. You gave your opinion on the Bill, which you have obviously studied fairly well. Drawing on the practical experience of the trauma that you have suffered, do you feel that anything else should be included in this Bill, or in any other legislation that may need to be developed, to try to avoid this problem happening again?

650. **Ms Travers**: I believe that victims should be kept informed. I am not saying that if Sinn Féin had come to me the previous week and said that it was going to appoint Mary McArdle as a special adviser, I would not still be upset and sitting here today. I am not saying that, but, I tell you, that phone call — it was just like when I came home on that day. Even though I had been in the ambulance and heard the woman in it say to my brother, Paul, that Mary was not going to make it — neighbours had brought me to my aunt's flat in Dunmurry, and I had to tell her because I could not get through on the phone — when I came home, walked into my hall and we were told that Mary was dead, it hit me just like that. It was like somebody had just punched me in the stomach. Hearing Mary McArdle's name, and I am sorry because I know that she is a human being but, for me, it was like something from out of this world — it really was. I cannot emphasise enough how much that affected me. So, yes, I believe that families should be told, as it would show a bit of consideration. I know that they would probably not be happy about it, but at least it would be a warning.

651. **Mr Mitchel McLaughlin**: I thank you for being here and echo Leslie's comments: you are both very brave women dealing with extremely tragic and dramatic circumstances. On a personal level, I want to acknowledge that to you both. I am not sure whether you are going to give evidence, Catherine, but I want to acknowledge your presence. My party's position on your case is that the PSNI is the investigating authority, and people should give whatever information and evidence that they have to it and fully co-operate with that investigation. I repeat that consciously this morning.

652. Ann, not only are you brave but you are trying to do something about the situation. I know that you are a member of the victims' forum, for which we owe you a debt of gratitude because you will bring a depth and breadth of personal experience that will help to inform the collective approach to this issue. You posed a very direct question to me, and I hope that you understand that it is out of absolute courtesy that I will respond directly. I think that there is only one way in which you can get a satisfactory answer to the truths that you are trying to uncover. That can happen only when all parties to the conflict agree to contribute their truths as well. In the 14-odd years since the Good Friday Agreement, we have not progressed one iota in that direction. We have put forward a proposition for debate, which could be improved if other parties want to join that discussion. That proposition is this: let us establish an independent and international truth recovery process. The British Government and their agencies should contribute to that as well as the loyalist groupings, the IRA and anyone or any organisation involved in the conflict or responsible for sustaining it. That is my opinion, but it is a reflective position because I have thought about it very deeply. Unless we crack that, we are in danger of more and more people being re-traumatised in the way that you quite evidently were.

653. I cannot understand why, in the appointment of Mary McArdle, no consideration was given. By the way, I just want to make the point that I probably got the same notice as you did. However, if you made contact, you should have had a response. I do not believe that it was anybody's intention to cause you to relive that terrible experience.

654. I think that the work that you are doing in the victims' forum will contribute to helping other people. In a post-conflict

society, there are those trying to move towards a process and towards that necessary level, which you described in your statement as reconciling people with one another. It is not that they would become friends or could completely set aside what happened, but, at a human level, people have acknowledged one another's dignity as well as the trauma and may have addressed, in a satisfactory way, their responsibility for that.

655. In some instances, people know exactly who they want satisfaction from or who they want to have that discussion with, but very many in our community do not have a clue who to turn to. They may know the corporate identity of who caused the trauma but not the individual. I think that the trauma for you was being confronted with the individual and the name coming back from the past in a way that you were totally unprepared for. I can see the very visible effect that it has had on you, and you have the additional struggle in that your personal health is suffering.

656. I want to address your point in the way in which I have and perhaps incorporate support from other political parties for how we can approach the issue of recovering the truth that people such as you and Catherine require. Does this Bill do it? I have to say that I do not think so. Just on the basis of having read the text of the Bill very carefully, I do not think that it does. Undoubtedly, your case was the catalyst, but it was the catalyst for many things that I do not think were helpful to you or to the wider debate: the way in which your case was sensationalised and the way in which people came at it not to limit your re-traumatisation but, in a sense, to score political points. Although that was understandable, it was not helpful.

657. What I would like is not this type of Bill, which will deal with, at most, a handful of individuals. We are talking about special advisers to 12 Ministers, and that number will possibly be reduced following a review of the Assembly and its Executive Departments. A wider group of thousands of individuals were affected by the conflict and violence from all sorts of directions and agencies. Within the group of survivors and those injured are combatants and non-combatants who were just caught up in a conflict that flared up around them and engulfed them, their families and their communities. We have a duty to them all, and that is what will inform my approach.

658. I have answered your question as best I can, although it is not the purpose of today's discussion. I have read very carefully your written submission. It is a heart-rending story, but you will acknowledge, by agreeing to go on the victims' forum, that we are not dealing with your case on its own. We are dealing with many, many other cases and people who are screaming for help and support.

659. **Ms Travers**: I will come back to you on a couple of things. First, as I pointed out, two gunmen murdered Mary that day, and I do not know who they were. So, like the other people whom you talked about, I do not know who those people are. Mary McArdle knows who they are, but she will not give their names. Waiting for the truth and for an international truth body is not doing the victims much good. It does not really wash with me at the moment. My dad searched for the truth about what happened to Mary, and, sadly, he passed away in 2009. He searched for the truth until he was too weak to search for it any longer. I am searching for the truth about what happened to Mary, and I have cancer, from which I hope that I will recover. Many families are waiting for the truth and, unfortunately, dying before they get it. With their death, they leave behind all that baggage and history for the rest of their family.

660. As for the sensationalising of this particular case, I would not have had a voice were it not for the media. I am very grateful to the media for everything that they have done to support me and for allowing me to have that voice. At times, certain commentators may have criticised me. That is fine, but they still gave me the voice, which I had not had

as a victim. I am very grateful to political representatives who have supported me because, without their support, I would not know what to do. I remember phoning the First Minister's constituency office on hearing of Mary McArdle's appointment. I had no idea what to do — I was lost. I had never experienced anything like this before. I spoke to a secretary. I remember crying and asking her, "What do I do? Who can I go to? How do I stop this? How do I change it? What do I do?" That is where it started for me.

661. For the sake of all victims, I wish that people could find it in their hearts to give them the answers that they so deserve. I think that this Bill will protect victims. You are right in saying that it is for a handful of people, but it means that it will never happen again, and it should never, ever, ever happen again. Nobody should have to go through what we went through last year. It dragged on and on and on, and it could have been stopped within days. It could have been stopped within hours, and I would have been fine with it. If Sinn Féin had said, "Hold on. We did not read this right. We are really sorry. Yes, Mary has the right to work, but we are going to take into account the victims and how upset the Travers family is. We will move her to another post.", I probably would not be sitting in this room today. That would have been it.

662. **Mr Mitchel McLaughlin**: Acknowledging that we are talking about only a few individuals, how do you think that we can deal with all those other victims? I know that this is deeply personal, and my question is not meant to be interrogative. I am very intrigued and, I have to say, impressed by the fact that you are prepared to go on to the victims' forum. It is obvious that you are not going on to that body to prosecute Ann Travers's particular case; you will be dealing with everybody.

663. **Ms Travers**: I am listening to everybody. I am not only listening to them but hearing them; not only hearing them but respecting them; and not only respecting them but considering them. That is a starting point for victims.

664. Sinn Féin/IRA are the only ones who continue to justify the murders that were carried out. For me, the very first step towards reconciliation would be to stop justifying those murders. I know that that might be really difficult for you. I know that that is like saying, "That was a big waste of time; we should have started talking years ago." That is fine. You know, there is no harm in being humble. There is no harm in saying, "We made a mistake; this is where we go." I could put my hands up and say that I have made a mistake. I have just been asked whether I would be happy for Mary McArdle to have this post if she showed complete remorse and told me exactly who was involved. I could very easily say, "No, she should never have it." No, that is not what life is all about. There is no harm in sticking your hand up and saying, "We made a bloody mistake. We should not have blown up people in Enniskillen; we should not have massacred workmen on buses; we should not have tied people to bread vans." That was wrong. It was immoral, it was inhuman and it was wrong. So stop justifying those actions by talking about Bloody Sunday, which was absolutely wrong, and the Ballymurphy massacre, which was absolutely wrong. I am not arguing with that. It is insulting to me when you do that. Do you realise how insulting that is to me?

665. **Mr Mitchel McLaughlin**: I hope that I did not insult you.

666. **Ms Travers**: It is insulting. That is not directed personally just at you; I hear it time and time and time again.

667. **Mr Mitchel McLaughlin**: I am anxious, particularly given the commitment that you have brought to this, that you understand that I have a very deep concern for the people whose victimhood is, for some, impossible to recognise because it was not the IRA who killed them but a state agency. All I am doing is taking your particular tragic experience and extrapolating that to all sections of our community, because

there are many people who look to the state as the perpetrators and wonder at what point the state will come forward and say that it has a truth to tell as well.

668. **Ms Travers**: That is not my view. I understand what you are saying, but that is not where I am at.

669. **Mr Mitchel McLaughlin**: May I put this to you as an intellectual point?

670. **Ms Travers**: I do not know. My hair is falling out, and my brain has gone with it.

671. **Mr Mitchel McLaughlin**: No, you are brilliant. What are you on about?

672. You see, that is an impediment to what you are trying to achieve: the peace and the truth that you are looking for. People are paralysed by the fact that if you ask those on only one side of the conflict to account for themselves, you paralyse them. They look across the table and ask who they were fighting, who was shooting at them, who threw the first stone or drew the first baton. There is a history. Your mother and father went through a terrible experience, and you have spoken eloquently about it. Your sister lost her life. However, they were born, as we all were, into a society that was already divided. There is a long history here, and we are trying to deal not with what Mary McArdle did as an individual but why these issues were not addressed in the past and whether we can get them addressed now. That is why we have a victims' support service and why we are having dialogue about how we can bring about truth and reconciliation process so that we never revisit that situation.

673. This is not a combative question, but I hope that it will help us all. I know that Carál Ní Chuilín offered to meet you and that you found that unacceptable and refused. Do you regret that now?

674. **Ms Travers**: No; I did not refuse to meet her. That is not what I said at all. I sent back the message that I would be happy to meet her if I could be told who was involved in Mary's murder. She sent back the message that there could be no preconditions to a meeting and no agenda. I am sorry, but does every meeting not have an agenda? I did not refuse to meet Carál Ní Chuilín. That is completely wrong.

675. **Mr Mitchel McLaughlin**: Did you not ask her to do something that she could not do?

676. **Ms Travers**: No. Why can she not do it?

677. **Mr Mitchel McLaughlin**: How would she know or how do you know that she would know?

678. **Ms Travers**: For one, she is very good friends with Mary McArdle. I happen to know that for a fact. My intelligence would be really insulted if you were to expect me to believe that she and Mary McArdle did not speak in prison and that she would not know who else was involved. If I was not going to get anything from that meeting, what on earth was the point of it? I did not refuse to meet her. That was the reply that I sent back, and that was the reply that I got.

679. **Mr Mitchel McLaughlin**: Let me make this point to you, Ann. I was addressing your earlier mention of getting a phone call in advance of the appointment. The Minister was coming to you to explain and, probably, to apologise —

680. **Ms Travers**: No, she was not. She came to me about four to six weeks afterwards, and that was through a phone call from our family friend, a priest.

681. **Mr Mitchel McLaughlin**: OK, but you would have had the opportunity to ask her for the explanation that you asked for today.

682. **Ms Travers**: Yes, and I sent the message back that I would meet her if she was going to ask Mary McArdle who was involved in Mary's murder. It came back that she would not do that. She said that there were to be no preconditions and no set agenda.

683. **The Chairperson**: Catherine, did you want to make a point?

684. **Ms Catherine McCartney**: We could bring the discussion back to the Bill, in

a sense. I do not understand how Ann's interactions with Sinn Féin feed into what Dominic asked about how we make the Bill human rights-compliant.

685. It could, at one level, be how the parties put forward people for appointments or what procedure should be followed in contacting families. Some people may not want to be contacted at all, so that has to be taken into consideration. Therefore, bring it back from the intellectual to the pragmatic. I do not have the answers. The blanket ban, Dominic, may not be human rights-compliant. I am no lawyer, but that does not mean that the Bill, if there is a sense that it is not human rights-compliant, cannot be looked at to see whether amendments could be made that would make it human rights-compliant.

686. Mitchel, I agree with you in that, yes, we have not dealt with the past, but victims are powerless in that sense. You people are the ones with that power. If you cannot agree on how it is done, victims are left having to approach this issue on an ad hoc basis, and it flares up all the time. Ann and I are just ordinary people, so we should not be here. You got the Good Friday Agreement, and it is up and working, but really, apart from that —

687. **This is what we are told all the time**: the Good Friday Agreement, the Good Friday Agreement. Yes, everyone is behind that 100%. We all agree with that, but there seems to be an imbalance in pace of who is able to move on.

688. What would be wrong with parking, not for ever but for a while, the appointment of people who were involved? I agree with you also that if prosecutions came from the Bloody Sunday inquiry and a soldier were found guilty of unlawful murder, I would totally disagree with anybody in this room who appointed him as a special adviser.

689. You may come back to me and say, "Let's look at that in the context of the time. Was it a political murder?" The law would have to decide that. This is not a one-sided or individual thing. Ann is fighting it individually, but it is symbolic for Northern Ireland as a whole. Where is the accountability not just to Ann as an individual but to society?

690. There are a lot of points on which we could go around the hall, but we could be here all day, because they are all complex issues. However, I will say one thing: your actions in life, no matter what you do in life, never disappear into thin air and be gone. Sometimes we do things in life and there are consequences, even though your family or society may have forgiven you. Sometimes if you commit murder, there are consequences. That does not mean to say that you are locked away and denied your human rights for ever, but there are some consequences, in that you have limited yourself to a degree. That is taking personal responsibility and acknowledging that.

691. How the law, society and the state deal with that is another issue, which we are dealing with today. It is bigger than Ann, although she is the one who brought it forward. It is about how the state accounts to victims.

692. **Mr M McLaughlin**: That is very helpful —

693. **Ms C McCartney**: I agree, too. There are victims on both sides.

694. **Mr M McLaughlin**: I completely and absolutely accept your point about the political parties. One of my opening comments was that we have not moved one iota on these issues in the 14 years since the agreement. Therefore, we are —

695. **Ms C McCartney**: I disagree. There has been movement, but the movement has been, as I say —

696. **Mr M McLaughlin**: On this issue.

697. **Ms C McCartney**: Let us take the example of truth and reconciliation and how everybody moves on. We have an example here of Mary McArdle, who you would recognise as someone who is, to a degree, a victim, because she became involved in a conflict that was not of her making. Therefore, from your perspective, to a degree, she is

a victim. She has been able to move on from that. Have the state and you policymakers here not created some mechanism by which Mary McArdle has been able to move on from that?

698. You have made inroads into that, but the fact is that the inroads are on only one side, not on the other side. Where are the victims? The victims are having to come on an ad hoc basis, as I talked about. As far as I am concerned, the political parties have done absolutely nothing apart from establishing the Victims' Commission and victims' forum. I totally respect what they are trying to do, but is there any evidence that they are effective?

699. **The Chairperson**: Mitchel, will you just wind up your —

700. **Ms C McCartney**: I am just saying that I agree. The issues that you raised are all very relevant, but we could talk about those all day. I would prefer to stick to what the Bill is about. How can we make it human rights-complaint? Is there any discrimination in the Bill? Is there a hierarchy of victims? I do not think that there is a hierarchy of victims in society, but I do think that a hierarchy of citizens is developing. If you are seen by parties not to have done enough to implement the Good Friday Agreement, perhaps because you were not in a position to do so, you as an ordinary person are not really important.

701. **Mr Girvan**: Thank you very much indeed. I really want to thank you for coming along this morning, Ann and Catherine. I appreciate that this is not an easy thing to do.

702. In your opening statement, Ann, you indicated that, for a number of years, you had managed to get on with your life, lead it properly and, as I will put it, get back to some sense of normality. I understand that the lack of consideration for victims has led us to the position in which we are in today. The fact that we actively brought forward this debate indicates that there was something wrong with the system. Special advisers did not go through the normal appointment procedure for civil servants, and they were not subject to the same criteria — the Human Rights Commission made a point about that earlier — so they were given a free road in. Any political party with a Minister could have made such an appointment. We could have done that. I will turn it around: the DUP could have gone down that route and done the very same thing by bringing in a ministerial adviser who had perpetrated numerous murders. We could have brought in, for example, Johnny Adair. What would that have done? It would have added insult to injury and rubbed salt in the wounds of the people affected.

703. We feel that the appointment was totally insensitive. Bringing forward some form of control mechanism to legislate against that, therefore, seems to be the only way to deal with it, because you cannot rely on the good nature or common sense of parties to deal with things in that sort of way. This had to come forward in order to deal with it.

704. I want to thank you very much for coming along. Given that my family has been a victim of republican terrorism — I know some people say, "You do not know", but I do, because I have been touched by it first hand — I appreciate that it is sometimes difficult to sit across the table from certain people. I am not saying that those people are in this room today. I am just saying that sometimes it is difficult when you know that someone had some involvement in something. Each and every one of us is trying to move forward.

705. I appreciate that hard subjects are being touched on today. I think that this debate has been shied away from on a number of occasions, but it is good to have it. This is perhaps an opportunity to heal wounds. I appreciate what you have done here today. Do you believe that the Bill will achieve anything? I am not trying to put words in your mouth, but I believe that until we have maturity in the political process to deal with things properly, it is totally insensitive to make such appointments. Would you like to comment on that?

706. **Ms Travers**: Yes, I do. I know that I am known as being a great waffler, but that is basically what I am saying. That is why I believe that the Bill is really important. Until things are otherwise, until, as you said, there is political maturity, and until there is no more justification of murders — I worry about manipulation — I think that the Bill is really important for protecting all victims. You are right: it is to protect people who have been affected by any act of terrorism.

707. **Mr Girvan**: It has brought the focus back on to the victim, which is where the focus should be. It should not be on the perpetrators, who seem to have been rewarded up until now, as opposed to the victims. Thank you very much indeed. I really appreciate you coming along.

708. **Ms Travers**: Thank you very much.

709. **Mr McCallister**: Catherine and Ann, most of us will probably feel that we have heard today some of the most powerful evidence that we have heard at any Committee. Ann, you showed a spirit of generosity by saying that someone, in your case, should have shown remorse, and by saying that you are not against people seeking employment and moving on. I say this as someone who regards themselves very much as not a victim. Thankfully, I did not lose any members of my immediate family or very close friends. Long may that continue. I am not someone who buys into the view that we are all victims. Certainly, your experience of the Troubles and mine are very different. I would be absolutely embarrassed if they were even compared. Thank you for coming and for sharing.

710. I have a few brief points. The numbers whom the Bill would affect might be small, but do you feel that it sends out a very important message? Secondly, do you think that a piece of work could be done to draw up guidelines or to make sure that we lift the position of the victim much higher up in the decisions? I am thinking about the political process and how appointments or any of these sorts of things would be handled.

711. My third point is on the human rights issue. I have listened to all the human rights evidence. It is still very much that, on the one hand, you have this and, on the other hand, you have that, and there is no definite decision of yes or no. Dominic and I have passed private Member's Bills, albeit on very different subjects. The human rights element comes into a lot of legislation, but the Bill should be passed, and if someone wants to challenge it in a court, that can be done. That is the great thing about our system: people can take it to the Supreme Court of the United Kingdom or the European Court. Let that happen, and that can be a test. That is one way around it. The numbers are small, but the impact is not. No one here today will have failed to have been moved by your evidence.

712. **Ms Travers**: Thank you very much. The Bill will be a signal for all victims, even for victims who are looking for answers elsewhere. It would be a very strong sign that victims are being supported. There is a lot of conversation about how we deal with our past and what we do with victims. Listen to victims, consider them and respect them.

713. I am jumping to your third point, because I am trying to remember what your second one was.

714. **Mr McCallister**: It was about victims. Could a piece of work be done on how to lift the role of victims up in our thinking so that we can avoid or minimise the chances of this happening again? The Bill would deal with it in a special adviser context, but what about other realms of public life?

715. **Ms Travers**: We on the victims and survivors' forum are trying to do a lot of work on this, but I feel that the very simple thing of a phone call, a letter or using an intermediary of some kind would soften the blow. As I said before, I am not saying that it would not make people upset or that it would not mean that you would not object to it. However, it would stop that initial throwback that I certainly experienced.

716. Sometimes I just wonder about the whole human rights issue. I hear so often about human rights in Northern Ireland. I just wonder where victims' human rights are. It always comes back to me. I always think about the right to work and the right to worship. I am personalising it again. That day, after Mass, my sister was going to be going to St Agnes's Church in Andersonstown to bring her P3 children to make their first confession, which is the sacrament of penance, in preparation for their first Holy Communion. Therefore, she was not allowed her right to work. My dad was not allowed his right to work, along with many other hundreds — thousands — of policemen, UDR men, and everybody else who was affected. He was not allowed his choice of job, which he chose in order to pay his mortgage and look after us.

717. I am kind of chuckling to myself. Dad was a solicitor for a long time. I remember him coming home when he was offered the position of resident magistrate. He asked, "Should I take this?" Dad was a very good solicitor. He was always there, seven days a week, for everybody. He would get phone calls on a Sunday, and all the rest of it. He said, "If I take it, I will be working from 10.00 am until 2.00 pm every day." I said, "Oh yes, dad, take it." I just wanted my daddy at home with me. Dad knew the risks that he was putting himself under. I often think about human rights. Listen, guys, it is time to start thinking about the human rights of victims.

718. **Mr McCallister**: I just want to wish you all the best in your battle with your illness.

719. **Ms Travers**: Thanks very much.

720. **Mr McCallister**: I am praying for you.

721. **Mrs Cochrane**: Thank you, Ann, for coming along today and the manner in which you have explained your situation to us. I know that you were disappointed that I did not vote in favour of the Bill at the time. Your brother also wrote to me about that. It came after a lot of discussion in the party. Our thinking was very much that that small piece of legislation would not be the fix or the solution. I was quite clear about the fact that I did not agree with the McArdle appointment. Following on from conversations that others have had here about the requirement for maturity in our process in future, I will certainly take your evidence back to my party. We will have further discussions about it. The point was made that although it is small piece of legislation, which may affect only a small number of people, the signal that it will give to victims is very important. I will go back to my party. Thank you.

722. **Ms Travers**: Thank you very much.

723. **The Chairperson**: Ann and Catherine, thank you very much for your contributions. The contributions and engagement have been worthwhile. The Committee will take that away, and it will inform the report that we issue in the new year. Finally, I want to echo what John said, Ann, and wish you all the best with your continuing treatment.

724. **Ms Travers**: Thank you very much, and thank you for giving me the opportunity to speak. I am sorry if I took a long time to answer anybody's question.

28 November 2012

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

725. **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.

726. **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.

727. 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.

728. 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.

729. 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.

730. 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."

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

732. 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.

733. 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.

734. 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.

735. **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.

736. 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.

737. 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.

738. 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.

739. 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.

740. 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.

741. 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.

742. 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."

743. 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.

744. 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.

745. 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.

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

747. **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?

748. **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.

749. **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.

750. **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?

751. **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.

752. **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.

753. **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.

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

755. **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.

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

757. **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?

758. **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.

759. **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.

760. 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.

761. 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.

762. **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.

763. **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.

764. **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?

765. **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.

766. **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.

767. **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.

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

769. **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?

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

771. **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?

772. **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.

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

774. **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.

775. **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.

776. **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 —

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

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

779. **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?

780. **Sir George Quigley**: Yes.

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

782. **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.

783. **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.

784. **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.

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

786. **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.

787. **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?

788. **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.

789. 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.

790. **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?

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

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

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

794. **Mr Weir**: OK.

795. **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?

796. **Sir George Quigley**: No.

797. **Sir Nigel Hamilton**: No.

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

799. **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.

800. **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.

801. 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.

802. **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.

803. 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.

804. 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?

805. **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.

806. 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.

807. **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?

808. **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.

809. **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.

810. **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.

811. 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.

812. 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?

813. **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.

814. 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.

815. **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?

816. **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.]*

817. **Mr Weir**: Yes, Sir Humphrey.

818. **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.

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

820. **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.

821. **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.

822. **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.

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

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

825. 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.

826. 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.

827. 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.

828. 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.

829. 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?

830. **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.

831. **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.

832. **Mr Mitchel McLaughlin**: It might have taken longer.

833. **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.

834. **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.

835. 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.

836. **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.

837. 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.

838. **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.

839. 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.

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

841. **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.

842. 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?

843. **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.

844. 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.

845. 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.

846. **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.

847. 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.

848. 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.

849. **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?

850. **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.

851. **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?

852. **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.

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

854. **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.

28 November 2012

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 Mitchel McLaughlin
Mr Adrian McQuillan
Mr Peter Weir

Witnesses:

Mr Michael Culbert *Coiste na nIarchimí*
Mr Thomas Quigley *Tar Isteach*

855. **The Chairperson**: I welcome Michael Culbert and Thomas Quigley. Do you wish to make an opening statement to kick things off?

856. **Mr Michael Culbert (Coiste na nIarchimí)**: Yes, thank you. I was here for the evidence of George Quigley and Nigel Hamilton, and, on their way out, I thanked them for the evidence that they gave to you. They are two honourable men, who tried their best to emphasise the need for equality of treatment of citizens here. It almost sounded as if they had been engaged in something nefarious or wrong or whatever. They are two decent men, who did their best, and the work that they have done, a lot of it under the radar, in bringing people together and promoting the concept of an equal society in the future is probably not appreciated in this room. The baseline is that we object to the Bill, *[Inaudible.]* and we urge people not to support it on the grounds of equality of citizenship in the spirit of moving forward to a shared future in which citizens are treated equally. We all have pasts, and we may all have changed in certain ways, but we are either going to move forward in a spirit of equality and progress or we are not. I hope that politicians will consider the good of society for the future as opposed to party political positions.

857. I also add that, from my point of view, I imagine that there should be a good reason for every action that anyone takes and, I hope, a positive reason. I am at a loss to figure out the full background to the Bill being put forward by a particular political party. I do not know whether it is for public relations, whether it is genuine, whether it is directed towards support issues for victims or whether it is directed towards a degree of vengeance against people who were opposed to the state and took actions against the state. I really do not know. I hope that it will be in a positive spirit of moving forward, but I just cannot find it in the Bill. Roughly speaking, that is our position.

858. **Mr Thomas Quigley (Tar Isteach)**: Tar Isteach is an ex-prisoners’ organisation set up by ex-prisoners. It works in north Belfast with ex-prisoners, relatives of ex-prisoners, victims and youth. It provides services in some of the most disadvantaged areas of the North of Ireland under very difficult circumstances. The people we cater for not only live in areas in which they are disadvantaged because of social and economic deprivation — ex-prisoners have to deal with those issues as well — but have to deal with discrimination in employment. There are barriers to their being part of what, we hope, is becoming a normal society. They are excluded completely from employment in the Civil Service, and most major firms refuse to give them employment. They are corralled in certain areas and employment sectors. They have to contend with the same barriers as everyone else, but they also have those additional barriers.

859. We work in those areas providing services on welfare rights, counselling and youth programmes. We work on

the interfaces. We work with loyalist prisoners and with the PSNI. We are doing our best to try to turn this into a normal society. There was a conflict here that many people were involved in, many people carried out actions that were deeply regrettable, and many actions should not have been carried out by a great many people. We have done a great deal of research for the people I work for as part of our remit. In one piece of research, we found out from those ex-prisoners that around 75% of them are what people would legitimately term “victims”. They have had their relatives killed — their brothers, their mothers — by state forces or loyalists. They have been injured themselves and have been brutalised in jails. They have come through all that and are now working, trying to improve society and the lot of people in their areas, homes and communities.

860. We are working towards those ends, and we see the Bill as another piece of discrimination that seeks to pick out and demonise ex-prisoners. Out of all the people who perpetrated things in this society over the past decades, they are the ones who are being picked on. They are an easy target in most cases. There are people who committed crimes and were not brought to court, right from the lower levels of the state forces to the top of the state, who were promoted, given medals and received all sorts of accolades. We work for people who were victims of their actions, and there is very little sensitivity towards their views on any of those acts. A British soldier returned to duty after serving a life sentence of 18 months or two years for murdering a person on the New Lodge Road. Having been found guilty of that, he was brought back to his regiment and given all his back pay and promoted. He is still in that regiment. There are no sensitivities there.

861. We want the sensitivities of all victims to be catered for, such as the victims from our areas, including me. My brother was shot dead by the British Army. My mother, to her dying day, never stopped thinking about him and never stopped talking about him. No one ever considered her sensitivities. No one ever did anything or came to her to say sorry for her loss and that that should not have happened. We saw no regret or remorse.

862. We are trying to move on and work for the people in our areas and are trying our best to ensure that it does not return to conflict. It has been very difficult for us. At times, we have been threatened by dissident forces and by people who are opposed to the peace process and a new society. We have kept our organisations and our services going in very difficult circumstances, trying to provide services in some of the most disadvantaged areas in the North of Ireland. We see the Bill as another barrier to the people who are carrying out that work and who live in those areas.

863. **The Chairperson**: What has the reaction been among ex-prisoners in general and their families to the legislation? Is there a fear that this could be the thin end of a bigger wedge?

864. **Mr Culbert**: I mentioned equality. We consider the legislation to be targeted at a specific section of the community. We support the peace process, which is still, let us face it, a foundling. It is still very much under way. I feel that people such as you, who are heavily involved in the political world, are slightly detached from the thinking of people at the grassroots, and I am glad that you asked me about that. Our people need to see a peace dividend to support the peace process. An international agreement was signed in 1998, in which certain commitments are given. You probably know what the commitments were, but, to summarise, one of them was to take measures to support the political ex-prisoner community into work and training. In subsequent years, that was supported by subsections or annex B of the St Andrews Agreement. We emphasised that need, out of which came the working group that Nigel spoke about. Those commitments were given by two Governments, and we were very hopeful that the commitments would be an added value to the release of

prisoners, the building of a new society and new political structures, and the emergence of a political party that has similar aims and objectives to us. There was a feeling of moving forward and of positivity, although there have been knock-backs in that process. The Bill looks as though it will be supported not only by unionist parties but by some nationalist representatives. It is quite disturbing for us that people would move against people who support the peace process. As my colleague Tommy said, we have been threatened by people who are opposed to the peace process because of our current interactions with policing and other agencies in the state. We are up front and open in our interactions. We still hold the views that we held in the past, but our means of achieving our aims and objectives have totally changed.

865. **The Chairperson**: You referred to those in the community who are opposed to the peace process. Could they use this legislation to their advantage in any way?

866. **Mr Culbert**: It is out there as a negative. In base terms, such people would say, “What did we tell you? What’s the use of that?” It is another bit of putty stuck to another that gradually builds up to the extent that something negative is building up; there is nothing in it for us, and people may look to other ways of dealing with society or achieving what they are trying to bring about. We are very aware of that. We are wary of it, and we want it to stop. That is the key issue. There has to be a dividend for people. I am not saying that people have to be bought off, but they have to see substantive change in society.

867. We are among the most unemployed sector of society. On the island, there are approximately 25,000 former IRA-connected political prisoners. There are somewhere in the region of 17,000 people connected with loyalism. Those are rough figures based on the most recent research carried out by Queen’s University in 2010. It is a pretty big sector of society, particularly if families and other relatives are included. Our role is to promote the peace by working with individuals involved in the conflict and trying to get them to buy into and promote the peace. It is a cumulative thing. The short answer to your question is that we are very wary of negative legislation being introduced that is directed at the constituency that was promised — under the Good Friday Agreement and the St Andrews Agreement — hope for the future.

868. **The Chairperson**: When the Human Rights Commission gave evidence here last week, it flagged possible legal flaws in the Bill and the risks that it runs of infringing the European Convention on Human Rights. Were the Bill to be passed, do you foresee it being challenged by ex-prisoners through the courts here and in Europe?

869. **Mr Culbert**: George Quigley spoke about the case that was taken to the House of Lords — nowadays it would be the Supreme Court — in London. I was involved in that case. We did not win it. We won a moral victory but not the issue. We are a pretty big part of society who can be legally denied our entitlement to goods and services, be those employment, travel or whatever. In a modern, democratic society, it is quite amazing that a small sector can be subjected to that. If we were talking about the Gulag in the 1970s here, I imagine that the British Government would be shaking a stick at it, but we can have a degree of internal exile here. That is our situation.

870. Now, it is not that high profile. Not all employers are inclined to discriminate against us as a sector. Many employers are pretty smart and know that we have talents, ambition and are finished with the conflict. A lot of employers do the right thing when in theory they need not do so. I do not want to go on about that too much, but it is the very serious situation that we are in at the moment. Do you want to expand on that, Tommy?

871. **Mr Quigley**: I think that we would have a strong case before the European Court of Human Rights. I read some of the commission’s comments, including the blanket ban and other elements, such

as penalising current advisers, being on dodgy ground. The trend is to move away from legislation that provides blanket discrimination against people. The trend for international derogation is heading in the same direction; countries do not like those types of bans and retrospective penalties. There is also the time factor. It is now 2012, and the agreement was signed more than a decade ago, so trying to bring in legislation now that affects people from all those years ago is dodgy. All those elements are on dodgy legal grounds. I think that we would have a strong case and, most likely, win it.

872. **The Chairperson**: On the demographic of ex-political prisoners, what is the average age, profile and gender of ex-prisoners?

873. **Mr Quigley**: The average age is in the 50s or 60s.

874. **The Chairperson**: Are most of them male?

875. **Mr Quigley**: Most of them are men.

876. **Mr Weir**: Gentlemen, thank you for your evidence. I suspect that there will not be a great meeting of minds between us on a lot of issues, so it would be fairly pointless for any of us to flog too many dead horses on that front. Different definitions and terms are used, but, basically, your organisation represents conflict-related former prisoners. Is your membership exclusively that? You mentioned that you had contact or regular interaction with people from a loyalist background, but is your organisation specifically for republican conflict-related prisoners?

877. **Mr Culbert**: Mostly, yes, but my organisation formally employs two former loyalist prisoners. The baseline is yes; my organisation represents a republican constituency.

878. **Mr Quigley**: I will expand on that slightly. We work in north Belfast. We not only have contact with loyalists there but have a working relationship with loyalists, as well as the PSNI. We deal with places such as the Limestone Road. Ex-prisoners are out on those roads regularly; they are working with the youth in those areas and trying to divert them into positive activities rather than the activities they would normally be engaged in. The level of violence on those interfaces has diminished greatly because of the work of republican and loyalist ex-prisoners. We are not exclusive.

879. **Mr Weir**: I understand that, and I am not questioning the ongoing work. I am trying to get at the perspective of the evidence and where it is coming from.

880. The Bill deals specifically with a particular category of work, but what about the broader area of employment rights and employment law? Do you draw any distinction on what the employment rights or rehabilitation should be for conflict-related prisoners and those who have been convicted of other criminal offences but would be described as non-conflict?

881. **Mr Quigley**: As it stands, you cannot legally discriminate against a person who is described as an ordinary decent criminal, but you can discriminate against a political prisoner. The House of Lords case ruled that you can refuse employment to an ex-political prisoner from the conflict in the North and sack such a person, but you cannot do that for an ordinary criminal.

882. **Mr Weir**: Do you accept the need for any level of employment restrictions on any ex-prisoner of any description?

883. **Mr Quigley**: I see that as being relevant in the case of a person who had been found guilty of dishonesty in some form going for a job in a bank, or someone with a conviction for an abusive crime going for a job in a youth club, for instance. I see relevance in those cases.

884. **Mr Weir**: So they would be needed in quite specific examples.

885. **Mr Quigley**: Yes.

886. **Mr Weir**: I do not necessarily agree with a lot of stuff, but I suspect that we could be here until Christmas and not make a great deal of progress in

that regard. I think that it was Michael who mentioned motivation. Neither the Bill's draftsperson nor anyone else could look inside anyone's head or heart in relation to the issue. The only thing that I would take exception to is the fact that you said that you did not know where this was coming from. Clearly, this case has been at least sparked by one appointment, which was that of Mary McArdle. Last week, Ms Travers gave evidence. Do you at least accept that that appointment showed a lack of sensitivity towards the victim concerned?

887. **Mr Culbert**: I do not want to speak about Mary McArdle per se, but I will talk about the concept of catering for victims, if you want to do that. I will not beat this back at you, Peter, but if the mobilisation for the Bill has come from sympathy for victims and attention to their sensitivities about appointments, where has that sensitivity about victims been over the decades? I can quote numerous cases in which people who have been convicted of murder by the courts — Diplock courts — have served very short sentences, have been called liars by the judges, have had their pay paid constantly during the prison sentence and have returned to the Scots Guards regiment. This is not tit for tat because that does not go anywhere, but I ask you this, Peter: where is the sympathy with those victims and families? Where is the legislation to ensure that that does not happen again? It is not fair. If a former British soldier has done his time, he should be OK to seek employment when he gets out of jail. It does not work every way, Peter.

888. **Mr Weir**: Leaving aside the details, Michael, if you take your case at face value, you are saying that, since certain wrong actions were tolerated in the past, we should tolerate wrong actions now. It is almost an argument that two wrongs do not make a right.

889. **Mr Culbert**: That is not my argument. My argument is that I do not really know the motivation behind the Bill. I appeal to people to look to a shared future as opposed to party political interest or where your vote should go in the future. If a person is so moved and feels so strongly about the issue, why has it appeared now for one specific case? It should have been there as a concept. If it had been, I would have said that it was genuine.

890. **Mr Weir**: Without defending Mr Allister, I suppose that he would say that he is in a position to put forward a Bill at this stage, since he is a Member, but previously he was not.

891. **Mr Culbert**: He is not really a stranger to the world of politics.

892. **Mr Weir**: That may be the case, but simply being involved in politics does not mean that you are in a position to do a particular thing.

893. **Mr Culbert**: I agree with you. In the same way, political parties that have been engaged here for decades may move in support of the Bill. Perhaps those parties should think about the concept or the underpinning reasons before they move.

894. **Mr Weir**: Our position has been fairly consistent. Sammy Wilson introduced different regulations, which the Civil Service brought in recently. I appreciate that there is some political disagreement on the issue. We could ping-pong the issue back and forward, but I suspect that Michael, Thomas and I will not be on the same page on a range of matters, so I am happy to leave it at that.

895. **Mr D Bradley**: In your preamble, Michael, you implied that the SDLP supported the Bill. If you read the Hansard report, you will see that we expressed our view very clearly. We voted for it at Second Stage, but, at that stage, we said that that did not imply support for the Bill at subsequent stages. I want to put that clarification on record.

896. We can talk about the general concept, and it seems that there are competing rights, as the recent case illustrates. As you said, there have been cases in the past, and so on. Another political

party in the Assembly could appoint a former member of the security forces who was involved in what you and I would consider to have been an atrocity. Presumably, if that were to happen, I would object, you would object, and others would object to it. That is the general concept that is at the heart of the issue. There is a competition between the rights of ex-political prisoners and the rights of victims. In your view, is it possible to square that?

897. **Mr Culbert**: George Quigley highlighted the fact that it is difficult to square it as you must remain sensitive to all aspects. Without sounding aggressive on the matter, there is a moral high ground from a particular perspective on our past. I respect their right to take that moral high ground, but if I were to attempt to do the same thing, I do not know whether they would allow me that. By that, I mean that there is a naturalness about who the victims are, who the perpetrators are and what went on. There is also a moral high ground about what constitutes violence. Does a lack of appropriate investment in a particular geographical area constitute structural violence against a community as opposed to somebody who shoots a bullet?

898. We will not go into a historical analysis, but there had to be reasons underpinning the conflict here. All I am trying to do is broaden out the picture of why people did what they did. It is not all because of madness or something that was put into the water. If we take a broad view of our past, I hope that that might lead people to having a more open interpretation of people and their actions.

899. There is a Commissioner for Victims, a victims' forum and a lot of stuff in the new Victims Service. I have some issues with the new Victims Service, but victims are being catered for to some degree. The people who constitute the political ex-prisoner community are citizens, and they have bought into the peace process. If a major sector of different geographical communities throughout the country of Ireland is going to be marginalised, that is a seedbed for future conflictual situations. I suggest that we have to try to tidy up whatever we can here and now, while at all times keeping an eye on ensuring that the sufferers and the relatives of the deceased are catered for appropriately.

900. **Mr D Bradley**: I am not disagreeing with you. I expressed my views about the work done by Sir George Quigley and others who worked with him, and I said that it was good and useful. To get back to my question: in certain circumstances, there seems to be a competition of rights between victims and ex-political prisoners.

901. **Mr Culbert**: You will relate victims at all times with the political and ex-prisoner community, and that is where we would differ. The most obvious people to whom individuals look when they talk about victims are the people who have been processed through the courts.

902. **Mr D Bradley**: I gave another example. I said that another party might appoint a former member of the security forces who was involved in work that you and I would consider to be an atrocity, so the rights issue of victims comes up there again.

903. **Mr Culbert**: I would not object to that person, male or female, being able to pursue a career or to seek employment. That is where there is a difference. The naturalness of the moral high ground — I do not mean that to be derogatory — is in our society in a "how dare they" way. Why is a scenario being created for people to have a problem with? What is the big deal about someone being a special adviser? What about being a cleaner here? What about being a door person? What is the big deal? What would a special adviser know or have access to that a Minister would not know if they were thought to be a danger? There are Ministers who are also former political prisoners, so where is the issue? Why are we creating something that will probably cause problems with a lot of people in our society who are ready to find a problem. That is not being aggressive to you, Dominic.

904. **Mr D Bradley**: People have drawn a distinction between people who are elected to positions and others who are appointed to positions. We did not create this situation; it arose. Certain actions arose as a result of that, and we are now trying to deal with them, but the people around this table did not create the situation. Perhaps those who took the decision to make a certain appointment also had a role to play.

905. **Mr Culbert**: It might not have occurred to the individual who made the appointment of a particular person that it would have been a major issue. I do not know.

906. **Mr D Bradley**: I would like to reach a position at which that type of situation does not arise in the future, whether on one side or the other.

907. **Mr Culbert**: What you are saying, Dominic, if you will excuse me for paraphrasing you, is that there are categories of citizens here who should not have particular jobs. Is that what you are saying to me?

908. **Mr D Bradley**: No. A person's appointment has caused severe trauma to people who were victims as a result of the actions of that person. I would prefer to get to the position in which a senior public appointment, whether the person is from one side of the community or the other, does not produce that sort of situation in the future.

909. **Mr Culbert**: I suggest that the appointment of somebody as a Minister is a much more senior appointment than that of somebody as a special adviser. I could not tell you who Nelson McCausland's special adviser is now or who the previous one was. I could not tell you who the special adviser is to —

910. **Mr D Bradley**: Some of the DUP men might not be able to tell you either.

911. **Mr Culbert**: I could not do it. What we have is a spotlight being shone on a particular person from a particular background. I come back to my point: why are we creating a situation that highlights one sector of our society?

912. **Mr D Bradley**: As I said, we did not create the situation; it has arisen and now has to be dealt with.

913. **Mr Culbert**: Fair enough.

914. **Mr D Bradley**: I want to deal with it in a way that allows political prisoners to pursue whatever avenue of employment they want to pursue, but I also want to protect victims from having to endure or re-endure trauma that they experienced 15, 20 or 30 years ago.

915. **Mr Culbert**: Dominic, I am batting back at you every time, and I apologise. Who would have taken offence at a former member of the UDR being a Minister here? You never hear that. In the community in which I live, the UDR had a particular resonance that was similar to that of the B-Specials and the RUC. We either accept that we have moved forward and that we will make major efforts to be accepting of all aspects of our former society, or we do not, in which case we have second-class citizenship. That is the way that I will keep coming back at you. We must have sensitivity to the victims; there is no question about that. Hopefully, the new victims' service will cater for that. I could not have predicted some years ago that a particular relative of a particular victim in the conflict would take such a major public stance. I do not think that any of us could have predicted that. I suggest that a particular political party did not envisage that.

916. **Mr D Bradley**: As you say, we could bat this back and forth all day long. I suggest that you could have envisaged it, and that political party could have envisaged it had it thought more about the actions in which the person had been involved.

917. **Mr Culbert**: Perhaps.

918. **Mr D Bradley**: Anyway, thank you very much. We will leave it at that.

919. **Mr Mitchel McLaughlin**: Thank you very much for your evidence. It is important to tease out these issues. At the point that we are at as a society, there are clearly still very raw emotions

and feelings. Although I do not think that anybody would deny that there has been movement and progress, it is evident that it is very easy to knock people back into their cultural safety zones. It seems to me that the issue that we should address and be guided by is whether reintegration and ensuring equality across the board is the safest ground — it is very easy for us to get knocked off it. I am interested to know because I think that we might find some interesting illustrations in discussions within the ex-prisoner community. Thinking across the spectrum and about the dynamic between you and former loyalist prisoners, has there been any discussion about this issue in particular, which is one that has divided parties in the Assembly? Has any discussion moved outside the established position — sometimes described in the media as the "tribal" position? Have people considered this more objectively and suggested a different way so that the situation that arose over Mary McArdle's appointment could have been avoided? However, that would have meant that the issue remained unresolved. In a sense, the Mary McArdle controversy has provided an opportunity for the parties to stand up and face the issue.

920. I imagine that the decision to nominate her took into consideration that we were 13 or 14 years into the process, and ex-prisoners were already operating as special advisers quite effectively and efficiently. Certainly, they did so with none of the issues that we are discussing now. However, perhaps the controversy has been aided and abetted by those in the media more interested in sensationalist coverage than how we help society to heal its wounds and move on.

921. Has there, either before the Mary McArdle incident or since, been any discussion with groupings from across the community's political spectrum?

922. **Mr Quigley**: Most of our relationships with loyalists are on the basis of dealing with reconciliation issues or major interface issues. As far as the people whom we deal with are concerned, they see progress. We see progress in steps and starts. Sometimes, it gets pushed back a bit. We see this Bill as pushing it back another little bit. However, in the main, the trend has been one of steady progress. When we saw the likes of the guidance coming into play, we thought that it was a very positive move. However, as far as we were concerned, it was not enough. We would still like to see the expunging of records, as would loyalists. We also have lots of contact with ex-British soldiers. Those people, who were on the ground here, are very candid about what they felt that their role was and how they feel about it now. Funnily enough, most of the ex-British Army people with whom we have contact now work in their communities with, for example, disabled or disadvantaged people. Sometimes, their contact with us has come through that. They have seen the work that we do, our literature or our website. We have some very good relationships with ex-British soldiers — people who are dead honest about what they did here and the role that they played, a role into which the state put them. Standing back from the situation here, they see progress. They express admiration for the work that we do. They have contacted us to state that.

923. Loyalists do the same. They are of the opinion that they played a role in the conflict. Their very strong view is that they were on the other side, which was that of the British state. As far as they are concerned, they were allies, and they were hung out to dry when the conflict ended and, during the conflict, used as scapegoats many times. They believe, like we do, that, whenever something like this comes up and tries to push progress back, we just have to keep on pushing.

924. There was a time when we did not have as strong a voice as we do now. In my opinion, and lots of people disagree with me, we have never had a normal society here. So "normalisation" is something that we hope to achieve rather than get back to. When we talk amongst ourselves, to loyalists and even to ex-British soldiers, we see progress.

They would see this as another barrier to that progress. They would see it as a retrograde step in what is generally positive progress towards some sort of normal society. We all work for and want the same thing. We do not want a return to violence; we are working against people who want to return to violence. In difficult circumstances such as these, we try our best to convince people that the peace process is real and that there is a real possibility of achieving a normal society in which everybody can be equal, have equal citizenship, be treated the same and have the same rights. That is how we view things, and that is the position that we feel we are in. Do we want to move forward or go back? Should victims be considered and taken into account? Absolutely. I wish that somebody had taken my mother into consideration. She faced insensitivity every day of her life until the day that she died — what was in the news, the way she and her family were treated, the way that her son's body was treated, and so on. No one ever took account of her sensitivities. She did not want ever to return to those days and nor do we. This Bill will push back that progress a bit. We will do our best to prevent it and everything in our power to argue against it.

925. **Mr Girvan**: I appreciate that many of the comments have been general. I am looking at the generalities of what can or cannot be dealt with. The point is that there are about 19 special adviser posts affected by the Bill. It would be a different matter if we were proposing Civil Service-wide legislation. We have accepted that the guidance from Sir George and Sir Nigel is there for the right reason: to try to normalise our society. Nobody is trying to rule that ex-prisoners should not have jobs.

926. Coming from my background, I know of probably hundreds of loyalist ex-prisoners, many of whom were convicted of murder. However, it would be totally insensitive of me — were I in the position to do so — to appoint one of them as a special adviser who would, in turn, steer government policy because advisers play a key role. I appreciate that Ministers with previous convictions were mentioned, but they have a mandate to be in post. Others appointed political advisers could rub salt into the wounds of people whom they, ultimately, made victims. I accept the variance in opinion of what a "victim" is. That debate needs to be brought into the open and engaged in properly. Unfortunately, some shy away from it. I am not one of those, but I feel that we need to be very careful about the reason why we are dealing with the Bill. It is because of the way in which this appointment was made and the sensitivity of the family who were the victims.

927. **Mr Mitchel McLaughlin**: We are also dealing with it because of the response of an avowed enemy of the peace process. There is no disputing that.

928. **Mr Girvan**: I appreciate that, but the family came forward and stated that they were appalled by what had happened. They sought reasons for the appointment but got no answers. Such sensitivities have to be considered, and that is part of the reason why the Bill was drafted to deal with 19 very senior posts for which large salaries are paid, perhaps twice what MLAs sitting round this table are on. That is the way it is. I would have a genuine difficulty in saying that we should not be looking at and introducing this Bill. I come from a family who were victims of republican terrorism. I have had to swallow that, and I am willing to move forward — I accept that I have to. On that basis, there is room for improvement, but ex-prisoners groups behind the scenes must understand that they cannot get everything that they want. I am talking about both sides because, in my community, there are those who say to me that they are looking for this, that and the other. Some have to realise that although they feel that they have rights, we have to consider, weigh up and balance how this is felt and measured by the general public and by people who are the victims.

929. The fact that 13 years has passed was mentioned. Maybe 13 years is not long

enough because the scars still run deep. This is generational, and it could take a long time. The normalisation of our society will not be a short process. This is a long game, and it will not be driven on in three or four years. I appreciate that you have your views on this, but we have to be sensitive to the whole issue. I am not saying that, in 10 years' time, you could not revisit this, but, at present, things are too tender in a lot of areas.

930. **Mr Culbert**: I appreciate your views, Mr Girvan. Your party and the other unionist parties have, pretty much since your inception, been supportive of your Government's — the British Government — positions. I suggest to you that the Bill goes against the will of the British Government. It was not you, I or the DUP who made the Good Friday Agreement or the St Andrews Agreement. This is your Government. Those agreements enshrined, hopefully from my point of view, a way forward for the people whom the agreements targeted as being participants in the conflict. By the way, as we all know but sometimes need to be reminded, the jails were not emptied as a result of the Good Friday Agreement. They were emptied of people who had been put in prison on the basis of particular types of charges — political charges. First, they were given an undertaking that they would receive assistance in moving towards employment opportunities, and, secondly, in the St Andrews Agreement, an undertaking was given to reduce barriers to employment. Your Government signed up to those undertakings.

931. Why would those who express that they definitely want a shared future here, and a better and equal future — I assume that they are genuine — move in support of putting up barriers? That will allow people to point to those international agreements not being worth a toss: they must have been lies; they can be overturned. That could undo at least a decade of building relationships in our society. I know that the relationships between the UUP and Sinn Féin, and between the Alliance Party and the DUP, are not great, but they are much, much better than they were. I would like to think that the electorate in republican areas will not see this as another chipping away of what was agreed and voted for across the country.

932. **Mr Girvan**: Do you not believe that the guidance to deal with the normal Civil Service went a long way to addressing some of your points?

933. **Mr Culbert**: It certainly did go a long way, but why would someone then bring in legislation to say that it should not go as far as that? It is a bit like saying, "You lot are victims but less so than those victims. They are definitely very worthy victims." That was the type of language used here some years ago. I do not think that it is right. That is my view.

934. **The Chairperson**: Thomas and Michael, thank you very much. It has been a very worthwhile contribution, and it will go towards the Committee's report on the Bill, which will be published in the new year.

5 December 2012

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree
Mr Paul Girvan
Mr John McCallister
Mr David McIlveen
Mr Mitchel McLaughlin
Mr Peter Weir

Witnesses:

Ms Eileen Lavery	*Equality Commission for*
Ms Jacqui McKee	*Northern Ireland*

935. **The Deputy Chairperson**: I welcome Eileen Lavery, head of advice and compliance, and Jacqui McKee, who is the director of advice and compliance. You are very welcome, and I ask you to make an opening statement.

936. **Ms Eileen Lavery (Equality Commission for Northern Ireland)**: Good morning, and thank you very much for the opportunity to speak to you about this. I apologise for having sent our submission just yesterday or the day before, but I hope that everyone has had an opportunity to read it.

937. Clearly, there are two things that we would like to focus on. One is the application of equality law to special adviser positions, and the second is how that process can become more open and transparent. The commission previously —

938. **The Deputy Chairperson**: May I just point out to members that it is paper 4M that is relevant to this evidence session. I am sorry about that.

939. **Ms Lavery**: Previously, we wrote to the review of arrangements for the appointment of special advisers, which was carried out by the Minister of Finance and Personnel. We wrote to him just last year, I think. In that, we tried to get across that equality legislation applies to all positions in Northern Ireland except those that have a special exemption. We know of no reason why these positions would be specially exempt. We understand, of course, that, given the nature of them, it may be necessary to argue that political opinion is an essential requirement of the job in some circumstances. However, that in itself does not take away from the requirement to apply all other aspects of equality duties. So, for example, it does not take away from the need to ensure that the appointment is not made without consideration of gender issues, age issues and those kinds of things. Even if the exemption in respect of political opinion is invoked, there should still be proper arrangements whereby transparency can be taken into account in the prevailing equality legislation. In those circumstances, you need objective standards and measures. You need to know what the duties of the individual are, what they will do, and how we will assess their ability to do those things. We are very much of the view that there should be clarity on those matters. In 2011, we agreed with the proposal that there should be greater clarity on the pay received by those individuals. So, that was what we said in 2011.

940. We are looking specifically at the Bill that has now been introduced by Jim Allister and particularly at clause 2, which deals with someone being ineligible for appointment on the grounds of a serious criminal conviction. If equality legislation teaches us anything, it is that blanket exemptions generally are not to be used. The assumption that anyone with a serious — I understand that “serious” is defined as five years — criminal conviction could not be a candidate does not seem to make sense to us. In our submission, we have tried to use examples of blanket exemptions and how those have been problematic in the

past. For example, we understand that those with a serious criminal conviction are much more likely to be men. Is that the intention and outcome, and could that be justified in any way? Say, for example, that a height requirement of at least 6 feet were introduced, you may say that that is not discriminatory, but, of course, it is much more likely to impact on women. We have seen case law on those sorts of matters in other countries, particularly in respect of police appointments in the USA.

941. One of the things we pointed out is that during the recruitment of special advisers in England in 2001, a discrimination complaint was made in the case of Coker, initially on gender issues, and Osamor, who later joined that case, in respect of race issues. So, there can be challenges to the appointment of special advisers.

942. We feel very strongly that an applicant could complain that the criterion of prohibiting anyone with a serious criminal conviction disproportionately excludes men, as I mentioned. Men would be disproportionately excluded, and it would then be for the employer to objectively justify why that criterion was used.

943. The other thing that the Committee has been much concerned with is the situation of people with conflict-related convictions after the Good Friday Agreement. I have, indeed, read the evidence provided by others. I know, for example, that you took evidence yesterday or the day before from Sir George Quigley and Sir Nigel Hamilton on the arrangements that have been in place for that. There is an exemption in the fair employment legislation, and that exemption has been there since 1976. Section 2(4) states that fair employment law does not protect anyone who approves or accepts the use of violence for political ends connected with the affairs of Northern Ireland. Anybody in this room who is as old as me, which is rarely the case anymore, will recall that in 1976, the fair employment legislation initially followed the Cameron review that looked at the disturbances in Northern Ireland and was then informed by the review commissioned by Sir William Van Straubenzee. At that time, there was concern about growing violence, and that exemption was made in 1976 for those reasons.

944. It seems that that exemption no longer makes sense, if I can put it as simply as that. The reason we say that is that, clearly, as part of the Good Friday Agreement, those in Northern Ireland with conflict-related convictions were released. I do not believe that anybody anticipated that they would be released to what I would loosely call "fester"; but that they would be released to become good citizens and to contribute to Northern Ireland. Exemptions in legislation that prevent those individuals from becoming good citizens and contributing to Northern Ireland do not seem to rest easy with the intention at the time.

945. Certainly, from the commission's perspective, we have been involved with the Office of the First Minister and deputy First Minister (OFMDFM), the voluntary guidance and the working group, which, as you know, comprises the Confederation of British industry (CBI), the trade unions and some of the ex-prisoners. We have been looking at how ex-prisoners with conflict-related convictions can be reintegrated into the workplace. We know that, ultimately, access to work is very much a door to contributing to society. It seems that the recent review of how that work was going said that the exclusion in the fair employment legislation is a real impediment and barrier that prevents that guidance from working as it should in the voluntary arrangement.

946. Two proposals, as you know, have been brought forward. One is that either section 2(4) of the Fair Employment and Treatment (Northern Ireland) Order 1998 is removed entirely, or that it remains but a caveat is inserted that it would not apply to those who have conflict-related convictions that predate 1998. Given that all that discussion is alive and very vibrant at present, the proposal within the Bill, which is that anyone with

a serious criminal conviction could not be considered for such a position, does seem to shout at one another, if I can use that phrase

947. In conclusion, we appreciate the importance of and the sensitivity around these positions. We think that arrangements for recruitment, conduct and remuneration should be open and transparent, but, for the reasons that I have set out, we caution against the use of a blanket exception where it cannot be objectively justified.

948. We remind the Committee that the test of objective justification means that an employer must be able to show that what is done is a proportionate means of achieving a legitimate aim. Those are rather legalistic words, but I think they are words that make sense to us all. The tests are whether that is proportionate and whether the aim was a legitimate one. The commission welcomes the voluntary guidance that Sir George Quigley and Sir Nigel Hamilton spoke to you about yesterday, and we have worked with the Office of the First Minister and deputy First Minister. As recommended by that guidance, we therefore agree that employers should take an individualised approach. Each person should be assessed on their own merits, and employers should consider the material relevance of any conflict conviction to the post to be filled, rather than rely on a blanket exception.

949. **The Deputy Chairperson**: You mentioned that you wrote to the Minister of Finance and Personnel in the context of the review of arrangements for the appointment of Ministers' special advisers. Are those new arrangements that the Minister has formulated within the equality legislation?

950. **Ms Lavery**: The arrangements certainly brought the appointments procedure much closer because they introduced such matters as criteria and openness and transparency, but I still think that more could be done with those arrangements to bring them clearly within the equality provisions.

951. **The Deputy Chairperson**: What aspects in particular?

952. **Ms Lavery**: If you go back to paragraph 8 of our submission, you will see some of the bullet points that we specifically made. We are not sure exactly which objective standards and measures have been introduced. We have looked at the issue very much in respect of those with convictions, for example.

(The Chairperson [Mr McKay] in the Chair)

953. **Mr D McIlveen**: Thank you for your presentation.

954. You made a point about not allowing former terrorists or criminals to fester. That is a fair point. I do not think that anyone, in any of the evidence sessions, implied that any of us would want that. The problem with this particular role is that it fell between two stools, in that it carried all of the political influence of an elected representative but it did not have the mandate of an elected representative. It had not gone through the rigorous vetting processes of a Senior Civil Service post. I think that is why this Bill has been brought forward. The role does not, unfortunately, sit comfortably within either of those two brackets.

955. You mentioned the issue of blanket exception. What do you view as an alternative to blanket exception? We cannot ignore the fact that the appointment that caused the Bill to be brought forward created a political problem that, ultimately, none of us around this table or in the Assembly could ignore. The subject of victims has been mentioned in a lot of the evidence sessions. I notice that in this session the word "victim" was not used once. That issue is what has brought this problem to the fore. We had somebody like Ann Travers, who was so vocal and so obviously offended by this particular appointment.

956. Similarly, if you did not go down the road of a blanket exception and you just relied on the discontent of a victim, you could have a situation in which there are no relatives alive to make

representations on behalf of someone who was murdered in the Troubles, such as an only child. In that instance, there would not be an issue. Besides a blanket exception, how can we deal with that? What, in the Equality Commission's view, is the alternative to that? The obvious alternative is just to bury our heads in the sand and hope that nobody else ever raises an objection to one of these appointments again.

957. **Ms Lavery**: We are trying to say that, in the absence of a blanket exemption, each individual should be considered on their own merits. We are not suggesting that there should not be vetting. We have said that, where someone has a conviction, the material relevance of that conviction to the post in question should be considered. We have used an example in our submission. Of course, there will always be cases in which someone has a past conviction that is materially relevant to the post in question. In such circumstances, I think it would be legitimate for any court or tribunal to agree that it is not appropriate to take that person on. We have used the example of child protection, when someone who has a conviction in that area applies for a job. It is that individualised consideration and the relevance of the conviction to the position that we are trying to get across.

958. **Mr D McIlveen**: You talk about child protection, but would you be supportive of a mechanism that took into account the protection of victims?

959. **Ms Lavery**: I am struggling to understand how that relates to the job. We are talking about assessing someone's suitability for the post. If the post is for a special adviser in the Department of Enterprise, Trade and Investment (DETI), I do not know how you can assess the suitability issue, including the relevance or appropriateness of a past conviction, from the eyes of a victim.

960. **Mr D McIlveen**: Again, to use the specific example that led to this Bill being brought forward, clearly, the insensitivity of that particular appointment caused incredible anguish and upset to the point where, although I am not from a medical background, there appears to have been medical ramifications. How do we protect the victim?

961. **Ms Lavery**: In considering the evidence previously given to the Committee, I believe that I have read comments saying not that such a person could never come back in but that the victim would have to be considered and advised. Individual victims will have their own stories. I have looked in particular at the evidence that was brought to you by the Commissioner for Victims and Survivors, which says that, among the victims' groups, there is a range of views on how we should move forward. Given that I have not been involved with victims and their representatives in a detailed way, I do not want to sit here and be a voice for them.

962. **The Chairperson**: There is some mention in the report of section 75 and the disproportionate effect on men. The presentation from the ex-prisoners' groups last week stated that the effect would mostly be on older men, those aged 50 and above, I think. NIACRO has said this legislation is potentially incompatible with section 75. Do you agree with that?

963. **Ms Lavery**: The evidence that we have provided to you today is primarily from the perspective of anti-discrimination legislation, and, as you know, our anti-discrimination legislation is much older. It is much longer in the tooth, and we have a lot more case law, legal history and that kind of thing. Concepts such as "disproportionate" and "objectively justified" are the lenses that have come to us through anti-discrimination case law. Section 75 places very specific duties on public authorities, and, in bringing forward policies, they have to consider the grounds that are identified in section 75. They have to consider the equality impact of them and those kinds of things. As you know, that has been a slightly different lens. Interestingly, as you will remember, in the Northern Ireland Act 1998 — I do not think that

it is section 75 per se — there is a specific requirement that all legislation that is brought forward has to be considered for its equality ramifications, and it is more that requirement that will apply to this.

964. **The Chairperson**: OK, but do you have a particular view on the impacts on gender, age and even political opinion?

965. **Ms Lavery**: If you were to look at this through that equality lens and describe it as a policy — that is unlikely, as it is much more likely that it will be viewed through the legislative lens in the Northern Ireland Act — clearly, there would be differential impacts, and you would then have to consider whether there was any way in which those differential impacts could be mitigated if you were to go forward.

966. **Ms Jacqui McKee (Equality Commission for Northern Ireland)**: Basically, we have picked out the issue of anti-discrimination legislation in relation to indirect discrimination provisions, because that is where the case law is around that.

967. **The Chairperson**: Last week, the Committee discussed at length the guidance from 2007. Do you have a view on whether it would be useful to legislate for that? Is it your view that that guidance currently applies to the Civil Service?

968. **Ms Lavery**: The guidance is voluntary guidance, and it has no legislative basis at present. It made sense to try to run that in a voluntary way initially to check out its effectiveness, and also because, when the guidance was first pulled together, there was very good support from the Northern Ireland Committee, Irish Congress of Trade Unions (NICICTU), the Confederation of British Industry (CBI) and others for that. As you know, the recent review has been conducted by academics, and they have said that, where the exemption in the fair employment legislation exists, this guidance will always be working on a prayer and a promise, essentially. If the guidance is to be totally effective, you really need legislative change. If I can remember correctly, my understanding is that the review says that there are two ways: either get rid of section 2(4) altogether or limit it. As I have tried to point out to you, we have brought forward recommendations for change. When we first started to talk about a single equality Bill back in 2002, we said, even at that stage, that we would like that reviewed.

969. **The Chairperson**: When the guidance was first introduced, did you have any sense that there were parts of the Civil Service that took it as being policy and sought to act in accordance with it?

970. **Ms Lavery**: I do not have any knowledge of whether parts of the Civil Service did that, so I cannot answer that.

971. **Mr Cree**: In answer to Mr McIlveen, you made a point about jobs and job placement and fitness for purpose, really. Do you accept, though, that the Bill is rather special in that it deals not with a normal recruitment process, which would be based on skills and experience, but with jobs that are based on patronage and which, therefore, are not the same as other jobs?

972. **Ms Lavery**: We recognise that these appointments are, essentially, for political advisers and that, in that sense, a political perspective is a requirement of the job. However, I do not accept that all other equality grounds that are protected in legislation should be discounted and ignored simply because of the political requirement of the job. Is that what you were asking me?

973. **Mr Cree**: I am trying to draw the distinction between normal recruitment practices and the employment of a special adviser, which is really a matter of patronage.

974. **Ms Lavery**: My view is that normal recruitment arrangements should not be entirely discounted because there is a requirement —

975. **Mr Cree**: You make the qualification of “entirely discounted”, but —

976. **Ms Lavery**: I accept that there is —

977. **Mr Cree**: It is a different exercise.

978. **Ms Lavery**: I accept that there is a requirement to have the same political perspective as the Minister. That is essential because of the nature of the job. I accept that, but that in itself does not and should not mean that no other equality consideration should be applied.

979. **Mr Cree**: Yes, but, for example, essential criteria such as skills and experience are not necessarily seen to be applicable either.

980. **Ms Lavery**: At present, they are not seen to be applicable. I think that they should be applicable.

981. **Mr Cree**: So, it is a special case.

982. **Ms McKee**: At the minute, there is a code of practice in relation to the recruitment of special advisers. It is guidance — that is the point; it is guidance — so it is about how far you can push that towards making it more mandatory to ensure that there is transparency around the process. We are saying — this is what the Coker case looked at — that there can be challenges under the anti-discrimination legislation. They will not relate to political opinion, but they may relate to race, sex or one of the other protected grounds.

983. **Mr Cree**: Yes, but I hope that you agree that guidance is only that.

984. **Ms McKee**: That is right.

985. **Mr Cree**: The legislation is designed to go considerably further than that.

986. **Ms McKee**: Yes. Certainly, when we responded to Sammy Wilson, we said that the commission feels that there should be transparency regarding those appointments so that it is clear, internally and externally, how people are appointed and so that it is not patronage.

987. **Mr Cree**: Mr McIlveen made the point that victims are not really an issue in this at all. The fact that somebody was murdered in such a dastardly fashion does not factor at all.

988. **Ms McKee**: I think that Eileen answered that earlier when she spoke about an individualised approach and looking at the material relevance of any conviction to each individual post.

989. **Mr Cree**: Do you not agree that it was insensitive, at least?

990. **Ms McKee**: I understand why we are here.

991. **Mr Mitchel McLaughlin**: Thank you very much. Apologies for being delayed; it was a long and difficult drive from Derry this morning.

992. People will disagree about why there was a conflict in the first place, but nobody can deny that we are in a post-conflict scenario. That will constantly challenge us; there will be contradictions and difficulties. Certainly, the issue of victims will be before us for a long time. The events of the other night over the flags debate in Belfast City Council, while not related to this case at all, give you some indication of just how deeply divisions and opinions will diverge in this region.

993. By using the title “special advisers”, we are describing people who are identified for appointment on the basis of the assistance, guidance and contribution that they can make to individual Ministers across all of the parties. Political opinion clearly is a factor. I take the point that you are making: there could well be an internal challenge. Someone with the same political qualification, if I could put it that way, could well feel aggrieved that they could equally have competed for the post. Of course, that is not what the Bill is about, and it is not what the controversy was about.

994. The issue of the peace process and the manner in which it was mandated in the referendum, etc, presents a duty on politicians to respect and reflect that. We have been through the discussion about the early release scheme and the judgement that was made that the people released did not represent a threat to society. But, of course,

there is the issue of people who were affected by the Troubles, and the victim community, which is a very, very sizeable community. That will always be an issue.

995. Is it your view that the materially relevant issue can be described or presented in the context of case law that we can visit or depend on?

996. **Ms Lavery**: I am not sure that I understand the question, but I will have a rattle at it.

997. In the limited case law in England, it was agreed that coherence with the political view of the person whom the special adviser was going to advise was a requirement of the job, but, as I said, the cases then came on such issues as gender and race. To go back to your point about agreement on political opinion: someone else may share the political opinion of the person who got the job as adviser, but they will say that they did not get the job because of their age or gender, for instance. Those are cases that can be brought forward, and we know that from the English scenario.

998. **Mr Mitchel McLaughlin**: That is exactly as I understood it. The question that I have put is more to do with how we respond to what I think is a mandated responsibility to help society deal with the conflict and the consequences of the conflict. We have set up the victims' service, and a considerable number of people have been released from prison on the basis that they no longer represent a threat to society. I think that that is an acceptance of the post-conflict nature of our society. I made brief reference to the distressing scenes on the streets of Belfast the other evening. They indicate that those divisions still run deep and that we have a long way to go. I was trying to bring it back to this issue and the fact that, undoubtedly, the potential for re-traumatising or hurting people over again will remain with us. If we were to consider the criteria by which special advisers, including former prisoners, could be appointed, is there anything in case law that we can depend on in terms of using material relevance as a criterion that could be addressed? Does that help?

999. **Ms Lavery**: I do not think that there is any case law that has specifically considered that issue. We are trying to get across that there should be an objective standard against which a political adviser is assessed, and skills and abilities should be considered. That would very much strengthen the ability to respond to any challenge that is brought forward by someone who says that they were unlawfully discriminated against. At present, quite a lot could still be done in the development of those objective standards.

1000. **Mr Mitchel McLaughlin**: Thank you.

1001. **The Chairperson**: Eileen and Jacqui, thank you very much.

12 December 2012

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree
Mr Paul Girvan
Mr John McCallister
Mr Mitchel McLaughlin
Mr Peter Weir

Witnesses:

Mr Derek Baker — *Department of Finance and Personnel*

1002. **The Chairperson**: I advise members that the Department of Finance and Personnel (DFP) official will not be in a position to comment on the policy merits of the Bill as there is no official departmental or Executive position on it. However, he will be able to respond to questions of a factual nature. Derek, you are very welcome back again.

1003. **Mr Derek Baker (Department of Finance and Personnel)**: Thank you. Good morning.

1004. **The Chairperson**: Do you want to make any opening comments?

1005. **Mr Baker**: No, Chair. You have just made my opening statement for me. Thank you very much for that.

1006. **The Chairperson**: You are a man of few words.

1007. **Mr Mitchel McLaughlin**: You use the same opening comment every time you come here.

1008. **Mr Baker**: Deny all knowledge; I know nothing. *[Laughter.]* The only comment that I would make in addition to what you, Chair, have already said is that the Committee has, very helpfully, posted the oral and written evidence that it has received on the Bill on its website. I have had a look at that. Happily, most of the issues are policy issues, which are not for me; they are for politicians to wrestle with. However, I am aware that the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) raised some concerns about aspects of our character vetting. We have responded to NIACRO; you have that before you. I take issue with NIACRO's analysis. I am happy to expand on that in questioning if the Committee so wishes. I would also be very happy to meet representatives from NIACRO to discuss their concerns, but that is something that we can take forward separately. I will leave it at that.

1009. **The Chairperson**: You just covered my opening question. NIACRO raised concerns about the application of the risk-assessment grid, and the comments in the correspondence, regardless of your opinion, are quite concerning due to the number of examples of jobs being rescinded after people have been selected on merit. It also alleges that there are other examples in which the merit principle was ignored. It describes the process as being fundamentally flawed, discriminatory and exclusive and says that it does not take into account individual circumstances. That is quite a serious charge.

1010. **Mr Baker**: Yes. I am concerned that some of the comments made by NIACRO in its letter are based on a misunderstanding of the processes that we apply. If there is any misunderstanding, obviously we are happy to engage with NIACRO on that. There are three areas of concern raised by NIACRO that I will draw attention to.

1011. The first, which you mentioned, is that we in some way do not apply the merit principle. By way of context, it is worth noting that throughout the public sector here — and I mean every part of the public sector — the Civil Service is the only part that is subjected to

external regulation by a statutory body in its recruitment. That body is the Civil Service Commission. The commission has almost a sole objective of ensuring that all recruitment to the Civil Service is done on merit and on the basis of fair and open competition. It audits us and publishes an annual report. That is the context within which we carry out all our recruitment.

1012. Specifically in respect of character vetting, those who are involved in recruitment to the Civil Service have no information whatsoever about unspent criminal convictions. That plays no part in the decision-making process, whether that involves an assessment centre, a test or an interview. It is only after individuals have been deemed suitable for appointment that character vetting is carried out. So, it is only after the merit principle has been applied that decisions are taken.

1013. The second point follows on from that. NIACRO expressed concern that the risk matrix may be applied in an arbitrary way. That is not the case. The risk matrix is there as a guide to decision-makers when people have been deemed suitable for appointment and when an unspent criminal conviction has been identified. Where concerns have been expressed and we have been given pause for thought in making an appointment, in each and every case we will write to the individual, explain the situation and invite the individual to submit a statement of disclosure.

1014. In that statement of disclosure, the individual will be invited to explain the circumstances of the conviction, state any mitigating circumstances, provide any character references they wish to submit and provide evidence of any rehabilitation. Then, we will consider that statement and, very importantly, consider the conviction against the nature of the post for which the individual has applied. It is only after that process has been gone through that a decision will be taken. It could well be that all of that information will lead us to the conclusion that the individual should be appointed. When a decision has been reached, we will write to the individual and explain the decision that has been taken and why it has been taken. So, I refute any suggestion that we apply the risk matrix in an arbitrary way. We do not. In each and every case, where a decision has been taken to not accept someone, we give the person an opportunity to comment.

1015. The third concern raised by NIACRO is that there is an absence of transparency in our arrangements. Again, I refute that. Our recruitment policy and procedures manual is on our website and explains in very great detail the process that we go though and the character-vetting process, including what will happen if an unspent criminal conviction is identified and the kind of criteria that we will take into account in reaching a decision. We will contact the individual. We will write back to them explaining our decision. I would say that that is a very transparent process. To ensure, or to attempt to ensure, consistency, all such decisions to exclude anybody from employment after they have been deemed suitable for appointment are made by my business unit, corporate HR, in DFP. Just to give you some numbers, since April of this financial year to date, over 1,000 people have gone through various competitions and been deemed suitable for appointment, and four people have been excluded from appointment on the basis of the disclosure of an unspent criminal conviction.

1016. Those are the comments I make in response to the NIACRO concerns. However, as I said, I would be more than happy to meet NIACRO to talk those through. I do believe that some of the comments made by NIACRO were based on a misunderstanding of our policies and procedures.

1017. **The Chairperson**: If an application is rejected on the basis of those criteria, is there any opportunity for appeal?

1018. **Mr Baker**: No. There is no appeal.

1019. **The Chairperson**: Is there any reason for that? Is that something that could be

looked at? That was a concern that the Human Rights Commission raised.

1020. **Mr Baker**: Anything can be looked at. There is no particular reason why we could not consider an appeal mechanism. Currently, there is no appeal, and that is the position. The reason for that probably goes back into the mists of time, before I was in post. However, it is of course possible to look at the option of an appeal. In that context, and given the issue that is before the Committee, the Finance Minister, in his review of the arrangements for appointing special advisers, did build into that arrangement an appeal against a decision that might be made by my business area. That is unique, in that, currently, the only appeal that exists is in respect of the appointment of special advisers but not in respect of the appointment of any other individual to the Civil Service.

1021. **The Chairperson**: In your correspondence you have provided a table with four areas of convictions. That seems very broad to me. Look at section 3, for example. It states that the Civil Service should “generally reject”, subject to other criteria obviously, “convictions demonstrating dishonesty”. How broad is that?

1022. **Mr Weir**: It includes all the politicians.

1023. **Mr Baker**: The point I would make is that it is only a guide. The predisposition would be to reject someone who has an unspent criminal conviction in respect of evidence of dishonesty. I do not think that that is an unreasonable position to take. However, as I explained earlier, we do build in the facility for the individual to then give us a statement of disclosure, the context, any mitigating circumstances, any character references and so forth. If we did not have that kind of barrier in place when bringing people into the Civil Service, I might well be back in front of the Committee answering questions as to why we allowed people in who have got unspent criminal convictions for issues in that area and the potential damage that that might create to the organisation. However, this is simply a guide. It simply raises a flag. We then investigate further and allow the individual to make representations. I think that that is a fair and proportionate approach to the issue.

1024. **The Chairperson**: Is a rough guide appropriate for this particular issue? Do we not need further detail on specific kinds of convictions? You could go from the most extreme to the most mundane, for want of a better word, of convictions.

1025. **Mr Baker**: Bear in mind that these will, by definition, be unspent criminal convictions. In those terms, that will be a criminal conviction with a custodial sentence of two and a half years. So, they will be serious issues by definition. It would not be a very minor offence. We are talking only about serious issues. I know that the Bill the Committee is considering has a different definition, but we have a very specific definition. So, all of these are serious issues. Anyone who has received a custodial sentence has been convicted of a very serious offence; it is not a trivial matter.

1026. **The Chairperson**: We received evidence on the Office of the First Minister and deputy First Minister (OFMDFM) guidance, which, I think, was issued in 2007. I think it was Nigel Hamilton who said at that evidence session that that particular guidance regarding the employment of ex-prisoners applied when he was in post and that it was signed off by David Hanson and Peter Hain, the Secretary of State at the time. When did that stop applying in the Civil Service?

1027. **Mr Baker**: That never applied to the Civil Service. The then Finance Minister, who is currently the First Minister —

1028. **The Chairperson**: Was it taken into consideration by the Civil Service in any way?

1029. **Mr Baker**: It was. The decision was a policy decision for Ministers, so the issue was put to the then Finance Minister, and the then Finance Minister took a policy decision that that guidance should not apply to Civil Service

recruitment. The rationale for his decision was that the arrangements in place, which I have described to you, were appropriate, adequate and dealt with all convictions, including conflict-related convictions. I think he stated his position in response to an Assembly question back in, probably, 2007. That position has not changed. So, it never applied to the Civil Service.

1030. **The Chairperson**: In the period between the date on which this was signed off and when the Finance Minister of that time took his position, would it be fair to say that the Civil Service was taking that seriously and, although not acting in absolute accordance, certainly taking it into account in its workings?

1031. **Mr Baker**: I am afraid that I am unsighted exactly on when the voluntary guidance was signed off. I was under the impression, probably mistakenly, that it was not concluded until 2007 and that it was around that time that the Finance Minister decided that it should not apply to the Civil Service. If I am wrong in that, it is still the case that, prior to that, the broad arrangements with regard to character vetting, which I have described to you, applied in the Civil Service, with all of those checks and balances built in. That is what pertained in the Civil Service at that time.

1032. **The Chairperson**: Could you give us more detail on that?

1033. **Mr Baker**: I am more than happy to.

1034. **Mr D Bradley**: I want to ask you one or two questions about the new arrangements for the appointment of special advisers since September 2011. You said that they differ from other arrangements in the Civil Service, in so far as there is an appeal mechanism. I want to ask you about the criteria of the appeal mechanism. I think there are six criteria: the absence of a pattern of repeat offending; the relevance of the conviction to the post to be filled; the nature of the offence; the severity of the sentence; evidence of rehabilitation; and third party references. It seems to me that numbers two to six are quite objective and can be measured fairly objectively. The first criterion, which is on the expression of remorse or regret might be a bit more difficult to measure. Let us consider the nature of the people to whom the Bill applies and the type of offence that they may have committed. Quite often, they may have changed their view of the offence, but that is not always equal to an expression of remorse or regret, if you gather what I am saying. Is there not a danger that the first criterion is setting up the appeal mechanism to fail in these cases?

1035. **Mr Baker**: I understand the point that you are making. We have not gone through an appeal, so we do not have case law, precedent or example. I imagine that an appeal would be a very difficult thing to deal with. It is difficult to lay down hard, fast and objective criteria that you could apply in every situation. If you try to be too prescriptive or precise, the danger is that you will be accused — NIACRO expressed a concern about this — of being too arbitrary and taking a tick-box approach.

1036. This may not be particularly helpful to the Committee, but the only point that I could make in response to your comment is that I do not think that it is the case that all of the criteria have to be met; these are just all of the issues that would be taken into account in the round during the course of an appeal. We have not attempted to give more weight to one criterion than to another. Generally, an appeal hearer would have to consider all of the issues. That is difficult; I understand that. However, I am afraid that, on the issue of personnel, we are always taking difficult decisions. It often boils down to a matter of judgement rather than a totally objective hard and precise fact in these matters. I cannot answer the question any better than that. It is not that the first criterion has to be met and then it is a barrier before you can go on to the next one, if that offers you any comfort.

1037. **Mr D Bradley**: So, possibly, we are talking about the general impression of the individual that is created under those six criteria.

1038. **Mr Baker**: Yes.

1039. **Mr D Bradley**: The appeals panel will be made up of independent members. Does that set it apart from the Department, to some extent?

1040. **Mr Baker**: Yes. Obviously, some consideration has been given to the kind of people who would be invited to hear an appeal if a certain situation arose. You are right: the Minister's intention clearly was that it should be outside of the Department of Finance and Personnel. It should not be civil servants or anybody connected with the Department; it should be totally independent. You can speculate on who such people might be. They may be from a trade union background or a private sector background; they may even be from a background like NIACRO. I do not know. I do not want to identify any individuals. It is in that kind of territory rather than political or Civil Service decisions.

1041. **Mr Mitchel McLaughlin**: Could we return to the response to the OFMDFM guidance?

1042. **Mr Baker**: Yes.

1043. **Mr Mitchel McLaughlin**: You explained that, as a result of a policy decision, it did not apply to the Civil Service.

1044. **Mr Baker**: Yes.

1045. **Mr Mitchel McLaughlin**: Did it apply to special advisers?

1046. **Mr Baker**: Well, to the extent that special advisers are civil servants, it did not.

1047. **Mr Mitchel McLaughlin**: Has that been considered in the context of Good Friday Agreement obligations towards ex-prisoners?

1048. **Mr Baker**: It has not been considered specifically in that context. The point about special advisers, quite simply, is that they have never hitherto been subjected to any kind of character vetting whatsoever as part of their recruitment. They were outside the normal Civil Service arrangements.

1049. **Mr Mitchel McLaughlin**: Are special advisers legally, in the fullest sense, regarded as civil servants, or are they deemed to be the equivalent of civil servants?

1050. **Mr Baker**: I think that they are civil servants.

1051. **Mr Mitchel McLaughlin**: So, it is more than just the fact that the Finance Minister may have a responsibility in terms of Civil Service salaries, wages and entitlements? You would say that it was a wider remit that the then Finance Minister, and, possibly, the current Finance Minister, was addressing?

1052. **Mr Baker**: Sorry; I am not quite sure about what that wider remit might be.

1053. **Mr Mitchel McLaughlin**: It appears from your answer that individuals appointed as special advisers are automatically accorded the full status of civil servants. Is that it?

1054. **Mr Baker**: Yes.

1055. **Mr Mitchel McLaughlin**: OK. You are unable to say whether that has been tested against the Good Friday Agreement?

1056. **Mr Baker**: No, to the best of my knowledge it has not been tested specifically.

1057. **Mr Mitchel McLaughlin**: OK. I want to ask about the risk assessment matrix. It was useful to have that paper. Is there any supplementary commentary or guidance to what are fairly succinct lines of consideration? There are four here.

1058. **Mr Baker**: No, there is not. There is nothing more than that. The totality of our policy and procedures on character vetting is contained in our recruitment and policy procedures manual. There is some more narrative around the Access NI process, but what you have before you is the totality of the material that is specific to the risk matrix.

1059. **Mr Mitchel McLaughlin**: I will take this, not necessarily as the threshold but as an example. The particular case that has sparked this private Member's Bill

dates from the 1980s. If we were to take that as a classification of people who have conflict-related offences, we are talking about people who were sentenced a minimum of 20 years ago and, in some cases, considerably further back than that, perhaps 30 years, because people were being sentenced in the early- and mid-1970s. Is there a point at which the timeline on some of these issues that are headlined in the matrix would also have to be considered? Would that not be a vulnerability were there to be an appeal or a challenge?

1060. **Mr Baker**: I appreciate that you are not asking me to give an opinion on whether any individual —

1061. **Mr Mitchel McLaughlin**: No, I have not mentioned any individual cases.

1062. **Mr Baker**: I could not. I suppose that I can best answer that question by saying that it is not necessarily the case that any individual with an unspent criminal conviction which correlates to any of the four areas identified in the risk matrix would automatically be excluded. A decision would be taken in light of the individual circumstances, which is the case for all civil servants.

1063. **Mr Mitchel McLaughlin**: Would that decision be taken by the corporate HR team?

1064. **Mr Baker**: Yes. It may be the case that an individual or individuals with a conviction for a very serious offence may be currently serving in the Civil Service. We destroy the records of criminal convictions after a decision has been taken because we do not want those hanging about anywhere. We believe that it is very personal data —

1065. **Mr Mitchel McLaughlin**: Whether they are successful or unsuccessful?

1066. **Mr Baker**: Yes. We currently do not hold that information. Anecdotally, we would know, and those who have taken decisions over recent years may know. All those factors would be taken into account, including the time period that would have elapsed. I anticipate that an individual making a statement of disclosure would address any time period in that statement. That is an opportunity for an individual to make his or her case.

1067. **Mr Mitchel McLaughlin**: Is that a written submission or —

1068. **Mr Baker**: It is; sorry —

1069. **Mr Mitchel McLaughlin**: Is it an iterative process where follow-up or supplementary questions would be submitted for answer as well, or do they just get one shot at it?

1070. **Mr Baker**: No, it is not necessarily one shot, but we do write to individuals to ask them to make a written submission. If there is any ambiguity there, or if we need clarification, we may write back, and it could become an iterative process. I would not like to say that it is one shot; not necessarily.

1071. **Mr Mitchel McLaughlin**: OK. Finally, I want to ask about the records, because that is what I was leading towards. The records are destroyed; that is a policy issue. How rapidly does that happen? Are they kept for a period in case there is a challenge?

1072. **Mr Baker**: I do not know how quickly that happens. All the disclosures from Access NI are destroyed. I do not know how quickly they are destroyed after we might take a decision not to accept someone. I can find that out for you and let the Committee know.

1073. **Mr Mitchel McLaughlin**: I am sorry; I was not paying attention there. You mentioned Access NI. Who gets the disclosure? Is it the corporate HR team or is it Access NI?

1074. **Mr Baker**: The process is that, every individual deemed suitable for appointment has to go through a check by Access NI. The individual actually has to fill in a form themselves for data protection purposes. The disclosure from Access NI, if there is one, comes to corporate HR in each case, and then we take the decision, although we will engage with the individual about that. In

the vast majority of cases, there is no unspent conviction identified, but, where there is, in many cases it is not an issue for us and we allow the person to be appointed. We would then immediately destroy the Access NI record. Your question might relate to a decision to exclude someone. I do not know how long we keep that record. I can find out for you and get back to the Committee.

1075. **Mr Mitchel McLaughlin**: Yes. You can be quite certain that the process is conducted in an absolutely objective and professional manner in the vast majority of cases, but we are talking about demonstrating a propensity over an issue that may have occurred at a particular time that, hopefully, has been consigned to history. That can be an interesting phrase. You could drive a horse and cart through it. A very clever barrister that we all know could make that mean anything or demonstrate dishonesty. It appears that, in terms of transparency, there may be issues there that are worth some careful consideration, given the implications of a Bill like this, should it succeed.

1076. **Mr Baker**: Yes, and as I said before in response to a question from Mr Bradley, this is difficult territory and taking those decisions is very difficult. There are no absolutes. One reaches judgements, and one hopes that they are sensible judgments that are defensible, but, of course, everything is open to challenge these days.

1077. **Mr Cree**: I have two points to make about NIACRO's comments, which are worth clarifying. One is that, in the application of the risk assessment grid, it makes the point that it is really designed to exclude rather than include. I thought that was an interesting point, because, if it is designed to include everyone, there is no point in having it. Of necessity, it must exclude. Is that right, or too simplistic?

1078. **Mr Baker**: I agree with you on that. I did not quite understand that point. The risk assessment is exactly that; it flags up risk. If we were going to include everybody, you would not have a risk assessment. It is just about waving a red flag, which will give us some cause for concern, and then we will go and investigate further through the statement-of-disclosure process. I believe that the statement-of-disclosure process is inclusive, but I think it would be wrong not to have some kind of risk assessment matrix that would give us the basis on which to pause for thought. If we did not have it, then it would be totally arbitrary and potentially very inconsistent. How would the poor official who is faced with the decision have any frame of reference on which to take a decision? I know that it is not perfect — none of those things is perfect — but we looked at it a couple of years ago, and it is the best we have got. I am sure that all of those things could be refined, but I reject the assertion that it is, by definition, exclusive.

1079. **Mr Cree**: The other point that I am concerned about is that NIACRO referred to a temporary post and the requirement for character there. It gives the example of a person who had been performing well in a particular role of a temporary nature and, when the post came up for applications — this always confuses me — the character element then kicked in. Surely it would have kicked in at the temporary level?

1080. **Mr Baker**: I would have thought so too. I cannot comment on the individual cases.

1081. **Mr Cree**: No.

1082. **Mr Baker**: I do not actually know what they are, but I agree with you.

1083. **Mr Cree**: It applies to temporary posts as well?

1084. **Mr Baker**: Yes, the same exclusion should apply. As you know, different arrangements apply to people in temporary posts, and they tend to be for a period of less than 12 months. Nevertheless, an individual in a temporary post could have access to all of the same kind of information and could potentially do the same damage as anybody in a permanent post, so it should apply equally across the board.

1085. **Mr Weir**: Thank you, Derek. On Leslie's latter point about NIACRO, given the grid that you indicated applies once someone has passed the test and is deemed appointable, I am not sure how that could not act as some filter mechanism. I am not quite sure how the idea of inclusiveness could include people who had not been deemed to be appointable in the first place. It remains to be seen whether there has been a degree of misunderstanding by NIACRO, and maybe that will be clarified.

1086. I have questions on a couple of points. The point has been made that many years may have passed since a previous conviction. Does the assessment of spent convictions currently used in the grid take account of the gravity of the offence, the duration of sentence, whether the conviction is spent and the length of time since sentencing?

1087. **Mr Baker**: We would not have any regard, obviously, to spent convictions.

1088. **Mr Weir**: We appreciate that.

1089. **Mr Baker**: So, it is only unspent convictions, and I suppose that the answer to all of your questions is yes; we would take all of those factors into account, just the seriousness of the conviction. The important point, particularly in respect of NIACRO's concerns and the evidence presented to the Committee by Sir Nigel Hamilton, is that we will also take into account the relevance of the conviction to the post that the individual is being appointed to. Obviously, we will take into consideration someone with a lot of driving convictions applying for a driving post. That is probably a bit of a caricature, but it is an obvious example. We would not make someone convicted of serious fraud the financial director of a Department, put them in charge of the accounts or whatever.

1090. **Mr Cree**: A Minister, perhaps?

1091. **Mr Weir**: I think, Derek, that you may be tempting us here at this point.

1092. **Mr Baker**: I will keep my counsel at this point. *[Laughter.]*

1093. **Mr Weir**: Although these points may seem obvious, it is useful to clarify them for the record. Some folks have tried to make the case that those convicted of Troubles-related offences should be in some way be rehabilitated or treated differently from other offenders. At least on the face of it, the grid system, as applied so far, makes no such differentiation between terrorist or Troubles-related convictions and others. Assessment is based on what has occurred.

1094. **Mr Baker**: That is correct. That policy decision, reached by the then Minister of Finance, was that our arrangements should cover every kind of conviction and not differentiate between conflict-related convictions and non-conflict-related convictions.

1095. **Mr Weir**: To follow up on Mitchel's point concerning the standing of a special adviser; the one distinction in the process is that such an appointment is, in many ways, at the grace and favour of the Minister. However, once appointed, do all the rights, obligations etc — including restrictions on activities, for instance — that are placed on a civil servant apply equally to a special adviser?

1096. **Mr Baker**: Yes. There is a code of conduct for special advisers, which is publicly available on our website. The Committee probably has a copy of that. With one exception, all of the contractual standards of conduct obligations of a civil servant apply equally to a special adviser. That exception relates to political activity and the exemption is obviously because of the nature of the individual, but all other standards of conduct apply.

1097. **Mr Weir**: Otherwise, the position is on a par with that of other civil servants?

1098. **Mr Baker**: Yes, it is, and we try to draw that out in the code of conduct specifically for special advisers, which cross-refers to our handbook's more general standards of conduct for civil servants and which is also available for public inspection.

1099. **Mr Weir**: Finally, you may not want or be in a position to comment on the range of suggestion for technical changes from the Office of the Legislative Counsel (OLC). It may be more appropriate for the proposer of the private Member's Bill to address. Does the Department have any comment on those technical aspects, or is it happy to leave them that way?

1100. **Mr Baker**: OLC sent those to me, unsolicited. I was quite surprised to get them, and I did not know what to do with them, so I passed them on to your Committee Clerk, perhaps rather unhelpfully. I would have to defer to the expertise of the OLC on those technical points.

1101. **Mr Weir**: I was clarifying that to make sure that there was no particular —

1102. **Mr Baker**: The only comment that I would make on the legalities of the Bill is one that I raised when I was here previously. I suppose that a little knowledge is a dangerous thing, and I caveat my comments by that. I am not legally qualified. Clause 7 contains a reference to the Civil Service Commissioners (Northern Ireland) Order 1999. I have a lot of dealings with the Civil Service Commissioners, and my understanding is that that order is still in the reserved field. I do not know whether that raises an issue, but that is for advice by the Assembly's legal advisers. I will park that issue.

1103. **Mr Weir**: That is maybe an issue that we can raise with the sponsor of the Bill.

1104. **Mr Baker**: I would not like to offer a definitive view.

1105. **The Chairperson**: The Equality Commission was before the Committee recently. Does the Department have any view on how the Bill affects the Department's ability to meet its section 75 duties? Has it carried out an assessment in that regard?

1106. **Mr Baker**: No, it does not.

1107. **The Chairperson**: Is it something that you have considered?

1108. **Mr Baker**: Not at this stage. I regard that as part of the policy consideration of the Bill. As with any legislation, normally some kind of equality impact assessment is undertaken, but that is not for the Department to do at this stage. So we do not have a view on it.

1109. **The Chairperson**: Do you have a view on any equality aspect of the Bill?

1110. **Mr Baker**: No.

1111. **Mr D Bradley**: I want to go back to the Minister's review of arrangements. That was as a result of the appointment of Ms McArdle and the subsequent discussions that took place. How do the Minister's new arrangements help to ensure that the feelings of victims are protected by the new procedure and process that he is implementing?

1112. **Mr Baker**: That is a very difficult question for me to answer. Obviously, there is nothing in the existing Civil Service arrangements for recruitment, nor, indeed, is there any specific mention in the Minister's arrangements in respect of victims per se. It may not be appropriate to introduce the concept of victims into our recruitment policies. It would probably be better for the Minister to answer that question. The best way I can answer it is to simply suggest that part of the thinking behind the Minister's new arrangements is that any civil servant, including special advisers, should be subject to the same level of character vetting as every other civil servant, so that the public will have confidence that people with appropriate character, if I may use that very judgmental term, will be appointed to publicly funded positions in the Civil Service. I suppose that that is a very vague concept, but, in that respect, he was trying to build up public confidence with respect to all of those who hold public positions in the Civil Service.

1113. **The Chairperson**: OK, Derek. Thank you very much.

1114. **Mr Baker**: This is probably the last time that I will give evidence to the Committee in the foreseeable future. I will be off to a new Department after Christmas. I have given evidence on lots of occasions, on lots of issues,

some of them tricky. On each and every occasion that I have been here, I have been treated with the utmost courtesy and fairness. I wanted to express my appreciation for that. Thank you.

1115. **The Chairperson**: Thank you, Derek.

12 December 2012

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree
Mr Paul Girvan
Mr John McCallister
Mr Mitchel McLaughlin
Mr Peter Weir

Witnesses:

Mr Jim Allister *Northern Ireland Assembly*

1116. **The Chairperson**: I welcome back to the Committee, Mr Jim Allister, the sponsor of the Bill. Jim, perhaps you want to make an opening statement with regard to the paper. I know that you have not had long to consider it.

1117. **Mr Jim Allister (Northern Ireland Assembly)**: Thanks for the opportunity to appear again and to deal with some of the issues that are in the issues paper. I have probably anticipated most of them. Although I have obviously not had a chance to study the issues paper in detail, I will seek to address the matters as best I can.

1118. I will make a couple of preliminary points. Obviously, I have tried to follow the evidence as best I can. It seems to me that there has been relatively little controversy or comment on clauses 4, 5, 6 and 7 and that, rather, the focus of attention has been on the other clauses. That might be indicative that there is a general acceptance that it is probably a good thing to bring some degree of statutory regulation to the process pertaining to special advisers and to put on a statutory footing a number of matters pertaining to them.

1119. The Committee heard a lot of evidence, some of which ranged far and wide. I suggest that the Committee heard no more poignant or compelling evidence than that of Ann Travers. It put the focus on why you have this Bill before you. Evidence, not just from her but from some others, identified a particular gap in the consideration given to victims in such appointments. Given that she spoke from the heart, Ms Travers expressed far more eloquently than I ever could the need for legislation such as this.

1120. I will speak briefly about the observations of the Office of the Legislative Counsel (OLC). A lot of those are stylistic changes, and you can take different views. Some are quite technical. I have taken a view on a number of stylistic ones. If you wish, I can indicate, paragraph by paragraph, what I am minded to say that I consent to. However, I am taking advice from the legal draughtsmen on the document. Therefore, it strikes me that it might be more useful to the Committee if I await those advices and then submit to you in writing the entirety of my view about the OLC contribution. If that is acceptable to the Committee, that is how I propose to deal with that. Probably after Christmas, I can issue you with correspondence setting out my view on each and every proposition raised.

1121. The only comment that I would make at this stage about the OLC contribution is that it was simply wrong to state, at paragraph 4, that the 1999 Order had not been amended to allow the appointment of special advisers by junior Ministers. There is such a change. There was an Order in 2007. Members who were here at that time probably remember the introduction of that change. So, it was simply wrong about that. That provision does now exist, so junior Ministers are among those who can make appointments in that regard. I have no difficulty whatever with a number of the OLC's issues and problems, as they are simply stylistic.

I will give some response on all the issues when I can.

1122. I will make another couple of general comments. There seemed to be a misfocus or misconception among some people that this Bill is interested in addressing only those with terrorist convictions. This Bill applies to anyone with any criminal conviction of the magnitude of five years or above. I was somewhat surprised that some of the evidence did not seem to grasp that point. Indeed, one of your members, Mr McIlveen, put it to one person that, by that approach, they are, in fact, creating a hierarchy of criminals. There seemed to be a pervasive interest in the well-being and prospects of those with terrorist convictions, thereby, creating a hierarchy of criminality. This Bill does not do that. This Bill applies across the board to all criminals, terrorist or otherwise. I just want to make that absolutely clear.

1123. I come now to some of the key human rights issues, which are probably among the more pertinent matters that I need to address. I remind the Committee that when it comes to the competency of a Bill, under the 1998 Act, only the European Convention on Human Rights occupies the position that any Assembly legislation must be compatible with it. Whatever other plethora of human rights covenants and declarations there are, the statutory obligation for the Assembly relates only to compatibility with the rights under the European Convention on Human Rights. That is from section 6 of the Northern Ireland Act 1998.

1124. On the issue of whether there is compatibility with article 7, the essence of the contention is whether the ineligibility for a post of special adviser constitutes a criminal penalty. You had various evidence. You had the suggestion from the Attorney General that it could do. However, you then had evidence from Professor Brice Dickson, who said:

"I do not think that you can categorise the rendering of someone as ineligible for a position as a punishment as such. It may be a disadvantage to that person, but I do not think that [the convention] would regard it as a 'punishment' or a 'penalty'".

1125. Indeed, Professor O'Flaherty from the Human Rights Commission said this with regard to potential candidates:

"I find it hard to see that the Bill would constitute a penalty ... they are not in post and there is no immediate victimisation of them to the extent that it is punitive."

1126. With regard to persons already in post, he argued that it was difficult to see removing them from post as a penalty, as they were given compensation for that removal.

1127. So, I would respectfully suggest that the preponderance of views from the experts is that the Bill does not violate article 7. That remains my strong contention. The measure is characterised properly as introducing eligibility for a post rather than as a punishment. I remind you that one case quoted to you was the case of R v. Field. It proceeded on the basis that disqualifying people from working with children did not constitute a criminal penalty within the meaning of article 7. That seemed to be a common thread in most of those cases. So, I share the view of the majority of witnesses to you that the Bill does not breach article 7.

1128. I do not think that there was any serious contention that it breaches articles 8 or 9 or article 1, protocol 1 about the right to property. No witness argued that that protocol was breached. Article 14 is, of course, a parasitic article in that it comes into play only if it can be piggybacked on another article, and that is the protection from discrimination. Moreover, we know, and you had it brought out to you by the Equality Commission, that there already is a provision in our employment law that people cannot rely, in defence of their political opinion, on opinions that support violence. There was the quite famous case, which still stands, that went all the way to the House of Lords.

1129. I come to the issue in the Bill that some characterised as being a blanket ban. A number of witnesses brought

that up and asked whether the Bill amounted to a blanket ban on persons becoming special advisers if they had serious criminal convictions. Tagged to that was the comment that there was a lack of individualisation in the Bill; that is, it did not take into account individual circumstances. On the matter of whether the Bill constitutes a blanket ban, I would say first that it is not a blanket ban, because it does not apply across the Civil Service. It does not say to someone with a relevant conviction, "You are banned from working anywhere in the Civil Service." It is quite discriminatory, in that it picks out a particular section of the Civil Service, because of its particular profile and genesis. The Bill states that you would not be eligible to apply for a post as a special adviser.

1130. Secondly, it does not prevent all persons with a criminal conviction from being special advisers. It prevents only people with a serious criminal conviction. Therefore, it is not a blanket ban on people with criminal convictions being either civil servants or special advisers. It is limited in those two dimensions. As such, I refute the suggestion that the Bill contains a blanket ban. It certainly is a very restricted ban, and it is certainly true that the ban is permanent and unreviewable, but it is not a blanket ban, so I think that it is wrong to characterise it in that regard.

1131. If it is not a blanket ban, the question is whether the lack of a review is a proportionate or disproportionate response. My view is that, in the particular circumstances, and there are particular restricted circumstances that the Bill is directing itself at, it is quite proportionate not to have a review. That is my position. I understand that the Committee has not yet had a discussion about the Bill as such. If the Committee reaches the view that it does feel that there is some need for a review mechanism, that is not something that I have closed my mind to as the sponsor of the Bill. It is something that I am not persuaded of at this moment. However, I remain open to discussing with the Committee the prospects and possibilities in that regard. They would have to be prospects and possibilities that build into any review due and significant regard to the question of contrition, the views of the victims of those being sought to be appointed, and the extent to which those being sought to be appointed to such a public office have been of assistance in the solving of the crime for which they were convicted. If it is thought necessary to have a review process, provided that it embraces those concepts in an adequate way, I have not closed my mind to it. However, I am not at all persuaded at the moment that there is a need for that mechanism, given the Bill's very particular and limited circumstances.

1132. There was all sorts of evidence presented to you about lustration and soft law. Soft law is all very interesting, but it does not actually apply, apart from scene-setting; it is not binding in regard to any of these matters. It gives rise to a fascinating academic debate, but it does not really inform very much what a legislator can do. The other important point to remember is that a variety of cases demonstrate that the courts will always show very significant deference to a legislator on the political judgement point and the political question raised. There is what is called a considerable margin of appreciation for what a legislator does. Courts will be very slow to intervene in that in any regard.

1133. I have sought, as swiftly as I can, to review some of what might be thought to be the more pertinent issues. I am not sure that I have dealt with all the themes that are in your issues paper, but, no doubt, if I have not, there will be questions that touch on them.

1134. **The Chairperson**: Thank you, Mr Allister. There has been some reference in the evidence to the Good Friday Agreement and the St Andrews Agreement, and comment contained therein that some of the witnesses said was relevant when taking the Bill into consideration. I think that Tar Isteach made reference to the St Andrews Agreement and said that the Government gave a commitment to

work with business, trade unions and ex-prisoner groups to produce guidance for employers in the private and public sector. The Office of the First Minister and deputy First Minister commissioned employers' guidance on recruiting people with conflict-related convictions early in 2007. Do you think that your Bill is going against the grain, to put it mildly, of the St Andrews Agreement?

1135. **Mr Allister**: No, I do not. Guidance is exactly that: guidance. A Bill, if it is passed, takes on statutory form. Guidance can never be a barrier to legislation. One can legislate over, above and beyond guidance, because guidance is only that. I see no constraint. Indeed, in the Bill getting this far, it is quite clear that it has been regarded by those who have to assess these tests that it is compatible with the statutory powers of the Assembly, or the Speaker would not have approved the Bill to be before you at all. Likewise, the Assembly, by its vote, has brought it this far. I do not see any impediment in the Belfast Agreement, the St Andrews Agreement or the guidance that Sir George Quigley and others spoke to that prevents the Bill from taking its course and, if it is the will of the Assembly, becoming law.

1136. **The Chairperson**: What did you make of George Quigley's comments that he would be concerned about the fact that the legislation affects convictions of five years and above? He said that, if that were to be spread across the board, he would have significant concerns about how it —

1137. **Mr Allister**: It is not being spread across the board. The Bill is very precise and focused on special advisers. It does not attempt to make it wider than that. We are talking about fewer than 20 posts. It is not a general application to the Civil Service.

1138. **The Chairperson**: Surely it sends out a message. If other employers are considering applications, and prisoners have applied, those employers will be inclined to take into account the case of special advisers. It sets an example.

1139. **Mr Allister**: The Bill does not apply to the private sector; it applies to a minute section of the public sector. It has no bearing on what the private sector does or does not do. The guidance that you talk about might have some bearing in the private sector, but the Bill certainly will not.

1140. **The Chairperson**: Do you believe that the proposals that you are putting forward for the small number of posts for special advisers should be extended to any other positions in the future?

1141. **Mr Allister**: If I thought that, it would be in the Bill.

1142. **The Chairperson**: What consultation did you have with republican ex-prisoner groups?

1143. **Mr Allister**: I made public declaration of the consultation, I made it available on website by a public statement and I believe that we sent it to particular high-profile prisoners' groups, which would have included some republicans. I cannot remember exactly to whom. We had response from some.

1144. **The Chairperson**: Did you have any communication with loyalist ex-prisoner groups?

1145. **Mr Allister**: No, no more was it available to them than it was to anyone else.

1146. **The Chairperson**: The reintegration of ex-prisoners in republican and loyalist communities has been part of the debate that we have been having in our evidence-gathering. What is your view on how ex-prisoners throughout the community should be reintegrated into that community, especially in the area of employment?

1147. **Mr Allister**: I do not think that ex-prisoners should be jobless. When they have served their sentence — of course, some did not serve their sentence — they should be available in the employment market. The Bill is saying that there is a particular sensitivity about the position of special advisers, made sensitive by a gauche and deliberately provocative appointment.

That sensitivity means that, as legislators, we cannot close our eyes to that. We have to address the issue, and we have to close the loophole that allowed such a devastatingly traumatic appointment, for victims, to be made. That does not slam the door on anyone seeking any other employment, not even in the Civil Service, and certainly not in the private sector or anywhere else.

1148. The Bill is not about doing down prisoners. I remind you that it applies to all prisoners, not just terrorist prisoners. It is not about doing them down. It is about saying that, because of what has happened, there is a particular circumstance in which it is unconscionable that someone could be appointed to a post such as this. Within that limited remit, therefore, action is to be taken to make it an eligibility for appointment that you do not have a serious criminal conviction, whether that be for rape or murder, or for a domestic or terrorist offence. If you have a serious criminal conviction, you are not eligible for the post, and it would be unconscionable to allow you to be.

1149. **The Chairperson**: Given the background to the Bill, which you referred to, is the legislation being punitive?

1150. **Mr Allister**: It is not being punitive, because it is not punishing anyone. It is creating eligibility criteria for a very select and limited number of posts. Ann Travers very generously said that she does not object to Ms McArdle being given a job in a Sinn Féin office, as, I think, is now the situation. However, she does object to, and the Bill objects to, rubbing the nose of victims in bloodstained dirt by the appointment to such a seminal and pivotal position of the one who made them victims. That is what the issue is here, and that is why it is about setting eligibility criteria to ensure that that does not happen again.

1151. **The Chairperson**: Is that not retribution, though?

1152. **Mr Allister**: It is not retribution. It is justice.

1153. **The Chairperson**: Given that this particular case refers back to the 1980s, and the fact that a conviction was handed down, surely this refers back to that process again, post hoc. That is why there are so many concerns about the Bill.

1154. **Mr Allister**: I do not think that the date of the offending is the issue. You had only to sit and listen to Ann Travers to realise that, whether it was the 1980s, 1960s or 2000s, it is as raw today for victims as it ever was. I do not think that anyone could fail to have been moved by the evidence, because it came so much from the heart. The reopening of that wound was indisputable. It is to deal with that mischief that this Bill is before you.

1155. **The Chairperson**: You referred to the fact that the appointment was “rubbing the nose of victims” in it because of the position of special adviser. Is that the only position to which you would apply this?

1156. **Mr Allister**: That is the only position that the Bill applies to, yes.

1157. **The Chairperson**: You would not wish to apply the same provision to any other publicly appointed post? It is only for special advisers?

1158. **Mr Allister**: If the Committee wants to table an amendment applicable to other public posts, that is a matter for the Committee. It is not what my Bill proposes.

1159. **Mr D Bradley**: Good morning. We live, we hope, in a democracy, and there are certain aspects of that that are relevant, including the rehabilitation of offenders and their reintegration, as was mentioned earlier. As a law professional, you might have a better understanding of that than many.

1160. I understand the background to your Bill. It concerns the appointment of Ms McArdle, and, as you rightly pointed out, we heard the very moving evidence of Ann Travers. There is no doubt that Ms Travers’s feelings were brought to the fore again by that appointment and are still extremely raw. I think

that she articulated her situation very graphically when she appeared before the Committee.

1161. Taking all that into account, is it not the case that perhaps your Bill is an overreaction to that situation and that the Minister's reaction and the new arrangements, or the review of arrangements, that he has initiated is a more measured and thoughtful reaction to the situation?

1162. **Mr Allister**: The problem with the Minister's reaction is not its content but the fact that he has been thwarted. You have heard evidence that the guidance that he brought in has been ignored in subsequent appointments by Sinn Féin. Therefore, you are in a situation in which there are appointments, and you have guidance that states the way to do it, yet one of the primary parties of government, which has since made a number of special adviser appointments, simply thumbs its nose at it and says, "Say what you like, but that is not how we are doing it."

1163. Therefore, the guidance is not being implemented. I believe that that is an added reason that the legislative route is the only route to go. I always thought that it was the best route, because guidance is only guidance and is subject to the whim of the next Minister, who can change it on a whim. It is therefore far better that you lay it down in legislation anyhow, but the case for laying it down in legislation is now even stronger, because the guidance has been shown to be impotent, in that it has not been implemented. Political reality points towards increased necessity, not less need, for the Bill.

1164. **Mr D Bradley**: You said that the guidance has been ignored and appointments have been made, but there is an important difference. Appointments that have been made are, as far as I know, not being paid for out of the public purse. I can turn around tomorrow as an MLA and appoint someone as my special adviser —

1165. **Mr Allister**: No, but, with respect, Mr Bradley, you cannot appoint someone to the heart of government. You cannot appoint somebody who has the right to see every paper that the Minister sees. You cannot appoint someone who is at the absolute top and heart of government. You can appoint somebody to advise you outside of those parameters, but the point about special advisers is not just that they are paid from public funds. It is the job that they do and the core role that they play right at the top and heart of government. There are people today in those positions with all that access who were appointed without going through the guidance that exists.

1166. **Mr D Bradley**: The Department would claim that they are not properly appointed.

1167. **Mr Allister**: But they are still there. They still have the same access to all the documents and papers, and all the ears that come with that. They are still facilitated and equipped with all that power and influence, in defiance of the appointment guidance. Therefore, it seems to me that that substantiates the case for the Bill, because it is about more than the fact that it is public money being used.

1168. **Mr D Bradley**: I take the points that you have made. Do you think that most of the requirements of your Bill could be satisfied by putting the Minister's new arrangements on a statutory footing?

1169. **Mr Allister**: By and large, that is what the Bill seeks to do: to put the code of appointment on a statutory footing; to introduce reporting, which is not in the guidance; to put the code of conduct on a statutory footing; and to put the vetting on a statutory footing. Part of the rationale for all of that is so that the ground rules are firmly set, that they cannot be changed on a whim, and that the next Minister does not come along, tear up the existing guidance and reignite the existing controversy. If you legislate for it, you set the parameters, and, whoever the Minister is, he knows that if he wants to change that, he has

to get that through the Assembly, not simply issue fresh guidance.

1170. **Mr D Bradley**: There is a difference, though. The Minister's new arrangements — guidance, or whatever — do not contain the five-year criminal offence.

1171. **Mr Allister**: No, it gives the right to have regard to matters such as that, but it does not create anything approaching an absolute so that if you have a serious criminal conviction, you are not eligible to be appointed. There is the policy discussion as to whether, given what has happened and given the evidence that you heard from people such as Ann Travers, there is not a crying need for a legislative response from the Assembly to address that inequity and the injustice that has been done, and to do it in a manner that addresses it for now and the future.

1172. **Mr D Bradley**: To be clear, would you be happy if the Minister's guidance were put on a statutory footing?

1173. **Mr Allister**: It would have to be put in a Bill. The Minister has not sought to do that. The only Bill that is seeking to do anything about it is this Bill, so I do not have a Bill to compare my Bill with. I do not have any other proposition to compare it with. All that I can compare it with is guidance, which, through no fault of the Minister, is impotent guidance, because it is being ignored. I am saying that, in those circumstances, this is the only Bill in town.

1174. **Mr D Bradley**: Surely it would be possible to encompass the Minister's guidance, through amendment, in your Bill.

1175. **Mr Allister**: In a way, this is setting the parameters to give statutory form and authority to various things that currently only have the status of guidance. Those include the code of conduct and the code of appointment, introducing the parallel situation with GB of an annual report and taking away the power of the Presiding Officer. All those things will be put on a statutory footing, and, yes, the Bill introduces the provision of eligibility so that if you have a serious criminal conviction, you are not eligible to be appointed.

1176. From first principles, I think that legislation is always better than guidance. When you have guidance that is being ignored, it is particularly better to have legislation, and it is right that that legislation address the matter fully and that it legislate to stop the mischief that gave rise to the concern in the first place.

1177. **Mr D Bradley**: If the Minister's new arrangements were to be encompassed in your Bill through amendment, would you be willing to remove from your Bill the five-year criminal conviction bar?

1178. **Mr Allister**: Five years is a high bar, not a low bar. It is twice as high as that in the Rehabilitation of Offenders (Northern Ireland) Order 1978, which sets the bar at 30 months for spent convictions. To hollow that out of the Bill would be to leave you with a mere shell of a Bill and one that means very little. That is an important benchmark. It is not saying to anyone and everyone who was ever convicted of anything that they cannot hold these posts.

1179. There are people who, in their youth, did foolish things and were convicted, but, in the main, that was reflected in the sentence that they got, and it probably was less than a five-year sentence because of their youthfulness, stupidity and everything else. It is not targeted at them but at the hardened criminal who committed a hardened criminal act and who, in consequence, gets an appropriate sentence. It is saying to him or to her that, because of the sensitivity, public profile and all of that that attaches to the very special position of special adviser, they will not be eligible for that post. They are eligible for anything else, but not that post, not least because of everything that happened heretofore. That seems to me to be rational and fair, just as it is fair and rational to say to people who have been convicted of a child-molesting offence that they are not eligible for a job working with children. It is also right to say to people that, given that they

have a serious criminal conviction, they will not be eligible for the post of special adviser. I repeat myself, but I think that it is unconscionable that they should be eligible.

1180. **Mr D Bradley**: You said that this is not a blanket ban and that it does not apply across the breadth of the Civil Service. You said, in fact, that the Bill is quite sharply focused on a small group of people. If you believe — I know that you do — that your purpose here is to protect the feelings of victims, surely there are lower posts than that of special adviser and, perhaps, higher posts that are still potentially achievable by such people. You are ignoring the feelings of victims who have been affected in those instances.

1181. **Mr Allister**: I can do nothing about the higher post of Minister because that is not within the competence of the Assembly. That involves amendment of the 1998 Act, which is the responsibility of Westminster.

1182. **Mr D Bradley**: I was thinking more about posts in the Civil Service.

1183. **Mr Allister**: If you are suggesting that the Bill should be wider, I am prepared to listen to that. My focus was to keep it on the mischief that had been identified, which was the position of special adviser. I know that people who hold other posts, including ministerial posts, and who have criminal convictions causes grief to victims. If I could do something about that, I would, but sadly that is not within the competence of the Assembly or the Bill. I can address only what is within the competence of the Bill.

1184. I will go back to your point about victims. When you talk about implementing the Minister’s guidance, you must remember that regard for the feelings of victims is absent from that guidance. If anything has come out of these evidence sessions, it is that we have identified the fact that there is no mechanism to take into account the views of victims. The guidance is deficient in that regard.

1185. **Mr D Bradley**: Mr Baker made that clear in his evidence this morning. That is rather disappointing, but it is not to say that the Minister’s guidance has to remain like that for ever. It can be changed, amended and improved.

1186. **Mr Allister**: It can be changed or amended at the whim of any Minister at any time, if it is only guidance.

1187. **Mr D Bradley**: Not if it is built into legislation.

1188. **Mr Allister**: Sorry?

1189. **Mr D Bradley**: Less so if it is built into legislation.

1190. **Mr Allister**: Any legislation requires the process of legislative amendment to change it, yes.

1191. **Mr D Bradley**: Thank you very much.

1192. **Mr Girvan**: Thank you for coming along. I welcome many of the points that have been raised in the Bill. I want to ask about the five-year tariff. How was it identified that five years would be acceptable? Why was it not set at four, three or eight years?

1193. **Mr Allister**: It could have been set at those levels. There is nothing magical about five years. I chose five years because of my experience in the courts. A five-year sentence can be handed down for what could be deemed a pretty serious offence. I was also mindful that many young people got sucked into situations that, had they been a few years older, they would have had the wit to keep out of, but they ended up with criminal records. In the main, however, because of their youth, they did not get a sentence exceeding five years. Therefore, it seemed to me that five years struck a realistic and appropriate balance.

1194. I did consider and could have gone for the 30-month period, which is in the Rehabilitation of Offenders (Northern Ireland) Order 1978. I am not wedded to five years. If the Committee thinks that five years is the wrong starting point and that it should be higher or lower, I am open to that, but five years seemed to me, from my experience, to epitomise

some serious offending. That is why it was chosen.

1195. **Mr Girvan**: Dominic spoke about other Civil Service positions and senior positions in the Civil Service, and the fact that we are dealing with a political appointment rather than going through the full rigours of a Civil Service appointment process. I understand the total difference between that system and a political party deciding who it wants to be a special adviser, whether qualified or not. The fact is that the guidance used by the ordinary Civil Service can be and has been set aside, and it is important that a statutory process be put in place.

1196. **Mr Allister**: It is important to remember that great violence has already been done to the normal concept of recruitment, in that the merit principle has been totally set aside in the appointment of special advisers. I am not trying to undo that, despite my many reservations about it. That is because I have to recognise that they are political appointments. I notice that the Equality Commission made some adverse comments about that aspect of the appointment process, and I empathise with it. I am saying that it is bad enough that people are appointed without regard to the merit principle, but that is compounded by their being so unmeritorious for appointment because of a serious criminal conviction in the eyes of their victims and of wider society. We can and should do something about that, which is what the Bill seeks to do.

1197. The world will not be perfect regarding the appointment process for special advisers. It will remain a cloistered situation in which, without regard to qualifications or anything else, Ministers can pick whom they choose. However, at least they should not be able to pick someone whose criminal offence credentials fly in the face of what the public would find conscionable. The Bill will address that issue.

1198. **Mr Cree**: Most people will understand the genesis of the Bill and how it came about. We have taken a lot of evidence from a wide range of parties, including a significant proportion from the republican community. We have not had a response from the other side of the community. Does that surprise you?

1199. **Mr Allister**: I generally find that what you call the “other side of the community” — the loyalist side — is often less politically engaged than the republican community, and perhaps it is a spin-off from that. Certainly, you have had a significant response, orchestrated or otherwise, from republican prisoners that was entirely predictable in all its content. However, there seems to have been a dearth of response from the loyalist community. It is hard for me to judge whether that is because of disconnect and disengagement with the process or because they recognise that it is not right to have people in such posts with that sort of background and were perhaps touched by the plight of Ann Travers. The republican paramilitary prisoners’ organisations certainly seem to have been untouched by the plight of the Travers family.

1200. **Mr Cree**: Thank you.

1201. **The Chairperson**: On that point, Jim, do you have any concern that the Bill may add to that disconnect between loyalist communities and the Assembly in the political process?

1202. **Mr Allister**: There is no history, nor can I anticipate that any is likely to be created, of ex-prisoners being appointed as special advisers by any unionist Minister. So I do not suppose that they are losing anything or anticipate losing anything in that regard. Sadly, however, Sinn Féin’s approach has been, as it appears to many, the deliberate choosing of people with such backgrounds.

1203. **The Chairperson**: Thank you very much, Jim.

1204. **Mr Allister**: Thank you. I will write to you with my considered views on the OLC amendments if that is acceptable. Could I have some guidance as to when you would need that?

1205. **The Committee Clerk**: The next meeting is on 9 January 2013.

1206. **Mr Allister**: You will have it before that date.

16 January 2013

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree
Ms Megan Fearon
Mr Paul Girvan
Mr John McCallister
Mr David McIlveen
Mr Mitchel McLaughlin
Mr Peter Weir

Witnesses:

Dr Máire Braniff	*University of Ulster*
Dr Cillian McGrattan	*Swansea University*

1207. **The Deputy Chairperson**: We have an evidence session with two academic witnesses. This session will be recorded by Hansard, so I remind you to switch off any electronic devices. The relevant documents are contained in your Bill folder. The witnesses are Dr Máire Braniff of the University of Ulster and Dr Cillian McGrattan of Swansea University. I welcome you both to the meeting and ask you to make an opening statement.

1208. **Dr Máire Braniff**: Thank you, Chairman and members, for giving us the opportunity to speak to you in this forum. We sent our submission late in the day, so we greatly appreciate you taking the opportunity to invite us here today. We hope that you have had the chance to read it. We appreciate that you have heard from legal scholars, victims and victims' representatives, and ex-paramilitary prisoners and their representatives. Our submission is primarily drawn from the perspective of political science.

1209. Much has been said in a very nebulous way about the politics of this Bill. In our reading, this is often referred to party politics, but we hope to speak to the more general political principles that are inherent in this debate. Our point of departure in thinking about this Bill was that it seemed to encapsulate a central dilemma of political thought and democracy, namely that good government should be simultaneously for and of the people. In tackling this problem at the end of the 18th century, James Madison held that, unless government got the balance right, it could end up oppressing a section of its people. This present case reflected that balancing act, for the problem that the Bill seeks to address arose from the belief that Sinn Féin had, in acting for one section of the people — its own support base or party personnel — simultaneously oppressed others, namely that section of society that has been marginalised or rendered almost voiceless by the experience of political violence or terror.

1210. In her evidence to this Committee, Ann Travers spoke eloquently and movingly about how this occurred. Her hearing of the appointment of Mary McArdle as special adviser caused her to relive the trauma that has, in her words, been haunting her for almost 30 years. Ann Travers' recounting of this echoes research in political science about the relationship between politics and trauma. Jenny Edkins, for example, argues that trauma involves more than just a feeling of powerlessness and that it incorporates a betrayal of trust:

"What we call trauma takes place when the very powers that we are convinced will protect us and give us security become our tormentors: when the community of which we considered ourselves members turns against us and is no longer a source of refuge but a site of danger."

1211. That is a problem that Northern Ireland has to deal with. After all, prisoners were given early release under the 1998 agreement, and much has been said in the Committee about the requirement that the state has to try to rehabilitate and reintegrate those people. However, the

Good Friday Agreement also stated that the best way to honour the dead is to:

"dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust ... of all."

1212. We see the Bill as a belated attempt to honour that pledge. We would argue that, focusing on its potential and the responsibility that you, as legislators, have towards us, the citizens, the tired and circular debate over conflicting rights can be surmounted. As such, we defend the Bill for the following political reasons.

1213. First, the Bill redresses an ongoing sidelining of victims. That sidelining takes many forms, from the idea that everyone was in some way responsible and, therefore, no one is culpable, to the idea that the onus for truth recovery lies within the British and Irish Governments, thereby ignoring the fact that the IRA was to blame for the vast majority of the killings. Secondly, the Bill sends out a signal that reconciliation is not just about moving forward but that it also has a historical dimension. The Bill has been dismissed as divisive and anti-peace process. We contend that that is only true if we equate peace to amnesia and if we equate justice to amnesty. Finally, the Bill represents a first step towards Madison's advice: either the Government can be trusted to govern for everyone or else it is made to. The Bill is saying that political murder was indefensible. That message is shared across many political parties. People from diverse backgrounds, such as Austin Currie to John Alderdice and William Craig to John Hume, have all argued that violence was not worth a single life. We believe that politicians should grasp the opportunity to say to future generations that violence is not reasonable or an ethical option, and politics and democracy can be seen to work.

1214. The Bill is a test, therefore, of Northern Irish governance, Northern Irish democracy and the kind of values that we, in Northern Ireland, are seen to cherish.

1215. **The Deputy Chairperson**: Thank you. Dr McGrattan, do you have anything to add?

1216. **Dr Cillian McGrattan**: Yes, just one point. We also highlighted in our submission the idea that it is imperative that legislation and policy-making take into account the broad institutional context in which they operate. We suggested that the institutional context of devolved governance in Northern Ireland contains opportunities to make political capital out of symbolic issues. The Bill tackles that problem as regards the sensitive area of political patronage, and the point has only been referred to fleetingly in the evidence that has been presented so far, namely that the Bill deals with an area of direct but ambiguous political importance; that is, the ability of Ministers to appoint special advisers. That power is general throughout liberal democracies, but the problem in Northern Ireland is that the appointment of certain individuals has traumatised victims and the fallout from the McArdle controversy showed that those appointments can break generally accepted beliefs regarding politicians, duty of care and duty of responsibility to wider society. For that reason, we feel that the Bill is an opportunity to address those areas.

1217. **The Deputy Chairperson**: Thank you both. Does anyone have any questions?

1218. **Mr D McIlveen**: Thank you for coming today. Máire, I have met you on a couple of occasions. Cillian, it is the first time that we have met, so it is nice to see you here. Given the heavy weight of evidence that we have had, I felt that a couple of academic perspectives might help us to draw everything together. For that reason, I have taken a lot of interest in what has been said.

1219. A balancing act has been created as a result of the Bill, going from some of the evidence that we have got. In one regard, the argument is that people who have, to some extent, although arguably, committed the crime and done the time should not be unnecessarily stigmatised for sins of the past, so to speak. That having been said, in your view, as far

as the research is concerned, do you believe that society should include everyone for every position, particularly in the public sector? Some arguments have been put forward that suggest that you could find evidence that what we are effectively making an issue about is perhaps not an issue somewhere else. Given your research, I would be interested if you could shed any light on that.

1220. **Dr Braniff**: Thank you for your question. Based on the academic literature and research that has been conducted, I would say that the Bill speaks to the ideas of reintegration and rehabilitation. Nobody is denying anyone the right to work nor are we denying that anyone has the right to be rehabilitated, but the literature lets us question exactly what is being rehabilitated and who or what are we rehabilitating. If we look internationally, we can see international norms emerging from Kofi Annan, who talks a lot about disarmament, demobilisation and reintegration (DDR) processes where we have reintegration. However, within that process of rehabilitation, we need to consider, especially, proportionality; so, what is acceptable now and what is the norm now. Are we saying that the violence was acceptable? Are we saying that it was legitimate? If we just stick with rehabilitation, we would argue that it becomes relativist. Literature and research also show that we need an acceptance that this was wrong, and the Bill speaks to that. We need there to be an acceptance that the bloodshed was wrong. Rehabilitation is one thing, but there is a danger that we rehabilitate the conflict at the expense of restitution. Do you want to add anything, Cillian?

1221. **Dr McGrattan**: I just want to underline that last point. From a political science perspective, the debate over the balancing of rights, although it is an important debate, could potentially defer consideration of other areas. It gets caught up in the one debate, and those other areas relate to ideas about legislators' responsibility to society and what values you, as legislators, want to pass on to society. As Máire said, rehabilitation is one thing, but the danger is that we focus on rehabilitation at the expense of ideas such as restitution or reconciliation.

1222. **Mr Mitchel McLaughlin**: Thank you for your evidence. In your paper, you referred to the motivation for Jim Allister in bringing forward the Bill as being the controversy — I think that you referred to it as a crisis, which I find an intriguing word. I do not think that the political system was about to collapse, which is what I would call a crisis, but there was a huge public furore. What prompted your late submission?

1223. **Dr Braniff**: As an initial response, the reason for our submission was that these are areas that we research and that we are very concerned with. We saw an opportunity to speak to the Bill, and we thought that we would take that opportunity and submit something in the hope that, in some way, we could make a contribution to the debate. We were particularly moved by the recent flurry of activity around the debate. We were watching it very keenly and reading through the transcripts, and, in hindsight, we thought that, as academics who are writing about this stuff and researching it, we could provide a written submission and give our views on it.

1224. **Mr Mitchel McLaughlin**: You were not requested to make a submission?

1225. **Dr Braniff**: No.

1226. **Mr Mitchel McLaughlin**: In preparing the submission — and it is quite an interesting perspective — did you consider international experience? I suppose that I am thinking specifically about South Africa, because there is some reference to it, where, again, combatants and non-combatants combined to agree a political response. I think that you have raised, particularly in this morning's submission, very clear moral and ethical issues as opposed to political issues, if I could put it that way. With the political issues that we deal with constantly, although they do not

always achieve the necessary balance or compromise, that is, very often, how agreed positions emerge. So, no one gets everything.

1227. **Dr McGrattan**: That last point links in to your original comment — in my mind, anyway. What we, as political scientists, tend to look at is the relationships and the idea that people can agree. We talked about crisis because, in this specific instance, societal and political relationships gave rise to what we perceived to be something that was out of step with normal and accepted beliefs about what is ethical and moral. Where that was revealed particularly — and the spur for what we were doing — was in Ann Travers' testimony to the Committee.

1228. Perhaps, I could link in the idea of relationships and moral crises to the idea of South Africa. What that case and others, such as Latin America, seem to suggest is that there is model out there for truth recovery and dealing with victims. The problem with South Africa and Latin America is that the state was primarily responsible for the majority of killings. That is not necessarily the case here. Where we see the moral crisis coming up here is where the political playing field is being slanted away from that basic historical fact, namely that the state or state forces are being held to one version of morality that does not necessarily apply to ex-paramilitaries. So, we perceived that a moral crisis surrounded that fudging of the political playing field. It was creating political and moral confusion. I think that that was the impulse for our intervention.

1229. **Mr Mitchel McLaughlin**: I want to discuss that further with you, but may I just make an observation? Is it not interesting that 15 years after the signing of the Good Friday Agreement, the only party to put forward a formal proposition for an independent truth-recovery process is the republican movement?

1230. **Dr McGrattan**: Well, that is not something that we could answer. Your colleagues round the table would have to respond to that. I am not too sure whether it is interesting. If you look at other cases, such as Germany or Spain, you see that these things can take generations. Each generation looks at it differently. If you take that kind of perspective, the problem is the lessons that we are passing on to future generations. As educators, we are particularly concerned with that. You, as politicians, should be concerned with that as well.

1231. **Mr Mitchel McLaughlin**: You have brought me precisely to what I wanted to discuss with you. In your paper, you present a high analysis of politics and the standards of democracy to which we should all aspire. Clearly, however, we are a society in transition. Whether we have made sufficient progress, even with regard to conflict resolution, is arguable. We certainly have a very disappointing track record on reconciliation processes. In other words, we are a long way from the type of idealistic democratic standard that you describe or analyse in your paper. We have to accept that there is a process involved in moving from a society that was pretty much at war for 30 years, with a huge legacy of bad government before that, to a significant process of building up political confidence and competence, and, I suppose, sufficient trust in each other, where we begin to empathize properly and respond appropriately to the hurt that we have caused one another.

1232. Do you accept what I am saying, which is that what we need is, in fact, analysis of what we are doing in the here and now, which is a relatively short period of time in trying to build up a political process and form a government and democracy? I suppose that the flags dispute, in its most graphic way, demonstrates that, even though that particular situation, in itself, might be described as having been brought about by a democratic process. We have seen the consequences on our streets. So, we are a long way from the type of democracy that you describe.

1233. **Dr Braniff**: Your comment speaks to the notion and duty to move forward and to

move through the process by looking forward. For us and the research that we are doing, it shows that it will be a difficult process, as you have rightly pointed out. It is something that we have to move through.

1234. We are about to mark the fifteenth anniversary of the Good Friday Agreement. Previously in these sessions, we have said that we are 13 or 14 years into a process. We need to move on. Both Cillian and I educate at university level. We are keenly aware of the challenges with which our students are engaged. We have first-time voters, who have no direct experience of the conflict. We and you have to be conscious of the values that you are passing on to the next generation. What are we moving forward with? Politicians need to consider those questions.

1235. **Dr McGrattan**: From an academic point of view, the literature of peace building talks to those issues that you raise. It talks about ideas of negative peace and positive peace. Negative peace is simply the absence of war. Positive peace relates to something more; it is to do with social cohesion and social justice. The danger is that we institute only the negative peace — that of division and segregation. The Bill provides an opportunity to link peace with justice; to say that certain things are acceptable and others are beyond the pale. I see the Bill as helping to move forward. I see it is an opportunity to move forward towards the kind of society that you are talking about.

1236. **Mr Mitchel McLaughlin**: Even though we are addressing a post that is, at most, reflected in a tiny group of, perhaps, 13 or 14 people, you think that it would make that amount of impact, while we ignore all the rest?

1237. **Dr Braniff**: The testimony that you have already heard in this Committee is illustrative of the impact that it has made across society. It has been felt and has resonated, not only for us as academics, but for the victims' sector, the legal sector, and those who are involved in rehabilitation and reintegration. Everyone has been concerned by that appointment.

1238. **Dr McGrattan**: It would send out a signal that politicians recognise their duty of care and responsibility. So, although you might say that it deals only with a small number of cases, as you say, symbols are important in this society. It would send out an important message at a symbolic level.

1239. **Mr Mitchel McLaughlin**: Yet, not just the participants, but widespread international opinion, which was a key element in the peace process — that which made this imperfect democratic structure possible — was actually contributed to hugely by people who were, in fact, combatants — people who had hurt people. They found and seized the opportunity for a peaceful and democratic way forward. So, in a sense, does that not require the democratic process to continue to not only acknowledge that but provide opportunity for further contribution rather than close doors?

(The Chairperson [Mr McKay] in the Chair)

1240. **Dr McGrattan**: That idea has been voiced, and the evidence has been given. As academics, we have to try to unpack the idea and the narrative that you have spoken of. For us, the idea of that narrative is that peace is a privilege not a right, and, if we start to enshrine the idea that we should be thankful to paramilitaries for calling off their war or to self-appointed community spokespersons for shouldering the responsibility for peace and we refuse to tackle that narrative in legislation, we will say something very dangerous about the types of values that we see our society following.

1241. Academically speaking, the narrative seems to imply that peace is a privilege, and you, as legislators, need to take the opportunity to say, "No; it is a right".

1242. **Mr Mitchel McLaughlin**: I am not coming at it in that way, and all the issues that you have described are equally important. Your perspective sounds more like a moral judgement

on the situation than the application of political science. We have to deal with the reality.

1243. **Mr Girvan**: Thank you for your paper; it is very helpful. It is about the perception of what one community or one group deems to be ethically correct or not ethically correct. How does that weigh up with social justice? I appreciate that that might not always mean the same thing to every group, and I appreciate that your paper gives a very clear view of what is and is not socially and ethically acceptable in any society. I am not talking about Northern Ireland but any society.

1244. **Dr Braniff**: We will come at that from a political perspective as opposed to a legal perspective. We have sought to highlight the political implications of this debate and these types of debates. As Cillian pointed out, the political implications of the debate on social justice and what is acceptable and what is not with the balance of rights defer deeper consideration of the issues of what is enshrined in the state, what role the state plays and what responsibilities politicians see themselves having towards wider society. There is a second point related to that, which speaks to the central conceit surrounding acknowledgement and understanding; that is, that everyone's opinion is valid. That leads to the idea that everyone is a victim and everyone is a perpetrator and, therefore, that no one is responsible. We need to confront that idea, and that is the challenge for you.

1245. **Mr Girvan**: It is interesting that you say that because, yesterday, we had a debate in the Chamber, and Mitchel made a comment about heroes and said that somebody's hero is, to another person, a murderer. In fact, the same term was used on both sides of the Chamber: one called them heroes and others called them murderers.

1246. **Mr Mitchel McLaughlin**: Nelson Mandela said it before I did.

1247. **Mr Girvan**: I appreciate that, from a social point of view, we have to say that each society sees those things totally differently. It is about the overview, as seen from the outside, when you put people who have perpetrated heinous crimes in the past in power or in key positions. Is that exonerating them and saying that it was perfectly OK to do it? Nobody is saying that it was ever perfectly OK to do it. We are looking at it from an ethical point of view. I think that ethics have to be looked at and measured on the same scale by both sides. Until there is recognition of that by both sides, salt will continually be rubbed into wounds. I think that that has to be met.

1248. **Dr McGrattan**: I will come back on that. You talked a lot about ethics. What we are concerned about is the political effect of this. The political effect is to give advantage to one ethical perspective over another. You mentioned the question of political power. I think that that has been addressed before by other people, in that there are free and fair elections here, and if you do not like who is elected, fair enough. However, we are not essentially talking about elections but political appointments. It is about political patronage and what the Assembly is to society and to the international sphere.

1249. **Dr Braniff**: We are conscious that a lot of our research has been conducted internationally. Regardless of where we go, people ask, "How did you do this in Northern Ireland?" You are asking me for our perspectives on South Africa and Latin America, but we need to be conscious that people look to us for guidance as well. So, we should be outward-looking too.

1250. **Mr Girvan**: I appreciate that. Thank you very much indeed.

1251. **The Chairperson**: Apologies for being late. I had another event with 30 schoolchildren from Dunloy, and I could not keep them waiting.

1252. This is an interesting piece that I read through last night. The question that comes to my mind is, given the Northern Ireland context and what is

happening in Belfast and the greater Belfast area, how does the Bill fit in with how we move this society forward? In any society, even one that has not come through the conflict that we have, I think that we still need to reintegrate prisoners, no matter the reason why they were in jail. Where do you stand on the prohibition of ex-prisoners for this post? Should that apply to other posts? In what context do you take that position?

1253. **Dr McGrattan**: As I understand it, Sir George Quigley and Sir Nigel Hamilton spoke about the private sector and such posts, and they compiled research on that. I think that that is outside our remit. You mentioned reintegration, the riots and everything that is going on. As political scientists, we would emphasise the duties that politicians have as political elites and leaders. You have a special position that is over and above that of normal citizens. You have responsibilities to question what is going on in society and to show leadership. As regards what is going in east Belfast, in particular, I think that it falls on you to stand up. I certainly come at it from that perspective. Political science would ask, "What are the politicians doing?"

1254. **Dr Braniff**: I will come in on this as well. As regards the narrative, effect and discourse of moving forward and moving on, it is imperative that the state does not move forward in a way that abdicates its responsibility to some of its most vulnerable citizens — the victims of our conflict. I pointed that out in the initial submission and here.

1255. **The Chairperson**: I am conscious that I was absent for the previous conversation. What view do you take of international processes, such as the one in South Africa?

1256. **Dr Braniff**: Without repeating ourselves, my PhD research was on the Balkans, so I will speak a little about Serbia and Croatia. They have struggled with similar sets of issues, yet there is a very different dynamic there because there is an international presence in the form of the European Union and the United Nations International Criminal Tribunal for the former Yugoslavia (ICTY). The internationalisation of these issues creates a different dynamic from what we have here. It is a collectivisation of blame and guilt, apportioned through the processes of conditionality, where your reward is incentivised by turning over your heroes/war criminals. Through indictments and transfer to the criminal court, this process of heroes/criminals is internationalised. It is incentivised by greater reward, for example, accession to the European Union.

1257. There are two things that particularly link and are similar to the experiences that we see here. There is now greater nationalism around these issues in Serbia, and a fissure is emerging in Bosnia, where we can see the stagnation, almost, of the political institutions. From international experience, we have to be careful about what we take as our point of comparison, but, at the same time, there are issues that bear some similarity.

1258. **Mr D Bradley**: Good morning again, from a different perspective. Some people might say — perhaps some have touched upon this — that you live in a rarefied atmosphere, in an ivory tower, and that you look at political science from that perspective while other people have to dirty their hands in getting on with the practicalities of making agreements and constructing structures that will work for democracy and lead to peace. In those circumstances, unfortunately, it may not always be possible to uphold the type of high standards that exist in the ivory towers. How would you respond to that?

1259. **Dr McGrattan**: I have a couple of responses to that. First, you have a choice about pushing the Bill forward or not. That is the responsibility that lies with you as legislators.

1260. **Mr D Bradley**: I am thinking more about what brought us here and how people were able to be appointed as special advisers before this. Obviously, there was certain agreement around that, and

it seemed to work, and it enabled the process.

1261. **Dr Braniff**: As I said, we are about to mark the fifteenth anniversary of the Good Friday Agreement, so it is fitting that we start to appraise what the Good Friday Agreement was, what it has meant and how we progress it forward. By virtue of us being here today, we are taking ourselves out of our ivory towers, which you suggest we live in. Our research is not driven by an ivory-tower mentality. We seek to very actively engage, and we are very actively concerned with the political process that is going on in Northern Ireland. I restate that the research that we have is outward-looking. It seeks to engage, and it seeks to have practical outputs. We engage publicly, and these issues are spoken about in public forums outside of this Building as well. This is the opportunity to, perhaps, insert, for want of a better word, some morality into our peace process.

1262. **Mr D Bradley**: You referred to Ann Travers’s testimony to the Committee. I think that everybody will agree with you that it was extremely moving and powerful. She differentiated between special advisers, who are not elected, and people who may hold ministerial positions, which are higher than special advisers — so we are told — and who are elected. If we continue the logic of your paper, should we not also put some sort of prohibition on those who stand for election?

1263. **Dr McGrattan**: I do not see that as being the logic of the paper. We are asking about the broad political culture that is coming out. We are not questioning the way in which democracy is set up in Northern Ireland; we are saying that democracy is set up in such a way in Northern Ireland that there can be dangers that political capital can be made out of different issues. We are not questioning what the institutions are or what the rules are; we are just suggesting that, sometimes, those issues might arise. This represents one opportunity to tackle the potential problems.

1264. **Mr D Bradley**: Do you think that the Bill is the best or only way to do it?

1265. **Dr McGrattan**: We are not legal scholars. I am not too sure whether it is the best or only way. I think that it would be a positive way forward.

1266. **Dr Braniff**: We speak again to the idea of a process. If this is part of the process of discourse and debate around what Northern Irish governance should be and what kind of values we seek to cherish in Northern Ireland, we need to take different steps to say to our students that these are the values that we uphold. Hopefully, that will go some way to speaking to wider issues that we will continue to deal with as we work through our past.

1267. **Mr D Bradley**: That is grand. Thank you very much.

1268. **The Chairperson**: Cillian and Máire, thanks very much. Your comments will help the Committee to sign off on its final report, which, hopefully, it will do shortly.

16 January 2013

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mrs Judith Cochrane
Mr Leslie Cree
Ms Megan Fearon
Mr Paul Girvan
Mr John McCallister
Mr Mitchel McLaughlin
Mr Peter Weir

Witnesses:

Professor Peter Shirlow — *Queen's University Belfast*

1269. **The Chairperson**: I welcome Professor Peter Shirlow from Queen's University Belfast. You are very welcome.

1270. **Professor Peter Shirlow**: Thank you.

1271. **The Chairperson**: Do you want to make a quick opening statement?

1272. **Professor Shirlow**: There are several things. Hopefully, the information is available. It is important, at the outset, to say that there is no unified victims' voice. We have to realise that there are multiple voices regarding victimhood. That is crucial.

1273. Some comments were made about voicelessness. We have seen, through funding, media coverage, etc, that there is no voicelessness of victims; victims' issues are very well articulated in our society. They come from disparate backgrounds and have different interpretations, but they are most certainly there. I agree that the funding should have been given; over £70 million has been given to victims' groups. The idea from some of the representations that are made that there is no funding, there is no place for victims, or that they are voiceless, is untrue. I understand the emotions of that; I understand that, privately, many people feel that their concerns and desires are not listened to. One of the problems in this society is that the issue of victims creates so much noise that we do not get to grips with solutions, and we do not actually articulate and work our way through what would be progressive and meaningful for this society.

1274. I think that it is also important to understand that victims' voices do not just fall between the orange and the green. I have spoken to police officers who are very supportive of conflict transformation among former paramilitary prisoner groups, and I have spoken to clergy across the ideological divide who are also very supportive of that. What is very regrettable is this broad-brush approach that every person who was convicted of a conflict-related offence is the same. I think that, within those organisations, there is a broad constituency of people with different motivations, different experiences and, most certainly, different understandings of how they look upon their own past.

1275. One of the things stated this morning should be corrected. There is massive exclusion of former prisoners from our society. It is legally enshrined in fair employment legislation that a person with a conflict-related conviction can be dismissed by an employer without any recourse, which many of us can seek through equality agencies and so on. So, I think that we have to correct that. I do not say that as either a republican or a loyalist. I say that as someone who has done detailed research on those communities and constituencies.

1276. My argument is that we, as a society, should be engaged in conflict transformation. Conflict transformation is dirty, difficult and grinding. Sometimes it is successful, but sometimes it is not. I point to the fact that there has been no loyalist reaction to dissident violence as an example of transformation

in loyalism. I point to the fact that people involved with former prisoner groups are working against dissidents. They have appointed groups such as Alternatives, which is doing excellent restorative justice work in Protestant working class areas. I also point to Lisburn PSP, a major social economy project for former UDA prisoners. So, a significant contribution has been made by former prisoners in the context of conflict transformation. My argument, as an academic, is how we measure and analyse that. I would not sit here and say that that work had taken place unless I had adequately measured it. I do not come here as a fellow ideological traveller. I come here as somebody who believes in conflict transformation.

1277. Victims are always seen as those at the harsh end of violence in this society. However, one of the things that we forget is that there is also victimhood in community, which was a great driver and motivation for violence. I do not think that violence is legitimate, but, at the same time, we have to realise that there are multiple forms and effects of violence.

1278. In some research that we did some years ago among republican and loyalist prisoners, we found that one third had lost a family member. If we look at the structure of Northern Irish society and at victimhood here, we see that that level of loss is mirrored by only the prison officer/security force community. That is way beyond the knowledge or experience of other people whose family members were killed. Around 50% of republicans and loyalists have also lost a relative. By “family member”, I mean a direct family member: mother, father, brother or sister. So, when we have these debates, I think we have to be aware that victimhood is embedded in these communities. It is not just simply a case of perpetrator and victim.

1279. One of the other important things that we found from our research was that one third of republicans and loyalists were intimidated out of their home. That is much greater than the figure for the average population in society. I am not condoning or condemning violence or the motivations therein. What I am arguing is that we cannot simply dismiss the fact that many houses and homes were affected by the perniciousness of violence in society.

1280. I also point to our research on victims and our work, yet again, on republicans and loyalists. The vast majority agree that civilians were victims of the conflict and that those on the other side were victims of the conflict. I point out that, in the republican community, former prisoners were twice as likely as other members of their community to state that the police, the British Army and prison officers were victims. So, the idea that there is just one body, one ideology and one experience is incorrect. If we begin any argument or debate that is not factually linked to evidence, we do not go anywhere.

1281. One of the things we have to appreciate is that significant consequences come from being part of a paramilitary organisation involved in a conflict. You made the point about hurt and so on. Thirty-five per cent of republicans and 50% of loyalists are on sedatives and tranquilisers. That is five or six times greater than the figure for the standard population in Northern Ireland. They are six times more likely to be on antidepressants. With sedatives and antidepressants more generally, we work out that it is three, four or five times more likely. With any measure for mental ill health or well-being, we find that former political prisoners or former terrorists, whatever you want to call them, suffer multiple forms of mental distress. Over one third of former prisoners have considered suicide and are four times more likely — 12 times more likely among women — to suffer from alcoholism than the standard population in Northern Ireland. That is perhaps contrary evidence to much that has been said so far. It gets beyond the idea of heroes because that is not exactly what is represented by that type of evidence.

1282. Questions have been asked about international examples. At a general

level, we know that DDR is successful when it is based on inclusion. Any form of demobilisation, disarmament and rehabilitation works through inclusion and not by excluding people from society. For you as politicians, that is a difficult situation because significant sections of society feel harmed and not listened to, but, at the same time, we have to make decisions. I point to that body of successful transformation work in the former prisoner constituency as an example of how the vehicle of conflict transformation is moving forward. I think that the flags protest would be much worse if it was not for some of the leadership and activities within loyalism. I feel that quite strongly.

1283. Conflict transformation is the reason why I am here. I believe in that. The Bill is quite clearly contrary to that. I also chaired the review panel on employers' guidance on recruiting people with conflict-related convictions, and we found very few people in industry who wanted to perpetuate fair employment legislation that could disbar former prisoners. If the Bill were to come into law, it would be another bar on those people, irrespective of many of the moral issues that are thrown up. If a constituency is prepared to engage, move forward and challenge itself, it should be included in society.

1284. **The Chairperson**: Thanks very much for the documentation that you provided. It is very useful, especially the report of the review panel. The report refers to dissident groups that use exclusion of ex-prisoners as a means for negative and hostile propaganda. Can you elaborate on how that could undermine the peace building that is under way?

1285. **Professor Shirlow**: Within loyalism and republicanism, I have had conversations, through research, with many people who, in many ways, lick their wounds, and they are concerned because they feel either betrayed, forgotten or marginalised. In many ways, those people would not necessarily be sympathetic to dissidents in either section but would state uncertainties about their commitments and allegiances. Most people do not feel that for ideological reasons, but they say to me that they feel excluded from society. We are talking about a community in which 50% or 60% have told us in survey after survey that they have been turned down for jobs and have not had interviews when they have been the best person for the job. That sense of fatalism or frustration comes in.

1286. I was speaking one day to a guy from a loyalist background who was in prison for five or six years. He would be affected by this legislation, and I do not think that he would ever end up being appointed. That man was in prison and joined the Christian Fellowship. When he came out of prison, he got a job with a gentleman who was involved in the Christian Fellowship and worked for 25 years in that man's place of work. He was promoted on multiple occasions, was a good citizen, ran a youth club and intervened in all sorts of youth activities in his community. The company went bust, and he could not find work. I understand the emotions of the McArdle issue, but a broad brush whereby everybody is the same is not conflict transformation. Are we seriously talking about excluding people such as that? Are we seriously talking about excluding a middle-aged person? That man cannot get a job. He has been a good citizen, but society tells him that he is not. A political maturity has to kick in, in many ways. To answer your question: prisoner groups go into schools and youth clubs, and they tell people that the allure of violence is wrong. The argument that loyalism makes is that you go to prison, you lose your wife, you lose your income, you come out, and you are put on the scrapheap. That work is crucial in diverting people away from conflict. It challenges the voice of those who are irredentist and want to take this society back to where it was. It is crucial, as are the voices in this room and elsewhere that condemn the dissidents and those who engage in that type of violence.

1287. **The Chairperson**: We have not had any representation from loyalism or loyalist ex-prisoner groups on the Bill. Is that a

sign that they are resigned to the fact that they will never be in a position such as this? Is it because, as you say, they feel excluded from the process, and so they think, why should they even participate? Is that —

1288. **Professor Shirlow**: I can only guess. I assume that it is perhaps because it seems like a Sinn Féin issue; that might have been a disincentive. It could also be a sense that, for example, the Progressive Unionist Party may never get into government and, therefore, will not appoint a special adviser. People could think, what is the point in engaging with that? I do not know the answer; I can only imagine what the answer would be. I could not say definitively.

1289. **Mr Mitchel McLaughlin**: You are very welcome. I found the information to be very constructive and helpful. What gets lost in this is the process that we are involved in. You talked about the resolution of the conflict and the issues that perhaps caused the conflict in the first instance. Of course, even the agreement, substantial though it was, could not deal with those issues. There is formula, and commitments are given by participants. There is a recognition that, over a period of time, attitudes may change and very substantial change will flow as a result.

1290. If I fast forward to the circumstances around the flags issue, you see some of the consequences when society has not prepared itself to accommodate or manage that change. Even the political leaderships had difficulty in coming up with an appropriate and timely response to all that. Clearly, it is a work in progress. It has to be accepted that there is a very uncomfortable relationship among those who were non-combatants and were unwilling spectators or victims of some of the consequences of the conflict. Sometimes, when the opportunity provides, you attempt to understand that this is a conflict that none of us who is alive today and may be involved in political leadership or government, for that matter, had any responsibility in starting. It began before we were born; we were born into conflict, in other words. It is going to take a long time to work that out of our DNA.

1291. In those circumstances, the principle of inclusion has proved to be very valuable. It has proved its worth by giving us a better form of politics than we had previously because there used to be issues of domination, subjugation and resentment. Perhaps there was also complacency: the view that that was the way that it was always going to be rather than a malign intention to victimise people. The consequence was the conflict that engulfed us.

1292. To that extent — this might be seen as controversial, but it is not intended to be — we were all victims. People will deny that we were all victims because they are still in the process of pointing the finger and allocating blame. However, that will not give a solution to the people who are in jeopardy of being re-traumatised because this or that happens, or a face reappears from the past. If we operate on the basis that people are entitled to change, we will have to pay the price. For people from my community, that might mean accepting that there will be no judicial or legal accountability. The British Government are in a position to make sure that that does not happen, and they appear to be exercising that power.

1293. If we were to look at individual circumstances around issues such as the Finucane case, you can see how difficult it is. That should not stop us, which leads me into my question. We might have to rely on international experience, and although I have never heard anyone argue that there are perfect examples that fit perfectly to our circumstances, there are lessons from all of those. There are lessons from the failures as well as from the successes, if only to remind us that we are not the only society that is riven and divided in our aspirations or on how we can manage this process. From your studies of other peace processes and conflict resolution processes, are there particular case studies that would be helpful to us in these circumstances?

There are clear party political positions on the issue of special advisers and perhaps on the fact that this issue affects one party on the Executive only. It is fundamental to addressing the many other issues that we have to solve as we go along.

1294. **Professor Shirlow**: Although it may be strange to people in this room, we are now held up as the exemplar of conflict transformation. People in this room may laugh or giggle at that, and they may be right to laugh and giggle.

1295. **Mr Mitchel McLaughlin**: I do not think so.

1296. **Professor Shirlow**: Our way is now the direction. There is a sore in this society, which is that the unionist community thinks that the issue of victims is one way, and that needs to be attended to. In the case of the Saville inquiry, someone will say, “What about Kingsmills?”, or whatever else, not that these things should not happen.

1297. **Mr Mitchel McLaughlin**: I hear that.

1298. **Professor Shirlow**: If we aspire to the notion of equality, whatever model we adopt must recognise that. It cannot simply be that we ask one section of society to expose its perpetuation against another side. Although the Bill may be reflective of that to some extent, that is still a major lifting process in this society. It is where unionists feel —

1299. **Mr Mitchel McLaughlin**: It is the response to that sore and that itch rather than the solution.

1300. **Professor Shirlow**: Whether those comments by unionists are right or wrong, when they look at Saville and other issues, they feel that this is a one-way process. We do not need a model from outside for that to change. We need to have the right framework to engage in a proper debate, and that framework has to work only if we do not go down the route of prosecuting people. That is the model from other societies that works. Many people here will decry the funding of prisoner groups and say that that was a great assault against the victims of the conflict. Other countries are now looking at that model. One of the problems in other DDR processes is that you fight the war, say to people that it is over and give them €50 for their Kalashnikov and say, “away you go”. Those people go away and sit at home, and, a year later, say that they are still on the dole and not included so they are going back to war.

1301. One reason why our process was successful is that it did things that were counter to what public opinion probably wanted. One of those was to fund the former prisoner model. We have a good model of transformation. At times, we do not realise that, but whatever we do on victims — of course we can point fingers — it cannot be based on a process of putting people back in prison. We will not get the generosity that is required to move this society forward if we are simply going to imprison people for the past through, for example, the HET. I do not think that that works. The problem that is thrown in then is that victims say that that is not fair and that they want these questions to be answered.

1302. I am not answering your question very well. The argument is that we have not arrived at a place where we have the right structure and process, and some people are still using victims as a political football. The victims of the conflict whom I know need medical care, emotional support and someone to come and hold their hand. We have missed out on the emotive terrain of victims in this society because we turned it into an ideological battle as opposed to what we should have been doing. Why in Northern Ireland do we have more people on antidepressants than in other societies? It is because we went through a conflict. When I do my research, the stories that I hear are that x is unwell and cannot see a psychiatrist for six months and that y is unwell and all the doctor does is give him or her tranquillisers. I do not think that we did that nurturing capacity of victims as well as we could have done. That might have taken a lot of heat out of the debate in this society. So of course it will be political. That is the nature of our

society. We really should have focused our concerns there. I do not think that it is too late to do that. That is very important.

1303. **Mr Mitchel McLaughlin**: You kind of addressed my point. I wonder whether our process of truth recovery, victims' issues of retribution, justice, truth, or whatever would actually help them to heal. The South African process had many faults and also many lessons. One was the issue of getting or accepting corporate responsibility, whereby someone, on behalf of an organisation or Administration, would step forward and say: that was our responsibility.

1304. **Professor Shirlow**: On the day that the Saville report was launched, one of the biggest cheers was when the Prime Minister, in some way, evoked those ideas that you mention. There was a generosity on both sides; on one side, that it was said and, on the other, that it was accepted. In any society that you study that has gone through a truth recovery process, of course it will have been difficult because we are talking about people who were killed. It cannot be anything other than difficult. However, that is not a reason not to do it.

1305. **Mr Mitchel McLaughlin**: What was interesting and, perhaps, sad, given how long and how resiliently the families had worked together in solidarity, was that they were divided immediately between the clear majority who said that they had got the truth; that was enough and was what they needed: to clear their relatives' names. A minority wanted to pursue the idea of legal retribution or justice. The result is that they still march on Bloody Sunday. The issue has not gone away.

1306. **Professor Shirlow**: Does that not illustrate the point? I have found it from conducting research. Everyone in this room will have spoken to victims. Say, for example, there is a family of five or six siblings, there will be five or six opinions, so it reflects wider societal problems. In a family, one member will say, "I just want to leave that. I want it to go away. I want to get on with my life." Others will want retribution, retribution, retribution. Even at the scale of a family, there will sometimes be a diversity of opinion about the best way to move forward.

1307. **Mr Mitchel McLaughlin**: With regard to the family and wider society — this is my final point — the uproar and media coverage on Mary McArdle's appointment deals with an absolutely microscopic example in terms of the scale of suffering. That is not to diminish it in any way at all. I have engaged with Ann Travers, so I know exactly what that poor woman has experienced. However, the Bill will not deal with the issues that we discuss. It might, if the Assembly goes along with it, result in adding another layer of resentment when there is enough already. It will not resolve the kind of pain that victims experience.

1308. **Professor Shirlow**: That goes back to my original point, which is that there is no uniform victims' voice. That is the point. Legislation such as this will not create a uniform voice. That is the reality.

1309. **Mr Mitchel McLaughlin**: Thanks very much.

1310. **The Chairperson**: Peter, the report reflects on the key findings on the impact of the employers' guidance. Why was there not greater buy-in to that? You referred to a number of councils, a major public sector employer and a major retailer, which is of interest. However, why was there not further buy-in?

1311. **Professor Shirlow**: I cannot say this definitively, but I think that the councils fell between, as I referred to in shorthand, orange and green. That might have been the case. However, Belfast City Council, which, of course, in our view, is mixed — perhaps becoming more fragmented as we speak — and shared — or unshared; whatever day it is today — was one of the groups to ratify it.

1312. One of the fundamental problems of being the chair of the review panel on those guidance principles was that there was no real investment in the principles themselves. As I recall, if

we had made it more evident that the guidance principles were there, we might have had much greater uptake, the point being that, obviously, all the uptake was positive. Anybody who thinks that there is not exclusion and that that legislation excludes is wrong. It is as simple as that. They are just wrong. Of course, there are multiple exclusions.

1313. **The Chairperson**: Obviously, a number of organisations endorsed the principles: the Irish Congress of Trade Unions, the Confederation of British Industry, the chambers of commerce and other organisations. Did they do anything to follow through or did they simply endorse the principles?

1314. **Professor Shirlow**: They endorsed the principles, promoted them and encouraged others to accept them. They have done that very publicly. The guidance was important to them. It was not simply tokenistic. It was not as though they were forced to do that, and it was certainly voluntary. They supported it very strongly. Again, it is another complexity of our society that industrialists can support the inclusion of former prisoners. I am sure that some of those businesspeople were probably victims of the conflict in many ways. So there is also a generosity in that constituency.

1315. However, one thing about the guidance is that it is now sitting on a shelf. Our recommendations are sitting on a shelf. I will say no more. They are sitting on a shelf, as much of my research is. *[Laughter.]*

1316. **The Chairperson**: Do you agree that, from your perspective, the mistake was that the principles should have been put on a legislative footing?

1317. **Professor Shirlow**: That is our argument: maintain article 2(4), but the onus would be on how the conviction related to the job, which would be no different from legislation throughout Europe — for example, you would not have paedophiles working with children. I know that that has been brought up in some of your discussions. I mentioned the example of the person who was in the Christian Fellowship, who said that he could not even get a job putting bolts in a piece of wood. Some employers recognise that those people have skills and abilities. Sometimes, they make very good employees, as do many people who are in long-term unemployment. They make good employees because, when they get jobs, they are enthusiastic to get them.

1318. I should point out that the issue also affects families. I have spoken to former prisoners who have told me that even their nieces and nephews have been unable to gain work. In some cases, they did not even know their nieces or nephews. Say, for example, I go to prison and my brother shuns me. He has nothing to do with me. He does not speak to me. I do not even know my nephews and nieces. However, they are also being impacted on by that type of legislation, so it runs into generations. It does not simply affect prisoners themselves. In some cases, it also affects their families.

1319. Society has a choice. It can either say that it is good or, as business leaders are saying, it is not helpful. There are more positive ways to include people.

1320. **The Chairperson**: Peter, thank you very much.

30 January 2013

Members present for all or part of the proceedings:

Mr Daithí McKay (Chairperson)
Mr Leslie Cree
Ms Megan Fearon
Mr Paul Girvan
Mr David McIlveen
Mr Mitchel McLaughlin
Mr Adrian McQuillan
Mr Peter Weir

1321. **The Chairperson**: I refer members to the secretariat paper on the Committee's clause-by-clause consideration of the Bill. We will start at page 2. Point 4 refers to the Committee's previous meeting, at which members gave initial consideration to the Bill's clauses. A number of members advised that they may propose amendments to the Bill through the Committee. Members should go through the Committee or liaise directly with the Clerk of Bills to table any amendments. However, to date, no amendments have been received from members. It will be necessary to establish a clear Committee position at the meeting today on any proposals for amendments from the Committee, irrespective of how fully formulated they are. Do members want to make any comment?

1322. **Mr Mitchel McLaughlin**: I wish to introduce amendments to a couple of clauses, but not today, because work is ongoing. I want to establish that any decision taken by the Committee today will record the fact that — there may be other members for all I know — the Committee decisions were, I presume, by majority. I am not in a position today to process the arguments, but I would be concerned if the impression was given that the clause-by-clause consideration resulted in unanimous positions in all circumstances, as I am signalling very clearly that I intend to introduce amendments to some clauses. If the record of the discussion reflects that, I will be content.

1323. **The Committee Clerk**: For clarity, when there is no consensus in the Committee, the report on the Bill will, as with any Bill, reflect a majority position. There is precedent that the Committee can agree to make a reference in the report to divisions being detailed in the minutes of proceedings that is attached to the report.

1324. **Mr Mitchel McLaughlin**: OK; thank you.

Clause 1 (Meaning of "special adviser")

1325. **The Chairperson**: Clause 1 refers to the meaning of "special adviser", which is defined as a person appointed to the NI Civil Service (NICS) to advise a Minister or junior Minister. In written evidence, the Office of the Legislative Counsel (OLC) advised that the Civil Service Commissioners (NI) Order 1999 did not make provision for a junior Minister to appoint a special adviser. The sponsor of the Bill subsequently advised that the order had been amended by the 2007 Order and that junior Ministers are among those who can make such appointments. The Bill sponsor has also advised that he will move an amendment to address a technical issue raised by OLC about the clause. Details of the issue raised and the Bill sponsor's response are in members' papers. Is the Committee content with clause 1, subject to the proposed technical amendment from the Bill sponsor?

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 1 agreed to.

Clause 2 (Special adviser not to have serious criminal conviction)

1326. **The Chairperson**: This clause prohibits a person with a serious conviction from being appointed as a special adviser. Those in post with such an offence or

who incur such a conviction while in post will have their appointment terminated. A duty is placed on Ministers to inform the Department whether a special adviser appointed by them has a serious conviction.

1327. Members will wish to refer to the evidence received regarding clause 2 in the table of themes and issues provided in their Bill folder. Theme 1 is consideration of the needs of victims; theme 2 is blanket disqualification versus individual assessment; theme 3 is compatibility with other human rights requirements; and theme 4 is commitments under the Good Friday/ Belfast Agreement and the St Andrews Agreement.

1328. The Bill sponsor has advised that he will move amendments to address technical issues raised by OLC in relation to clause 2. Again, information on that is in your Bill folder. So, I will put the question: is the Committee content with clause 2, subject to the proposed technical amendments from the Bill sponsor?

1329. **Mr Mitchel McLaughlin**: May I record my intention to introduce an amendment to this clause, as well? In recording my intention, I would like to take the view of the Committee.

1330. **The Chairperson**: We will take a vote on clause 2.

Question put, That the Committee is content with the clause, subject to the proposed amendments.

The Committee divided:

Ayes 5; Noes 3.

AYES

Mr Cree, Mr Girvan, Mr D McIlveen, Mr McQuillan, Mr Weir.

NOES

Ms Fearon, Mr McKay, Mr Mitchel McLaughlin.

Question accordingly agreed to.

Clause 2 agreed to.

1331. **The Clerk of Bills**: May I just clarify that agreement has been made that clause 2 is subject to proposed technical amendments by the Bill sponsor?

1332. **The Chairperson**: Yes.

Clause 3 (Meaning of "serious criminal conviction")

1333. **The Chairperson**: This clause defines a "serious criminal conviction" as one for which a sentence of imprisonment of five years or more, or another specified sentence, was imposed. Members may wish to refer to the evidence received regarding clause 3 in the table of themes and issues provided in their Bill folder, and those are listed. The sponsor has advised that he will move amendments to address technical issues raised by OLC in relation to this clause. Again, that information is provided in the Bill folder.

1334. Is the Committee content with clause 3, subject to the proposed technical amendments from the Bill sponsor?

1335. **Mr Mitchel McLaughlin**: Sorry — before you put the question — an issue about conflict-related sentences came up in the evidence and that particularly interested me. It is not so much a subject for an amendment to clause 3, but it may be an issue that requires an additional clause. How would you propose to deal with that eventuality? For example, would acceptance of clause 3, subject to the sponsor's amendment, preclude the possibility of introducing a clause that addresses the issue of conflict-related sentences?

1336. **The Clerk of Bills**: No. You have kind of clarified now that you have an issue there. The Committee is indicating its position —

1337. **Mr Mitchel McLaughlin**: So, you could support clause 3, as presented today —

1338. **The Clerk of Bills**: In an ideal situation, you would have amendments beforehand, but any Member may introduce a new clause or amendment any time up to 9.30 am on the Thursday before Consideration Stage. You would

probably address that in the House as to the fact that things developed or whatever —

1339. **Mr Mitchel McLaughlin**: Yes.

1340. **The Clerk of Bills**: — but the member has put his view on the record now.

1341. **Mr Mitchel McLaughlin**: What you are advising is that it is possible to support clause 3, as presented today, without prejudice to the ability to introduce a new clause or amendment at Consideration Stage.

1342. **The Clerk of Bills**: It does not prevent an individual Member from doing that.

1343. **Mr Mitchel McLaughlin**: OK; I understand.

1344. **The Clerk of Bills**: The Committee Clerk may want to reflect that position in the report.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 3 agreed to.

1345. **Mr Mitchel McLaughlin**: I want to record the fact that that was unanimous.

Clause 4 (Annual report)

1346. **The Chairperson**: Clause 4 places a duty on the Department to prepare, and on the Minister to lay before the Assembly, an annual report about special advisers. There was general support for this clause in evidence received. Members should see theme 5 in the table of themes and issues in their Bill folder. The Bill sponsor has advised that he will move an amendment to address a technical issue, again raised by OLC, in relation to clause 4. That information is provided. Is the Committee content with clause 4, subject to the proposed technical amendment from the Bill sponsor?

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 4 agreed to.

Clause 5 (Code of conduct)

1347. **The Chairperson**: This clause places a duty on the Department to issue, and on the Minister to lay before the Assembly, a code of conduct for special advisers. This code forms part of the adviser’s contract of employment. No issues were raised in the evidence in respect of this clause. Members should see theme 5 in the table of themes and issues. The Bill sponsor, again, will move amendments to address technical issues raised by OLC. Is the Committee content with clause 5, subject to the proposed technical amendments from the Bill sponsor?

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 5 agreed to.

Clause 6 (Code for appointments)

1348. **The Chairperson**: This clause places a duty on the Department to issue, and on the Minister to lay before the Assembly, a code governing the appointment of special advisers. It must provide that an appointment must be subject to the same vetting procedures as those that apply when appointing senior civil servants to the NICS. Members may wish to refer to the evidence on clause 6 in the table of themes and issues. The Bill sponsor has again advised that he will move an amendment to address the concerns of OLC. Is the Committee content with clause 6, subject to the proposed technical amendment from the Bill sponsor?

1349. **Mr Mitchel McLaughlin**: I intend to table an amendment to this clause. I wish to record that in the proceedings.

1350. **The Chairperson**: Shall we take a vote on this clause?

1351. **Mr Mitchel McLaughlin**: Yes, please.

Question put, That the Committee is content with the clause, subject to the proposed amendment.

The Committee divided:

Ayes 5; Noes 3.

AYES

Mr Cree, Mr Girvan, Mr D McIlveen, Mr McQuillan, Mr Weir.

NOES

Ms Fearon, Mr McKay, Mr Mitchel McLaughlin.

Question accordingly agreed to.

Clause 6 agreed to.

Clause 7 (Advisers to the Presiding Officer)

1352. **The Chairperson**: This clause amends the Civil Service Commissioners (NI) Order 1999 to remove the Speaker of the Assembly from the list of those entitled to appoint a special adviser to the NICS without adhering to the merit principle of appointment on the basis of fair and open competition. For the evidence received relating to clause 7, members may wish to refer to theme 6 on Secretary of State consent in the table of themes and issues in the Bill folder.

Question, That the Committee is content with the clause, put and agreed to.

Clause 7 agreed to.

Clause 8 (Interpretation)

1353. **The Chairperson**: This provision contains definitions of words or terms used in the Bill. OLC has raised some technical points in relation to this, and the Bill sponsor has agreed to table amendments to address those. Is the Committee content with clause 8, subject to the proposed technical amendments from the Bill sponsor?

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 8 agreed to.

Clause 9 (Transitional provisions)

1354. **The Chairperson**: This clause gives effect to the provisions of the schedule. No issues were raised in the evidence.

Question, That the Committee is content with the clause, put and agreed to.

Clause 9 agreed to.

Clause 10 (Commencement)

1355. **The Chairperson**: This clause provides for clauses 5 and 6 to come into operation on the day that the Bill receives Royal Assent. Clause 2(4) will come into operation one month after that. All other provisions will come into operation two months after Royal Assent. OLC raised some concerns, and the Bill sponsor advised that he will move amendments to synchronise the timings of the commencement provisions. That information is contained in the Bill folder. Is the Committee content with clause 10, subject to the proposed technical amendments from the Bill sponsor?

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 10 agreed to.

Schedule 1 (transitional provisions: termination payments)

1356. **The Chairperson**: The schedule makes provision for payment to existing advisers whose appointment is terminated under the legislation. A special adviser is entitled to a payment of three months' salary or the amount stipulated in their contract, up to a maximum of six months' salary. Members may wish to consider the evidence provided under theme 3 in the table of themes and issues in the Bill folder. Is the Committee content with the schedule as drafted?

1357. **Mr Mitchel McLaughlin**: I will state our position, and maybe there should be a vote. An amendment that I am considering tabling to an earlier clause may have a consequence for this provision. I have recorded my interest in the earlier clause. Is that sufficient, or should I indicate that there may be a possible consequence for this provision? I suppose that, for safety, I should.

1358. **The Clerk Of Bills**: Yes. If you feel that there may be a consequential amendment to the Bill, you should. I urge the Committee Clerk to note that you registered this at the time.

1359. **Mr Mitchel McLaughlin**: OK. I would like the Committee to vote on the schedule.

Question put, That the schedule be agreed.

The Committee divided:

Ayes 5; Noes 3.

AYES

Mr Cree, Mr Girvan, Mr D McIlveen, Mr McQuillan, Mr Weir.

NOES

Ms Fearon, Mr McKay, Mr Mitchel McLaughlin.

Question accordingly agreed to.

Schedule 1 agreed to.

Long Title

Long title agreed to.

1360. **The Chairperson**: The next step is that the initial draft of the Committee's report to the Assembly on the Bill will be considered at our meeting on 6 February, with a view to agreeing the final draft report on 13 February before the Committee Stage expires on 15 February. Members may wish to consider, at this stage, whether they have any recommendations or requests for assurance that they wish to be included in the report. Consideration Stage is a matter for the Bill sponsor to bring forward in line with the requirements set out in the Assembly's Standing Orders. Any agreed Committee amendments are required to be tabled in advance of Consideration Stage.

Appendix 3

Memoranda and Correspondence from the Bill Sponsor

Civil Service (Special Advisers) Bill

[AS INTRODUCED]

CONTENTS

1. Meaning of "special adviser"
2. Special adviser not to have serious criminal conviction
3. Meaning of "serious criminal conviction"
4. Annual report
5. Code of conduct
6. Code for appointments
7. Advisers to the Presiding Officer
8. Interpretation
9. Transitional provisions
10. Commencement
11. Short title

SCHEDULE Transitional provisions: termination payments

Civil Service (Special Advisers)

A

BILL

TO

Amend the law on special advisers in the Northern Ireland Civil Service.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Meaning of "special adviser"

1.—(1) A person (P) is a special adviser if subsections (2) to (4) apply.

(2) P is appointed to a position in the Northern Ireland Civil Service by a Minister.

5 (3) P is appointed only in order to advise the Minister.

(4) The terms and conditions of the appointment provide that P will cease to hold that position on the date the Minister ceases to hold office.

Special adviser not to have serious criminal conviction

2.—(1) A person is not eligible for appointment as a special adviser if the
10 person has a serious criminal conviction.

(2) Where a person who holds an appointment as a special adviser incurs a serious criminal conviction, that person's appointment terminates immediately by virtue of this Act.

(3) Where on the date of coming into operation of this section a person—

15 (a) holds an appointment as a special adviser, and

(b) has before that date incurred a serious criminal conviction,

that person's appointment terminates immediately by virtue of this Act.

(4) Ministers must inform the Department in writing whether any special adviser appointed by them has a serious criminal conviction.

20 **Meaning of "serious criminal conviction"**

3.—(1) In this Act "serious criminal conviction" means a conviction for an offence for which—

Civil Service (Special Advisers)

(a) a sentence of imprisonment of 5 years or more was imposed,

(b) a sentence of imprisonment for life was imposed,

(c) an indeterminate custodial sentence under Article 13 of the Criminal Justice (Northern Ireland) Order 2008 was imposed,

(d) a sentence of detention during the pleasure of the Secretary of State, or for life, or for 5 years or more, was imposed under Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (children convicted of grave crimes), or 5

(e) a sentence of detention during the pleasure of the Governor, or for life, or for 5 years or more, was imposed under section 73 of the Children and Young Persons Act (Northern Ireland) 1968 (children convicted of grave crimes). 10

(2) This section applies whether the person—

(a) was convicted in Northern Ireland or elsewhere,

(b) was convicted before or after the coming into operation of this Act. 15

Annual report

4.—(1) The Department must, as soon as possible after the end of each financial year, issue a report about special advisers employed during that year.

(2) The Minister of Finance and Personnel must lay the report before the Assembly as soon as possible after it has been issued. 20

(3) Without prejudice to the generality of subsection (1), a report under this section must include information about the number and cost of the special advisers.

Code of conduct

5.—(1) The Department must issue a code of conduct for special advisers within 3 months of this section coming into operation. 25

(2) Without prejudice to the generality of subsection (1), the code must provide that special advisers must not—

(a) authorise the expenditure of public funds,

(b) exercise any function in relation to the management of any part of the Northern Ireland Civil Service, or 30

(c) otherwise exercise any function conferred by or under any statutory provision, or any power under the prerogative.

(3) The code may permit a special adviser to exercise any function within subsection (2)(b) in relation to another special adviser. 35

(4) The Minister of Finance and Personnel must lay the code before the Assembly as soon as possible after it has been issued.

(5) The code forms part of the terms and conditions of employment of special advisers.

Civil Service (Special Advisers)

Code for appointments

6.—(1) The Department must issue a code governing the appointment of special advisers within 3 months of this section coming into operation.

(2) Without prejudice to the generality of subsection (1), the code must provide that the appointment of special advisers must be subject to the same vetting procedures as the appointment of Senior Civil Servants to the Northern Ireland Civil Service.

(3) The Minister of Finance and Personnel must lay the code before the Assembly as soon as possible after it has been issued.

Advisers to the Presiding Officer

7.—(1) In Article 3 of the Civil Service Commissioners (Northern Ireland) Order 1999, paragraph (2)(b) (which excludes certain appointments by relevant members from the requirement that persons are to be selected for appointment to the Northern Ireland Civil Service on merit) shall cease to apply in relation to the Presiding Officer of the Assembly.

(2) Accordingly, in paragraph (3) of that Article, sub-paragraph (a) shall cease to have effect.

Interpretation

8. In this Act—

"Department" means the Department of Finance and Personnel

"Minister" means

(a) the First Minister or deputy First Minister,

(b) a Northern Ireland Minister,

(c) a junior Minister,

and the words in paragraphs (a), (b) and (c) have the same meaning as in the Northern Ireland Act 1998,

"statutory provision" has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

Transitional provisions

9. The Schedule (transitional provisions: termination payments) has effect.

Commencement

10.—(1) Sections 5 and 6 come into operation on the day on which the Act receives Royal Assent.

(2) Section 2(4) comes into operation at the end of the period of 1 month after the day on which the Act receives Royal Assent.

(3) The other provisions of this Act come into operation at the end of the period of 2 months after the day on which the Act receives Royal Assent.

Short title

11. This Act may be cited as the Civil Service (Special Advisers) Act (Northern Ireland) 2012.

SCHEDULE

Section 9

TRANSITIONAL PROVISIONS: TERMINATION PAYMENTS

1. A special adviser whose appointment is terminated by virtue of section 2(3) is entitled to a termination payment from the Department.

5 2. The termination payment is an amount equivalent to the greater of—

(a) 3 months' salary, or

(b) where the special adviser is entitled to a contractual severance payment, that payment.

3. A contractual severance payment means a payment, to which the special 10 adviser would be entitled under the terms and conditions of the appointment, if the appointment were terminated because the Minister who appointed the special adviser ceased to be a Minister.

4. No termination payment under paragraph 2(b) shall exceed an amount equivalent to 6 months' salary.

This Memorandum refers to the Civil Service (Special Advisers) Bill as introduced in the Northern Ireland Assembly on 2 July 2012, (Bill 12/11-15)

CIVIL SERVICE (SPECIAL ADVISERS) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by Mr Jim Allister ("the Member") in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

POLICY OBJECTIVES

3. The first objective of the Bill is to provide that no person shall hold the post of special adviser if they have been convicted of a criminal offence for which they received a custodial sentence of five years or more (a "serious criminal conviction").

4. The Bill places a statutory duty on the Department of Finance and Personnel (DFP) to publish a code of conduct and an annual report about the number and cost of special advisers, similar to duties in the Constitutional Reform and Governance Act 2010, passed by the UK Parliament. It also requires the DFP to publish a code for appointment of special advisers.

5. The Bill also amends the Civil Service Commissioners (Northern Ireland) Order 1999 to remove the Presiding Officer of the Northern Ireland Assembly from the list of office-holders who are entitled to appoint a special adviser to the Civil Service.

BACKGROUND

6. Early in the Northern Ireland Assembly's third mandate an issue arose around the appointment of ministerial special advisers, particularly the ability to appoint someone to such a public office who had a serious criminal conviction. The Member raised the matter in a number of ways, including through public statements, media

This Memorandum refers to the Civil Service (Special Advisers) Bill as introduced in the Northern Ireland Assembly on 2 July 2012, (Bill 12/11-15)

interviews and by tabling Assembly Questions, an Assembly Motion and a Matter of the Day. The relevant Assembly Questions can be viewed on the Northern Ireland Assembly website via the AIMS portal, at http://aims.niassembly.gov.uk/mlas/search.aspx

7. In June 2011, in response to the public controversy, the Minister of Finance and Personnel, Sammy Wilson, announced by press release that he would undertake a review of arrangements for the appointment of special advisers. The terms of reference of the review were:

   "To review the current arrangements which are applied to the appointment of Ministers' Special Advisers, taking account in particular of the policies and processes in place governing the appointment of all other civil servants, and to bring forward recommendations for new appointments, as appropriate".

8. The review report was published in September 2011 and is intended to govern all appointments from that date. It did not, however, recommend the disqualification of current special advisers with a serious criminal conviction but made a series of recommendations aimed at strengthening regulation of the Special Adviser appointments process. The report is available at http://www.dfpni.gov.uk/review-of-arrangements-for-the-appointment-of-ministers-special-advisers.pdf

CONSULTATION

9. The Member carried out a six-week consultation on the policies behind the Bill in autumn 2011. A total of 818 responses were received. Of those, 808 supported the proposal that anyone with a serious criminal conviction should be prohibited from holding the post of special adviser. A very small minority of respondents opposed the Bill.

OPTIONS CONSIDERED

10. In developing this legislation, the Member considered the following options:

    - Option 1 - that regulation of the process for the appointment of special advisers be based solely on the Department of Finance and Personnel's review report of September 2011 and the non-statutory *Code of Practice on the Appointment of Special Advisers.* Moreover, to retain the power in the Civil Service Commissioners (Northern Ireland) Order 1999 enabling the Speaker to appoint a special adviser, in addition to the adviser provided by the Assembly Commission.

- Option 2 - to introduce and enact the Civil Service (Special Advisers) Bill to disqualify prospective and existing special advisers with a serious criminal conviction, and to put the duty to lay before the Assembly a code of conduct, code of appointment and annual report on a statutory footing. Moreover, to remove the anomaly of the Speaker still being able to appoint a special adviser by political patronage.

11. The response to the Member's consultation was overwhelmingly in favour of disqualifying existing special advisers with a serious criminal conviction. The DFP review report did not address this issue and was itself subsequently disputed. In addition, the Member was not aware of any proposal to review the legislation granting the Speaker a residual patronage power. Legislation would also provide an opportunity to reflect the provisions in the UK Parliament's Constitutional Reform and Governance Act 2010, creating a duty to publish and lay before Parliament an annual report and code of conduct on special advisers. In addition, it would allow for the code of practice on the appointment of special advisers to be put on a statutory basis. For all of the reasons outlined above, the Member concluded that a Bill was necessary.

OVERVIEW

12. The Bill consists of 11 clauses and 1 Schedule.

COMMENTARY ON CLAUSES

A commentary on the provisions follows below. Comments are not given where the wording is self-explanatory.

Clause 1: Meaning of "special adviser"

Clause 1 defines a special adviser as a person appointed to the Northern Ireland Civil Service to advise the First Minister or deputy First Minister, a Northern Ireland Minister or a junior Minister. The position terminates when the Minister ceases to hold office.

Clause 2: Special adviser not to have serious criminal conviction

Clause 2 prohibits a person with a serious criminal conviction from being appointed as a special adviser. Special advisers in post with a serious criminal conviction and those who incur such a conviction while in post will have their appointment terminated by this legislation. A duty is placed on Ministers to inform DFP whether any special adviser appointed by them has a serious criminal conviction.

This Memorandum refers to the Civil Service (Special Advisers) Bill as introduced in the Northern Ireland Assembly on 2 July 2012, (Bill 12/11-15)

Clause 3: Meaning of "serious criminal conviction"

Clause 3 defines "serious criminal conviction" as one for which a sentence of imprisonment of five years or more, or another specified sentence, was imposed.

Clause 4: Annual report

This provision places a duty on DFP to prepare, and on the Minister for Finance and Personnel to lay before the Assembly, an annual report about special advisers.

Clause 5: Code of conduct

This clause places a duty on DFP to issue, and on the Minister for Finance and Personnel to lay before the Assembly, a code of conduct for special advisers. This code forms part of the adviser's contract of employment.

Clause 6: Code for appointments

This clause places a duty on DFP to issue, and on the Minister of Finance and Personnel to lay before the Assembly, a code governing the appointment of special advisers. The code must provide that appointment must be subject to the same vetting procedures as apply when appointing senior civil servants to the Northern Ireland Civil Service.

Clause 7: Advisers to the Presiding Officer

This clause amends the Civil Service Commissioners (Northern Ireland) Order 1999 to remove the Presiding Officer of the Northern Ireland Assembly from the list of office-holders who are entitled to appoint a special adviser to the Civil Service without adhering to the merit principle of appointment on the basis of fair and open competition.

Clause 8: Interpretation

This provision contains definitions of words or terms used in the Bill.

Clause 9: Transitional provisions

This clause gives effect to the provisions of the Schedule.

Clause 10: Commencement

Clauses 5 and 6 will come into operation on the day the Act receives Royal Assent. Clause 2(4) will come into force one month after Royal Assent. All other provisions will come into operation two months after Royal Assent.

This Memorandum refers to the Civil Service (Special Advisers) Bill as introduced in the Northern Ireland Assembly on 2 July 2012, (Bill 12/11-15)

The Schedule: transitional provisions: termination payments

The schedule makes provision for payment to existing special advisers whose appointment is terminated under the legislation. A special adviser is entitled to a payment of three months' salary or the amount stipulated in their contract, up to a maximum of six months' salary.

FINANCIAL EFFECTS OF THE BILL

13. The Bill has no significant financial implications. Compensation equivalent to up to six months' salary will be paid to any existing special adviser whose appointment is terminated under the legislation. This is similar to what would be paid if the Minister terminated the contract of the special adviser.

14. No significant additional costs will be incurred as a result of the duty on the Department of Finance and Personnel to produce an annual report, code of conduct and code for appointments of special advisers. The Department has already prepared non-statutory codes on special advisers.

HUMAN RIGHTS ISSUES

15. The provisions of the Civil Service (Special Advisers) Bill have undergone detailed legal examination to ensure their compliance with the European Convention on Human Rights (ECHR). It is not considered that the Bill engages Article 6 of the convention. The Bill sets a qualifying condition for employment as a civil servant; it does not make a determination of an adviser's civil rights. In order to ensure compliance with Article 1 of the First Protocol to the ECHR, on the right to property, compensation is provided for any special adviser whose appointment is terminated under the legislation.

16. The Member is satisfied that the application of a straightforward eligibility criterion to the post of special adviser is human rights compliant.

ADDITIONAL LEGAL CONSIDERATIONS

17. In assessing the legislative competence of the Bill, in accordance with Section 6 of the Northern Ireland Act 1998, careful consideration has been given to the nature and effect of Clause 2(3) of the Bill, which terminates the appointment of any existing special adviser with a serious criminal conviction. Although the provision has a retrospective dimension, in so far as it relates to an appointment that took place in the past, it is clear that its application is wholly prospective. The Bill does not provide that the appointment of a special adviser with a serious criminal conviction was void from the outset, therefore it does not change the legal nature of

a past event; it simply enables disqualification to be imposed for the future. The competence of the Bill is therefore unaffected.

LEGISLATIVE COMPETENCE

The sponsor of the Bill, Mr Jim Allister, had made the following statement under Standing Order 30:

> *"In my view the Civil Service (Special Advisers) Bill would be within the legislative competence of the Northern Ireland Assembly."*

Email regarding the Consultation Period

From: Morrison, Samuel [samuel.morrison@party.niassembly.gov.uk]
To: +Comm. Fin & Pers Public Email
Cc:
Subject: Private Members Bill

Dear Mr McAteer,

Mr Allister has asked me to write to you to express his thanks for being able to appear before the committee.

He has also asked me to confirm that the consultation ran from 11th October 2011 to 30th November 2011.

Kind regards,
Samuel Morrison, PA to Jim Allister

PS Please acknowledge receipt of this email.

Mr Allister's response to points raised by the Office of the Legislative Counsel

Civil Service (Special Advisers) Bill
Response by Jim Allister to points raised by the Office of Legislative Counsel.

1. I am grateful to OLC for their attention to the drafting detail of the Bill.

2. I accept without reservations the points raised in paragraphs 5, 8, 9, 10, 11, 13 15 and 19 (subject to the exception referred to in paragraph 3 below) of the OLC advice and will move amendments to accommodate these points.

3. I do not accept the point made in paragraph 4 in that a 2007 amendment enabled junior Ministers to each appoint a SPAD. I understand OLC now accept this is correct. It follows I do not accept the suggestion in paragraph 19 of the OLC advice that line 24 of clause 8 should be deleted.

4. In regard to paragraphs 2 and 3 of the OLC advice, I am advised and believe that Bill when passed would stand above prerogative legislation in the hierarchy of law. Moreover, once legislation speaks on a matter, the prerogative is in abeyance. Thus, in my view it is better to underscore the supremacy of proper legislation over prerogative legislation by not including the words "For the purposes of this Act". Thereby the definition of "special adviser" would be retained within legislation passed by the Assembly.

5. In regard to paragraph 6, in my view "incurs a serious criminal conviction" is perfectly clear and understandable.

6. In regard to paragraph 7 I do not believe it is necessary to permit delay in removal of a SPAD once convicted for the following reasons:-

   a) the precedent in regard to councillors convicted and sentenced to more than 3 months imprisonment (S 4 Local Government Act (NI) 1972) means any appeal does not delay removal;

   b) anyone sentenced to 5 years or more is unlikely to be on bail pending appeal and, therefore, unavailable to do their job as a SPAD;

   c) if ultimately acquitted on appeal the person is then available to be reappointed by the Minister.

7. As a follow on to points arising from clauses 2 and 3 I should make it clear that for the avoidance of doubt I intend to move an amendment to Clause 3(1)(a) to clarify that disqualification is triggered only by the imposition of an immediate sentence of 5 years or more and that a suspended sentence of 5 years would not trigger disqualification – of course, suspension of a 5 year sentence while possible would be relatively unusual.

8. I accept the point made in paragraph 12 and will move an amendment to restructure clause 3 so that (1) (c), (d) and (e) will refer to similar sentences under the law of another country or territory outside the United Kingdom.

9. At this point I will deal with a related issue which arose from other evidence about concerns over convictions in unsound jurisdictions. I agree with what the Attorney General told the committee, namely that "convicted" was likely to be interpreted by the courts as "duly convicted" so as to exclude convictions in a country disrespectful of international human rights standards. I am advised and believe it is not necessary to add a qualifier to

"convicted" in the Bill. Such a qualifier, such as "duly convicted", would be readily implied in accordance with the judicial obligation to interpret law so as to be in accordance with human rights under the Human Rights Act 1998. The term "conviction" by its very nature connotes basic rule of law guarantees of a fair trial. So, no further addition is required to clause 3(2).

10. In regard to paragraph 14, I am content to move an amendment to change the reference to "function" to "power" in clause 5.

11. In regard to paragraph 16, I will move an amendment to synchronise the timings of the commencement provisions. This will involve amendment of clauses 5(1) and 6(1) so that the Department has 2 months to issue the code of conduct and the code for appointments from the date of Royal Assent. The commencement clause will also be altered so that sections 5,6,8,10 and 11 come into operation on the day on which the Bill receives Royal Assent.

12. In regard to paragraph 18, I intend to amend clause 6 to add a provision requiring Ministers to have regard to the code.

Jim Allister

Appendix 4

Memoranda and Papers from the Department of Finance and Personnel

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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
Parliament Buildings
Stormont

13 September 2012

Dear Shane,

Civil Service (Special Advisers) Bill

This paper provides the Committee with an introductory briefing on the above Private Member's Bill (the Bill) in advance of the evidence session by officials on Wednesday 19th September 2012. It sets out the background to the current arrangements for the appointment of Special Advisers, the proposals in the Bill, and highlights the key areas of difference.

The Minister for Finance and Personnel, who has policy responsibility for issues affecting the management of the Northern Ireland Civil Service (NICS), including arrangements for the appointment of individuals to posts in the NICS, undertook a review of the arrangements for the appointment of Special Advisers in 2011. Special Advisers are civil servants appointed under Article 3 of the Civil Service Commissioners (Northern Ireland) Order 1999 as amended. The main outcome of the review was the decision by the Minister to introduce a vetting / character checking process for the appointment of Special Advisers similar to that which is applied to all other civil servants. The Minister informed his Ministerial colleagues that the new arrangements for appointing Special Advisers were effective from September 2011.

The Bill proposes a number of key changes to the current arrangements. **Clause 2** prohibits a person with a serious criminal conviction from being appointed as a Special Adviser. Special Advisers currently in post with a serious criminal conviction and those who incur such a conviction while in post would have their appointment terminated by this legislation. A duty is placed on Ministers to inform DFP whether any Special Adviser appointed by them has a serious criminal conviction. A 'serious criminal conviction' is defined in **Clause 3** of the Bill as one for which a sentence of imprisonment of five years or more, or another specified sentence, was imposed. This goes beyond the current vetting arrangements for the appointment of civil servants by automatically providing for a bar on appointment as a result of a "serious criminal conviction" and does not provide for any mitigating factors to be taken into account in the vetting process such as an expression of remorse/regret; no pattern of repeat offending; the relevance of the conviction to the post to be filled; the nature of the offence; evidence of rehabilitation and contribution to the community; and third party references regarding the individual's character. Under the current arrangements for appointing civil servants, disclosure of an unspent criminal conviction prior to appointment will result in a decision on the individual's appointment being taken on a case by case basis in accordance with the policy on convictions set out in the NICS recruitment policy and procedures manual. The Bill contains a retrospective dimension as the current arrangements relate to future appointments only.

Clause 4 of the Bill would require the preparation by DFP of an annual report on Special Advisers, and its submission by the Minister for Finance and Personnel to the Assembly, providing information about the number and cost of Special Advisers employed during

the year. At present there is no such central collation of information of this kind, although information about the number of Special Advisers employed and the salary bands on which they are paid is routinely included in each department's published Annual Resource Accounts.

Clause 5 of the Bill places a statutory duty on DFP to issue, and on the Minister for Finance and Personnel to lay before the Assembly, a code of conduct for Special Advisers. There is currently in existence a Code of Conduct for Special Advisers, which forms part of a Special Adviser's contract of employment, but it is not on a statutory footing.

Clause 6 of the Bill places a statutory duty on DFP to issue, and on the Minister of Finance and Personnel to lay before the Assembly, a code governing the appointment of Special Advisers. The existing code of practice on the appointment of Special Advisers, as amended by the guidance issued by the Minister for Finance and Personnel in September 2011, is not on a statutory footing. It also provides that the code should ensure that any such appointments are subject to the same vetting procedures as apply when appointing senior civil servants to the NICS. Under current NICS policy, vetting arrangements for civil servants apply equally to staff at all grades. There are no separate vetting arrangements for senior civil servants.

Clause 7 proposes to amend the Civil Service Commissioners (NI) Order 1999 to remove the Presiding Officer of the Northern Ireland Assembly from the list of office-holders who are entitled to appoint a Special Adviser to the Civil Service without adhering to the merit principle of appointments on the basis of fair and open competition. This Clause may have limited practical impact on existing arrangements in that it is not thought that the Presiding Officer of the Assembly has ever appointed a Special Adviser to the civil service. Any Special Advisers to the Presiding Officer are thought to have been appointed as employees of the Northern Ireland Assembly, rather than the civil service.

Yours sincerely,

NORMAN IRWIN

Office of the Legislative Counsel, 19 November 2012

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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
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Stormont

Our Ref –MISC82/11-15

19 November 2012

Dear Shane,

Civil Service (Special Advisers) Bill

I attach, for the information of the Committee, comments by the Office of the Legislative Council on some drafting and technical issues in respect of the above Bill. The comments and any amendments which might flow from them do not affect the policy of the Bill.

Yours sincerely,

NORMAN IRWIN

Civil Service (Special Advisers) Bill

Some drafting and technical issues

1. This note deals only with drafting and associated technical issues. It does not deal with the general legal effectiveness of the Bill or with legislative competence. The points below vary in significance and some are, to some extent, matters of style or taste. But I note in particular drafting which does appear to accord with the norms of the NI statute book.

Clause 1

2. In the context of the Bill as a whole it seemed to me that clause 1 should contain a definition intended to operate for the purposes of the Bill only. But it is drafted as a proposition of law which would define "special adviser" in law generally. The definition is I think inaccurate (see para 4 below) - but in any event I would suggest that subsection (1) should begin with words such as "For the purposes of this Act" to indicate that section 1 is a definition and not a statement of law of general application.

3. Since the concept of a special adviser is already defined in law - by Article 3 of the Civil Service Commissioners (NI) Order 1999 - a more direct drafting approach might have been simply to refer to this existing law in defining "special adviser". This would also have the benefit of automatically picking up any change to that definition (there has already been change to the definition since 1999). As matters stand, if the prerogative order is changed to alter the meaning of special adviser, a Bill will be needed to update any Act resulting from this Bill.

4. The definition of special adviser in the Bill appears to be wrong in law, in that it differs in two respects from the definition in the 1999 Order. Under the Bill a special adviser can be appointed by a junior Minister to advise the junior Minister. But the 1999 Order makes no provision for such appointments. Under Article 3(2)(b) read with Article 3(3) a special adviser may only be appointed by FM, dFM and any other member of the Executive Committee. A junior Minister is not a member of the Executive (NI Act section 20(1)) and so may not appoint a special adviser.

5. The second difference is that under the Bill a special adviser is someone who is appointed on terms providing that he ceases to hold office **on the date** the Minister ceases to hold office. But under the 1999 Order a special adviser is someone appointed for a period terminating **on or before the date** on which the Minister ceases to hold office. So a person serving on a short fixed term basis ending before the Minister ceases to hold office is a special adviser under the 1999 Order but arguably not under the Bill. This obviously opens up scope to evade the Bill by simply appointing special advisers on short term rolling contracts. The correction needed to correct this issue is to add the words "or before" in clause 1(4)

Clause 2

6. Subsection (2) provides for immediate termination of the appointment of a special adviser who "incurs a serious criminal conviction". That language in itself is somewhat unconventional and I have been unable to find reference to the incurring of a conviction on the statute book.

7. Another issue on subsection (2) is what happens if the conviction is overturned on appeal? Immediate termination involves in a sense pre-empting the final outcome of the criminal process. If the person appeals immediately against conviction should the clause not allow the criminal process to run its full course before termination?

8. Subsection (3) does not work as drafted. It provides for the appointment of a special adviser holding office "on the coming into operation **of this section**" to be terminated

immediately. The difficulty is that under clause 10(2) different parts of section 2 come into operation on different dates. The correction needed is to amend clause 2(3) to refer instead to the coming into operation **of this subsection**.

9. The drafting of subsection (4) is unconventional and ambiguous in that it is drafted in the plural and places obligations on "Ministers" to report appointments "by them". Read literally this requires all Ministers to report all amendments made by any Ministers. The correction needed is to re-write the provision in the singular to require a Minister to report an appointment made by that Minister.

Clause 3

10. The list of convictions in clause 3(1) is defective in a number of respects.
    - in subsection (1)(d) reference is made to detention "during the pleasure of the Secretary of State"; while this correctly covers sentences passed before the devolution of policing and justice it does not cover sentences after that event; the correction is to insert an additional reference to detention during the pleasure of the Minister of Justice;
    - on similar lines subsection (1)(e) refers to a sentence of detention "during the pleasure of the Governor"; again while this correctly covers sentences passed before 1973, it does not cover sentences passed under section 73 of the 1968 Act after 1974; the correction is to insert an additional reference to detention during the pleasure of the Secretary of State.

11. Clause 3(2) repeats the mistake mentioned above by referring to "the coming into operation of this Act". The Act comes into operation in three stages, thus rendering the reference ambiguous. The correction needed is to refer to "this section" instead of "this Act".

12. Clause 3(2) also provides that the section applies whether the conviction was in Northern Ireland or elsewhere. But a conviction "elsewhere" cannot fall within subsection (1)(c), (d) or (e) as these are sentences known only to the law of Northern Ireland. A possible solution is to refer to corresponding sentences under the law of other countries.

Clause 4

13. Subsection (1) refers to employment "during that year" which I take to mean employment during the whole year. Possibly what is intended is employment "**at any time** during that year".

Clause 5

14. I understand this clause is intended to reflect the corresponding UK provision in section 8 of the Constitutional Reform Act 2010. If so, it seems odd that the drafting has been changed in a few minor respects but in ways which seem to render it defective:
    - in subsection (2)(b) and (c) the corresponding UK provision refers to a special adviser not exercising certain "powers" whereas the NI version has been changed to "function". As "function" includes "duty", it seems rather odd to say that a special adviser must not fulfil a duty;
    - the duties (functions) which the special adviser must not exercise are those "under any statutory provision". If that includes the Bill itself, then the provision is completely self-contradictory since the adviser would not be able to exercise a function which consists of the duty to comply with the code of practice;
    - the UK provision refers to Her Majesty's prerogative whereas the NI Bill refers to "the prerogative" - is it clear what this means?

15. Subsection (5) has again been changed from its UK counterpart and refers to "the terms and conditions of **employment**" of special advisers. This is at odds with clause 1(4) which refers to them having terms and conditions of **appointment**. This latter wording seems preferable given the doubt about whether civil servants are "employed" in the traditional sense of employment under a contract of employment.

16. There seems to be a lack of co-ordination between the timings in this clause and those in clause 10. Under clause 10 the Bill is fully operation 2 months after Royal Assent. But clause 5 comes into operation on Royal Assent but allows 3 months for the Code to be made. So the Bill could be in operation without the Code being in place. Would it not be sensible to synchronise the timings?

Clause 6

17. The same point on timings arises as in clause 5.

18. What is the legal effect (if any) of the Code. Is an appointment in breach of the Code a valid one?

Clause 8

19. Very minor points but ideally
"**the** Department" in line 20;
"the Minister" in line 21;
delete line 24 - the reference to junior Minister is incorrect (see above);

Clause 10

20. The commencement provisions do not work properly. If clauses 5 and 6 are to come into operation at an early date then sections 8, 10 and 11 need to come into operation along with them.

Response to Assembly Committee query regarding Vetting procedures

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Mr Shane McAteer
Clerk
Committee for Finance and Personnel
Room 419
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Stormont

Our Ref: CFP180/11-15

7 December 2012

Dear Shane,

Civil Service (Special Advisers) Bill

In your letter of 29 November 2012 you asked for comments on the issues raised by NIACRO on the application of the Civil Service Code and vetting procedures.

All appointments to the Northern Ireland Civil Service (NICS) are made in line with the Civil Service Commissioners' Recruitment Code and the NICS Recruitment Policy and Procedures Manual. This ensures that appointments are made on merit on the basis of fair and open competition – the merit principle. The Civil Service Commissioners (Northern Ireland) Order 1999 disapplies the merit principle in respect of Special Advisers in recognition of their unique role and the personal nature of their appointments.

NICS policies and procedures comply with the Rehabilitation of Offenders Order (NI) 1978 which is aimed at protecting the rights of rehabilitated ex-offenders.

NICS recruitment policy and procedures are kept under review. In 2010 the Department of Finance and Personnel conducted an internal review of its recruitment security vetting arrangements. As a result the NICS Risk Assessment, used to carry out security vetting/character checking of applicants with convictions, was revised. The revised Risk Assessment is attached at Annex A and sets out the guidelines which must be applied. This has resulted in a less constrictive approach when considering applicants with convictions and has promoted inclusion rather than exclusion. Each case is considered carefully on its own merits. Applicants with convictions, including those which cannot be "spent", are not automatically rejected for appointment. To ensure greater consistency in the treatment of those with criminal records all decisions on acceptability are taken by DFP Corporate HR. When considering potential candidates with criminal convictions against the Risk Assessment Corporate HR also follows a process which gives candidates the opportunity to provide statements of disclosure to provide information about the context to their convictions. The following factors are also taken into account before decisions are made:

- Relevance of conviction to post applied for;
- Nature of the conviction and severity of penalty imposed by court;
- Circumstances surrounding conviction;

- Rehabilitation and contribution to society;
- Statements of character;
- Any other information provided by the candidate which tends to suggest that the convictions are not representative of the overall character of the individual.

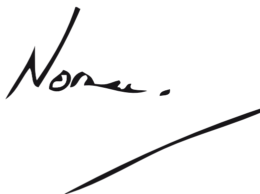
Without specific information it is difficult to comment on the applicants' experiences to which NIACRO has referred in the correspondence to the Committee for Finance and Personnel. However I would wish to make the Committee aware that the application of our policy and procedures for vetting have frequently resulted in candidates who might otherwise be rejected for appointment being found suitable when the context and mitigating circumstances of their convictions are disclosed.

Our policy and procedures are communicated openly in the NICS Recruitment Policy and Procedures Manual which is published on the DFP and NICS recruitment websites and can be accessed at:

https://irecruit-ext.hrconnect.nigov.net/resources/documents/r/p/p/rppmv13.pdf. In particular, Section 9.1 details the process for Criminal Record Checks and clearly describes how disclosures are managed. The Manual provides contact details for the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) to help and support potential applicants with criminal convictions seeking assistance in making application for employment in the NICS. The Candidate Information Booklets for all NICS recruitment competitions also advise potential candidates "you should not put off applying for a post because you have a conviction."

The Department believes that these procedures provide a sound and fair basis for determining the suitability of candidates to be appointed to the NICS.

Yours sincerely,



NORMAN IRWIN

Annex A – NICS Risk Assessment

In making appointments to the NICS the following guidelines must be adhered to:

	Generally Reject
1	Convictions demonstrating a propensity to violent, destructive, or abusive behaviour.
2	Convictions demonstrating serious negligence causing death or injury to others.
3	Convictions demonstrating dishonesty.
4	Convictions for motoring offences which are directly related to the post applied for or where the individual has been convicted on more than one occasion for the same offence.

These guidelines must be applied in line with current law on rehabilitation of offenders. The vast majority of convictions will usually become “spent” after a prescribed period. Spent convictions can only legally be taken into account for certain ‘excepted’ posts e.g. those involving substantial access to children or vulnerable persons.

Employing departments or agencies may apply enhanced standards or additional checks for particular posts where they can justify and defend it e.g. for posts involving contact with young people (see above); driving test work where particular offences or penalty point levels may cause concern or otherwise, for example, in posts which involve driving duties and where any reasonable person would be likely to conclude that a particular conviction indicates a significant risk or is incompatible with the duties of a particular post. Any specific additional requirements should be decided upon, at latest, prior to the vacancy being advertised.

A candidate should not normally be appointed if he/she has repeated, or has been convicted on more than one occasion for an offence. All candidates who have convictions which could preclude them from appointment must be invited to provide a statement of disclosure before any decision on his/her suitability is made.

Convictions which cannot be ‘spent’ – Applicants with convictions which cannot be ‘spent’ should not be automatically rejected. All information available will be considered.

In-post Candidates –In-post candidates with criminal convictions which would preclude them from being appointed to an externally advertised competition are required to advise their Departmental HR of such convictions and may be subject to internal disciplinary proceedings.

Pending charges or convictions– In accepting offers of appointment, candidates are required to advise of any convictions they have had in jurisdictions outside the United Kingdom and of any pending charges which have not yet been dealt with by the Courts. Failure to advise of any pending charge or conviction, including those outside of the United Kingdom, will invalidate the offer of appointment.

Appendix 5

Written Submissions

MAST

MAST

Mourne Action for Survivors of Terrorism

Committee Clerk
Room 419
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Ballymiscaw
Stormont
Belfast
BT4 3XX

11th October 2012

Dear Sir,

Civil Service (Special Advisers) Bill – Call for Evidence

Some time ago we in MAST responded to a consultation supporting a bill to ban people with serious criminal convictions from holding the post of Special Adviser at Stormont.

We understand that this bill has passed its second stage by 62 votes to 32 and that the bill has now been referred to the Finance and Personnel Committee.

We in MAST support Clause 2 of this bill because we believe it is totally wrong and unacceptable that someone with a serious criminal conviction should be able to hold the position of Special Adviser due to the hurt caused to innocent victims' families.

Special Advisers are positioned within the top ranks of government and with this comes status, standing and the wages of top civil servants. This is not allowed to happen within the regular ranks of the civil service so why should they be able to hold the top position of Special Adviser?

We are also in support of Clause 4 (the production of an annual report) as we believe that the public have a right to know how much of their money is going to Special Advisers and this requirement is already in place in the rest of the UK.

MAST are also in support of the introduction of a Code of Conduct and a Code for Appointments (Clauses 5 and 6) as this will introduce greater regulation to the issue.

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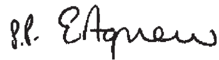
Finally, we in MAST are in full support of Clause 7 which removes the right of the Presiding Officer (or speaker) to appoint a Special Adviser. The Speaker has never exercised the right to appoint a Special Adviser and the role of the Speaker is above party politics and therefore he should not have the option to appoint a Special Adviser, a post which by its very nature is party political.

We in MAST would like the comments we have made within this correspondence recognised and taken into consideration.

Yours sincerely,



Sandra Johnston
Chairperson

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Tar Anall

Evidence submission to the Civil Service (Special Advisers) Bill

This bill aims to discriminate against former political prisoners imprisoned during the conflict. Political prisoners will be barred as Special Advisers to Government Ministers and serving Special Advisers will be sacked.

Former political prisoners already face serious discrimination in many areas that detrimentally affects their lives and the lives of their families. This is especially so in the area of employment where many barriers exist, both structural and political, excluding them employment in numerous sectors of the labour market.

This Bill will add to the number of legal ways in which former political prisoners can be excluded from employment and it will reinforce the discriminatory attitudes and practices with which former political prisoners have to contend.

This bill will operate as a breach of the international agreement between two sovereign states, the Irish and British governments, that gave effect to the Good Friday Agreement. It will also contravene the commitments given in regard to political ex-prisoners' in the Good Friday Agreement and in the St Andrews Agreement. If it is passed in the form proposed its retrospective penalisation of current special advisors will be in contravention of domestic and international human rights provision.

This Bill should be rejected in its entirety; it has no place in the current political circumstances of the North of Ireland, specifically,

The purpose of Clause 2 would;

1. Operate as a breach of the international agreement between two sovereign states, the Irish and British governments, which gave effect to the Good Friday Agreement.

2. It will contravene the commitments given in regard to political ex-prisoners' in the Good Friday Agreement and in the St Andrews Agreement.

3. Its 'retrospective penalisation' of current special advisors will be in contravention of domestic and international human rights provision.

4. The Bill in its entirety has not been Equality Impacted Assessed

5. In its intention and spirit it completely contradicts the purpose and intention of the OFMDFM commissioned 'Employers' Guidance On Recruiting People With Conflict-Related Convictions' (EGRPCRC) May 4th 2007

This Bill (CSSAB) and the discriminatory thinking behind it demonstrate the need for change in three important areas, that is;

1. Article 2(4) of the FETO(1998) should be amended, or repealed to reflect the changed political circumstances of the north of Ireland, in order to reflect the terms of the Good Friday Agreement with its reference to the introduction of measures to facilitate the reintegration of prisoners into the community in the area of employment.

2. The urgent need for the promised review of the 'effectiveness of the operation of the voluntary guidance' (Employers' Guidance On Recruiting People With Conflict-Related Convictions) after 18 months. That promise was made in May 2007. The guidance has been completely ineffective in 'reducing barriers to employment and enhancing the re-integration of ex-prisoners with conflict related convictions'.

3. The North Ireland Civil Service Recruitment Policy should be amended to reflect the terms of the Good Friday Agreement with its reference to the introduction of measures to facilitate the reintegration of prisoners into the community in the area of employment, and that any conviction for a conflict related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought.

This Bill will add to the number of legal ways in which former political prisoners can be excluded from employment and it will reinforce the discriminatory attitudes and practices with which former political prisoners have to contend.

Human Rights and Equality Issues

The provisions of the Civil Service (Special Advisers) Bill are not compliant with the European Convention on Human Rights (ECHR). The Bill engages Article 6 of the convention and Article 1 of the First Protocol. The Bill excludes a person from employment as a civil servant without taking due regard to an international agreement and will operate as a breach of that international agreement between two sovereign states, the Irish and British governments', which gave effect to the Good Friday Agreement. In addition, my concern is that the Bill is in breach of Sections 75 and 76 of the Northern Ireland Act 1998.

Legislative Competence

Jim Allister has not provided details of his discussions with the Secretary of State for Northern Ireland regarding this Bill. It is therefore necessary for the Committee for Finance and Personnel to confirm that this Bill does not breach any agreements between the Northern Ireland Assembly and the Westminster Government and that it falls within the legislative competence of the Assembly.

Sinn Féin

Sinn Féin consultation response to Civil Service (Special Advisers) Bill

Sinn Féin are opposed to this Bill. We believe this is an issue of equality and fairness. This is an obvious attempt to prevent republican ex-prisoners from fulfilling the role of special advisers now and in the future. Many legal impediments are put in front of republican and loyalist ex-prisoners. Sinn Féin will not acquiesce to a situation in which further restricts access to employment or to the provision of goods, facilities and services.

Legislating to prohibit ex-prisoners from employment as a Special Adviser would further institutionalize discrimination. Prohibiting ex-prisoners from employment as a Special Adviser would be discriminatory and would run contrary to the Good Friday Agreement and the St Andrews Agreement. Sinn Féin believe it would represent a breach of Human Rights, contravene the ECHR, and run against the equality requirements on government, this would be patently unfair.

Sinn Féin are opposed to clauses 2 and 3 of the Special Advisors Bill on the basis that:

Ex-Prisoners have played a significant role in the peace process and the political process here. The peace process itself is premised on inclusivity. The system of government in the north is designed to guarantee inclusivity and participation of all sections of society. The institutions are required to promote equality.

All of this was enshrined in the Good Friday Agreement which was endorsed by majority north and south. The release of prisoners under the terms of the GFA bears out the fact that without addressing the issue of prisoners there would not have been a peace process. The GFA also recognized the need for measures to facilitate the reintegration of prisoners into the community including removing barriers to employment. This was again formally recognized in the St Andrews Agreement.

In the GFA the British and Irish governments pledged to:

‘continue to recognize the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, retraining and/or re-skilling, and further education’ (Annex B, point 5. 10 April 1998.

The St Andrew’s Agreement (2006, Annex B) pledged that:

‘government will work with business, trade unions and ex-prisoner groups to produce guidance for employers which will reduce barriers to employment and enhance re-integration of former prisoners’.

Many elected representatives throughout Ireland are ex-prisoners, including Ministers, MPs, MLAs, Councilors, TDs and MEPs. The fact that ex-prisoners are returned to these positions demonstrates clearly that a significant section of society have confidence in these ex-prisoners to act as their representatives. It is important that inclusivity and representativeness transect all sections of government, elected, civil service, public appointments etc.

Legislating to prohibit ex-prisoners from any position of employment will alienate many former political prisoners and their families and whole sections of society. We live in a society which is still emerging from conflict. Punitive measures against one particular group of former participants in the conflict runs contrary to the ethos of conflict resolution and may lead to alienation from the very political process which maps the route away from conflict. Conflict resolution requires a no-winners and no-losers approach.

Sinn Féin believes this Bill is in complete opposition to these fundamental concepts.

Éirí na Gréine

Éirí na Gréine
5 James Street
Omagh
Co Tyrone
BT78 1DH

24/10/12

A Chara,

The Tyrone ex-prisoners organisation Éirí na Gréine would like to register our outright opposition to the Private Members bill on the employment of Special Advisors within the local political institutions.

Éirí na Gréine represents a considerable number of former political prisoners in the mid and East Tyrone areas, many who have been to the fore in the development of the peace process. The contribution by former political prisoners to the peace process has been widely recognised, as has our input into the development of our local communities. The fact that the release of political prisoners was integral to the GFA demonstrates the importance our input into the process. There is no doubt that former political prisoners have been central in bedding down the political institutions and building support for them, not only on a national level but also at a very basic grassroots level.

We oppose clauses 2 and 3 of the Bill.

We believe these are a blatant attack on former political prisoners despite the very influentual role they have played in the developing political situation over the last number of years. Indeed the bill is very specific in its aim of frustrating the positive influence of former political prisoners in the political institutions.

Éirí na Gréine believe that the bill is contrary to the Good Friday Agreement which, despite its shortcomings, was committed to assisting former political prisoners and their families. Similar commitments were once again made in the St Andrews Agreement of 2006. This bill represents yet another employment barrier to political ex prisoners who still face a myriad of barriers and blockages when it comes to issues of employment, travel and many other 'bread and butter' issues. This bill represents yet another employment barrier to us, as political ex prisoners, and also calls into question, if passed, the equality within the political institutions locally.

So we believe this bill is divisive, discriminatory and sends of a very negative message.

In closing, we believe this bill alienates a significant proportion of the population to the path of conflict resolution and engagement with the political process. According to a report compiled by George Quigley (OFMDFM) in 2007 there were up to 30,000 political ex prisoners in the north of Ireland. These people, many of whom are trusted by their communities to be their councillors, MLAs, MPs and TDs should not be targeted in this very dilate and unapologetic manner by those who are opposed to the political process and the out workings of the Good Friday Agreement.

Is sinne le meas

Kevin McGrade	Glenn Campbell
(Cathaoirleach)	(Rúnaí)

Cairde

To Whom It May Concern,

I am writing in relation to the bill, which has been tabled regarding the employment of ex-prisoners as Special Advisers.

Barring ex-prisoners from employment as a Special Adviser would be discriminatory and would run contrary to the Good Friday Agreement and the St Andrews Agreement.

GFA.

In the **GFA** the British and Irish governments pledged to:

> *"continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, retaining and / or re-skilling, and further education"* ***(Annex B, point 5 10 April 1998)***

St Andrew's Agreement.

The St Andrew's Agreement (2006 Annex B) pledged that:

> *"government will work with business, trade unions and ex-prisoners groups to produce guidance for employers which will reduce barriers to employment and enhance re – integration of former prisoners"*

Legislating to bar ex-prisoners from employment as a Special Advisors would again institutionalise discrimination. Many elected representatives throughout Ireland are ex-prisoners, including Ministers, MP's MLA's Councillors, TD's and MEP.

Many Ex-prisoners are involved in community development roles and projects within their own community. These individuals strive day and daily to develop facilities and programmes that will enhance their community to the betterment all. The fact that ex-prisoners are in these positions demonstrates clearly that a significant section of society trust and relay on ex-prisoners as their representatives and community leaders.

We would ask that this bill is not passed as it will have a discriminatory effect upon the whole Ex-prisoners community.

Is Mise

John Mc Crory
Chairperson
Cairde
Strabane Republican Ex-prisoners Group.

Tar Abhaile

From: Meabh Tar Abhaile [meabh@tarabhaile.com]
To: +Comm. Fin & Pers Public Email
Cc:
Subject: Submission to SpAd Bill Call for Evidence

To whom it may concern,

Please find attached a submission to the Call for Evidence in relation to the Civil Service (SpAd Bill).

Tar Abhaile is a welfare group for republican ex-prisoners and their families. Much of our daily work is in assisting our target group to overcome the many barriers to their full and equal participation in society.

Ex-prisoners already face difficulties in many aspects of normal life, in accessing home insurance, in entry to some countries, in some fields of employment.

We are extremely concerned at the proposed Bill which would seek to enshrine in legislation discrimination against political ex-prisoners.

Regards,

Méabh Mackel
Project Coordinator
Tar Abhaile

028 7126 6675
074 3261 9423

Written Submission to Civil Service (SpAd Bill) Call for Evidence

Tar Abhaile call for this Bill to be rejected in it's entirety. Our specific objection centres on Clause 2 of the Bill.

Clause 2: Special Advisor not to have serious criminal conviction.

1. Barring Ex-Prisoners from employment as a Special Adviser is discriminatory and creates further barriers to their full and equal participation in society. Ex-Prisoners already face barriers in accessing home insurance, in entry to some countries, adoption etc.

2. We live in a society that is still emerging from conflict, legislating to penalise Political Ex-Prisoners will alienate that section of society, which recent studies suggest is significant in size.

According to the *Ageing & Social Exclusion in Former Politically Motivated Prisoners in NI* study, of men aged 50-59, the proportion of those who are former politically motivated prisoners could be up to 30.7%. *Ageing & Social Exclusion in Former Politically Motivated Prisoners in NI* **2010, p127.**

'there can be little doubt that former politically motivated prisoners constitute a significant proportion of men over 50 in NI and this should be taken into account by those responsible for health and social well-being policy and programmes.' *Ageing & Social Exclusion in Former Politically Motivated Prisoners in NI* **2010, p128.**

3. It would represent a breach of Human Rights, contravene the ECHR, and run against the equality requirements in government.

The provisions of the Civil Service (Special Advisers) Bill are not compliant with the European Convention on Human Rights (ECHR). The Bill engages Article 6 of the convention and Article 1 of the First Protocol. The Bill excludes a person from employment as a civil servant without taking due regard to an international agreement and will operate as a breach of that international agreement between two sovereign states, the Irish and British governments', which gave effect to the Good Friday Agreement. In addition, my concern is that the Bill is in breach of Sections 75 and 76 of the Northern Ireland Act 1998.

4. It would run contrary to the Good Friday Agreement and the St Andrews Agreement and contravene the commitments given in regard to Political Ex-Prisoners.

'The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or reskilling, and further education.' **Annex B, point 5. 10 April 1998**

The *St Andrew's Agreement* **(2006, Annex B)** pledged that:

'government will work with business, trade unions and ex-prisoner groups to produce guidance for employers which will reduce barriers to employment and enhance re-integration of former prisoners'.

5. It ignores the crucial role Ex-Prisoners have played in the peace process and the political process.

Tar Abhaile, as with many of the other ex-prisoner groups, work closely with other groups in our community to engage in difficult 'outreach' work. This work is crucial in cementing the peace process on a local basis.

6. Ex-Prisoners are entitled to be MLAs and Ministers in government. Our First Minister and deputy First Minister are both Political Ex-Prisoners.

7. Tar Abhaile have worked with the Ex-Prisoners Working Group within OFMdFM to promote the OFMdFM issued *'Employers' Guidance On Recruiting People With Conflict-Related Convictions'* (EGRPCRC) May 4th 2007, the proposed Bill is entirely contradictory to this work.

Sir George Quigley, Chairperson of the working party that created the Employers' Guidance On Recruiting People With Conflict-Related Convictions stated in its introduction;

> *'1.5 In summary, the basic principle arising out of the main report by the working group is that any conviction for a conflict related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought.'*

8. The Bill is based on the presumption that Ex-Prisoners cannot be victims, and promotes a 'hierarchy of victims'. Several studies highlight the ongoing harm Ex-Prisoners experience relating to physical and mental health and employment.

In particular the *Blocks to the Future study* **2005** and the *Ageing & Social Exclusion Amongst Former Politically Motivated Prisoners in NI* **2010**. See links below.

http://www.qub.ac.uk/schools/SchoolofLaw/Research/InstituteofCriminologyandCriminalJustice/Publications/worddocs/Filetoupload,226499,en.pdf

http://www.brandonhamber.com/publications/Report%20Blocks%20to%20the%20Future.pdf

Tar Isteach

From: Tommy Quigley [tommy@taristeach.org]
To: +Comm. Fin & Pers Public Email
Cc:
Subject: Northern Ireland Assembly: Vote NO to the Civil Service (Special Advisers) Bill - Sign the Petition!

Sir/Madam, On behalf of the management committee of Tar Isteach, please find attached a submission in regard to the Civil Service (Special Advisers) Bill.

I also wish to submit as evidence an online petition opposing this Bill. The petition was initiated 10 days ago and to date 723 responses oppose the Bill. The petition can be accessed at the link below.

https://www.change.org/en-GB/petitions/northern-ireland-assembly-vote-no-to-the-civil-service-special-advisers-bill?share_id=YjsETtDFpr&utm_campaign=mailto_link&utm_medium=email&utm_source=share_petition

Kind regards Thomas Quigley

Tar Isteach Project Coordinator
Tar Isteach
244 Antrim Road
BT15 2AR
02890754967
info@taristeach.org
www.taristeach.org

Evidence submission to the Civil Service (Special Advisers) Bill

This Bill should be rejected in its entirety; it has no place in the current political circumstances of the North of Ireland, specifically,

The purpose of Clause 2 would;

1. Operate as a breach of the international agreement between two sovereign states, the Irish and British governments, which gave effect to the Good Friday Agreement.
2. It will contravene the commitments given in regard to political ex-prisoners' in the Good Friday Agreement and in the St Andrews Agreement.
3. Its 'retrospective penalisation' of current special advisors will be in contravention of domestic and international human rights provision.
4. The Bill in its entirety has not been Equality Impacted Assessed
5. In its intention and spirit it completely contradicts the purpose and intention of the OFMDFM commissioned 'Employers' Guidance On Recruiting People With Conflict-Related Convictions' (EGRPCRC) May 4th 2007

The OFMDFM press release on the publication of the guidance stated:

> *"04 May 2007 - Publication of employers' guidance on recruiting people with conflict-related convictions*
>
> *Guidance for employers which is aimed at reducing barriers to employment and enhancing the re-integration of ex-prisoners with conflict related convictions has been published*
>
> *At St Andrews the Government gave a commitment to work with business, trade unions and ex-prisoner groups to produce guidance for employers in the private and public sector.*
>
> *Published by the Office of the First Minister and Deputy First Minister, the voluntary guidance is the product of extensive work between Government departments, representatives of the Confederation of British Industry in Northern Ireland, the Irish Congress of Trades Unions and ex-prisoner groups.*
>
> *The effectiveness of the operation of the voluntary guidance will be reviewed after 18 months.*
>
> *Copies of the guidance can be downloaded from the Department's website 'www.ofmdfmni.gov.uk/conflict-transformation-news ' or (http://www.northernireland.gov.uk/news/news-ofmdfm/news-ofmdfm-040507-publication-of-employers.htm)*

This Bill (CSSAB) and the discriminatory thinking behind it demonstrate the need for change in three important areas, that is;

1. *Article 2(4) of the Fair Employment and Treatment Order (FETO) 1998 should be amended, or repealed to reflect the changed political circumstances of the north of Ireland, in order to reflect the terms of the Good Friday Agreement with its reference to the introduction of measures to facilitate the reintegration of prisoners into the community in the area of employment.*
2. *The urgent need for the promised review of the 'effectiveness of the operation of the voluntary guidance' (Employers' Guidance On Recruiting People With Conflict-Related Convictions) after 18 months. That promise was made in May 2007. The guidance has been completely ineffective in 'reducing barriers to employment and enhancing the re-integration of ex-prisoners with conflict related convictions'.*
3. *The North Ireland Civil Service Recruitment Policy should be amended to reflect the terms of the Good Friday Agreement with its reference to the introduction of measures to facilitate the reintegration of prisoners into the community in the area of employment,*

and that any conviction for a conflict related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought.

Sir George Quigley, Chairperson of the working party that created the Employers' Guidance On Recruiting People With Conflict-Related Convictions stated in its introduction;

'1.5 In summary, the basic principle arising out of the main report by the working group is that any conviction for a conflict related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought.'

In their January 2007 Fair Employment Tribunal judgment McConkey Marks V The Simon Community (N.I.) the Tribunal concluded that Article 2(4) of the Fair Employment and Treatment Order 1998 specifically limits the protection against fair employment that the Order as a whole provides.

"In this Order any reference to a person's political opinion does not include an opinion which consists of or includes approval or acceptance of the use of violence connected with the affairs of Northern Ireland, including the use of violence for the purpose of putting the public or any section of the public in fear."

However, they also stated that:

"In light of the Belfast/Good Friday Agreement, and the changed environment in Northern Ireland since the words set out in Article 2(4) were first enacted, there may be good reasons to consider appropriate amendments to the said Article, or even its repeal, to reflect those changed circumstances; and not least to reflect the terms of the said Agreement with its reference to the introduction of measures to facilitate the reintegration of prisoners into the community in the area of employment."

"In the view of the Tribunal it is therefore a matter for Parliament and not this Tribunal whether amendments … should be made, and if so the terms of any such amendments, and/or whether the provision should be repealed."

Further, the judgment of Mr Justice Kerr, (McComb [2003] NIQB 47) then, Lord Chief Justice and current member of the Supreme Court, of July 2003 on the importance of the government's commitment to the re-integration of ex-prisoners in line with the Good Friday Agreement;

'The agreement contemplated that mechanisms would be put in place for the accelerated release of prisoners and that those prisoners who benefited from that programme would be reintegrated into the community. It appears to me therefore that particular attention should be paid to the fact that a prisoner released under the terms of the Northern Ireland (Sentences) Act 1998 has been adjudged not to be a danger to the public.'

'that there is a positive duty on public authorities to take account of early release arrangements and their consequence for "re-integration" in their guidelines and policies.'

It should also be noted that the example set for employers and the total ineffectiveness of the 'voluntary guidance' was demonstrated on Friday 28th of September 2007 in NI Assembly Written Answers to Questions, when Gregory Campbell asked the then Minister of Finance and Personnel, Peter Robinson, (now First Minister) to detail what implications the employers' guidance on recruiting people with conflict-related convictions has for Civil Service recruitment.

'Mr Robinson: As the guidance has not been applied there have been no implications for recruitment to the Northern Ireland Civil Service. As the Minister responsible for recruitment to the Northern Ireland Civil Service it is not my intention to apply the guidance as I believe the existing recruitment policies and procedures provide appropriate arrangements

for dealing with candidates with criminal records.' (http://www.niassembly.gov.uk/qanda/2007mandate/writtenans/070928.htm#8)

The minister knew that the 'existing recruitment policies and procedures' for the civil service bar political ex-prisoners from employment.

Sir George Quigley stated in the final sections of the Guidance to Employers;

" Finally, following the recent Fair Employment Tribunal judgment in McConkey and Marks v the Simon Community the Government has initiated, as a matter of urgency, a review of fair employment legislation to consider whether there is a need to amend Article 2 (4) of the Fair Employment and Treatment Order 1998 in the Tribunal words

"…..to reflect those changed circumstances [in light of the Good Friday Agreement] and not least to reflect the terms of the said Agreement with its reference to the introduction of measures to facilitate the reintegration of prisoners into the community in the area of employment"

(March 2007)

The Jim Allister Bill, Civil Service (Special Advisers) Bill, is intended to further discriminate against former republican political prisoners by excluding them from yet another area of employment.

This Bill will add to the number of legal ways in which former political prisoners can be excluded from employment and it will reinforce the discriminatory attitudes and practices with which former political prisoners have to contend.

Human Rights and Equality Issues

The provisions of the Civil Service (Special Advisers) Bill are not compliant with the European Convention on Human Rights (ECHR). The Bill engages Article 6 of the convention and Article 1 of the First Protocol. The Bill excludes a person from employment as a civil servant without taking due regard to an international agreement and will operate as a breach of that international agreement between two sovereign states, the Irish and British governments', which gave effect to the Good Friday Agreement. In addition, my concern is that the Bill is in breach of Sections 75 and 76 of the Northern Ireland Act 1998.

Legislative Competence

Jim Allister has not provided details of his discussions with the Secretary of State for Northern Ireland regarding this Bill. It is therefore necessary for the Committee for Finance and Personnel to confirm that this Bill does not breach any agreements between the Northern Ireland Assembly and the Westminster Government and that it falls within the legislative competence of the Assembly.

NIACRO

NIACRO'S RESPONSE TO THE COMMITTEE FOR FINANCE AND PERSONNEL CIVIL SERVICE (SPECIAL ADVISERS) BILL

DATE: 31/10/2012

CRU Ref: 2012/69

NIACRO Ref:HFJ25485

1

Ms. Kathy O' Hanlon
Assistant Assembly Clerk
Committee for Finance and Personnel
Room 252
Parliament Buildings
Stormont
Belfast
BT4 3XX

31st October 2012

Dear Ms. O' Hanlon

I enclose NIACRO's response to the Committee for Finance and Personnel Civil Service (Special Advisers) Bill.

NIACRO, the Northern Ireland Association for the Care and Resettlement of Offenders, is a voluntary organisation, working for over 40 years to reduce crime and its impact on people and communities. NIACRO provides services for and works with children and young people; with adults in the community and with people in prison and their families, whilst working to influence others and apply all of our resources effectively.

NIACRO receives funding from, and works in partnership with, a range of statutory departments and agencies in Northern Ireland, including criminal justice, health, social services, housing and others.

We appreciate the opportunity to respond to this consultation and are keen to engage further if that would be helpful.

If you require any further information, please do not hesitate to contact us.

We look forward to receiving the final policy document.

Yours faithfully

Olwen Lyner

Chief Executive

Enc

2

NIACRO welcomes the opportunity to comment upon the draft Civil Service (Special Advisers) Bill, which raises important issues about rehabilitation of people with previous convictions, particularly those related to the conflict in Northern Ireland.

We continue to advocate for a review of the rehabilitation of offenders legislation which, at present, does little to protect anyone with any type of conviction. Evidence from our work demonstrates clearly that discrimination exists in both organisational practices and wider society. Employment is critical to reducing re-offending; therefore it is important that people with a conviction are given fair treatment when trying to find a job.

We do not believe that anyone should be completely prohibited from holding any position simply by virtue of having a criminal conviction.

The Rehabilitation of Offenders legislation (1978 and 1979 Orders) already sets out a matrix of those convictions which are disclosable, as well as providing guidance on the circumstances under which convictions should be considered spent. Any new legislation which was not compatible with this would require careful consideration under Section 8 of the Justice (Northern Ireland) Act 2004 by the Attorney General.

Furthermore, NIACRO believes that the resettlement of people convicted of conflict related offences, and their return to full civic life (including employment), is a essential for any society emerging from conflict.

In March 2007, the Office of the First Minister and deputy First Minister produced guidelines for employers entitled 'Recruiting people with conflict-related convictions'. The parties to this guidance (OFMDFM, the Irish Congress of Trade Unions, the Confederation of British Industry and a representative group of ex-prisoners) recommended the following:

- the onus of proof is on the employer to show material relevance;

- the conviction must be manifestly incompatible with the position in question;

- the seriousness of the offence is not in and of itself enough to make a conviction materially relevant; and

- it will only be in very exceptional circumstances that a conviction will be relevant.

NIACRO reiterates that the proposal within the Bill to set any such threshold for disqualification would not be in line with rehabilitation periods for custodial sentences detailed in the Rehabilitation of Offenders (NI) Order 1978, and is unlikely to be considered legislatively competent by the Attorney General.

Furthermore, we oppose the retrospective extension of any such legislation to those already in post, as this would clearly breach the common law principle of opposing ex post facto laws.

In general, we would support increased transparency and accountability throughout the public sector. NIACRO is opposed to the automatic extension of legislation from any other jurisdiction without appropriate consideration of the local issues by the Northern Ireland Assembly, so local policy proposals would need to be developed.

3

NIACRO argues that as well as the barriers which exist for people represented in the Section 75 groupings, this legislation would present an additional barrier for people with criminal records to contend with.

We appreciate the opportunity to comment on this matter and would be happy to provide further information if that would be helpful. We look forward to meeting with the Committee in due course to discuss this response further.

Northern Ireland Human Rights Commission

Submission on the Civil Service (Special Advisers) Bill 2012

Summary

A. In this submission the Commission advises on the provisions of the Civil Service (Special Advisers) Bill which provides that no person shall hold the post of special adviser if they have been convicted of a criminal offence for which they received a custodial sentence of five years or more.

B. The European Court of Human Rights affords member states a wide margin of appreciation with respect to access to the civil service. The Commission advises, however, that the Committee considers the absolute nature of the proposed prohibition in light of the current arrangements for the appointment of special advisers operational from September 2011.

C. The Commission advises that the Committee considers whether, or not, the restriction on employment as a special adviser constitutes a penalty that was not applicable at the time the criminal offence was committed and any potential breach of Article 15 of the ICCPR and Article 7 of the ECHR.

D. Relevant international standards relating to lustration are referred to.

E. The Commission refers the Committee to the UN Standard Minimum Rules for the Treatment of Prisoners which emphasise the importance of ensuring the social rehabilitation of prisoners.

F. The Commission refers to initiatives undertaken by the Executive to assist in the reintegration of those involved in the conflict and recalls the UN Standards regarding disarmament, demobilization, and re-integration of ex-combatants. The Commission considers that the Bill may be inconsistent with these standards and with the developments in this area taken by the NI Executive.

Submission of the Northern Ireland Human Rights Commission

1. The Northern Ireland Human Rights Commission ('the Commission') pursuant to Section 69 (4) of the Northern Ireland Act 1998 advises the Assembly whether a Bill is compatible with human rights.[1] In accordance with this function the following statutory advice is submitted to the Committee for Finance and Personnel on the Civil Service (Special Advisers) Bill 2012.

2. The Commission bases its views on the internationally accepted human rights standards, including the *European Convention on Human Rights* as incorporated by the *Human Rights Act 1998* and the treaty obligations of the Council of Europe and United Nations systems. The relevant international treaties in this context include:

- The European Convention on Human Rights, 1950 ('ECHR') [UK ratification 1951] and
- The International Covenant on Civil and Political Rights, 1966 ('ICCPR')[UK ratification 1976].

3. The Northern Ireland Executive and Assembly are subject to the obligations contained within these international treaties by virtue of the United Kingdom's ratification. The Commission, therefore, advises that the Committee scrutinises the proposed Private Members Bill for full compliance with international human rights standards.

4. In addition to these treaty standards there exists a body of 'soft law' developed by the human rights bodies of the United Nations. These declarations and principles are non-binding in

1 Northern Ireland Act 1998, s.69 (4)

themselves but they are considered to constitute explications of the treaty provisions and they provide further guidance in respect of specific topic areas. The relevant standards in this context are:

- the UN Standards for Disarmament, Demobilization, Re-integration of ex-combatants
- the UN Standard Minimum Rules for the Treatment of Prisoners
- the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.

5. This advice relates to clauses 1, 2, 3 and 9 of the Civil Service (Special Advisers) Bill. The effect of these clauses is summarised in the Explanatory Memorandum which states that they:

> *"provide that no person shall hold the post of special adviser if they have been convicted of a criminal offence for which they received a custodial sentence of five years or more (a "serious criminal conviction")."*

6. The Bill will have implications for those convicted of a criminal offence and consequentially victims of crime. The Commission notes the potential impact upon those convicted of a conflict related offence, who may be designated as an ex-combatants under the relevant international standards.[2] The Bill, therefore, has implications for victims and survivors of the conflict.

Vetting Arrangements

7. The Bill introduces a prohibition on the appointment to the post of special adviser, which is a civil service appointment, made by the relevant Minister. The Commission recalls the case of Sidabras v Lithuania in which the European Court stated, *"that access to the civil service as such cannot be basis for a complaint under the Convention…".*[3] It should be noted that the European Court has afforded member states a wide margin of appreciation in respect of access to the civil service.[4]

8. The Commission notes that under the Civil Service (NI) Order 1999, the Department of Finance and Personnel may make regulations or give directions prescribing the requirements for appointment to the Northern Ireland Civil Service. At present every position in the NICS carries a security vetting level which is determined by the individual Departmental Security Officer, under the terms of which:

> *"A person must not be appointed to the NICS where there is a significant risk that he or she would represent a threat to the people, assets or information which the Service has a duty to protect.*
>
> *To enable this assessment to be made, as a minimum, candidates who are liable to be appointed must complete an application for a criminal application for a criminal record check at the appropriate level which meets the requirements of the post."*[5]

9. Following a review of arrangements for the appointment of special advisers a new vetting process was introduced which provides for Corporate Human Resources to make a recommendation to the appointing Minister with respect to the appropriateness of a proposed

2 Disarmament, demobilization and reintegration of ex-combatants in a peacekeeping environment, Principles an Guidance Principles and Guidelines

3 SIDABRAS AND DŽIAUTAS v. LITHUANIA (Applications nos. 55480/00 and 59330/00) See for discussion Virginia Mantouvalou 'Work and private life: Sidabras and Dziautas v Lithuania' European Law Review [30, 2005]

4 Glasenapp and Kosiek v. Germany judgments of 28 August 1986 (Series A nos. 104, § 49, and 105, § 35

5 See DFP Risk Assessment Matrixa

appointment (hereinafter 'the 2011 Review').[6] This arrangement has been operational since September 2011.

10. The Commission recalls that in general the European Court has found blanket prohibitions to be disproportionate interferences with the relevant rights engaged. For instance in **Hirst v United Kingdom** the Court found that an automatic blanket prohibition on convicted prisoners exercising the right to vote was arbitrary in its effects and no longer served its stated aim of punishing offenders.[7] Similarly in the case of **S and Marper v UK** the Court ruled that the indiscriminate approach towards the retention of DNA profiles *"fail to strike a fair balance between the competing public and private interests".*[8]

11. The European Court has recognised that in certain circumstances restrictions on employment may engage the right to private life.[9] Whilst the circumstances provided for by the proposed Bill do not appear to engage the right to private life, the jurisprudence of the European Court is evolving and the Commission advises the Committee to consider the possibility of a potential future challenge. If such a challenge were brought the relevant court would assess whether the interference with an applicant's right to private life was a proportionate means of achieving a legitimate aim.

12. The Bill proposes an indefinite prohibition on those convicted of a serious offence being appointed as a special adviser. The Commission advises that the Supreme Court of the United Kingdom has previously found that the imposition of indefinite restrictions, which represent an interference with the right to private life, may be found to be disproportionate where there is no provision for an independent review into the circumstances of an individual.[10]

13. The availability of an independent review mechanism is a relevant consideration in assessing the proportionality of an interference or restriction. The Commission notes that whilst the mechanisms put in place by virtue of the 2011 Review makes provision for individual assessment, the restriction proposed by the current Bill does not make provision for individual assessment or review. The Commission advises that the imposition of a blanket restriction without provision for individual review may be considered disproportionate.

Retroactive Penalty

14. The ICCPR (Article 15) and the ECHR (Article 7) prohibit the imposition of a heavier penalty than the one that was applicable at the time a criminal offence was committed. It is noted that the relevance of Article 7 ECHR has been raised with the Committee. Articles 15 (ICCPR) and 7 (ECHR) would only be relevant if the prohibition on recruitment could be considered a heavier penalty than the one applicable at the time a criminal offence was committed. The Commission advises that the Committee assures itself that the proposed restriction does not amount to the imposition of an additional and retroactive penalty.

15. The issue of penalties has been considered by the European Court on a number of occasions. In the Welch case, the European Court ruled:

> *"the starting point in any assessment of the existence of a penalty is whether the measure in question is imposed following conviction for a 'criminal offence'. Other factors that may be taken into account as relevant in this connection are the nature and purpose of the measure*

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6 'Special Advisors - Review of arrangements for the appointment of Ministers special advisers' DFP 6 September 2011 available at: http://www.dfpni.gov.uk/special-advisers-review-of-arrangements-for-the-appointment-of-ministers

7 (No 2) [2005] ECHR 6

8 S and Marper v United Kingdom, applications nos 30562/04 and 30566/04, Council of Europe: European Court of Human Rights, 4 Dec 2008

9 The European Court has ruled that the right to private life may include the right to seek employment Niemitz v Germany (1992) 16 E.H.R.R. 97, s.29.

10 'R (on the application of F and Angus Aubrey Thompson) v Secretary of State for the Home Department' [2010] UKSC 17

in question; its characterisation under national law; the procedures involved in the making and implementation of the measure and its severity."[11]

16. The UN Human Rights Committee which is responsible for ensuring compliance with ICCPR, in its General Comment 29, stated that Article 15 includes a requirement that *'criminal liability and punishment [be] limited to clear and precise provisions in the law that were in place and applicable at the time the act or omission took place'.*

17. The Commission notes that the Bill makes provision for transitional measures and importantly provides compensation for any person who may be removed from post as a consequence of a serious conviction. The Explanatory Memorandum states that these measures have been put in place to ensure compliance with Article 1 of the First Protocol to the ECHR, on the right to property.

Lustration

18. International human rights standards recognise the importance of ensuring that public institutions are structured in such a manner as to ensure respect for the rule of law and human rights. The Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity ('Updated Principles')[12] state:

"Public officials and employees who are personally responsible for gross violations of human rights, in particular those involved in military, security, police, intelligence and judicial sectors, shall not continue to serve in State institutions. Their removal shall comply with the requirements of due process of law and the principle of non-discrimination."

19. The Updated Principles are intended to address impunity and primarily to address individuals who have committed gross violations, including extra-legal, arbitrary or summary executions in order to prevent further violations.[13] The removal of certain individuals from public office (referred to as lustration) is, therefore, recognised in international human rights standards and good practice under certain circumstances.

20. The European Court has ruled that to ensure human rights compliance lustration measures must meet certain criteria which are summarised below:

- Lustration law should be accessible to the subject and foreseeable as to effects
- Lustration should not exclusively serve the purpose of retribution or revenge
- If domestic law allows restrictions on ECHR rights, it must be precise enough to allow for the individualisation of the responsibility of each person affected thereby and contain adequate procedural safeguards
- National authorities must keep in mind that lustration measures are temporary, and therefore their necessity diminishes with time.[14]

21. The Commission advises that the Committee assure itself that the imposition of lustration for those already in office and who have been convicted of a serious offence is compliant with these criteria and with the Updated Principles.

11 Welsch v UK, (App. 17440/90), 9 February 1993, Series A No 307-A

12 E/CN.4/2005/102/Add.1

13 E/CN.4/2005/102/Add.1, Updated Set of principles for the protection and promotion of human rights through action to combat impunity Principle 26 refers to 'gross violations of human rights, such as torture; enforced disappearance; or extra-legal, arbitrary or summary execution.'

14 Adamsons v Latvia (no. 3669/03, 24 June 2008) Para 116

Transitional Justice and Rehabilitation – Reintegration

22. The Commission recalls that international human rights standards require state authorities to assist in the rehabilitation and reintegration of prisoners. The UN Standard Minimum Rules for the Treatment of Prisoners state:

> *"The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation."*

23. In addition the Commission notes that in May 2007, the Office of the First Minister and deputy First Minister (OFMdFM) issued guidance for employers on the recruitment of people with conflict-related convictions.[15]

24. This guidance is intended to assist in the reintegration of those involved in the conflict and its stated aim is *"to ensure that .. a [conflict related] conviction is not taken into account, unless it is materially relevant to the post or service in question".*

25. A Review Panel established to assess the effectiveness of the guidance reported its findings in March 2012.[16] The Panel recommended that legislative changes be introduced to underpin the effectiveness of the guidance, namely amendments to the Fair Employment and Treatment (Northern Ireland) Order 1998 to ensure those with conflict related offences are protected from discrimination.

26. The Commission advises that the United Nations has issued relevant guidance on transitional justice and treatment of former combatants, including the 'Standards for Disarmament, Demobilization, and Re-integration of ex-combatants' (DDR). These Standards emphasise the importance of ensuring that those involved in conflict are able to re-integrate into society. The Standards state:

> *"DDR supports and encourages peace-building and prevents future conflicts by reducing violence and improving security conditions, demobilizing members of armed forces and groups, and providing other ways of making a living to encourage the long-term reintegration of ex-combatants into civilian life."*

27. The Commission advises the Committee that the OFMdFM guidance and the current arrangements for the appointment of special advisers are broadly consistent with human rights standards. The prohibition contained within the Bill may be inconsistent with the UN Standards.

15 OFMdFM 'Guidance for Employers on the Recruitment of People with Conflict Related Convictions' May 2007

16

Coiste na nIarchimí

From: Michael Culbert [michael@coiste.com]
To: +Comm. Fin & Pers Public Email
Cc:
Subject: Civil Service (Special Advisers) Bill

A chara

My organisation strongly objects to this Bill and its intent to further marginalise the political ex prisoner community here.

I would refer you to the section of the Good Friday Agreement – strand 3 as below and St Andrew's Agreement.

Prisoners

1. Both Governments will put in place mechanisms to provide for an accelerated programme for the release of prisoners, including transferred prisoners, convicted of scheduled offences in Northern Ireland or, in the case of those sentenced outside Northern Ireland, similar offences (referred to hereafter as qualifying prisoners). Any such arrangements will protect the rights of individual prisoners under national and international law.

2. Prisoners affiliated to organisations which have not established or are not maintaining a complete and unequivocal ceasefire will not benefit from the arrangements. The situation in this regard will be kept under review.

3. Both Governments will complete a review process within a fixed time frame and set prospective release dates for all qualifying prisoners. The review process would provide for the advance of the release dates of qualifying prisoners while allowing account to be taken of the seriousness of the offences for which the person was convicted and the need to protect the community. In addition, the intention would be that should the circumstances allow it, any qualifying prisoners who remained in custody two years after the commencement of the scheme would be released at that point.

4. The Governments will seek to enact the appropriate legislation to give effect to these arrangements by the end of June 1998.

5. The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or reskilling, and further education.

The Bill as proposed by Mr Allister runs contrary to this Governmental commitment as in Point 5 above.

Our specific objections are based upon the following:

Clause 2: Special adviser not to have serious criminal conviction

Clause 2 prohibits a person with a serious criminal conviction from being appointed as a special adviser. Special advisers in post with a serious criminal conviction and those who incur such a conviction while in post will have their appointment terminated by this legislation. A duty is placed on Ministers to inform DFP whether any special adviser appointed by them has a serious criminal conviction.

Clause 2 will

- Operate as a breach of the international agreement between two sovereign states, the Irish and British governments, which gave effect to the Good Friday Agreement.
- It will contravene the commitments given in regard to political ex-prisoners' in the Good Friday Agreement and in the St Andrews Agreement.
- Its 'retrospective penalisation' of current special advisors will be in contravention of domestic and international human rights provision.
- The Bill in its entirety has not been Equality Impacted Assessed
- In its intention and spirit it completely contradicts the purpose and intention of the OFMDFM commissioned 'Employers' Guidance On Recruiting People With Conflict-Related Convictions' (EGRPCRC) May 4th 2007

Clause 3: Meaning of "serious criminal conviction"

Clause 3 defines "serious criminal conviction" as one for which a sentence of imprisonment of five years or more, or another specified sentence, was imposed.

On this we would refer you to Sir George Quigley, Chairperson of the working party that created the Employers' Guidance On Recruiting People With Conflict-Related Convictions, who stated in its introduction;

> *'1.5 In summary, the basic principle arising out of the main report by the working group is that any conviction for a conflict-related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought.'*

Again we repeat that this measure is designed to mitigate against one particular sector of society and that we consider that it is discriminatory in its design and intent

I am requesting an opportunity to make a verbal submission with more detail to the Committee for Finance and Personnel

Le meas
Michael Culbert

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Equality Commission for Northern Ireland

The Civil Service (Special Advisers) Bill

Briefing for the Committee for Finance and Personnel (5 December 2012)

1. The Equality Commission for Northern Ireland (Commission) advises on those provisions of the Civil Service (Special Advisers) Bill which relate to its remit[1]. The Commission's remit has relevance to;
    - Clause 2, that is, the exclusion of any person with a serious criminal conviction;
    - and Clauses 4-6, that is, the placing on a statutory basis aspects relating to the remuneration, conduct and appointments of Special Advisers.

2. The Commission previously wrote to the Minister of Finance and Personnel, Mr Sammy Wilson MP MLA (September 2011) in the context of the Review of Arrangements for the Appointment of Ministers' Special Advisers.

3. The Commission's evidence includes the commentary provided for the Review of Arrangements for the Appointment of Ministers' Special Advisers and additional observations on The Civil Service (Special Advisers) Bill.

Review of Arrangements for the Appointment of Ministers' Special Advisers (September 2011)

4. In 2011 the Commission considered the appointment of Special Advisers and the extent to which the mode of their appointment engaged equality legislation and the Commission's remit, in particular its responsibilities in respect of the Fair Employment and Treatment Order 1998, (as amended) and the other anti-discrimination statutes in respect of employment matters.

5. In summary, the Commission recognised the importance of Special Advisers, in terms of their role in shaping public policy in Northern Ireland. The Commission also noted that Special Advisors are privileged in the terms and conditions that apply to them. Accordingly the process by which these positions are filled is a matter of some public significance. The Commission also appreciated the unique nature of Special Advisers and the legal framework within which they are established in Northern Ireland and throughout the rest of the United Kingdom. It also noted that there is a current Code of Practice on the Appointment of Special Advisers in Northern Ireland.

6. The Commission has proposals in two areas to make to the Committee. Firstly the Commission would wish that the application of relevant equality and employment law be seen to clearly apply in these appointments. Secondly because of the expenditure of public moneys involved, there is a need for, and value in putting in place the most open and transparent arrangements possible.

[1] Annex 1 The Equality Commission for Northern Ireland

7. The Commission welcomes the references to equality law and principles in the Code of Practice on the Appointment of Special Advisers that is current in Northern Ireland. It also recognises the particular circumstances that may remove some of these appointments from the requirement not to take account of the political views of candidates or of those being considered for appointment. The Commission previously drew to the attention of the Minister of Finance and Personnel, Mr Wilson MP MLA, a number of considerations that might be borne in mind, in the context of the Review of Arrangements for the Appointment of Ministers' Special Advisers.

8. Specifically the Commission drew attention to the following considerations:

- The exemption in respect of political opinion based on the "essential nature of the job", as provided for in fair employment legislation, be invoked only after careful consideration[2];
- Future practices in respect of the filling of Special Adviser posts where it is considered appropriate to invoke the exemption in respect of political opinion, should include some tangible measure, beyond good counsel, whereby the arrangements are otherwise transparently and publicly in accord with the prevailing equality legislation.
- All other appointments to posts of Special Adviser should be, and seen to be, made within the letter and spirit of the equality and employment legislation.
- Consideration should be given to introducing an arrangement whereby there is, within the Civil Service appointments process, some objective standard or measure against which the expertise, qualification and suitability of the person to be appointed can be independently evaluated.
- In the interests of transparency, greater clarity should be available as to the remuneration of the Special Advisers. The Commission considered that an approach such as that adopted by the Cabinet Office in this regard would be a useful guide.

9. The Commission is aware that the Review of Arrangements for the Appointment of Ministers' Special Advisers was completed in September 2011 and a Report on the Review was placed in the Assembly Library around the end of 20 October 2011[3].

The Civil Service (Special Advisers) Bill. Clause 2: Ineligibility for Appointment on the Grounds of a Serious Criminal Conviction

10. The following comments relate to Clause 2 of the Civil Service (Special Advisers) Bill, that is, those provisions which prohibit a person with a serious criminal conviction from being appointed as a Special Adviser. In summary, our comments relate to the application of blanket exceptions in recruitment processes generally and specifically the recruitment of people with conflict related convictions, as they relate to the provisions of the Fair Employment and Treatment (NI) Order 1998.

11. The Commission advises employers to exercise particular caution with criteria which might directly or disproportionately exclude persons who have certain characteristics, or which might discourage such persons from applying for work that they are actually

[2] Article 70(4) of the Fair Employment and Treatment (NI) Order 1998
[3] AQW 240/11-15

suitably qualified to do[4]. Such criteria may relate to, for example, prescribing that applicants must be a certain height. This criteria, although applied equally to all candidates may have the impact of disproportionately excluding women. An employment decision that is indirectly discriminatory will normally be unlawful unless the decision (e.g. the job criterion in question) can be objectively justified. The test of objective justification is where an employer is able to demonstrate that the criterion is a proportionate means of achieving a legitimate aim in the full context being considered.

12. The Commission recognises that there are particular occupations where it may be legitimate to exclude people from employment based on specific criminal convictions. For example, where the aim is to protect children and vulnerable adults it would be considered proportionate (and necessary) to exclude from employment an applicant with a criminal conviction where there is a direct relevance of the crimes committed to the job in question.

13. In relation to recruitment for Special Advisers, it is noteworthy that in 2001 a discrimination complaint has been made in relation to a Special Adviser appointment in England.[5] In the case of Coker and Osamor – v- the Lord Chancellor and the Lord Chancellor's Department, the EAT ruled that the arrangements for the appointment were not indirectly discriminatory. The fact that the arrangements were challenged on the grounds of sex and race is however of relevance.

14. In the scenario of the Civil Service (Special Advisers) Bill, a potential applicant could, for example, complain that the criterion of prohibiting all persons with a serious criminal conviction disproportionately excludes men. If this scenario were correct (that is, that men (or another protected equality ground) were disproportionally excluded by the application of the criterion), it would be for the employer to objectively justify that the criterion was a proportionate means of achieving a legitimate aim, taking into account relevant factors in any such complaint.

15. In terms of the recruitment of people with conflict related convictions, the Commission is mindful of the new era post the Good Friday Agreement. Currently Section 2(4) of the Fair Employment and Treatment (NI) Order 1998 excludes from protection those whose political opinion supported the use of violence[6]. The Commission, in the context of a proposed Single Equality Act in 2002[7], considered that the legislature should use the Single Equality Act to clarify the position in relation to this, given the passage of time and the new political environment.

16. The fair employment case of McConkey & Marks v The Simon Community clarified the position in terms of current fair employment provisions. In summary, the Fair Employment Tribunal (December 2006) handed down a decision relating to a case

[4] Equality Commission Guidance, 'A Unified Guide to Promoting Equal Opportunities in Employment' Section 10B.3

[5] [2002] IRLR 80, England and Wales Court of Appeal

[6] Section 2(4) of the Fair Employment and Treatment (NI) Order 1998 which states that,*'In this Order any reference to a person's political opinion does not include an opinion which consists of or includes approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland, including the use of violence for the purpose of putting the public or any section of the public in fear.'*

[7] Position paper: Update on the Single Equality Act: Autumn 2002

involving two individuals with conflict related convictions. The Tribunal found that, subject to Article 2(4) of the Fair Employment and Treatment (NI) Order 1998, the applicants' claims of political discrimination must fall and their cases were dismissed. The Tribunal considered that Article 2(4) applied to political opinions held in the past, as well as those held in the present[8]. The Tribunal suggested that the case highlighted the need for the legislation to be reviewed in light of more recent political developments. McConkey and Marks subsequently appealed the decision of the Fair Employment Tribunal to the Court of Appeal. The Court of Appeal dismissed their appeals. McConkey and Marks then appealed the Court of Appeal decision to the House of Lords. The House of Lords subsequently upheld the Court of Appeal decision and dismissed McConkey and Marks appeals.

17. In relation to assisting individuals with conflict related convictions to re engage in society and in particular to reenter the labour market, in May 2007 the Office of the First Minister and deputy First Minister issued guidance on the recruitment of people with conflict – related convictions. The guidance was developed by the Ex-Prisoners Working Group comprising representatives of Government Departments, the Confederation of British Industry, the Irish Congress of Trade Unions, and a representative group of ex-prisoners[9].

18. The voluntary guidance for employers is aimed at reducing barriers to employment and enhancing the reintegration of ex-prisoners with conflict-related convictions. The guidance advises employers to disregard any conflict related conviction unless it is materially relevant to the post to be filled. The overarching principle upon which the guidance is based is, 'that any conviction for a conflict-related offence that pre-dates the Good Friday Agreement (April 1998) should not be taken into account unless it is materially relevant to the employment being sought'[10].

19. As part of the Employers' Guidance a tripartite review panel was formed. This panel comprised one representative from each of the parties involved in developing the guidance, i.e. OFMdFM, ICTU, CBI, as well as an Independent Chair. In its terms of reference, the Panel was tasked with considering individual cases, building up evidence regarding the acceptance and adoption of the Guidance, and producing a progress report on the impact of the Employers' Guidance after an 18 month period. The Review Panel published an interim report in June 2011 and its final Report was issued in March 2012[11].

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[8] Section 2(4) of the Fair Employment and Treatment (NI) Order 1998 states that,*'In this Order any reference to a person's political opinion does not include an opinion which consists of or includes approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland, including the use of violence for the purpose of putting the public or any section of the public in fear.'*

[9] The Equality Commission and other organisations, such as the Federation of Small Businesses joined the Ex-Prisoners Working Group in 2009.

[10] Employers' Guidance on Recruiting People with Conflict-Related Convictions:Office of the First Minister and deputy First Minister 2007

[11] Report of the Review Panel: Employers' Guidance on Recruiting People with Conflict-Related Convictions March 2012

20. The Report of the Review Panel is quite extensive with a number of conclusions. As part of the Report it is noted that 'a range of impediments and legal barriers have prevented the Guidance from working as a voluntary arrangement', and that 'Given this, the view of the Review Panel is that the Employers' Guidance should be implemented by legislative change'. The Review Panel therefore 'recommends removing Section 2(4) of the Fair Employment and Treatment (Northern Ireland) Order 1998 or alternatively allowing Article 2(4) to remain but placing a caveat that it would not apply to those conflict-related convictions that pre-date 1998'.

21. The work of the Review Panel and its Report are a testament to the present difficulties faced by ex prisoners in re entering the labour market. The Assembly may therefore consider that arrangements for recruiting positions of Special Advisor should as recommended by the Review Panel, also adopt the perspective that a conflict related offence that pre dates 1998 should not be taken into account unless it is materially relevant to the position being filled.

Clauses 4-6 Statutory Requirements

22. As noted above, the Commission is in agreement, in principle, with those Clauses of the Bill which relate to transparency with regard to the conduct, recruitment and selection and remuneration of Special Advisers. It is for the legislature to decide whether these aspects should be on a statutory or voluntary basis.

23. It is noted that Clause 6: Code of Appointments includes a provision that appointment must be subject to the same vetting procedures as apply when appointing senior civil servants to the Northern Ireland Civil Service. The Commission would again note the necessity of ensuring that any vetting procedures are as far as possible transparent, are relevant to the specific position being appointed and are in accordance with rehabilitation of offenders' principles.

Conclusion

24. In conclusion, the Commission appreciates the importance and also the sensitivity around the appointment of Special Advisers and is in agreement that the arrangements for the recruitment, conduct and remuneration should be the most open and transparent.

25. For the reasons set out above, the Commission cautions against the use of blanket exemptions unless they can be objectively justified. The test of objective justification means that an employer is able to show that what is done is a proportionate means of achieving a legitimate aim in the particularities, and full context, of the criterion being challenged.

26. The Commission welcomed (in 2007) the development of the Employer Guidance on Recruiting People with Conflict Related Convictions by the Office of the First Minister and deputy First Minister. As recommended by that guidance, the Commission therefore agrees that employers should take an individualised approach and consider the material relevance of any conflict related conviction to the post to be filled rather than rely on blanket exemptions[12].

[12] A conflict related conviction that pre-dates the Good Friday Agreement

Annex 1

The Equality Commission for Northern Ireland

1. The Equality Commission for Northern Ireland ("the Commission") is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the anti-discrimination legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.

2. The Commission"s remit also includes overseeing the statutory duties equality duties on public authorities in Section 75 of the Northern Ireland Act 1998: to pay due regard to the need to promote equality of opportunity and pay regard to the desirability of promoting good relations, as well as the duties in Section 49A of the Disability Discrimination Act 1995 (as amended).

3. The Commission, along with the NIHRC, has also been designated as the "independent mechanism" in Northern Ireland, tasked with promoting, protecting and monitoring implementation of the United Nation Convention on the Rights of Persons with Disabilities (UNCRPD).

Dr Máire Braniff and Dr Cillian McGrattan

The Civil Service (Special Advisors) Bill: Democratic Implications and Considerations

Dr Máire Braniff (University of Ulster)

Dr Cillian McGrattan (Swansea University)

Introduction

The appointment of Mary McArdle as special advisor to the Minister of Culture, Arts and Leisure, Carál Ní Chuilín, in 2010 provoked a media storm that Jim Allister MLA has cited as the impetus behind the Civil Service (Special Advisers) Bill.[1] Although Mr Allister's preparation and support of the Bill has, in turn, created much debate, only a fraction of it has overtly considered what the Bill and the situation it seeks to address might mean for the Northern Irish polity. This paper seeks to draw out some of those considerations.

Democracy as Power-Sharing

Northern Ireland enjoys what is known in political science literature as consociationalist governance. This is a form that is common to many countries around the world in which power is shared between ethnic, national or religious communities.[2] Consociationalism is often defined against the winner-takes-all, first-past-the-post majoritarianism of Westminster as it is based on governmental posts being portioned out among political parties (in effect, power-division) and important decisions being made subject to a system of mutual vetoes. Although the Northern Irish system has been extolled as an exemplar of managing divided societies it has also given rise to periodic debates on the lack of an official opposition.

Because of its delicate balancing of communal division the system might also be seen to contain within it the persistent possibility of crisis, of which the McArdle appointment is one clear example. A consociational system fastens together otherwise polarised and segmented blocs and their elites within a single policy-making framework. Consensus on decision-making and implementation

[1] Official Report (Hansard) Committee for Finance and Personnel, 'Civil Service (Special Advisers) Bill: Briefing from Mr Jim Allister MLA. Available at http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/September-2012/Civil-Service-Special-Advisers-Bill--Briefing-from-Mr-Jim-Allister-MLA/.

[2] Adrian Guelke, *Politics in Deeply Divided Societies.* London: Polity, 2012, pp. 6-7.

becomes, paradoxically, the only option as agreement is created through a system of checks and balances (veto powers in particular) and a subsequent tampering of ethnic sentiments. Within this system politics becomes effectively de-politicised: the culture of openness, transparency and debate that is commonly understood to be the hallmark of politics becomes deferred through the procedural requirement to reach consensus – an inversion of Heaney's 'Whatever you say, say nothing'.[3] The element of crisis contained within this arrangement is that it is impossible to suppress issues such as victimhood, truth recovery or the search for justice for ever and that cases such as that of McArdle will inevitably appear and recur.

De**mocracy and Representation**

The question of how to deal with such appearances and recurrences goes therefore to the heart of any democracy. They constitute a fundamental dilemma over what the roles of politicians should be and how ordinary citizens are represented and re-presented by political elites.

In his contribution to the 'Federalist Papers' (the series of radical and revolutionary articles that envisioned a new democratic American republic), James Madison drew explicit links between political representation and popular participation. For Madison, the paradox of democratic government resides in the fact that it has to be simultaneously *for* the people and *of* the people. It must necessarily involve ordinary citizens and communities in the processes of governance, while also observing a system of checks and balances to ensure that one group does not exercise unfair, unjust or unethical sway over another: 'To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed'.[4]

Madison's point echoes in the oral evidence of Professor Brice Dickson to the Committee. Human rights law, in his opinion 'would allow states a certain margin of appreciation' in deciding on employability protocols for special advisors or ex-paramilitary prisoners. Professor Dickson and his colleagues Dr Rory O'Connell and Dr Anne Smith argued for an 'individualised approach' – a point

[3] Seamus Heaney, "Whatever You Say Say Nothing." In *New Selected Poems, 1966–1987*. London: Faber and Faber, 1990, pp. 78-80.
[4] James Madison, 'Number X: The Same Subject Continued'. In James Madison, Alexander Hamilton and John Jay, *The Federalist Papers*. Harmondsworth: Penguin, 1987 [1788], p. 123.

that was reflected in the Human Rights Commission's interpretation of the treatment by the European Court of Human Rights on lustration and domestic restriction of employment rights.[5] The Madisonian corollary to that proposition is the question of how to balance those individual rights with societal ones. Mr Mitchel McLaughlin MLA alluded to this in his response to Professor Dickson's arguments:

> We have great sympathy with and sensitivity for the individuals who have been hurt as a result of the actions of others, but we also have an absolute duty to try to move beyond post-conflict into reconciliation processes such as truth recovery to deal with the fact that there are many victims in our community who have never had redress.[6]

The issue of how to move forward as a society, building a sound infrastructure for future generations while acknowledging the divisions, hurts, grievances and injustices of the past lies at the heart of the Bill. Although this involves issues of rights and issues of ethics, it is fundamentally a political question: it creates polarisation and debate and is, perhaps, ultimately unsolvable.[7]

Politics and Ethics

This is not to say the issue should be ignored, nor is it to indulge trite, sentimentalising of the notion that we should agree to disagree. In our view, the point deserves consideration, for it goes to the heart of what we perceive the Bill to be about: namely, the repudiation of a slide towards equivalency. What we mean by equivalency should be made clear: it involves the suggestion that there is no distinction between state killings and those of extra- or anti-state forces. Three points follow from this.

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[5] Northern Ireland Human Rights Commission, 'Submission on the Civil Service (Special Advisers) Bill 2012, paragraph 20. In the interests of precision, the Bill deals with employment rights rather than lustration *per se*.

[6] Official Report (Hansard), Committee for Finance and Personnel, 'Civil Service (Special Advisers) Bill: Human Rights Issues, 21 November 2012. Available at http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/November-20121/Civil-Service-Special-Advisers-Bill-Human-Rights-Issues/.

[7] Cillian McGrattan, 'Spectres of History: Nationalist Party Politics and Truth Recovery in Northern Ireland', *Political Studies*, Vol.60 (3): 455-473.

Firstly, there is the issue of accountability: despite the failings of the British state to persecute those culpable for heinous acts of murder and terror against individuals and whole sections of society, it is subject to the law. Mr McLaughlin and Sinn Féin implicitly recognise this in their calls for the state to admit to its actions. There results an immediate moral confusion. For, just as the state is accountable before the law (that is, before the legal process), the idea that loyalist and republican volunteers should also give evidence before an independent or international tribunal becomes mere rhetoric: those groups are unaccountable to anyone but their own codes of ethics, apart from outside coercion they are not under any compulsion to partake in a truth and reconciliation process. (The willingness of the Northern Irish political class to entertain ideas to the contrary speaks to the resilience of the central conceit of the Report of the Consultative Group on the Past that both state and anti-state actors could invest willingly in a 'Legacy Commission'.)[8]

Secondly, the consequence is not just moral confusion between the distinction between accountability (the law) and murder, there is also a political effect to equivalency: namely, that the state is accountable, paramilitaries are not. The effect is to weight the political process in favour of paramilitaries. This is not to say that the British and Irish states were not culpable of atrocious actions (and omissions). It is rather only to point out that the playing field becomes uneven through the application of an implicit system of double standards.

Thirdly, not all voices are equal. Contrary to Mr McLaughlin's otherwise laudable promotion of acknowledgement,[9] 'understanding' is not synonymous with justice. In other words, some stories are more easily told than others and victims – namely, those marginalised and muted (if not silenced) through political violence – start from a point of disadvantage vis-à-vis their perpetrators. Equalising that disparity remains radically different from fostering an equivalence of experience. Within this understanding, acknowledgement and (uneasy) understanding fall short of redress or justice and may, through repeated reference, create a discursive framework that militates against actually achieving justice or uncovering the truth about what happened to victims.

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[8] Cillian McGrattan *Memory, Politics, Identity: Haunted by History*. Basingstoke: Palgrave Macmillan, 2013, pp. 12-17.

[9] It is not that they would become friends or could completely set aside what happened, but, at a human level, people have acknowledged one another's dignity as well as the trauma and may have addressed, in a satisfactory way, their responsibility for that. Available at http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/November-20121/Civil-Service-Special-Advisers-Bill-Ann-TraversCatherine-McCartney-Briefing/, accessed on 7 December 2012.

Political Realities

The impulse to side-line ethical or political realities remains a key theme in submissions to the Committee. The essentially problematic nature of that impulse is that it is couched in benign, inclusivist language. The submissions of NIACRO and the loyalist and republican ex-(paramilitary) prisoners harness that language. Mr Pat Conway (NIACRO), for example, argued that 'Our view is that [if] someone commits an offence, goes to court and is dealt with by due process […] they are either found guilty or innocent'. He seemingly elides punishment with what he calls 'the real world': 'In our view, there is no such thing, for example, as politically motivated rape'.[10] Now, that this was the attitude of the South African Truth and Reconciliation Commission, which is often cited in relation to these 'dealing with the past' debates in Northern Ireland, says little for the political and moral reality of the 'international norms' that were alluded to in passing and directly within the legal briefings.[11]

A more ambiguous area is that alluded to in Mr Michael Culbert's testimony (on behalf of the republican ex-prisoner group Coiste na nIarchimí) who has argued before the Committee that 'We either accept that we have moved forward and that we will make major efforts to be accepting of all aspects of our former society, or we do not, in which case we have second-class citizenship'.[12]

The political *effect* of this is to use the language of rights to press a factional agenda on to an entire society. As Ann Travers pointed out in her testimony, there is a demonstrable difference between society partaking in free and fair elections and people being returned who we may not like and them appointing individuals to public positions whom we may not like. [13]It is politically loaded and it is morally offensive. The effect of the strategy of NIACRO, the ex-prisoner groupings and Sinn Féin of

[10] Official Report (Hansard), Committee for Finance and Personnel, 'Civil Service (Special Advisers) Bill: NIACRO Briefing', 7 November 2012. Available at http://www.niassembly.gov.uk/Documents/Official-Reports/Finance_Personnel/2012-2013/121107_CivilServiceSpecialAdvisersBillNIACROBriefing.pdf.

[11] Fiona C Ross, *Bearing Witness: Women and the Truth and Reconciliation Commission in South Africa*. London: Pluto, 2003.

[12] Official Report (Hansard), Committee for Finance and Personnel, 'Civil Service (Special Advisers) Bill: Coiste na nIarchimí/Tar Isteach Briefing', 28 November 2012. Available at http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/November-20121/Civil-Service-Special-Advisers-Bill-Coiste-na-nIarchimiTar-Isteach/.

[13] Official Report (Hansard), Committee for Finance and Personnel, 'Civil Service (Special Advisers) Bill: An Travers/Catherine McCarthy Briefing', 21 November 2012. Available at http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/November-20121/Civil-Service-Special-Advisers-Bill-Ann-TraversCatherine-McCartney-Briefing/.

conflating perpetrators who *choose* to carry out violent acts and victims who suffered those acts is to create an ethical aspic that serves only to confuse and obscure.

Politics and Democracy

It is imperative that political leaders remove that aspic rather than perpetuating it. However, it is our contention that the political context of this Bill will result in the latter rather than the former. In the first instance the proposer of the Bill remains an 'outsider-figure' within the Assembly: the fact that it was he and not one of the parties of government who has tried to tackle the anomalies that resulted from a previous review[14] speaks to a willingness by those in power to abdicate responsibility when it comes to issues that go to the heart of where Northern Ireland stands as a political community.

Madison's response to the question of balancing individual rights against the need to create a coherent, cohesive polity was straightforward: either the elite (what he referred to as the majority faction) contains itself or it is made 'unable to concert and carry into effect schemes of oppression'.[15] Sadly one of the things this Bill highlights is the fact that the predilection of certain factions within Northern Irish society to indulge in ethnic politics continues to oppress and re-traumatise individuals who suffered the effects of political violence. The willingness of other parties to vocalise disgust at one incident while turning a blind eye to or actively indulging in others is an indictment of our political class.

That the Bill is deemed necessary is in and of itself evidence of the moral confusion at the heart of Northern Irish society. The choreography surrounding its preparation and much of the debate it has spurred, in our eyes, only reproduces that confusion. Political leaders enjoy a role different from most of us in society – most people are expected to fulfil the roles they find themselves in, politically and economically, but this is precisely what political leaders need not and indeed should not do. They may question society and its frameworks, they may question their position within, and they may and must question what form society is taking and what values define it.

[14] See Civil Service (Special Advisers) Bill: Explanatory and Financial Memorandum, paragraphs 7-8. Available at http://www.niassembly.gov.uk/Documents/Legislation/Bills/Non-Executive%20Bills/Session-2011-12/Civil%20Service%20(Special%20Advisers)%20Bill%20EFM.pdf.
[15] Madison, 'Number X', p. 126.

Written submissions from individuals supporting the Bill

1

Dear friend,

Some time ago you responded to my consultation on a bill to ban people with serious criminal convictions from holding the post of Special Adviser at Stormont.

I was overwhelmed with the support which my proposal received with over 800 groups and individuals responding to the consultation.

On 25th September the Bill passed its second stage by 62 votes to 32. Now the Bill has been referred to Finance and Personnel Committee.

The DFP Committee is currently asking for evidence. The public notice announcing this fact is online here http://www.niassembly.gov.uk/Assembly-Business/Committees/Finance-and-Personnel/Civil-Service-Special-Advisers-Bill/Public-Notice/

In essence, this is a second consultation. It is important that as many people as possible send in supportive comments to the committee.

You can contact the committee by emailing committee.finance&personnel@niassembly.gov.uk or writing to Committee Clerk, Room 419, Parliament Buildings, Ballymiscaw, Stormont, Belfast BT4 3XX.

You could include the following points:

(i) Say you support Clause 2 because you believe that no one with a serious criminal conviction should be able to hold the position of Special Adviser due to the hurt caused to victims' families;

(ii) Point out that SPADs hold a role at the top of government with the status, standing and pay of top civil servants. No such convicted person could hold such a post as a regular civil servant so why should they be able to be a Special Adviser;

(iii) Say you support Clause 4 (the production of an Annual Report) because you believe the tax paying public have a right to know how much of their money is going towards Special Advisers. Make the point that this is already the case in the rest of the UK;

(iv) Say you support the introduction of a Code of Conduct and Code for Appointments (Clauses 5 and 6) as this will bring greater regulation to the issue and

(v) Say you support Clause 7 which removes the right of the Presiding Officer (or speaker) to appoint a Special Adviser. Make the point that the Speaker (a) has never exercised the right to appoint a Special Adviser and (b) the role of the Speaker is above party politics and therefore he should not have the option to appoint a Special Adviser, a post which by its very nature is party political.

Please adapt these points as you please so as to avoid uniformity and feel free to add further points.

My speech in the Assembly on the issue is online here http://www.tuv.org.uk/press-releases/view/1634/special-advisers-bill-passes-second-stage

If you could advise me of any response received from the Committee I would appreciate

Name supplied.

2

Dear Sir,

Here are my views on this Bill.

Clause 2 prohibits a person with a serious criminal conviction from being appointed as a special adviser.

I support the sentiments of this clause because those with a serious criminal conviction should not be appointed a Special Adviser. Just consider what the victim's families would think.

Top Civil Servants would not be allowed to be convicted persons so why should Special Advisers be?

Clause 3 defines "serious criminal conviction" as one for which a sentence of imprisonment of five years or more, or another specified sentence, was imposed.

I entirely support this clause.

Clause 4: Annual report

This provision places a duty on DFP to prepare, and on the Minister for Finance and Personnel to lay before the Assembly, an annual report about special advisers.

As in the rest of the UK tax payers have a basic right to know how much of their money is paid to Special Advisers.

Clause 5: Code of conduct

This clause places a duty on DFP to issue, and on the Minister for Finance and Personnel to lay before the Assembly, a code of conduct for special advisers.

This is a very good idea and I fully support it.

Clause 6: Code for appointments

This clause places a duty on DFP to issue, and on the Minister of Finance and Personnel to lay before the Assembly, a code governing the appointment of special advisers.

Agree. If top civil servants need to be vetted, then so do Special Advisers.

Clause 7: Advisers to the Presiding Officer

This clause amends the Civil Service Commissioners (Northern Ireland) Order 1999 to remove the Presiding Officer of the Northern Ireland Assembly from the list of office-holders who are entitled to appoint a special adviser.

Entirely agree. The Speaker should be above party politics and should not indulge in party patronage.

Name supplied

3

To whom it may concern

Please see my response below,

- Can I voice my support for Clause 2 because I believe that no one with a serious criminal conviction should be allowed to hold a position of Special Adviser due to the hurt that this can/will cause the victims' families surely we can all agree that they have suffered enough.
- Secondly Special Adviser hold a role at the very top of our government (whether we agree with the current arrangements or not) it is a position of status and high standing it is also a position that demands a top rate of pay. And no convicted person should hold such a post.
- I also support Clause 4 (Annual Report) because I believe the public (who pay the salary of these people) have a right to know how much of our money (Tax) is going towards Special Advisers. I believe that this is how it works in the rest of the UK and like it or not we are still part of the UK.
- There must be a Code of Conduct and Code for all such Appointments, and those who are not willing to sign up to this, have excluded themselves from any such post.
- Finally can I voice my support for Clause 7 the Speaker has never exercised the right to appoint a Special Adviser and as the role of the Speaker is above party politics they therefore should not have the option to appoint a Special Adviser,as by doing so they will bring the post to the level of all other MLA's and thereby make it party political.

I trust that this will help you to formulate a Bill that is proper and correct in the eyes of all thinking people.

Regards

Name and address supplied.

4

Dear Sir/Madam,

Bill re. Post of Special Advisers (SA). Call for Evidence.

I offer my congratulations to the Members of the NI Assembly for the expeditious manner in which this Bill has made its way to the Committee stage.

Clause 2

This clause makes it clear that anyone with a serious criminal conviction should not be appointed to the post of SA.

I fully agree with this clause as it appears to me to be in line with practice in most sectors of employment where appointments are being made to posts of high responsibility and trust.

Clause 4

This clause sets out the need for an Annual Report on SA. Such legislation would ebing NI into line with the rest of the UK. It wuld provide for greater transparency as to how public monies are being spent and such a report would add to public confidence in, and respect for, those in government who are entrusted with the spending of Tax Payer's money.

Clauses 5 & 6

I agree with both of these clauses as SAs occupy positions of high responsibility and trust. Positions, comparable to those of higher Civil Servants. SAs are also in close contact with

their respective Ministers when very confidential matters are being discussed which may have a bearing on the government of the citizens of this Provence. This being the case, only those who have been adequately vetted should hold such posts.

Clause 7

It seems rater strange to me that the Presiding Officer/Speaker has authority to appoint SA. Who are; it seems to me, closely associated with the political party of their respective Minister, and as the Office of Presiding Officer/Speaker ought to be above Party Politics. I understand that to-date no SA has been appointed by the holder of that Office.

I agree with clause 7 as it would regularise this situation.

I would like this Bill to be passed into law as I was appalled by an earlier appointment of a SA.

Yours faithfully

Name and address supplied

5

I support Clause 2 - How absurd that a criminal could ever achieve the post of special adviser, and how repulsive that they be appointed as such, adding insult to injury of their victims family, while occupying a role at the very top of Government, with a top salery to match, when no such convicted person could ever hold a position of a regular civil servant.

I support Clause 4 - By the producing of an Annual Report as I believe the Tax paying public (of which I and my family

are) have a right to know how much of our money goes towards Special Advisers, as is rightly already the case in the UK, of which Northern Ireland is part of.

Clause 5 & 6 I very much support the introduction of a

code of conduct and code of appointments, creating greater control and supervision, in turn greater regulation.

I am in support of clause 7 - By removing the Speakers right to appoint a special adviser. The speaker - as I believe- has never exercised this right and also, the role of the speaker - as I understand it is/should be above Party Politics, therefore should not be in the position of appointing a special adviser.

Name not supplied

6

Dear Sir/Madam,

I will like to follow up with the following questions:

(i) . I support Clause 2 because you believe that no one with a serious criminal conviction should be able to hold the position of Special Adviser due to the hurt caused to victims' families;

(ii) . I would like to point out that SPADs hold a role at the top of government with the status, standing and pay of top civil servants. No such convicted person could hold such a post as a regular civil servant so why should they be able to be a Special Adviser;

(iii) I support Clause 4 (the production of an Annual Report) because you believe the tax paying public have a right to know how much of their money is going towards Special Advisers. Make the point that this is already the case in the rest of the UK;

(iv) I support the introduction of a Code of Conduct and Code for Appointments (Clauses 5 and 6) as this will bring greater regulation to the issue and

(v) I support Clause 7 which removes the right of the Presiding Officer (or speaker) to appoint a Special Adviser. Make the point that the Speaker (a) has never exercised the right to appoint a Special Adviser and (b) the role of the Speaker is above party politics and therefore he should not have the option to appoint a Special Adviser, a post which by its very nature is party political.

Name supplied

7

In my opinion, legislative reform of the rules governing the selection of Special Advisers to Government Ministers in Northern Ireland is a necessity.

I firmly believe that a person who has been previously convicted of a serious criminal offence should be prohibited from holding or being employed to the position of ministerial Special Adviser, or any other paid similar post in our Government.

I agree with the suggestion that the threshold for disqualification of office role should be a previous custodial sentence of 5 years. Thi should be the case irrelevant of any Good Friday Agreement release considerations; or when and where the sentence was delivered and conviction imposed; or what length of the sentence was actually served by the convict.

A serious crime in this context should not only include activities related to terrorism; violence; murder; or conspiracy or attempts to commit these types of acts; whether politically motivated or not.

The term ‘serious criminal conviction’ should include all crimes committed in any jurisdiction, in any decade, for whatever motivation, which resulted in a conviction of 5 years or more in our jurisdiction.

I agree that the proposed prohibition of those persons with a previous serious criminal conviction should apply not only to new appointees, but also to those persons currently in post.

Such a prohibition of current Special Advisers who have a previous serious criminal conviction should include some form of timeframe of notification as with any termination of temporary employment, but should most definitely not include a redundancy package/pay-off in any shape or form.

In addition, I feel that the salaries of all Special Advisers should be greatly reduced. Special Advisers earn an obscene annual salary, even without considering the current economic recessionary situation, spending cuts, and new social reforms announced recently.

I believe that all citizens and communities of this fine country would feel the benefit of tighter regulations i.e. a Code of Appointment as to who the Ministers of the Executive/Assembly employ to advise them. In line with this, a Code of Conduct should be drafted and ratified in the typical way. It is the hard earned money of this country’s people that goes to the salaries of Special Advisers. We the people should not be paying the salaries of those persons who have been convicted in any Justice System for causing pain, suffering, and national insecurity and instability. This is the whole point as to why our power-sharing Government was devolved and established yet again- to move forward from such idiotic Governmental schemes which ignore calls for respect echoing from victims of serious crime and their families. Our country will only flourish from the removal of ex-convicts from Special Advisory roles. I feel that

these aforementioned ‘national interest’ points greatly outweigh any alleged human rights implications for the individual.

I will never trust the opinions or advice of previously convicted Special Advisers whom elected politicians or parties employ, especially if that Adviser cannot even boast an impressive CV of specialised knowledge or even interest in the area of said employing Minister’s duty. Our Ministers already boast such emptiness in the enactment of their roles, in my opinion.

I would like to express my gratitude for this opportunity to put forward evidence in relation to and in support of the Civil Service (Special Advisers) Bill. I truly wish this Bill to be passed and enacted to both the satisfaction of its contents and other required adjustments as may be necessary.

Name supplied.

Note: separate but identical submissions to No. 7 above were provided by four other individuals.

8

In May 2011, the only person to be convicted for the murder of my sister Mary was appointed Special Advisor to the Sinn Fein Culture Minister.

This ill considered appointment had a drastic effect on both mine and my family’s emotional health and well being. It forced me back to a dark place where I had no wish to return. It succeeded in re traumatising me to the effect where I would find myself reliving the 8th of April 1984 in inappropriate places such as whilst driving, while in the supermarket, crying uncontrollably. I could no longer mention my sisters name without tears coming to my eyes . My children saw their normally calm, controlled mum anxious, stressed,hyperactive despite being sleep deprived. I was back to being that 14 year old teenager who saw her Mum leaning over her Dad and sister lying awkwardly on the dirty gravel in Windsor Avenue.

I pleaded through various media outlets that Sinn Fein would reconsider this appointment. They chose to ignore me and indeed proceeded to talk about the rights of ex prisoners while ignoring the fundamental rights of the victim. Indeed during this process I have been made to feel as though I am anti the process of peace and moving forward. This could not be further from the truth. I celebrate how far N Ireland has come on and welcome that men and women can go to work freely in the job of their choice to support their families without the fear of being killed.

I do however feel that politicians who supported the use of violence in the past now have a duty of care towards the victims created by such violence. It is within their power not to re traumatise these victims. I may have spoken up but there are thousands like me who hurt quietly at home, forced to relive the day evil visited their lives because of an arrogance that ex prisoners somehow have more human rights or protected more from the Good Friday Agreement than the very victims they created. This Bill isn’t about my family seeking revenge or justice for Mary, it’s about protecting future innocent families from having to relive their hell as we did. Just because people don’t speak out doesn’t mean they are not hurting, it’s important and vital to protect them. Speaking out and leaving yourself open to criticism is difficult and traumatic , I quite understand why there are those who don’t choose this path.

Thank you for taking the time to read this email and I hope it will help you understand the impact of last years Special Advisor appointment on me. Everyone is entitled to work but take ownership and have a duty of care towards your victims.

You may be aware I am in the process undergoing treatment for Breast Cancer, my next treatment date is the 8th of November, if you deemed it appropriate I would be happy to meet with the committee in person.

Name supplied

9

We believe that people with serious criminal convictions should not hold the post of Special Adviser at Stormont. Besides the hurt that having such a person in this role would cause to the victims' families these people would be at the very top of government with the status, standing and pay of a top civil servant and yet no such convicted person would get a job as a regular civil servant. For this reason we support Clause 2.

The tax paying public have a right to know how much of their money is being paid to Special Advisers and for this reason we support Clause 4, the production of an Annual Report. This is already the case in the rest of the UK.

We also support Clauses 5 and 6, the introduction of a Code of Conduct and Code for Appointments, as this will bring greater regulation to the issue.

Since the role of Speaker is above party politics and since the appointment of a special Adviser is by its very nature party political, why should the speaker have the right to appoint a Special Adviser, a right which he has never before exercised? We therefore support Clause 7 which removes the right of the Speaker to appoint a special Adviser.

Joint submission – two names supplied

10

Dear DFP Committee

I would like to take this opportunity to add my support for the Special Advisers Bill, as introduced by Jim Allister MLA, in the assembly.

I believe that no one with a serious criminal conviction should be allowed to hold a position such as Special Adviser as this only seeks to inflict more hurt and pain on the families of those who lost loved ones over the past 40 years of a sustained terrorist campaign. For someone to hold such a position at the top of government along with the huge salary and perks that it brings, and not to have worked for it, is deeply insulting to all those who have to live with the pain caused by these very same people. No such person could hold position as a regular civil servant so therefore why a Special Adviser ?

The tax paying public of Northern Ireland has a right to know how much of their money is going towards Special Advisers as is the case in the rest of the UK, so therefore it is essential that an annual report is produced to advise of this. More regulation is needed.

The speaker of the house should not be permitted to appoint a Special Adviser as he /she has never exercised that right before, purely because their role is supposed to be above party politics and to appoint such a post would be in essence party political.

I hope you take these points into consideration and look on this Bill most favourably.

Regards

Name supplied

Written submissions from individuals opposing the Bill

1

Greetings,

Vote NO to the Civil Service (Special Advisers) Bill

This bill aims to discriminate against former political prisoners imprisoned during the conflict. Political prisoners will be barred as Special Advisers to Government Ministers and serving Special Advisers will be sacked.

Former political prisoners already face serious discrimination in many areas that detrimentally affects their lives and the lives of their families. This is especially so in the area of employment where many barriers exist, both structural and political, excluding them employment in numerous sectors of the labour market.

This Bill will add to the number of legal ways in which former political prisoners can be excluded from employment and it will reinforce the discriminatory attitudes and practices with which former political prisoners have to contend.

This bill will operate as a breach of the international agreement between two sovereign states, the Irish and British governments, that gave effect to the Good Friday Agreement. It will also contravene the commitments given in regard to political ex-prisoners' in the Good Friday Agreement and in the St Andrews Agreement. If it is passed in the form proposed its retrospective penalisation of current special advisors will be in contravention of domestic and international human rights provision.

Note: this email was sent as part of a petition started on Change.org, viewable at http://www.change.org/petitions/northern-ireland-assembly-vote-no-to-the-civil-service-special-advisers-bill. To respond, click here

The Committee received over 820 email submissions via the above online petition. Additional comments were made to the above text on a number of these submissions; those comments can be viewed via the above link.

2

A chara

I oppose the Special Advisers Bill as, barring an ex prisoner from employment as a Special Adviser is discriminatory and would contravene both the letter and spirit of the Good Friday Agreement, which was passed by overwhelming majorities in both the north and south of Ireland and also the St Andrews Agreement.

Without the participation and involvement of ex prisoners in the peace process, there wouldn't be one.

Is mise le meas

Name supplied

3

A chara,

I am writing in response to the proposed special advisor bill which seeks to bar ex-prisoners from becoming special advisors in Stormont.

I am opposed to this bill in the strongest terms as it goes against the Good Friday Agreement and St Andrews agreements, both of which recognised the need for lifting the barriers to employment faced by the ex-prisoner community.

We live in a society which is still emerging from conflict.

Punitive measures against one particular group of former participants in the conflict run contrary to conflict resolution and leads to alienation from the political process which maps the route away from conflict.

Confliect resolution requires a no-winners and no-losers approach. This Bill is in opposition to this.

I trust you will take these matters into consideration

Is Mise

Name and address supplied

4

A chara,

I am writing in response to the proposed special advisor bill which seeks to bar ex-prisoners from becoming special advisers in Stormont.

Ex-Prisoners have played a significant role in the peace process and the political process.

The peace process is premised on inclusivity, the system of government in the north is designed to guarantee inclusivity and participation of all sections of society. The institutions are required to promote equality. All of this was enshrined in the Good Friday Agreement.

I look forward to hearing from you.

Is Mise

Name and address supplied

5

A chara,

I am writing in opposition to the Special Advisors Bill which has been tabled in the Assembly by Jim Allister which if successful will bar ex-prisoners from becoming special advisors.

As an ex-prisoner myself, I am outraged at the proposals contained within this bill. It goes against the Good Friday agreement in which the British and Irish Governments pledged to:

'continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, retraining and/or re-skilling, and further education' (Annex B, point 5. 10 April 1998)

As it stands, ex-prisoners can become, MLA's, Ministers and MEP's. The fact that ex-prisoners are voted into these positions demonstrates clearly that a significant section of society trust and rely on ex-prisoners as their representatives.

Legislating to bar ex-prisoners from any position of employment will alienate many former political prisoners and their families and sections of society and does not take account of the contribution ex-prisoners made to the peace process.

I wish for my comments to be included in responses to these proposals and I hope that this Bill does not proceed further through the Assembly.

Is Mise

Name and address supplied.

6

A Chara

I write in response to the Bill which Mr Jim Allister is sponsoring through the Assembly at this time. I wish for you to re-consider this Bill as the implications of such a piece of legislation would have far reaching consequences.

The peace process is premised on inclusivity, the system of government in the north is designed to guarantee inclusivity and participation of all sections of society. The institutions are required to promote equality. All of this was enshrined in the Good Friday Agreement

Ex-prisoners are entitled to be MLAs, and Ministers in government.

Many elected representatives throughout Ireland are ex-prisoners, including Ministers, MP's, MLA's, Councilors, TD's and one of our MEP's. The fact that ex-prisoners are voted into these positions demonstrates clearly that a significant section of society trust and rely on ex-prisoners as their representatives. I myself serve on Magherafelt District Council as a councilor, and four of my colleagues' are former prisoners, in fact three of them topped the poll in each of their own DEA's at the last council election.

Punitive measures against one particular group of former participants in the conflict run contrary to conflict resolution and leads to alienation from the political process which maps the route away from conflict.

Conflict resolution requires a no-winners and no-losers approach. This Bill is in opposition to this.

I trust that the committee will consider this response when dealing with this issue.

Name and address supplied

7

A Chara

I write in response to the proposed Bill which Mr Jim Allister MLA is sponsoring through the Assembly at this time.

With reference to the proposal that ex-political prisoners be excluded from posts I propose that such a Bill would, in barring ex-prisoners from employment as a Special Adviser would be discriminatory, would run contrary to the Good Friday Agreement and the St Andrews Agreement. It would represent a breach of Human Rights, contravene the ECHR, and run against the equality requirements on government, this would be patently unfair.

Ex-Prisoners have played a significant role in the peace process and the political process.

The peace process is premised on inclusivity, the system of government in the north is designed to guarantee inclusivity and participation of all sections of society. The institutions are required to promote equality. All of this was enshrined in the Good Friday Agreement

Many elected representatives throughout Ireland are ex-prisoners, including Ministers, MP's, MLA's, Councilors, TD's and one of our MEP's. The fact that ex-prisoners are voted into these positions demonstrates clearly that a significant section of society trust and rely on ex-prisoners as their representatives.

It is important that inclusivity cuts across all sections of government, elected, civil service, public appointments etc.

Legislating to bar ex-prisoners from any position of employment will alienate many former political prisoners and their families and sections of society.

We live in a society which is still emerging from conflict.

I trust that you will take this response into account and prevent this Bill from going any further

Yours Sincerely

Name and address supplied

8

To whom it may concern,

I am writing to voice my complete and utter opposition to this bill. Political ex-priseoners have made and continue to make a valuable contribution to peace building on this island, through the social, community and political fields. This is a process that should be encouraged not prohibited.

Furthermore, the fact that a political ex-prisoner can be a Minister yet a political ex-prisoner cannot be an advisor to the same Minister demonstrates clearly the discriminatory and ludicrous nature of this bill.

Yours sincerely,

Name supplied

9

A chara

As an elected representative, being a serving Councillor and former Mayor of my Borough I would like to express my strongest concerns regarding Clauses 2 and 3 of the proposed Speical Advisors Bill, which will in my opinion and that of many other public figures who were critical for the delivery of the Good Friday Agreement and the St Andrews Agreement, weill unduly discriminate against ex-prisoners in their employment and the contribution that group continue to make to the democratic process.These are punitive measures that run contrary to conflict resoloution, and potentially could lead to alienation from the political process.There must be no barriers to the employment of ex-prisoners and no equivacation regarding this matter

Is mise

Name supplied

10

A chara,

As a former ex prisoner and former councillor I am opposed to clauses 2 & 3 of the Civil Service (Special Advisers) Bill as barring ex-prisoners from employment as a Special Adviser would be discriminatory, go against the Good Friday Agreement and the St Andrews Agreement.

I believe ex prisoners have played a key role in the peace process and many elected representatives through-out Ireland are ex prisoners thus demonstrating a large section of society support and rely on ex prisoners as their elected representatives.

Is mise le meas,

Name supplied

11

To whom it may concern. Jim Allister motion to ban ex prisoners as special advisors is not only discriminating against a valued section of our community but shows a degree of sectarianism as he is directing this to harm Sinn Fein I am strongly opposed to both Jim Allister and his perpetual brow beat of the nationalist republican section or our community.

Name supplied

12

I am writing to register my opposition to the Civil Service (Special Advisors) Bill. This is a discriminatory piece of legislation which goes against the principles of the Good Friday Agreement. Former political prisoners have played and continue to play a vital role in our society through their peace building work through contributions within the Assembly, local government and community organisations.

Thousands of former prisoners are discriminated against in society. This includes barriers preventing them from travelling to certain countries, accessing insurance, mortgages etc, accessing foster/adoption services and in many cases barriers to employment. The Assembly should not be involved in creating a barrier to employment and should be leading the way in creating a society which values equality for all.

Is mise le meas

Name and telephone supplied

13

Cléireach an Choiste
Seomra 417
Árasáin na Parlaiminte
Cnoc Anfa
Béal Feirste
BT4 3XX

23 Deireach Fómhair 2013

A Chara

Is mian liom mo thuairim a thabhairt ar an reachtaíocht atá ag dul tríd an Tionól faoi láthair maidir le ceapúchán iar-chimí mar Chomhairleoirí Speisialta.

Creidim go mbheidh an reachtaíocht má ritear í leatromach ar iar-chimí polaitiúla agus go mbheid sí glan in aghaid spriorad Chomhaontaithe Aoine an Chéasta agus Chill Rimhinn.

I gComhaontú Aoine and Chéasta, deir sé faoi Iarscríbhinn B Alt 5:

“Aithníonn na Rialtais I gcónaí tábhacht na mbeart chun ath-lánpháirtiú prionsúnach isteach sa phobal a éascú trí thacaíocht a sholáthar sula scaoilfear soar iad agus tar éis a scaoilte soar araon, lena n-áirítear cúnamh a bheidh dírithe ar leas a bhaint as deiseanna fostaíochta, atraenáil agus/nó athoiliúint, mar aon le breisoideachas.”

Ghlac tromlach mhuintir na hÉireann leis an Chomhaointú agus gach cuid de. Téann an reachtaíocht seo ina aghaidh seo.

Is mise le meas

The Committee Clerk
Room 417
Parliament Buildings
Stormont
Belfast
BT4 3XX

Dear Sir/Madam,

I wish to express my opinion on the legislation currently going through the Assembly regarding the appointment of former prisoners as Special Advisers.

I believe that the legislation, if enacted, will be discriminatory against former political prisoners and that it will be completely against the spirit of the Good Friday and St Andrews agreements.

Paragraph 5 of annex B of the Good Friday Agreement states:

“The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or re-skilling, and further education.”

The majority of the people of Ireland accepted every part of the agreement. This legislation goes against that.

Yours faithfully,

Name and address supplied

14

TO WHOM IT MAY CONCERN

I am a former elected member of the Assembly and an ex - political prisoner. I am also the Mother of three sons who are ex- political prisoners. If this Bill becomes law, at least two members of my family will be prevented from taking up employment as Special Advisors to elected members of the Assembly. This means that the out working of the Peace Process, part of which includes the legislative Assembly is being subverted in the interests of political discrimination. The responsibility of legislators is to ensure that the political, social and human rights perspectives of the Peace Process and the Good Friday Agreement are not undermined by the sectarian posturing of any individual whether elected or not.

I reject this Bill in its entirety and I have specific objections to Clause 2

Clause 2: Special Advisor not to have serious criminal convictions.

My specific objections to Clause 2 of the Bill is that it will open the floodgates to political vetting of political ex-prisoners i, contrary to the equality requirements of the GFA. Legislating to bar ex-prisoners from obtaining employment as Special Advisors is discriminatory and can be used to exclude ex prisoners from other areas of employment. It is also a failure to recognise the fundamental right of those imprisoned during the conflict to continue to play a major role in the process of conflict resolution. Ex- prisoners have and are continuing to make important contributions to peace in their communities.

Political vetting in the past has alienated many communities listed in the indices of Social deprivation. Legislating to exclude ex prisoners from employment as Special Advisers will reinforce that concept of alienation. Statistics show that unemployment among political ex-prisoners is highest in those communities already suffering serious deprivation.

Clause 2 of the Bill represents a breach of Human Rights, contravenes the ECHR and is contrary to the Equality requirements of the Good Friday and St Andrews Ageeement.

The Good Friday Agreement was endorse by a majority of voters North and South. The author of this Bill is opposed to the Good Friday Agreement and by implication Human Rights and Equality legislation.

Clause 2 discriminates against those political ex- prisoners who served longer than five years in prison but who on appeal later had their sentences quashe

Name supplied

15

25th October 2012

A chara

Re: Special Advisers Bill Consultation

I refer to the above Bill which is currently being considered by the Finance and Personnel Committee as part of it’s legislative process.

Having considered the terms of the Bill I wish to voice my concerns and highlight my opposition to this Bill. In particular I believe the political motivations behind the Bill run contrary to both the Good Friday Agreement and the St Andrews Agreement .

The Bill focuses on the role former prisoners now play in delivering a new future for the north of Ireland and specifically on the positive role former prisoners have played in shaping policies within the government and structures at Stormont.

The Bill would in my opinion create a further punishment on former prisoners who have served time in jail having been convicted of specific offences. This further punishment is unfair and unjust and clearly discriminatory.

The Good Friday Agreement recognised the issue of prisoners as one of specific importance to the development of the peace process and the building of new relations across society. The St Andrews Agreement took this a stage further by recognising the barriers that exist within society and committing to work to reduce those barriers and enhance re-integration of former prisoners. This Bill undermines that commitment and is therefore in breach of the St Andrews Agreement

I respectfully request that the Committee take into consideration the above comments and hope that this Bill is withdrawn or subsequently not approved.

Is mise

Name and address supplied

16

25/10/2012

A chara,

I am writing in relation to the Special Advisors Bill, which is currently being considered by the Finance and Personnel (DFP) Committee. I would like to record my opposition to clauses 2 and 3 and my opposition to the bill as a whole for the reasons which I will now outline.

Barring ex-prisoners from employment as Special Advisers would, in my view, be discriminatory and would run contrary to the both the Good Friday and St Andrews Agreements. Furthermore, it would represent a breach of Human Rights, contravene the ECHR and would run against the equality requirements on government. Legislating to bar ex-prisoners from employment as a Special Adviser would once again institutionalise discrimination. Institutionalised discrimination against nationalists was common practice in the North of Ireland for decades, and ultimately the proposed Special Advisors Bill would be a retrograde step towards a return to such discrimination.

It is important to remember that Ex-Prisoners have played a significant role in the peace process and the political process. The Good Friday Agreement recognised the need for measures to facilitate the reintegration of prisoners into the community, including removing barriers to employment. This was again formally recognized in the St Andrews Agreement. The Good Friday Agreement was endorsed by majority north and south.

Many elected representatives throughout Ireland are ex-prisoners, including Ministers, MP’s, MLA’s, Councillors, TD’s and one MEP. The fact that the electorate vote ex-prisoners into these positions clearly demonstrates that a large volume of people have no difficulty electing ex-prisoners as their representatives.

At a meeting of Omagh District Council on 4th October 2011, a motion was adopted that required Omagh District Council to adopt the employer’s guidance issued by the Office of First Minister and Deputy First Minister and commit itself to ensuring that former political prisoners are allowed to compete for employment on exactly the same terms as every other citizen. The Special Advisors Bill would obviously go against the guidance issued by OFMDFM.

In conclusion, I wish to record my opposition to the Special Advisors Bill for the reasons outlined above.

Is mise le meas,

Name supplied

17

25th October 2012

A chara

Re: Special Advisers Bill Consultation

I refer to the above Bill which is currently being considered by the Finance and Personnel Committee as part of its legislative process.

Having considered the terms of the Bill I wish to voice my concerns and highlight my opposition to this Bill. In particular I believe the political motivations behind the Bill run contrary to both the Good Friday Agreement and the St Andrews Agreement.

The Bill focuses on the role former prisoners now play in delivering a new future for the north of Ireland and specifically on the positive role former prisoners have played in shaping policies within the government and structures at Stormont.

The Bill would in my opinion create further punishment on former prisoners who have served time in jail having been convicted of specific offences. This further punishment is unfair and unjust and clearly discriminatory.

The Good Friday Agreement recognised the issue of prisoners as one of specific importance to the development of the peace process and the building of new relations across society. The St Andrews Agreement took this a stage further by recognising the barriers that exist within society and committing to work to reduce those barriers and enhance re-integration of former prisoners. This Bill undermines that commitment and is therefore in breach of the St Andrews Agreement.

I would ask that the Committee take into consideration the above comments and hope that this Bill is withdrawn or subsequently not approved.

Is mise

Name and address supplied

18

25th October 2012

A chara

Re: Special Advisers Bill Consultation

I refer to the above Bill which is currently being considered by the Finance and Personnel Committee as part of it's legislative process.

In considering the terms of the Bill I wish to voice my concerns and highlight my opposition to this Bill. I believe the political motivations behind the Bill run contrary to both the Good Friday Agreement and the St Andrews Agreement .

The Bill focuses on the role former prisoners have in delivering a new future for the north of Ireland and specifically on the positive role former prisoners have played in shaping policies within the government and structures at Stormont. It is ironic that this Bill should be seeking to exclude individuals from employment while the tens of thousands of the electorate have put their trust in elected representatives many of whom are themselves former prisoners.

The Bill provides for further punishment of former prisoners who have served time in jail having been convicted of specific offences. This further punishment is unfair and unjust and clearly discriminatory.

The Good Friday Agreement recognised the issue of prisoners as one of specific importance to the development of the peace process and the building of new relations across society. The St Andrews Agreement took this a stage further by recognising the barriers that exist within society and committing to work to reduce those barriers and enhance re-integration of former prisoners.

This Bill undermines the commitments made and is therefore in breach of the St Andrews Agreement

I would ask that the Committee take into consideration the above comments and hope that this Bill is withdrawn or subsequently not approved.

Is mise

Name and address supplied

19

A chara

As an ex-prisoner and supporter of the political process that has been ongoing in this country for some time now I wish to register in the strongest possible terms my objections in particular clauses two and three of the Speical Advisers Bill which will discriminate against the employment prospects of many of us who were pivotal to the success of the delivery of peace here. All of this is contrary to the Good Friday Agreement and also the St Andrews Agreement and would if passed prove detrimental to equality provision. I trust that the efforts of many ex-prisoners and their contributions will continue to help shape all progress here.

Name and address supplied

20

As a former political prisoner I wish to outline my opposition to the proposed bill on special advisors, being sponsored by Jim Allister.

I, like many other prisoners were released as a result of the Good Friday Agreement, an internationally binding agreement, and one which recognised the reason for our imprisonment was political and as such prisoners were integral to the GFA. This bill runs contrary to the Agreement and flies in the face of the limited work that has been done by the Institutions at helping Ex Prisoners and our families move on from our imprisonment.

I had been imprisoned for ten years from 1988-1998 on the basis of a forced confession, which in recent years has been proven in the courts to be flawed and unjust. The courts accepted that I was wrongly imprisoned for something I didn't do. Unfortunately there are many more like me. If this bill proceeds, people like myself who have been imprisoned unjustly for over 5 years would be prohibited from applying for a job as a special advisor. I am one of the lucky ones who have successfully challenged my conviction after many years of perseverance and a large personal cost to myself. Others may not have the perseverance or actually know how to challenge such forced convictions which were extracted under duress. This bill would effectively bar them from potential employment opportunities. Indeed we, as ex prisoners already face enough barriers to employment without those opposed to us creating more barriers. It is an affront to section 75 equality legislation in operation in the north at present.

I am greatly opposed to clauses 2 and 3 of the bill as I believe many Ex Prisoners have had a great input into their communities since their release. They have gained the respect of their local communities to become leaders and on many occasions, become their elected representatives. Many political ex prisoners have embraced the political institutions and helped develop the peace process amongst our local communities. This bill goes against any good work that has been done to make political ex prisoners feel 'involved' in the political process and will alienate many from the political institutions.

The very unique composition of the local Government institutions accepts that a power sharing government is required given the very unique political situation in our country for the past number of decades. Equality must be at the heart of every political institution. Indeed

it is estimated that somewhere in the region of 30,000 political ex prisoners are living in the north at present, a substantial number of people, who will be actively discriminated against if such legislation proceeds in the Assembly.

Name supplied

21

To whom it may concern

I wish to voice my opposition to the SPAD bill tabled by Jim Alister.

It is my view that that this bill is at best discriminatory and at worst sectarian. There can be no doubt that former POW's have played a significant role through out the peace process and still have An important contribution to make.

Ex prisoners currently form part of the government both North and South including Ministers, MP's, MLA's, Councilors, TD's and one of our MEP's demonstrating that a large number of people trust and rely on ex-prisoners as their representatives.

Creating a law to deliberately exclude one particular group of former participants in the conflict runs contrary to conflict resolution and goes against the principles of the GFA which recognized the need for measures to facilitate the reintegration of prisoners into the community including removing barriers to employment.

Conflict resolution requires a no-winners and no-losers approach. This Bill is in opposition to this and must be opposed.

Yours Sincerely

Name and address supplied

22

I am writing in opposition to the “Civil Service (Special Advisors) Bill”.

I am opposed to clauses 2 and 3 as I believe ex-prisoners have played a valuable and very substantial role in the peace process, and the current political process is testament to their work and commitment.

It should also be noted that within both the Good Friday and St. Andrews Agreements there is a direct reference to reducing barriers to employment for ex-prisoners, this bill is in direct conflict with those commitments.

If we are truly attempting to move forward, advancing the peace process into the next stages, alienating sections of our communities will only serve to hinder further development.

Name supplied

23

A chara

I write to voice my opposition to the Jim Alisters bill which seeks to bar ex prisioners from the role of special advisor within the Assembly.

As a former prisoner I reject this attempt to legalise discrimination. The peace process is premised on inclusivity, the system of government in the north is designed to guarantee

inclusivity and participation of all sections of society. The institutions are required to promote equality. All of this was enshrined in the Good Friday Agreement.

Former prisoners are elected both sides of the border as I am myself. Respected and trusted by a large number of people to represent them.

Legislating to bar ex-prisoners from any position of employment within the Assembly will sent a very clear message to all employers and therefore must be opposed.

With Regards

Name and address supplied

24

A Chara,

Today is the 26 October 2012. This is the deadline day for submissions on the Allister Bill, seeking to impose further penalties on the politically motivated former prisoners who are currently employed in a support capacity at the Assembly.

If enacted into law Clause 2 of the Bill will:

- Be a breach of the international agreement between the Irish and British governments
- Contravene the commitments made to politically motivated ex-prisoners in the Good Friday Agreement and St Andrews Agreement.
- Be in contravention of domestic and international human rights provision, due to its ‘retrospective penalisation’ of those current special advisors.
- Have failed to be given an Equality Impact Assessment.
- Contradict, in its intention and spirit, the purpose of the ‘Employers’ Guidance On Recruiting People With Conflict-Related Convictions’ May 4th 2007, as commissioned by OFMDFM.

In the Good Friday Agreement 1998 which led to the release of politically motivated prisoners there is a clear recognition of the need to create a new beginning and to move away from the dark days of conflict. This new beginning will not be enhanced by the implementation of punitive sanctions against a section of our community which has been so deeply involved in helping to change the future of our society for a whole generation of young people.

At every stage and at every level former political prisoners have played an immensely important role within the Republican constituency and across the wider community. The progress which has made our peace process the envy of many countries would not have been possible without them.

Republican former prisoners continue to play a role in the peace process and in the political process.

Widespread discrimination against members of the nationalist population helped set the scene for the 3 decades of conflict we have all endured and recently emerged from. Attempts to repeat aspects of that discrimination against a valued section of our community today will do nothing to help bring about a new dispensation for our children.

We should all be committed to the eradication from our society of all measures of discrimination, not just among the political ex-prisoner constituency but also across wider society. We believe that only the implementation of legislation to guarantee equality of citizenship for all can bring about a fair and stable society. Allister’s proposed Bill flies in the face of that!

Recent research by academics at QUB indicates that around 25,000 members of our community are former Republican prisoners. That is a massive section of our population in itself but when family members are brought into the reckoning it shows the scale of the proposed discriminatory practices envisaged in this Anti Agreement Unionist's Bill.

Society in this part of Ireland is still emerging from conflict. The idea of singling out one particular group of activists for punishment is anathema to the building of a better safer future for all. How can anyone who has an eye to a more equal and settled community give this legislation other than a complete rejection?

The enemies of our cherished new dispensation relish this type of antediluvian thinking and seek to continue conflict and friction at every opportunity.

Name and address supplied

25

Dear Sir,

I would like to make three simple observations about the provisions of the Civil Service (Special Advisers) Bill. Section 2 of the Civil Service (Special Advisers) Bill provides that 'A person is not eligible for appointment as a special adviser if the person has a serious criminal conviction' (serious criminal conviction defined in s. 3(1). Clearly, the Bill is aimed at former politically motivated prisoners and the fact that it affects a relatively small number of people does not alter the flawed reasoning on which it is based.

First, it is argued that persons who have a serious criminal conviction should be excluded from appointment as special advisors to Stormont Ministers on the grounds that they pose a danger to the public. There is no evidence that this is the case as the extremely low recall rate over the 12 year period of operation of the Sentence Review Commission demonstrates. Indeed, the judgement of Kerr J recognises that "… a prisoner released under the terms of the Northern Ireland (Sentences) Act 1998 has been adjudged not to be a danger to the public." No convincing justification has been established for countermanding the findings of the Sentence Review Commissions.

Second, it is argued that the appointment of politically motivated former prisoners as special advisors to Stormont Ministers is offensive to public opinion ignoring the fact that the holding of a referendum (here the referendums of 22 May 1998) constitute the most rigorous test of public opinion available in a democracy. The Good Friday/ Belfast Agreement and its provisions (set out in Command Paper 3883) was ratified in referendums both in Northern Ireland and in the Republic. A very substantial majority (81%) of the people of the Northern Ireland voted in support of the Agreement and its provisions, including those on paramilitary prisoners which recognised that the politically motivated nature of their convictions. Paragraph 5 of the Agreement's provisions on prisoners stipulate that "The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or reskilling and further education." Barring ex-politically motivated prisoners from employment hardly constitutes assisting them to avail of employment of opportunities.

Third, the effect of the Civil Service (Special Advisers) Bill's provision to debar anyone having a 'serious criminal conviction' – including anyone with a politically motivated conviction – is to retrospectively increase a penalty imposed by the courts, and this is counter to Article 7 of European Convention on Human Rights which specifies that a heavier penalty than the one that was applicable at the time the criminal offence was committed shall not be imposed. Therefore, it is very likely that a court would find that an imposition of a disqualification from

employment on these grounds is inconsistent with both the Good Friday Agreement and the European Convention on Human Rights.

Yours sincerely,

Name supplied

Appendix 6

Other Papers

NIACRO

NIACRO works to reduce crime and its impact on people and communities

Amelia House
4 Amelia Street,
Belfast, BT2 7GS

Tel: (028) 9032 0157
Fax: 087 0432 1415
Email: niacro@niacro.co.uk
Web: www.niacro.co.uk

HFJ25498

Mr Shane McAteer
Committee Clerk
Committee for Finance and Personnel
Northern Ireland Assembly
Room 419
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

22 November 2012

Dear Shane,

Re Civil Service (Special Advisers) Bill

Thank you for your letter of 12 November requesting NIACRO's views to the restrictions in the application of the Civil Service Code and vetting procedures.

Since it was established, NIACRO has highlighted its concerns around the lack of opportunity for individuals with convictions wishing to access employment. Most particularly we have voiced our concerns on behalf of individuals seeking employment opportunities within NICS and the application of the Risk Assessment Grid used in making recruitment decisions.

Following NIACRO's first consultation response to the Civil Service Commissioners' Draft Recruitment Code (2005), we met with the Commissioners to explore some of the points we raised in greater detail.

We explained that whilst encouraged by the use of terms such as "merit", "fair" and "open competition", used throughout the draft Recruitment Code, that this was not the reality experienced by applicants with convictions.

Our promotion of best practice and getting the right person for the job was reflected in NICS previously with significant evidence of directing applicants to our advice line for disclosure advice. The extent to which this was considered and fairly and transparently risk assessed by DFP at the time however was questionable. Since the move to an external recruitment provider there has been a noticeable shift with less evidence of transparent processes.

Some examples of applicant experiences are detailed below:

a. One individual had his job offer rescinded by the DFP, due to his unspent convictions despite the fact that he was initially selected on "Merit". The Department failed to explore details of convictions further with the candidate to assess relevance before taking such action. This clearly goes against the principle of best practice.

b. Another individual received a phone call the day before his interview to tell him that it had been cancelled as he did not meet "the general entry requirement for character" on the grounds of having a four and half year old conviction for excess alcohol: again not relevant to the duties of the job and an example of failure to comply with the Merit Principle.

c. One employee with a conviction in a temporary post within the Civil Service applied for a similar permanent position. Not withstanding the fact that he had been doing the job for a substantial period of time, with his line manager providing an excellent reference, his application was disallowed as did not meet the general entry requirement for character. This evidences inconsistent and inequitable consideration within Departments and as such the Code would need to ensure against such future practices.

The above practices we believe are mainly attributable to the application of the DFP / NICS Risk Assessment Grid which promotes exclusion rather than inclusion which we consider fundamentally flawed.

NIACRO recognises that employers in Northern Ireland need to recruit safely but they must also ensure that such individuals are not permanently excluded from the workforce. We call for a less static instrument that provides greater flexibility.

In the 2005 we recommended that the application process clearly lays out how individuals can make informed decisions about applying for opportunities and be clear about how disclosures will be handled and what it will mean for the individual applicant.

Yet in 2012, seven years on, we note that the NICS Risk Assessment Grid still remains discriminatory and exclusive. The Grid was applied in a recent case to initially reject a Doctor who applied for a Disability Analyst post and who posed minimal risk. NIACRO is concerned about the artibtray application of the grid used to reject suitable candidates.

NIACRO's fundamental concern lies in the DFP's use of the Risk Assessment Grid. While the Grid appears to have been updated in recent years, we believe that it is still unsuitable and discriminatory and would question fit with the AccessNI Code of Practice. We call for NICS to be more transparent about how it complies with AccessNI requirements when vetting candidates.

In addition, the Grid does not take account of individual circumstances. An example of this relates to an applicant who was refused employment as a Paramedic because he had a (conflict related) conviction for personation which is a dishonesty offence. Despite having provided a disclosure statement the Grid automatically excluded him.

To conclude NIACRO continues to call for a more transparent application of the Recruitment Code that pays closer attention to objective assessment of each individual's circumstances relating to their conviction history.

I hope this provides the Finance and Personnel Committee with some background information regarding our concerns with current risk assessment practices.

Please contact me should you have any further questions.

Yours sincerely

PAT CONWAY
Director of Services

Northern Ireland Association for the Care and Resettlement of Offenders
Recognised by the Inland Revenue as a charity XN 48280 Company Limited by Guarantee No. N.I 18121
Chairman: S McDowell; Chief Executive: O Lyner; Chairman Finance Committee: Patrick L Farry BSc FCC

Letter to the Secretary of State

COMMITTEE FOR FINANCE AND PERSONNEL

The Rt Hon Theresa Villiers MP
Secretary of State for NI
NIO
Stormont House
Stormont Estate
Belfast
BT4 3SH

28 November 2012

Dear Secretary of State

Civil Service (Special Advisers) Bill

The Committee for Finance and Personnel is currently undertaking Committee Stage scrutiny of the Civil Service (Special Advisers) Bill. The Bill seeks to amend the Civil Service Commissioners (NI) Order 1999; however, in evidence from the Department of Finance and Personnel and the Attorney General for NI[1], the Committee heard that the Civil Service Commissioners are a reserved matter. Members therefore agreed to seek clarification from you on whether any necessary consent has been provided in respect of the provisions in the Bill which deal with a reserved matter.

The Committee also agreed to request your view on the compatibility of the Bill with the fulfilment of any commitments or obligations in respect of ex-prisoners which the Westminster Government made in the Good Friday/Belfast Agreement and the St Andrews Agreement. In particular, this includes implications as regards the ability to apply the *Employers' Guidance on Recruiting People with Conflict-Related Convictions* (attached) which was published in 2007 and expressly aimed to fulfil such commitments.

I would be grateful for a response by 11 December 2012.

Yours sincerely

Daithí McKay
Chairperson

Enc

[1] Evidence received on the Bill to date, including the Official Reports of the Department of Finance and Personnel and Attorney General's evidence sessions can be found at [illegible]

Room 419, Parliament Buildings, Ballymiscaw, Stormont, Belfast BT4 3XX
Seomra 419, FoirgnimhnaParlaiminte, BaileLiosnaScátha, Cnoc an Anfa, BéalFeirste, BT4 3XX
Tel: 028 90521843 Fax 028 90520360
Email: [illegible]

Response from Minister of State

Northern Ireland Office

Northern Ireland Office
Stormont House
Stormont Estate
Belfast BT4 3SH
Telephone 028 9052 7888
Facsimile 028 9052 7040
www.nio.gov.uk

Minister of State

COMMITTEE FOR
F & P

Mr Daithi McKay MLA
Chairperson of the Committee for
Finance and Personnel
Room 419
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

7th December 2012

Dear Daithi

CIVIL SERVICE (SPECIAL ADVISERS) BILL

Thank you for letter of 28 November 2012 to the Secretary of State. As the matters raised fall within my area of responsibility your letter has been passed to me to reply.

In relation to your first question, I can advise that the Secretary of State has received no request for consent from the Speaker in regard to this Bill. If the Bill proceeds, the Secretary of State will of course need to consider whether any of its provisions deal with a reserved matter, as well as its compatibility with the European Convention on Human Rights, prior to Royal Assent.

Turning to your second question, relating to the compatibility of the Bill with the Belfast and St Andrews Agreements and the OFMDFM Code on employment of ex-terrorists, the interpretation of the Agreements and guidance in this area is a transferred matter. It is therefore for the Assembly and Executive to consider this matter.

Kind Regards

MIKE PENNING MP
Minister of State for Northern Ireland

Letter to the Civil Service Commissioners for Northern Ireland

COMMITTEE FOR FINANCE AND PERSONNEL

Mr Brian Rowntree
Chairperson
Civil Service Commissioners for NI
Office of the Civil Service Commissioners for NI
Room 105
Stormont House
Stormont Estate
Belfast
BT4 3SH

28 November 2012

Dear Mr Rowntree

Civil Service (Special Advisers) Bill

The Committee for Finance and Personnel is currently undertaking Committee Stage scrutiny of the Civil Service (Special Advisers) Bill. The Bill seeks to amend the Civil Service Commissioners (NI) Order 1999; however, in evidence from the Department of Finance and Personnel and the Attorney General for NI[1], the Committee heard that the Civil Service Commissioners are a reserved matter. Members agreed to request the Commissioners' views on the Bill, given that it will have an impact on the legislation under which you operate.

The Committee also agreed to seek clarification on the extent to which the Civil Service Commissioners' mandatory Recruitment Code for appointments to the wider NI Civil Service takes account of the *Employers Guidance on Recruiting People with Conflict-Related Convictions* (attached) which was published by OFMDFM in 2007, and which expressly aims to fulfil the Westminster Government's commitments in the Good Friday/Belfast Agreement and St Andrews Agreement regarding ex-prisoners.

I would be grateful for a response by 11 December 2012.

Yours sincerely

Daithí McKay
Chairperson

Enc

[1] **Evidence received on the Bill to date, including the Official Reports of the Department of Finance and Personnel and Attorney General's evidence sessions can be found at** http://www.niassembly.gov.uk/Assembly-Business/Committees/Finance-and-Personnel/Civil-Service-Special-Advisers-Bill/Civil-Service-Special-Advisers-Bill---Committee-Stage/

Room 419, Parliament Buildings, Ballymiscaw, Stormont, Belfast BT4 3XX
Seomra 419, FoirgnimhnaParlaiminte, BaileLiosnaScátha, Cnoc an Anfa, BéalFeirste, BT4 3XX
Tel: 028 90521843 Fax 028 90520360
Email: committee.finance&personnel@niassembly.gov.uk

Response from Civil Service Commissioners for Northern Ireland

Mr Daithi McKay
Chairperson
Committee for Finance and Personnel
Northern Ireland Assembly
Room 419
Parliament Buildings
BELFAST
BT4 3XX

11 December 2012

Dear Mr McKay

Thank you for your letter of 28th November 2012.

You are of course correct when you write that responsibility for the Civil Service Commissioners is a reserved matter. In those circumstances you will understand that it may be more appropriate for you to seek the views of the Northern Ireland Office in relation to the content of the Civil Service (Special Advisers) Bill. However, wishing to be as helpful as possible, I would add that, whilst not seeking to comment on the Bill in general, it is worthy of note that its provisions do not appear to impact on the work of Commissioners.

With regard to your request for clarification in relation to the Employers' Guidance on Recruiting People with Conflict-Related Convictions, the position is that Commissioners considered this matter when drawing up the Revised Recruitment Code. They took the view, following discussion that the wording was sufficiently inclusive to deal with the Guidance in relation to this situation. In stating this it is, of course, important to remember that the appointment of Special Advisers is outside the terms of the Recruitment Code by virtue of the provisions of Article 3(2) and (3) of the Civil Service Commissioners (Northern Ireland) Order 1999.

I hope that this response has been helpful.

Yours sincerely

Brian Rowntree, CBE
Chairperson

Cc Marion Matchett
Raymond Mullan
Vilma Patterson
Jim Scholes
Heather Stevens
Bernie Gray
Julian King, NIO

Correspondence from the Commission for Victims and Survivors

Commission for
Victims and Survivors

Windsor House
9-15 Bedford Street
Belfast
BT2 7EG

Tel: 028 9031 1000
Fax: 028 9060 7424
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Web: www.cvsni.org

6th December 2012

Mr Shane McAteer,
Committee Clerk,
Commitee for Finance and Personnel,
Room 428,
Parliament Buildings,
Ballymiscaw,
Stormont,
Belfast,
BT4 3XX.

Dear Shane McAteer

Following my meeting with the Committee for Finance and Personnel on 14th November 2012 I would like to provide a brief response in answer to a question asked by Dominic Bradley MLA. During the meeting, Mr Bradley raised the issue that the current Bill does not achieve balance between the rights of victims of trauma and those of ex-prisoners.

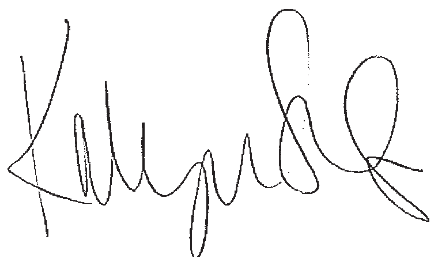
In responding to this query, I returned to the Forum to canvass their views on this issue. The responses from Forum members broadly reflect those expressed by members when I previously asked for their views prior to the Committee meeting. On the particular "clash of rights" issue raised by Mr Bradley, one Forum member expressed the view that, 'it is vital that every applicant for special adviser posts be treated equally under the law...with reference to ex-prisoners my view is that they have served their time and provided they meet the criteria for the post, they should get it.'

Meanwhile, another Forum member commented that, 'I would like politicians to consider victims and the effect any appointment may have on them. I would like them to contact the family concerned prior to the appointment, not to ask their permission but to pre-warn them...before hearing from the media, another source or accidentally at a later date.'

In closing, I would like to repeat the central point that I raised in my opening statement to the Committee. Whether or not the current Bill before the Committee

becomes law, as Commissioner for Victims and Survivor, I would impress upon all Ministers and their respective political parties the imperative of exercising responsibility and display empathy to the plight of all victims and survivors who have been affected by the conflict.

Yours sincerely,



Kathryn Stone
Commissioner

NIHRC correspondence

Mr Shane McAteer
Room 428,Parliament Buildings,
Ballymiscaw, Stormont,
Belfast, BT4 3XX

11th December 2012

Dear Shane,

RE: Civil Service (Special Advisers) Bill

I refer to your correspondence of 29 November 2012.

The Commission has reviewed information which is available to us with respect to the Northern Ireland Civil Service Risk Assessment Matrix. The Commission notes that the Risk Assessment Matrix sets down general guidelines rather than prohibitions.

The information available to the Commission does not suggest that there is an opportunity for an individual to appeal a decision to reject his or her application. However there appears to be potential for some consideration of the particular circumstances of the individual.

The Committee may wish to seek the Department's assessment of how the Matrix strikes the correct balance between the public interest and the rights of the individual.

If you require any further information, please do not hesitate to contact me here at the Commission.

Yours sincerely,

Professor Michael O'Flaherty
Chief Commissioner

Additional papers considered by the Committee

Office of the First Minister and deputy First Minister: Employers' Guidance on Recruiting People with Conflict-Related Convictions
http://www.ofmdfmni.gov.uk/1.05.07_ex_prisoners_final_guidance.pdf

Department of Finance and Personnel: Review of Arrangements for the Appointment of Ministers' Special Advisers
http://www.dfpni.gov.uk/special-advisers-review-of-arrangements-for-the-appointment-of-ministers

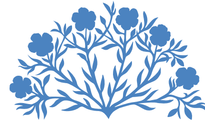
Report of the Review Panel: Employers' Guidance on Recruiting People with Conflict-Related Convictions
http://www.ofmdfmni.gov.uk/final_review_panel_report_2012.pdf

Ruth Jamieson, Peter Shirlow and Adrian Grounds: Ageing and social exclusion among former politically motivated prisoners in Northern Ireland and the border region of Ireland
http://www.qub.ac.uk/schools/SchoolofLaw/Research/InstituteofCriminologyandCriminalJustice/Publications/worddocs/Filetoupload,226499,en.pdf

Professor Bill Rolston: Review of literature on republican and loyalist ex-prisoners
http://www.ofmdfmni.gov.uk/final_literature_review.pdf

Appendix 7

Assembly Research Papers



Research and Information Service
Bill Paper

28 September 2012 NIAR 606-12

Michael Potter

The Civil Service (Special Advisers) Bill 2012

This Bill Paper summarises the main points of the Civil Service (Special Advisers) Bill 2012 and briefly outlines some of the related debates.

Note: This paper constitutes research material only and should not be taken as legal advice.

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Key Points

The Civil Service (Special Advisers) Bill was introduced on 2 July 2012 by Jim Allister MLA. The aim of the Bill is to regulate the appointment and conduct of Special Advisers, including the introduction of mandatory vetting.

The main provisions of the Bill are as follows:

- Clause 1 – Definition of ‘Special Advisers’, derived from Section 15 of the Constitutional Reform and Justice Act 2010
- Clause 2 – Exclusion of any person with a serious criminal conviction
- Clause 3 – Definition of a ‘serious criminal conviction’ as one carrying a sentence of 5 years or more
- Clause 4 – Duty to publish an annual report on Special Advisers, laid before the Assembly, derived from Section 16 of the Constitutional Reform and Justice Act 2010
- Clause 5 – Duty to publish a code of conduct for Special Advisers, laid before the Assembly, derived from Section 8 of the Constitutional Reform and Justice Act 2010
- Clause 6 – Duty to publish a code of conduct for the appointment of Special Advisers, laid before the Assembly
- Clause 7 – Removal of the advisers to the Speaker of the Northern Ireland Assembly from the list of exceptions to recruitment on the merit principle
- Schedule – Financial arrangements for individuals in post dismissed as a result of the legislation

Key points relating to the provisions of the Bill are as follows:

- The appointment of Special Advisers is determined by the appointing Minister. Vetting procedures were introduced in 2011, but they are not on a statutory basis.
- There is currently a code for appointing Special Advisers and a Code of Conduct for Special Advisers, but these are not on a statutory basis.
- Special Advisers in Great Britain are appointed by Ministers and vetting procedures are carried out in respect of access to sensitive information. Special Advisers in the Republic of Ireland are not required to undergo vetting on appointment, but details of the individual and contract of employment are to be laid before the Oireachtas.
- While some concerns have been raised by the Attorney General as to whether the Bill is compliant with the European Convention on Human Rights, the Bill proposer states that the Bill is human rights compliant.

Contents

Key Points

1 Introduction

2 Background to the Bill

3 Clauses of the Bill

4 Special Advisers in Other Jurisdictions

5 Legislation and Policy

6 Human Rights

Appendix 1: Relevant Sections of the Constitutional Reform and Governance Act 2010

1 Introduction

The Civil Service (Special Advisers) Bill[1] was introduced on 2 July 2012[2]. This Bill Paper summarises the origin, purpose and main clauses of the Bill and relates some comments on human rights compliance.

2 Background to the Bill

The Department of Finance and Personnel (DFP) carried out a Review of Arrangements for the Appointment of Ministers' Special Advisers in 2011 due to the "public, political and media comment and controversy surrounding the appointment of a Ministerial Special Adviser"[3]. The Review noted that it is ultimately for each Minister to decide how to select his or her Special Adviser and that, unlike for civil servants, there is no vetting procedure for Special Advisers[4]. The Review recommended the following[5]:

- There should be no change in the exemption of the merit principle in respect of Special Advisers
- Compliance with the existing Code of Practice on the Appointment of Special Advisers[6] should be mandatory for Ministers
- All generic documentation relating to the appointment and employment of Special Advisers should be routinely published on the DFP website
- A new vetting process should be introduced to apply to Special Advisers

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1 The Civil Service (Special Advisers) Bill 2012: http://www.niassembly.gov.uk/Assembly-Business/Legislation/Current-Non-Executive-Bill-Proposals/Civil-Service-Special-Advisers-Bill/Civil-Service-Special-Advisers-Bill/.

2 Bill page on the Northern Ireland Assembly website: http://www.niassembly.gov.uk/Assembly-Business/Legislation/Current-Non-Executive-Bill-Proposals/Civil-Service-Special-Advisers-Bill/.

3 Department of Finance and Personnel (2011), Review of Arrangements for the Appointment of Ministers' Special Advisers, Belfast: DFP, Paragraph 1: http://www.dfpni.gov.uk/special-advisers-review-of-arrangements-for-the-appointment-of-ministers. See also the Bill proposer's rationale presented at the Committee for Finance and Personnel 19 September 2012: http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/September-2012/Civil-Service-Special-Advisers-Bill–Briefing-from-Mr-Jim-Allister-MLA/.

4 Paragraphs 7-8.

5 Paragraph 27.

6 The Code of Conduct is at Annex B of the Review report.

Questions in the Northern Ireland Assembly have been raised on matters relating to salary, tenure, costs, conduct, job descriptions, contracts of employment, appointment procedures, vetting, identity, notification and selection criteria in respect of Special Advisers[7].

The Civil Service (Special Advisers) Bill was introduced as a Private Member's Bill by Jim Allister MLA on 2 July 2012 and passed Second Stage on 25 September 2012.

The Bill is intended to achieve four things[8]:

1. To "provide that no person shall hold the post of Special Adviser if they have been convicted of a criminal offence for which they received a custodial sentence of five years or more"

2. To place a statutory duty on the Department of Finance and Personnel (DFP) to publish a code of conduct and annual report on the number and cost of Special Advisers

3. To require the DFP to publish a code for the appointment of Special Advisers

4. To remove the Presiding Officer from the list of office-holders entitled to appoint a Special Adviser

3 The Clauses of the Bill

This section briefly examines the clauses of the Bill.

Clause 1: Definition of 'Special Adviser'

A Special Adviser is defined as "a person appointed to the Northern Ireland Civil Service to advise the First Minister or deputy First Minister, a Northern Ireland or a junior Minister"[9]. This is derived from Section 15 of the Constitutional Reform and Governance Act 2010 (see Appendix 1).

This accords with the definition provided in the DFP Review, which adds that Special Advisers are employed to provide advice with a political dimension to Ministers where it would inappropriate for a civil servant to do so. As such, their employment terminates when the Minister is no longer in post[10].

Clauses 2-3: Ineligibility for Appointment on the Grounds of a Serious Criminal Conviction

The Bill provides for the exclusion of any person with a 'serious criminal conviction' from being a Special Adviser. A 'serious criminal conviction' is defined as one that carries a sentence of five years or more imprisonment. Maximum sentences are set in statute, but actual sentences are determined through a balance of mitigating and aggravating factors, with some guidance from guidelines and precedents[11]. 'Serious offences' and 'specified offences' are listed in Schedules 1 and 2 of the Criminal Justice (Northern Ireland) Order 2008[12], which provides for extended sentences in such cases.

The provisions include the dismissal of any Special Adviser who is in post when the legislation comes into force or who incurs a serious criminal conviction. The Schedule to the Bill provides for financial arrangements in the event of such a dismissal.

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7 For example, AQW 13655/11-15, AQW 13640/11-15, AQW 13638/11-15, AQW 11015/11-15, 10547/11-15, AQW 10368/11-15, AQO 1743/11-15, AQW 10243/11-15, AQW 10242/11-15, AQW 10241/11-15, AQW 10240/11-15.

8 Civil Service (Special Advisers) Bill Explanatory and Financial Memorandum (NIA BILL 12/11-15 EFM), p.1.

9 Explanatory Memorandum, p.3.

10 Review, Paragraph 3.

11 BJAC Valentine (2010), Criminal Procedures in Northern Ireland, Belfast: SLS Legal Publications, pp.610-11.

12 Criminal Justice (Northern Ireland) Order 2008: http://www.legislation.gov.uk/nisi/2008/1216/contents.

Formerly, no form of vetting was required for Special Advisors, whereas Criminal Record Checks are carried out for all applicants to the Northern Ireland Civil Service (NICS) and a level of vetting applied to individuals dependent on the nature of their employment[13]. New arrangements for the employment of Special Advisers, including vetting, were in place in September 2011 and are being implemented for subsequent appointments[14]. This Bill would place the vetting requirement on a statutory footing.

Clauses 4-6: Statutory Requirements

Clause 4 places a duty on DFP to publish an annual report about Special Advisers, and for it to be laid before the Northern Ireland Assembly, to include information about costs. There is currently no requirement for the publication of information on Special Advisors. An annual report on public appointments is published by the Office of the First Minster and deputy First Minister (OFMdFM), but there is no such requirement in respect of Special Advisers[15]. This clause is derived from Section 16 of the 2010 Act.

Clause 5 provides for similar requirements with regard to a code of conduct for Special Advisers, to form part of the Adviser's contract of employment. Special Advisers are currently contractually bound by a Code of Conduct for Special Advisers, including the NI Civil Service Code of Ethics, as set out in the Model Contract for Employment for Special Advisers[16]. This clause is derived from Section 8 of the 2010 Act.

Clause 6 provides for similar requirements with regard to a code of conduct for the appointment of Special Advisers. Special Advisers are currently appointed in accordance with the Code of Practice on the Appointment of Special Advisers and the Civil Service Commissioners (Northern Ireland) Order 1999[17].

Clause 7: Removal of the Exclusion of Advisers to the Presiding Officer from the Merit Principle

The Bill provides for the removal of advisers to the Presiding Officer of the Northern Ireland Assembly (i.e. the Speaker) from the list of offices whose appointment is exempt from the merit principle on the basis of fair and open competition. Currently, Section 3(3)(a) of the 1999 Order exempts advisers to the "Presiding Officer of the New Northern Ireland Assembly" from being subject to the merit principle for recruitment purposes.

Currently, the Adviser to the Speaker of the Northern Ireland Assembly is appointed by open competition.

4 Special Advisers in Other Jurisdictions

This section briefly outlines provisions for Special Advisers in other jurisdictions.

13 Pre-employment checks for the Civil Service are governed by Section 9 of the NICS Recruitment Policy and Procedures Manual: Department of Finance and Personnel (2012), Northern Ireland Civil Service Recruitment Policy and Procedures Manual, Belfast: DFP, pp.66-71: https://irecruit-ext.hrconnect.nigov.net/resources/documents/r/p/p/rppmv12nd.pdf.

14 Evidence from the Department of Finance and Personnel to the Finance and Personnel Committee 19 September 2012: http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/September-2012/Civil-Service-Special-Advisers-Bill–DFP-Briefing/.

15 OFMdFM Public Appointments web pages: http://www.ofmdfmni.gov.uk/index/making-government-work/public-appointments.htm.

16 Answer to AQW 11015/11-15 dated 27 April 2012; Model Contract for Employment accessible as Deposited Paper 994/2012 in the Northern Ireland Assembly Library: http://www.niassembly.gov.uk/Assembly-Business/Research-and-Information-Service-RaISe/Deposited-Papers-2012/.

17 Answer to AQW 10547/11-15 dated 18 April 2012; the Code of Practice is at Annex B of the Review of Arrangements for the Appointment of Ministers' Special Advisers (see note 3 above); Civil Service Commissioners (Northern Ireland) Order 1999: http://nicscommissioners.org/wp-content/uploads/2011/06/CSCNI-Order-1999.pdf.

Advisers to UK Ministers[18]

Special Advisers in the UK Parliament are governed by the provisions of the Constitutional Reform and Governance Act 2010[19]. Provisions relevant to the current Bill are as follows:

- **Section 15: Definition of 'Special Adviser'** A Special Adviser is a person "appointed to assist a Minister of the Crown after being selected for that appointment by the Minister personally". The appointment is to be approved by the Prime Minister and terms and conditions of employment approved by the Minister for the Civil Service.
- **Section 16: Annual Reports about Special Advisers** The Minister for the Civil Service is to lay annual reports on Special Advisers before Parliament.
- **Section 8: Special Advisers Code** The Minister for the Civil Service must lay before Parliament and publish a code of conduct for Special Advisers, to exclude powers to authorise the expenditure of funds, management of the civil service or exercise executive powers not contained within the Act.

Pending Commencement Orders for the 2010 Act, the following documents govern the appointment and conduct of Special Advisers[20]:

- **Civil Service Order in Council 1995 (as amended)**[21], Section 3(1) of which exempts anyone appointed directly by a Minister of the Crown from appointment by merit and open and fair competition.
- **Code of Conduct for Special Advisers 2010**[22], which governs the work of Special Advisers.
- **Model Contract for Special Advisers 2010**[23], which sets out principal terms and conditions of employment for Special Advisers.
- **Civil Service Code**[24], except regarding the principles of objectivity and impartiality.
- **Ministerial Code**[25], Section 3 of which includes guidelines on the appointment and conduct of Special Advisers.

The Public Administration Select Committee announced an inquiry into Political Special Advisers in April 2012. Evidence collection is complete and a report is in preparation[26].

Vetting procedures do not specify whether Special Advisers are always to be subject to vetting procedures, but security vetting is carried out as required[27].

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18 For background to the current provisions for UK Special Advisers, see House of Commons Library Standard Note SN/PC/03813 Special Advisers 7 August 2012: http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-03813.pdf.

19 Constitutional Reform and Governance Act 2010: http://www.legislation.gov.uk/ukpga/2010/25/contents.

20 See House of Commons Library Standard Note SN/PC/03813 Special Advisers 7 August 2012, p.4.

21 Civil Service Order in Council 1995: http://www.civilservice.gov.uk/wp-content/uploads/2011/09/Consolidated-Order-in-Council-as-at-22-Jan_tcm6-6864.doc.

22 Code of Conduct for Special Advisers 2010: http://www.cabinetoffice.gov.uk/sites/default/files/resources/special-advisers-code-of-conduct.pdf.

23 Model Contract of Employment for Special Advisers 2010: http://www.cabinetoffice.gov.uk/sites/default/files/resources/special-advisers-model-contract_0.pdf.

24 See Note 4 of the Civil Service Code: http://www.civilservice.gov.uk/wp-content/uploads/2011/09/civil-service-code-2010.pdf.

25 Ministerial Code: http://webarchive.nationalarchives.gov.uk/+/http://www.cabinetoffice.gov.uk/media/409215/ministerialcodemay2010.pdf.

26 Public Administration Select Committee Inquiry into Political Special Advisers: http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-select-committee/inquiries/parliament-2010/political-special-advisers1/.

27 Communication from House of Commons Library, 25 September 2012 ("012/9/92-PCC).

Special Advisers in the Scottish and Welsh Governments

Special Advisers in Scotland and Wales are governed by similar requirements as those in Westminster, with some regional differences, for example, the Scottish Government has a model contract of employment for Special Advisers[28].

Scottish and Welsh Government Special Advisers are subject to the same code of conduct as their Westminster counterparts and Scotland and Wales come under the provisions of the Constitutional Reform and Governance Act 2010[29].

Special Advisers in the Government of Ireland

Special Advisers in the Republic of Ireland have a similar role and function to those in the UK, and are appointed similarly. There are areas of employment where vetting is mandatory, but this does not apply to civil servants generally, where vetting is on a non-statutory basis, and Special Advisers are exempt from the legislation governing civil service employment requirements[30]. However, the appointing office holder is required to lay before the Oireachtas a statement of qualifications, a statement of interests, a copy of the contract of employment and a statement as to whether the appointee is a relative of the office holder[31].

The appointment and conduct of Special Advisers are governed by the following legislation:

- Ethics in Public Office Act 1995[32]
- Public Service Management Act 1997[33]
- Standards in Public Life Act 2001[34]

5 Legislation and Policy

Some relevant legislation with regard to the employment of persons with a criminal record is as follows[35]:

- The **Rehabilitation of Offenders (Northern Ireland) Order 1978**[36], working on the principle that individuals with criminal convictions should be rehabilitated into society through access to employment, outlines periods after which convictions are spent and indicates sentences that are excluded from rehabilitation.
- The **Northern Ireland Sentences Act 1998**[37] brings into effect arrangements for the release of prisoners for conflict-related offences as a consequence of the Belfast Agreement[38]. In the application for judicial review by Damien McComb in 2003 on the issue of application for a taxi licence, Justice Kerr ruled that prisoners released under the

28 Model contract of employment for Special Advisers in the Scottish Government: http://www.scotland.gov.uk/Resource/Doc/254435/0089279.pdf.

29 Scottish Ministerial Code 2011, Paragraphs 4.14-4.18: http://www.scotland.gov.uk/Publications/2011/12/01141452/0; Welsh Ministerial Code 2011, Paragraph 2.8: http://wales.gov.uk/docs//dfm/publications/110708ministerialcodeen.doc.

30 Oireachtas Library and Research Service On-Demand Research Paper 2012/16339 21 September 2012.

31 Appendix 5 of the Guidelines on Compliance with the Provisions of the Ethics in Public Life Acts for Office Holders: http://www.sipo.gov.ie/en/Guidelines/EthicsActs/OfficeHolders/Text/Name,2203,en.htm.

32 Ethics in Public Life Act 1995 (Section 19): http://www.irishstatutebook.ie/1995/en/act/pub/0022/index.html.

33 Public Service Management Act 1997 (Section 11): http://www.irishstatutebook.ie/1997/en/act/pub/0027/index.html.

34 Standards in Public Life Act 2001: http://acts.oireachtas.ie/en.act.2001.0031.1.html#sec1.

35 See also Research and Library Services Briefing Note 68/09 Employing Ex-Offenders with Conflict-Related Convictions in Northern Ireland: http://archive.niassembly.gov.uk/researchandlibrary/2009/6809.pdf.

36 Rehabilitation of Offenders (Northern Ireland) Order 1978: http://www.legislation.gov.uk/nisi/1978/1908/contents.

37 Northern Ireland Sentences Act 1998: http://www.legislation.gov.uk/ukpga/1998/35/contents.

38 The Agreement 1998, ‘Prisoners’ Paragraph 1: http://www.nio.gov.uk/agreement.pdf.

terms of this Act are deemed by the Sentencing Commissioners not to be a danger to the public[39].

- The **Fair Employment and Treatment Order 1998**[40] makes it unlawful to discriminate on the grounds of religious belief or political opinion. In an appeal to the House of Lords by John McConkey and Jervis Marks in 2009[41] against decisions by the Simon Community not to employ them on the basis of having been convicted of conflict-related offences, the appeal was dismissed on the grounds that the refusal to employ was not based on political opinion, but exercising that opinion through the use of violence.

The Office of the First Minister and deputy First Minister issued guidance for the recruitment of persons with conflict-related convictions. The key principle, taken from the working group set up to look at the matter, is as follows[42]:

> *…that conflict-related convictions of 'politically motivated' ex-prisoners, or their membership of any organisation, should not generally be taken into account [in accessing employment, facilities, goods or services] provided that the act to which the conviction relates, or the membership, predates the Agreement. Only if the conviction, or membership, is materially relevant to the employment, facility, goods or service applied for, should this general rule not apply.*

The guidance is not obligatory or set in legislation.

6 Human Rights

The Explanatory and Financial Memorandum states that the Bill is compliant with the European Convention on Human Rights (ECHR)[43].

In evidence to the Committee for Finance and Personnel, the Attorney General raised concerns with regard to Article 7 of the European Convention on Human Rights[44]. He stated as follows[45]:

> My concerns stem from article 7 of the convention. That does two things, one of which is relevant, potentially, to this Bill. First, article 7 of the convention prohibits retrospective penalisation, so one cannot retrospectively render criminal that which was not criminal at the time. Secondly, and, perhaps, more relevantly for this discussion, it prohibits an increase in penalty or the imposition of a heavier penalty than was available at the time. If the question is asked whether the disqualification that is introduced by clauses 2 and 3 of the Bill constitutes a penalty in domestic law terms, the answer is quite clearly that no, it does not, because our criminal law would not recognise that as a penalty. For the consideration of this issue, it is vital to recall that "penalty", as used in article 7, has an autonomous convention meaning, and that has been clarified in a number of Strasbourg cases.

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39 [2003] NIQB 47 7 July 2003: http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2003/2003%20NIQB%2047/j_j_KERF3984.htm.

40 Fair Employment and Treatment Order 1998: http://www.legislation.gov.uk/nisi/1998/3162/contents/made.

41 [2009] UKHL 24 20 May 2009: http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090520/conkey-1.htm.

42 Office of the First Minister and deputy First Minister (2007), Recruiting People with Conflict-Related Convictions: Employers' Guidance, Belfast: OFMdFM,p.4: http://www.ofmdfmni.gov.uk/1.05.07_ex_prisoners_final_guidance.pdf.

43 Explanatory and Financial Memorandum, p.5.

44 European Convention on Human Rights: http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/The+Convention+and+additional+protocols/The+European+Convention+on+Human+Rights/.

45 Evidence from the Attorney General to the Finance and Personnel Committee 19 September 2012: http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/September-2012/Civil-Service-Special-Advisers-Bill–Briefing-from-the-Attorney-General/.

> It strikes me that in taking guidance as best one can from the Strasbourg authorities, one starts with the dominant question in seeing whether article 7 applies. Does the measure, to use a neutral term, follow on as a consequence from a criminal conviction? I think the answer here is that what happens in clauses 2 and 3 does follow on as a consequence of a criminal conviction.

In the Second Stage debate, the Bill proposer refutes these concerns and points to exclusions for criminal convictions in Paragraph 9 (3) of Schedule 1 of the Justice Act (Northern Ireland) 2011[46], which was deemed ECHR compliant[47].

Standing Order 85 (4) of the Northern Ireland Assembly states of Private Member's Bills:

> The Speaker shall, as soon as is reasonably practicable after the introduction of the Bill, send a copy of it to the Northern Ireland Human Rights Commission.

Standing Order 97 also states that the Human Rights Commission can be asked to advise whether a Bill is compatible with human rights at any stage.

46 Justice Act (Northern Ireland) 2011: http://www.legislation.gov.uk/nia/2011/24/contents.

47 Northern Ireland Assembly Official Report 25 September 2012: http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-12-13/25-September-2012/.

Appendix 1: Relevant Sections of the Constitutional Reform and Governance Act 2010

8 Special advisers code.

(1) The Minister for the Civil Service must publish a code of conduct for special advisers (see section 15). .

(2) For this purpose, the Minister may publish separate codes of conduct covering special advisers who serve the Scottish Executive or the Welsh Assembly Government.

(3) Before publishing a code (or any revision of a code) under subsection (2), the Minister must consult the First Minister for Scotland or the First Minister for Wales (as the case may be). .

(4) In this Chapter "special advisers code" means a code of conduct published under this section as it is in force for the time being. .

(5) Subject to subsection (6), a special advisers code must provide that a special adviser may not— .

(a) authorise the expenditure of public funds; .

(b) exercise any power in relation to the management of any part of the civil service of the State; .

(c) otherwise exercise any power conferred by or under this or any other Act or any power under Her Majesty's prerogative. .

(6) A special advisers code may permit a special adviser to exercise any power within subsection (5)(b) in relation to another special adviser. .

(7) In subsection (5)(c) "Act" includes— .

(a) an Act of the Scottish Parliament; .

(b) an Act or Measure of the National Assembly for Wales; .

(c) Northern Ireland legislation. .

(8) The Minister for the Civil Service must lay any special advisers code before Parliament. .

(9) The First Minister for Scotland must lay before the Scottish Parliament any special advisers code under subsection (2) that covers special advisers who serve the Scottish Executive. .

(10) The First Minister for Wales must lay before the National Assembly for Wales any special advisers code under subsection (2) that covers special advisers who serve the Welsh Assembly Government. .

(11) A special advisers code forms part of the terms and conditions of service of any special adviser covered by the code.

15 Definition of "special adviser".

(1) In this Chapter "special adviser" means a person ("P") who holds a position in the civil service serving an administration mentioned below and whose appointment to that position meets the applicable requirements set out below.

Her Majesty's Government in the United Kingdom

The requirements are—

(a) P is appointed to assist a Minister of the Crown after being selected for the appointment by that Minister personally; .

(b) the appointment is approved by the Prime Minister;

(c) the terms and conditions of the appointment (apart from those by virtue of section 8 (11)) are approved by the Minister for the Civil Service;

(d) those terms and conditions provide for the appointment to end not later than— .

(i) when the person who selected P ceases to hold the ministerial office in relation to which P was appointed to assist that person, or .

(ii) if earlier, the end of the day after the day of the poll at the first parliamentary general election following the appointment.

Scottish Executive

The requirements are—

(a) P is appointed to assist the Scottish Ministers (or one or more of the ministers mentioned in section 44(1)(a) and (b) of the Scotland Act 1998) after being selected for the appointment by the First Minister for Scotland personally; .

(b) the terms and conditions of the appointment (apart from those by virtue of section 8 (11)) are approved by the Minister for the Civil Service; .

(c) those terms and conditions provide for the appointment to end not later than when the person who selected P ceases to hold office as First Minister.

The reference above to the Scottish Ministers excludes the Lord Advocate and the Solicitor General for Scotland.

Welsh Assembly Government

The requirements are—

(a) P is appointed to assist the Welsh Ministers (or one or more of the ministers mentioned in section 45(1)(a) and (b) of the Government of Wales Act 2006) after being selected for the appointment by the First Minister for Wales personally; .

(b) the terms and conditions of the appointment (apart from those by virtue of section 8 (11)) are approved by the Minister for the Civil Service; .

(c) those terms and conditions provide for the appointment to end not later than when the person who selected P ceases to hold office as First Minister. .

(2) In subsection (1), in relation to an appointment for which the selection is made personally by a person designated under section 45(4) of the Scotland Act 1998 or section 46(5) of the Government of Wales Act 2006, the reference to the person who selected P ceasing to hold office as First Minister for Scotland or Wales (as the case may be) is to be read as a reference to the designated person ceasing to be able to exercise the functions of the First Minister by virtue of the designation.

16 Annual reports about special advisers.

(1) The Minister for the Civil Service must— .

(a) prepare an annual report about special advisers serving Her Majesty's Government in the United Kingdom, and .

(b) lay the report before Parliament. .

(2) The First Minister for Scotland must— .

(a) prepare an annual report about special advisers serving the Scottish Executive, and

(b) lay the report before the Scottish Parliament. .

(3) The First Minister for Wales must— .

(a) prepare an annual report about special advisers serving the Welsh Assembly Government, and .

(b) lay the report before the National Assembly for Wales. .

(4) A report under this section must contain information about the number and cost of the special advisers.

Research and Information Service
Briefing Paper

Paper 000/00 26 October 2012 NIAR 737-12

Michael Potter

The Employment of Ex-Prisoners Released under the Belfast Agreement

1 Introduction

This paper is written in the context of the consideration by the Committee for Finance and Personnel of the Civil Service (Special Advisers) Bill 2012[1], which includes a provision to exclude individuals with a serious criminal offence from the post of special adviser (Clause 2). In response to discussions within the Committee[2], this paper briefly considers the effectiveness of guidance for the employment of prisoners released in relation to the Belfast Agreement[3].

2 The Context of the Employment of Ex-Prisoners

Among the commitments in the Belfast Agreement is the following[4]:

1 Call for Evidence on the Civil Service (Special Advisers) Bill: http://www.niassembly.gov.uk/Assembly-Business/Committees/Finance-and-Personnel/Civil-Service-Special-Advisers-Bill/Public-Notice/.

2 Committee for Finance and Personnel 3 October 2012.

3 For a summary and background to the Bill, see Research and Information Service Bill Paper 141/12 The Civil Service (Special Advisers) Bill 2012: http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/finance_personnel/14112.pdf.

4 Belfast Agreement, 'Prisoners': http://www.nio.gov.uk/agreement.pdf.

The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or re-skilling, and further education.

Subsequent to the commitments of the Belfast Agreement, the following is stated in the St Andrews Agreement[5]:

The Government will work with business, trade unions and ex-prisoner groups to produce guidance for employers which will reduce barriers to employment and enhance re-integration of former prisoners.

3 The Employment of Ex-Prisoners

Studies of former prisoners in Northern Ireland have highlighted difficulties in finding employment due to having unspent convictions[6].

Sir George Quigley and Sir Nigel Hamilton were tasked with convening a working group on the employment of ex-prisoners, which led to the publication of voluntary guidance for employers. This guidance recommends that convictions for conflict-related offences prior to the Belfast Agreement should not be taken into account in applications for employment unless materially relevant to the employment being applied for[7]. In response to difficulties reported by ex-prisoners in accessing employment, the Consultative Group on the Past suggested the guidance was not well used and that it should be set in statute[8].

A review of the guidance was completed in March 2012. The conclusions are summarised as follows[9]:

1) Where the Employers' Guidance has been implemented by employers it has functioned well and without difficulty;

2) A range of impediments and legal barriers have prevented the Guidance from working as a voluntary arrangement;

3) Given this, the view of the Review Panel is that the Employers' Guidance should be complemented by legislative change;

4) The Panel recommends either –
   a. removing Article 2(4) of the Fair Employment and Treatment (Northern Ireland) Order 1998, or
   b. allowing Article 2 (4) to remain but placing a caveat that it would not apply to those conflict-related convictions that pre-date 1998;

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5 Agreement at St Andrews, Annex B: http://www.nio.gov.uk/st_andrews_agreement.pdf.

6 For example, Peter Shirlow (2001), The State they are In: Republican Ex-Prisoners and Their Families, Belfast: Tar Isteach; Adrian Grounds and Ruth Jamieson (2003), 'No Sense of an Ending: Researching the experience of imprisonment and release among Republican ex-prisoners' in Theoretical Criminology, 7(4) 347-362; Bill Rolston (2007), 'Demobilisation and Reintegration of Ex-combatants: The Irish Case in International Perspective' in Social Legal Studies, 16(2) 259-280; Kieran McEvoy (2008), Enhancing Employability in Prison and Beyond: A Literature Review, Belfast: NIACRO; Bill Rolston (2011), Review of Literature on Republican and Loyalist Ex-Prisoners, Jordanstown: University of Ulster; etc.

7 Office of the First Minister and deputy First Minister (2007), Recruiting People with Conflict-Related Convictions: Employers' Guidance, Belfast: OFMdFM,p.4: http://www.ofmdfmni.gov.uk/1.05.07_ex_prisoners_final_guidance.pdf.

8 Consultative Group on the Past (2009), Report of the Consultative Group on the Past, Belfast: CGPNI, p.82.

9 Peter Shirlow, Fergus Devitt, Brendan Mackin and Alan Mercer (2012), Report of the Review Panel: Employers' Guidance on Recruiting People with Conflict-Related Convictions, p.5.

5) In the interim and in the absence of the Guidance being supported by statutory change a review panel should exist as an appeal mechanism for job applicants with conflict-related convictions;

6) The Panel notes the increased cooperation between ex-prisoner groups from across the political divide and recommends that these groups should continue to work together to engage with employers and develop employability and training initiatives to meet employer needs.

Article 2(4) of the 1998 Order, as referred to in conclusion 4 above, states the following[10]:

In this Order any reference to a person's political opinion does not include an opinion which consists of or includes approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland, including the use of violence for the purpose of putting the public or any section of the public in fear.

The Article was used in the appeal to the House of Lords in 2009 by John McConkey and Jervis Marks[11], who were refused employment on the grounds of their conflict-related convictions.

10 Section 2 of the Fair Employment and Treatment (Northern Ireland) Order 1998: http://www.legislation.gov.uk/nisi/1998/3162/article/2/made.

11 [2009] UKHL 24 20 May 2009: http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090520/conkey-1.htm.

Research and Information Service
Briefing Paper

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Michael Potter

The Release of Prisoners as Part of the Belfast Agreement 1998

1 Introduction

This paper is written in the context of the consideration by the Committee for Finance and Personnel of the Civil Service (Special Advisers) Bill 2012[1], which includes a provision to exclude individuals with a serious criminal offence from the post of special adviser (Clause 2). In response to discussions within the Committee[2], this paper briefly summarises the circumstances and conditions of the release of prisoners as part of the Belfast Agreement 1998[3].

2 Prisoner Releases and the Belfast Agreement

Secondary sources indicate that the release of prisoners with conflict-related convictions was seen as a key demand and key concession for various negotiators[4], was seen as

1 Call for Evidence on the Civil Service (Special Advisers) Bill: http://www.niassembly.gov.uk/Assembly-Business/Committees/Finance-and-Personnel/Civil-Service-Special-Advisers-Bill/Public-Notice/.

2 Committee for Finance and Personnel 3 October 2012.

3 For a summary and background to the Bill, see Research and Information Service Bill Paper 141/12 The Civil Service (Special Advisers) Bill 2012: http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/finance_personnel/14112.pdf.

4 Jeremy Smith (2002), Making Peace in Ireland, London: Longman, pp.229, 240.

controversial to many[5] and was a major area of conflict during the discussions[6], reflected by being one of the two remaining issues to be resolved on the eve of the Belfast Agreement[7]. The release of prisoners was to take place over a period of two years, which was a compromise of proposals of longer and shorter periods[8], but was seen as a major confidence-building measure of the agreement[9].

Full primary source documentation on the negotiations is not in the public domain.

With regard to prisoners, the Belfast Agreement states the following[10]:

1. Both Governments will put in place mechanisms to provide for an accelerated programme for the release of prisoners, including transferred prisoners, convicted of scheduled offences in Northern Ireland or, in the case of those sentenced outside Northern Ireland, similar offences (referred to hereafter as qualifying prisoners). Any such arrangements will protect the rights of individual prisoners under national and international law.

2. Prisoners affiliated to organisations which have not established or are not maintaining a complete and unequivocal ceasefire will not benefit from the arrangements. The situation in this regard will be kept under review.

3. Both Governments will complete a review process within a fixed time frame and set prospective release dates for all qualifying prisoners. The review process would provide for the advance of the release dates of qualifying prisoners while allowing account to be taken of the seriousness of the offences for which the person was convicted and the need to protect the community. In addition, the intention would be that should the circumstances allow it, any qualifying prisoners who remained in custody two years after the commencement of the scheme would be released at that point.

4. The Governments will seek to enact the appropriate legislation to give effect to these arrangements by the end of June 1998.

5. The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or re-skilling, and further education.

Provisions for prisoners under the Agreement were introduced by the Northern Ireland (Sentences) Act 1998[11]. This provides for the establishment of the Sentence Review Commissioners[12] (Section 1), to whom applications may be made for release[13]. The four conditions for release are as follows (Section 3):

5 G.K.Peatling (2004), The Failure of the Northern Ireland Peace Process, Dublin: Irish Academic Press, pp.10, 12, 18, 74.

6 Graham Dawson (2007), Making Peace with the Past? Memory, Trauma and the Irish Troubles, Manchester: Manchester University Press, p.23.

7 The other being the decommissioning of paramilitary weapons, Frank Millar (2004), David Trimble: The Price of Peace, Dublin: Liffey Press, p.66.

8 Deaglán de Bréadún (2008), The Far Side of Revenge: Making Peace in Northern Ireland, Cork: Collins, p.132.

9 John Bew, Martyn Frampton and Iñigo Gurruchaga (2009), Talking to Terrorists: Making Peace in Northern Ireland and the Basque Country, London: Hurst, p.147.

10 Belfast Agreement, ‘Prisoners’: http://www.nio.gov.uk/agreement.pdf.

11 Northern Ireland (Sentences) Act 1998: http://www.legislation.gov.uk/ukpga/1998/35/data.pdf.

12 Website of the Sentence Review Commissioners: http://www.sentencereview.org.uk/.

13 ee also House of Commons Library Research Paper 98/65 Northern Ireland: The Release of Prisoners under the Northern Ireland (Sentences) Bill, which sets of the background to the Northern Ireland (Sentences) Bill: http://www.parliament.uk/documents/commons/lib/research/rp98/rp98-065.pdf.

The prisoner has been sentenced for life or at least five years for a scheduled offence in relation to the conflict in Northern Ireland before 10 April 1998

The prisoner is not a supporter of a specified organisation[14]

The prisoner is not likely to become a member of a specified organisation or to be involved in the commission, preparation or instigation of acts of terrorism

The prisoner would not be a danger to the public

From 1998 to 2012, 482 prisoners have been released under these provisions, 21 of whom have been recalled[15].

14 These are subject to change, as designated by the Secretary of State, currently the Continuity Irish Republican Army, the Loyalist Volunteer Force, The Orange Volunteers, The 'Real' Irish Republican Army, The Red Hand Defenders and Óglaigh na hEireann.

15 Sentence Review Commissioners (2012), Annual Report 2011/2012, Norwich: The Stationery Office, p.25.

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