Northern Ireland Assembly

Committee for Finance

OFFICIAL REPORT (Hansard)

Functioning of Government (Miscellaneous Provisions) Bill: Mr Sam McBride

27 May 2020

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Members present for all or part of the proceedings:
Dr Steve Aiken (Chairperson)
Mr Paul Frew (Deputy Chairperson)
Mr Jim Allister
Mr Pat Catney
Ms Jemma Dolan
Mr Seán Lynch
Mr Maolíosa McHugh
Mr Matthew O'Toole
Mr Jim Wells

Witnesses:
Mr Sam McBride Author

The Chairperson (Dr Aiken): I welcome Sam McBride, well-known Northern Ireland journalist and author. You still have not given me any royalties for the number of times that I have mentioned 'Burned'. I have already made a declaration that I will not be asking particular questions of Sam because of previous relationships that we have had. The agenda item is being recorded by Hansard. I draw members' attention to the Clerk's briefing paper and to Mr McBride's mission paper.

Mr Sam McBride: Thank you, Chair and Committee, for the invitation to come here. Let me clarify that I am here personally. I am the political editor of the 'News Letter'. However, I do not represent it, and there is no conflict with it. My editor knows that I am here today, but I am speaking about this as someone who has covered this place for more than a decade. I covered the renewable heat incentive (RHI) scandal in particular over the past few years, touching on lots of these issues.

It is not for me to say whether the Bill should be supported. That is not my role as a journalist. That is your job. However, it is clear, and it seems to be accepted from the evidence of most of the members and from what I picked up beforehand, that there is a problem that has to be addressed. The argument is how we address it, and whether this is the correct and proportionate way to do that. For those saying that this is not the way to deal with it, the onus is on them. The obvious question for them is: what is their alternative? The alternative, as we know from the Minister's evidence of a fortnight ago, is codes and putting this into a code of practice.

Sue Gray, the Minister's permanent secretary, who is hugely experienced in this area, unusually so for a Northern Ireland permanent secretary, has endorsed that, effectively. She says that the code that will exist is written in a way that is much easier to understand. That might imply that the last code was difficult to understand, or that, somehow, our poor spads just could not get their heads round the idea that passing confidential government documents to family members, for instance, or to Peter

Robinson's son, because he was the son of the First Minister, or his corporate clients, was in some way not forbidden. Nobody would seriously make that contention. They knew that what they were doing was wrong, and that is why it was almost inevitably being hidden on hidden systems: phones, email accounts, WhatsApp, whatever it might have been. Therefore, I am not convinced that that gets to the kernel of what is going on here.

We had rules, lots of them. The difficulty was that they were unenforced or unenforceable. Therefore, in the words of Andrew McCormick — I paraphrase him rather than quote him directly — on paper, there were rules, but the nature of our institutions meant that they were quite difficult to enforce. That is very carefully phrased from a senior civil servant. Effectively, it means that there was a culture of anarchy, where it looked as if there were written rules and that anybody who inspected them would have said, "Yes, there are rules", but they were meaningless, and we know that they were meaningless.

The danger is that we get into a party political debate as to which party was worst. We know about the DUP failures, and, to a lesser but still significant extent, Sinn Féin's failures, because of the RHI inquiry and because they were tangled up in it. Other parties now in the Executive were not in it when the inquiry was set up. It would be wrong to impugn the integrity of the other parties by suggesting that they probably were doing the same thing, but they might have been. We do not know. Therefore, where you have a thick veil of secrecy, the only way of getting to the truth is when you have something very unusual and rare, such as a public inquiry, which compels the handing over of previously private and confidential information.

One of the key tests of the new regime, whether it is the Bill or the code that succeeds, is public confidence. We know that public confidence is important, because this place was down for three years and very few of the public were marching in the streets to get it back. Therefore, there is a significant vested interest for everyone in this room, and for anybody who cares about this place, in getting this right so that the public believes that people who behave badly can be held to account in the system — without the entire system having to be toppled to deal with those people, as was seen to be necessary by some people the last time.

The key thing will be whether anyone ever loses their job over bad behaviour in this place, or whether they fear losing their job, or fear any other significant sanctions. That could be a loss of their salary, a loss of a portion of their salary or a fine. I do not see any evidence of that in the code, as drafted. It is held up that the code, as drafted, moves things significantly forward because it clarifies that the Minister is accountable for his or her spad's discipline, as if that was the problem. That was not the problem.

Indeed, in many ways, the fact that the Minister was responsible for the discipline of the spad was part of the difficulty. For instance, with Nelson McCausland and Stephen Brimstone, we know that there was — I am throwing this out as a rare example of where it got to the stage of disciplinary procedures — a recommendation to discipline the spad, and the Minister simply blocked it, so that does not solve things, and it does not improve public confidence.

Very often in these situations, I think that the suspicion, from reasonable people, is that where a spad is acting in a bad or improper way, they are not doing so without the knowledge of the Minister: they are doing it with the knowledge of the Minister. Even if that is not in the specifics of what they are doing at that point, it is their general modus operandi. Therefore, is it seriously expected that a Minister who is perhaps putting in place that system will actually police people who are clearly responsible for breaking rules?

On the two suggestions that I put to the Committee very briefly in writing, I want to expand on those slightly as to the unintended difficulties, it is fair to say, based on what Mr Allister said, of how the Bill is drafted. Again, I think that is accepted by most of the people in this room, whether they support or oppose the Bill. Clause 11 raises the difficulty that it might pose for whistle-blowers, and I am treading on some of the same territory as the Human Rights Commission, albeit from a different perspective. One unintended consequence is that you could penalise whistle-blowers who are acting in the public interest. So, can you distinguish between somebody who is blowing the whistle — on RHI, for the sake of argument — and, clearly, that is not something that you would want to imprison or fine somebody for, and somebody who is passing confidential government documents to their relatives that have the implication of saying, "The scheme is shutting quickly; if you do not get in quickly, you are not going to get your boiler"?

Those are completely divergent positions, and that needs to be clarified. However, I think that that can be clarified, because the Bill provides for a reasonable excuse defence of using private email accounts, for instance, but there is not that defence, as I understand it, from reading the Bill, on the confidential information clause. Therefore, adding a public interest defence to the other clause would go a significant way to removing that difficulty. Although, there is still the need to make that explicit in the Bill, because there is potential, as the Human Rights Commission said, of a chilling effect whereby, even if there was no difficulty under the law, Joe Bloggs, as a civil servant looking to do the right thing, thinks that there might be, and why should he risk his job and his personal liberty for doing the right thing?

On that point, I am not a lawyer and have no expertise in law whatsoever. However, in the libel laws, there are significant defences for various categories of what are seen to be public interest actions that otherwise might be defamatory. For instance, as we speak here, no one can sue us for anything that we say, no matter how outrageous, and that is seen in law as a clear and absolute defence. It is understood to be there for a good reason and, obviously, should not be abused. Therefore, I think that it is possible to put robust mechanisms into a Bill like this to protect those who are not meant to be ensnared by it.

Finally, on the point of whistle-blowers, it is important to err on the side of accepting that someone is a whistle-blower and is acting in the public interest, rather than putting too great a hurdle in their way. I will illustrate that with one example from the RHI situation. In January 2017, a brown envelope landed on my desk in the 'Newsletter' newsroom when I came in one day. It had been delivered by the Royal Mail, it was addressed to me, and there was no other evidence as to who had sent it, so I did not know. I had no idea. During the public inquiry, I learned that that was sent by John Robinson, who was the special adviser to the then Economy Minister, Simon Hamilton. The emails contained within essentially pointed the finger away from the DUP and at civil servants. Now, you might think that, obviously, that ought to be an offence, and I do not think that that should be an offence, for the following reason. I am not saying that it is proper. It is not for me to decide whether that was proper or not; clearly, I have a vested interest as the journalist who wrote the story. However, I think that somebody can have impure motives in blowing the whistle, as clearly John Robinson had. I think that he was trying to protect himself, as I make clear in the book, rather than necessarily even his party. Even if he was trying to protect the party, if what he was doing was still in the public interest, I do not think that difficulty for him ought to defeat the defence, if that makes sense, because what was in those emails was true, it was accurate and it was a very significant development. It was not simply a story about political chicanery: it was about the Civil Service. We now know so much more, and I feel much more confident about the rightness of us publishing that information, because we know that those civil servants were deeply flawed, let us say, in how they approached their roles. Therefore, I think that it is easy to look at hard cases and make bad law, and we — or you, rather, I should say — should definitely err on the side of the whistle-blower there.

One point that I took from what the Human Rights Commission said was around a spad briefing the media, which again is a very good point and an, I think, unintended consequence of this. I think that that is something that either could be made a reasonable excuse or potentially does not need to be made a reasonable excuse, because, as I understand it, part of the spad's role is to communicate with their party. Does that then extend to communicating with a party press officer who briefs the media? That in my experience is generally the case, rather than dealing directly with spads. Both of those things do happen, but generally it comes through a party. Or does that need to spelled out? I am not the best person to give detailed evidence on that, but I think that that could be dealt with.

The second area that I think is perhaps an unintended consequence of this is the issue of private emails. Crucially, this is open to consideration regardless of whether the Assembly accepts the Bill and clauses as drafted, or whether it rejects them and says that we should not make criminal offences. Even if it decides not to make criminal offences, I think that this could be a significant deterrent to some of the worst behaviour that we have seen in this place, particularly, but not only, by special advisers. That is the possibility of a new clause that would essentially encourage spads — it would not be a big stick, as such — not to conduct their work on private electronic devices or email accounts. It would be a clause that would make clear that, if they do so, civil servants — independent of themselves, if they are a civil servant, but I think this is probably more applicable to spads or even Ministers — should be able to go into their private email accounts and inspect the government business that exists in those accounts.

I have some experience of that because we now know that Andrew Crawford, who was the special adviser to Arlene Foster for most of her ministerial career, operated overwhelmingly, it seems, from a Hotmail account. We got some of those emails through the RHI inquiry; otherwise, we would never

have seen them. On the back of that, I went to his former Department and made a freedom of information request. Because that was material that was created in his role as a government employee, paid for by me as a taxpayer, I believed that I had a right under the law to access his emails. The Department came back and said, "We cannot do this, because he owns his account and he has left the Department". You can see in that an incredible perverse incentive for someone who is a special adviser or a Minister who wants to hide anything. If there is no sanction, why on earth would they ever use a government account? In the evidence from the Minister and Sue Gray, there was the suggestion that there would be a tougher disciplinary process. It seems that, ultimately, when you get to the end of that — I have spoken to some of the people involved in drafting it — it is essentially the hope that, in the court of public opinion, the Minister will be embarrassed enough to do the right thing. I think that is potentially a naive way of approaching this.

Finally, there was one other point that the Human Rights Commission raised that I thought was interesting. If I can read my own writing here — yes. The Commission said that fraud, for instance, was already a criminal offence. Essentially, why do you need to create a new criminal offence when we know that that most extreme form of abuse, let us say, is already criminal? Of course, that is correct and it is self-evident. However, there is a difficulty with this: how do we know that the fraud has taken place if we are not able to ever access these documents? The RHI inquiry is the exception to the rule because it got into these private accounts, and even then the inquiry team were suspicious that some of these people were not handing over everything. They had to keep going back to them and threatening them with very significant sanctions if they did not play ball. In this situation, as things stand, and as I understand it, as the code sits at the minute, the onus is in on the individual to be the arbiter of whether this information should ever be released to a Committee of the Assembly, to the public via freedom of information, to a court or to any other body, and that is not the rule for other public-sector employees. Therefore, there is a need for some way of ensuring that there is a deterrent to that.

The Chairperson (Dr Aiken): Thank you very much, Sam.

Mr O'Toole: Thank you for that evidence, Sam, and the written evidence is extremely thorough. I have a few questions. First, if it is within the parameters of our discussion today, were you surprised by the Coghlin report and the import of its findings?

Mr McBride: I was very surprised. I have said that I thought that the language that it used would have been much tougher. Anyone who sat through the evidence of the inquiry and listened to it — most of what is in the report is essentially a narrative of what happened, but we already knew that by the time that we got to the report. There are recommendations and findings, clearly. The key finding is that this was not corruption, but beyond that a lot of the findings are pretty self-evident. A Minister ought to be accountable for their spad? Well, I think that that, to most reasonable people, was obvious before this process. Spads, for instance, should not be passing confidential material to relatives etc — a lot of it was kind of obvious. Based on what happened in this room and the public confidence that was derived from their demeanour, and how all three of the panel approached their roles, which was very robust and without fear or favour with everyone from all political parties, civil servants, the people who set up the inquiry and all sorts of people, I think it was very surprising that the report said what it said.

Mr O'Toole: Do you think, from your experience of reporting on this place since January, that there has been any evidence of change in how business is done, notwithstanding the fact that COVID-19 has changed everything?

Mr McBride: It is very difficult to answer that question, partly because of COVID-19 and partly because we are at a very early stage, and these issues tend to tumble out much later down the line. If you look at RHI, Red Sky, the social investment fund (SIF) or any of these scandals, it tends to be a year or two down the line before we get the point where people start coming forward and saying, "Actually, there is a difficulty here".

Mr O'Toole: A question we have discussed here is how people communicate. When Jim Allister gave evidence to this Committee, I asked about a journalistic defence and exempting both normal interaction between press officers, spads and journalists and also whistle-blowing. Clause 11 may be amended, and Jim has acknowledged that there are issues there, but would you say that there might also be an issue with clause 9 about interactions between interesting people and the media?

Mr McBride: They both overlap in the sense that both potentially come into play here. I believe that there is no issue, but I am not a lawyer, and there will be other people who can advise you on this. I

believe that, because a spad can brief their party as part of their role, that is not improper. The use of the word "improper" in this, I think, is "improper" in terms of "improper benefit". It is helpful because, clearly, that is not outwith their role. That is their role, and that is a spad doing their job. That was never really the issue here.

Mr O'Toole: One of the things that are really important in understanding this is the unique context of this place and the fact that there is a mandatory coalition. Do you think that the very nature of how power-sharing here works means that it is more important that there is statutory underpinning or an enhanced level of scrutiny or penalty for bad behaviour? I am not asking you to endorse whether there should be statutory underpinning.

Mr McBride: Yes, because we have no Opposition in this place, and that is the key difference with other jurisdictions. If you have an Opposition, they are funded, they are incentivised and they have a vested interest in trying to turf out those guys who are currently in the Executive to get in. Therefore, there is that sort of healthy tension in the system. When you do not have that, clearly there is a difficulty, but I think that it is a mistake to simply look at other jurisdictions and say, "Well, they do not have that, and even if we did not have these unique circumstances in Northern Ireland, that is OK". Look at what is happening in London at the moment and look at some of what has happened in Dublin. I think that there is an inherent difficulty where you have incredibly powerful people who are not accountable within the system. For instance, we know that Dominic Cummings has been using private means of communication to keep things off the system. Once you do that, you corrupt not just the here and now, but the historical record that we get as declassified files in 20 years' time. It is corrupted to an extent that we do not actually know what ever went on, and that is not healthy.

Mr O'Toole: Do you not think that if we accept, for the purposes of assumption, that a certain amount of correspondence will always happen off official channels and that you cannot completely legislate away private and phone conversations —. I do not know if you use Signal, but lots of journalists do. That is the new messaging app that wipes out messages, I am told, a certain period of time after they have been sent.

Mr Wells: How do you get that?

A Member: I use that one.

Mr Wells: Give me the code for that.

The Chairperson (Dr Aiken): Steady.

Mr O'Toole: Do you not think that by, for example, literally outlawing the use of Gmail and WhatsApp, you push communications into even more offline places, and the record is even more denuded?

Mr McBride: You potentially do, but bear in mind that, if there is a criminal sanction —. You do not know what happened at the other end of that communication. Every communication involves at least two people. What we saw at the RHI inquiry was very interesting. We had special advisers who did not hand over communications and then another special adviser, who was the recipient, did hand them over. That is the difficulty. If you think that there is a very big sword hanging over you, I think that you will think twice about that.

If I have interpreted this correctly from what has been said earlier on the amendments to this that are potentially coming forward, I think it is a mistake to think this is about outlawing things like Gmail, Hotmail or whatever it might be. Clearly those are going to be used in extremis, and you do not want some sort of bureaucratic system where there is an emergency, as there is at the minute, and somebody feels, "Oh, I do not have the right Blackberry with me, so I cannot send an email that needs to be sent". There is a very easy way of dealing with that where you retrospectively give somebody a period of, let us say, seven days, a month or whatever it might be, and you have to get that back into the Department — and the onus is on you. Likewise, there is a reasonable excuse in that for specific circumstances, and there is a public interest test. If somebody is going to be prosecuted under that, is it in the public interest to do that? If it is self-evident that that is a situation where there has been no harm caused and where it is not for anybody's benefit, it is hard to see how any prosecutorial authority would take a case there.

Mr O'Toole: We do have a very skilled and expensive libel lawyer in Belfast who is particularly favoured by one of the Executive parties. I will not name him.

Mr McBride: I am familiar with him.

Mr O'Toole: I am sure that you are. My final question is actually about the two main parties. I do not want to make it party political, but we live in a situation where we have had two fairly dominant parties for 15 years. Have you observed, notwithstanding COVID-19 and the unique circumstances, any specific cultural changes in how they operate since the emergence of the RHI report? I touched on that earlier on.

Mr McBride: I think that they are more careful in how they operate, and they are aware that people are looking for those things. There are individuals — John Robinson, Timothy Johnston and others — who were spads, who have not returned as spads. I think that is an implicit acknowledgement that those people were seen as damaged out of this and that therefore people would be looking at them extra carefully. Aidan McAteer does not appear to have returned to his role as a so-called super-spad, so there is an implicit recognition that what he was doing was wrong and was against the law. Therefore, I think that there have been limited changes there, but it is a mistake to view that too much through a party political prism. Of course, you will all do that, as that is your job and you are MLAs, but I think that law is about putting something in place that will potentially be in place for decades to come. At the moment, the DUP and Sinn Féin are in power and there is no immediate prospect — much to your disappointment — of that changing, but it is about the principle of that and whether it is a good thing. I have no experience of covering the SDLP and the Ulster Unionists as the lead parties in this place. Was it different? I do not know.

Mr O'Toole: This is my final comment/question. As far as you are aware, the people that you have named —. If this Bill was passed tomorrow, those people who were in positions of prominence and power in 2014, 2015 and 2016 would not be captured by this? Certainly, there are suggestions that some of those people are still in positions of authority in those parties' decision-making structures. I do not know, but, if they are, they would not be caught by this Bill.

Mr McBride: Do you mean that it would not be retrospective?

Mr O'Toole: No. I mean that, for example, you mentioned the person who is now the chief executive of the Democratic Unionist Party and that he would not be captured by this Bill.

Mr McBride: He is not a government employee.

Mr O'Toole: Indeed, and he would not be. I do not know what structures he is involved in now or what decision-making or consultations he is involved in, but he would not be captured by this legislation.

Mr McBride: No, and I think that there is an important principle here that, where an individual is paid for by a political party, it is up to the political party, within the bounds of the law, as to what they do. Where they are paid for by the taxpayer, it is very different. If a party chooses to put somebody in on £92,000 a year as a spad, certain responsibilities come with that. One of those is stringent accountability.

Mr O'Toole: What I am saying is that one of the findings in your book is that, in both those parties, there was extra-official involvement in decision-making, shall we say? People who were not paid for by the taxpayer were still involved in decision-making. That seems to have been the case, in different ways, in both major parties. I do not know whether that persists. Everyone has been back in this place for only a few months. I moved back to Northern Ireland only a few months ago. However, if it does continue, in a sense, that particular flaw would not be captured by this legislation.

Mr McBride: I think that I misunderstood your question. I think that it might be captured in this sense. That was not actually Timothy Johnston. He was a spad during RHI; he was not chief executive. It was Sinn Féin with Aidan McAteer and the super-spad structure that they set up to circumvent the law. In the Chamber, Máirtín Ó Muilleoir was very open as to why they did that. Therefore, I think that that would be captured, on these grounds: that could happen only when there were secretive channels of communication to those individuals; to Ted Howell, Martin Lynch and various other people. That could happen only with the secrecy, so the secrecy is critical here. Take away the secrecy when it is government business; it is not chatting about party business that is not relevant to the Department. In

this case, it is about submissions to a Minister being sent outside the system to somebody, and it is being done only because they can do it and hide it. If they knew that it was being seen by civil servants and potentially by me in a freedom of information request or by this Committee when it asked for papers, it would not be done.

Mr O'Toole: Indeed, I have discussed that with Mr Allister. Clearly that is part of what is targeted by the official communications thing, but there are other means of communicating that I worry are not captured.

The Chairperson (Dr Aiken): OK, thanks very much, indeed. Jim?

Mr Wells: Which Jim? Clever Jim or thick Jim?

The Chairperson (Dr Aiken): I am not making any judgement on that one.

Mr Allister: Thanks, Sam. Up to now we have had codes. As I put it to the human rights people, they have not exactly excelled in demonstrating their capacity to work. If we put all this into codes — let us focus on spads — and the spad breaches that code, the same code gives the exclusive disciplinary power to the Minister who appointed him. Does that take us any further down the road of transparency or protecting against the very things that happened in the past?

Mr McBride: As I understand what is being done here, based on Sue Gray and Conor Murphy's evidence a couple of weeks ago, it does help us in terms of transparency. We do get to see the report. To the best of my knowledge, the Stephen Brimstone case was the only time that a spad got to the disciplinary point.

Mr Allister: Yes.

Mr McBride: Unfortunately, that is the only one that we can talk about. In that case, a document was drawn up; a disciplinary report that recommended, as I understand it, a sanction against him of some sort. The Minister stopped it, and we did not even get to see the report. This moves us on a little bit. There is a baby step, where we now get to see the report. The hope of the drafters seems to be that the Minister feels compelled by public opinion to suddenly swing in and say that it is indefensible and he has to act.

I suspect that that report largely said what was blindingly obvious to people: that what he had done was inappropriate. We kind of knew that anyway. So, I am not convinced that it really moves us forward that much if there is no sanction or if there is no change to who the decision maker is. An independent decision maker for disciplinary matters would be very different, I think.

Mr Allister: The Bill, of course, recommends that they are subject to the Civil Service disciplinary code, outwith the Minister.

If you have a situation where the Minister makes the appointment — he is hand-picking; there is not even a selection panel; there is nothing — and then there is the rapport that might evince itself in a natural inclination to defend that person and the Minister has sole authority to decide their fate, it is not exactly confidence-building, is it?

Mr McBride: No.

Mr Allister: Having listened to all that has been said, I have indicated that it is appropriate to amend clause 11 to import a reasonable excuse defence and a public interest defence and, maybe, a provision to make sure that FOI situations are covered, to save any action done on the foot of statutory authority.

Mr McBride: Just explain that to me, sorry.

Mr Allister: FOI requests are answered on the basis of statutory authority, so you would not want anyone to get into trouble for producing a document under FOI.

Mr McBride: OK. Yes, of course.

Mr Allister: I might need to put something into that clause to save statutory authority, but other and above that are reasonable excuse and acting in the public interest. Do you think that that is enough to protect the genuine whistle-blower and to protect the legitimate briefing of media?

Mr McBride: It might help to put in something that refers explicitly to it not applying to whistle-blowing in the public interest. If I am misunderstanding you, my apologies, but I am just thinking this through, based on what you said. It is not just about putting this into law so that somebody will not be prosecuted; it is about giving them reassurance that somebody can point it out to them and say, "Look, there it is in black and white. This is not intended to get at you", basically. That is very important. A potential chilling effect here is not what anyone intends, I think, but I can see how a junior civil servant looks at this and thinks, as the commissioner said, "If there is any chance at all that my liberty is at stake, why should I do this?". You do not want that sort of impediment to be in the way.

Mr Allister: Another way of doing it might be to elaborate on what "reasonable excuse" is. It is interesting that, for example, in the domestic abuse Bill, there is a separate clause defining reasonableness, so that would be an option as well.

Mr McBride: The COVID legislation that we are all far too familiar with at the minute sets out reasonable excuse for exercise. It is not exhaustive but states what it includes. Maybe that is the way to do it, so that it captures some of the exemplary excuses, but it would be difficult perhaps to capture them all.

I am a journalist, so I have a particular reason to think about these things, but there are other people who might not even know that this is going on. Therefore, if it is left like that, it gives some discretion to the prosecutorial authorities and to the judge as to whether it is reasonable. In the extreme cases that we are thinking about here, clearly, they are not reasonable. I do not think that that really nullifies any of the intent of the Bill, but it builds in a bit of a safeguard for any potential unintended consequences.

Mr Allister: Fair enough. Earlier today, a question was raised about what criminality is captured by clause 11 that is not already criminal. Presumably the distribution by a spad of confidential documents to his family was not a criminal offence?

Mr McBride: You will know more about the law on that than I will, but my understanding of the Official Secrets Act is that it is much more targeted towards national security and the defence of the nation.

Mr Allister: Take it from me: there is nothing in the Official Secrets Act that would help you in that situation.

Mr McBride: I think that it is a breach of the terms of the Civil Service rule book, but, yet again, we heard at the RHI inquiry that, in the Civil Service — it was not just spads — the culture was so widespread that civil servants, up to and including permanent secretaries, were forwarding confidential government documents to their private Hotmail or other email accounts, so that they could read them on a bigger screen at points.

In technical terms, in the Civil Service rules, that was a potential dismissal offence of gross misconduct, but nobody was ever sacked for it, to the best of my knowledge. Therefore, you have a contradiction between what, on paper, is quite a tough sanction that recognises that these things are problematic and the sanctions not being enforced. The emails are problematic not just for the reasons that we are discussing but for information security reasons. They could be hacked. There were the Hillary Clinton emails. They are open to commercial interests, with people hacking them for commercial gain. There are all sorts of things. If the sanctions are not enforced, they are meaningless.

Mr Allister: On your idea that the Civil Service could go into a special adviser's private emails to check something out, there would be horrendous data protection issues, would there not?

Mr McBride: There would, and, again, I will defer to you and to lawyers on the drafting of this, but I think that it is possible to put this into terms that are very restrictive and make clear that there has to be a reasonable belief and expectation that that information exists. You cannot just go to a spad's email account and start fishing around in the hope that there might be a government document. You have to have a reason to believe that it is there.

For instance, in the example that I gave of Moy Park and Andrew Crawford, I asked for documents because we knew that they existed and we knew that he used this account; there is no debate about that. Yet we are told that it is not in the public interest, and there is no mechanism whereby the Department can go in and get that, having facilitated the practice by forwarding things to the spad's account and knowingly keeping it off the system. That is so perverse and so insecure in terms of the security of the individual's data protection rights that there has to be some deterrent to that.

Therefore, in the presence of the spad, under proper authority, there has to be a way that that, at least, can be tested, or some other means of stopping it need to be found. It should be made clear that it will not happen retrospectively to people who did not know that that would be the case, but spads are told openly now, "If you do this in the future and chose to use a private email account, this is what will happen". You are doing it with your eyes open, and, therefore, it is your choice.

Mr Allister: So, to restrict the powers to, say, a permanent secretary on reasonable suspicion would be something of a safeguard. OK.

Mr McBride: Maybe there could be a role there for the information commissioner. Ultimately, this is a freedom of information issue. There is case law on this from the information tribunal with Michael Gove's spads, and I think that Dominic Cummings was one of them at that point, where they tried to do that, and the information tribunal ruled that you could not use government emails in that way. Therefore, there is case law around that.

Mr Allister: Thank you.

The Chairperson (Dr Aiken): A very quick one, Matthew.

Mr O'Toole: A very quick one. I was just looking at my phone and finding loads of things that would be prosecutable; probably things where I have forwarded on bits of information from my old job that are in my Hotmail account. Do you not think that there is a risk that you have a chilling effect on public administration?

One of the things that came out in your book is a capacity question; a calibre question, frankly, in relation to the Northern Ireland Civil Service and our broader political class here. Do you not think that there is a risk of creating a chilling effect if there is seen to be, first, as the Human Rights Commission talked about, the potential of a criminal sanction or loss of liberty for getting on the wrong side of this, even if there is a reasonableness excuse or a fair defence of one kind or another? Do you not think that you create a chilling effect for our Civil Service and public life here, which your book seems to acknowledge is already a little bit underpowered?

Mr McBride: I suppose that I would turn that round and ask this: why would a civil servant need to use a Hotmail account? I am not being facetious; I am being genuine. In what sort of circumstances would that be appropriate?

Mr O'Toole: The circumstances in which it would be appropriate are as mundane as having an official device that has died and you are moving around and happen to need a bit of information on another device. Or, for example, knowing that you need a bit of information and you cannot get to your official email, you send it from your work email to your Hotmail or Gmail to access it later. I would say that 99·999% of civil servants' use of personal email will be affected by that.

My question is not so much that you cannot draw a defence, and Jim has talked about there being a defence for that, but the very fact of there being a criminal sanction for it creates a chilling effect for people and actually makes it even harder for us to get, frankly, younger, better people into the Northern Ireland Civil Service.

Mr McBride: Two things help to mitigate that. One is the public interest aspect. Is it in the public interest? Is there a difficulty? Clearly, what you have outlined is in the public interest. You are a civil servant, you are doing your job, your phone has died, so you forward it to your private email. If there is a provision for retrospectively informing the Department, there is a decision about what threshold that should be at. Should it be that there is a threshold whereby, over a certain classification of document, you say that that applies, and routine stuff about a Minister's meeting or something is not that important, or maybe you think that it is?

There are ways of dealing with that, which still recognise that it should be really frowned upon very severely. It is frowned upon in the Civil Service handbook. It is very clear that that is a disciplinary matter, up to the level of gross misconduct, because it is about data security and the individual's data that you are forwarding. There may be good reasons to do that in extremis, but it really should be, I think —. I mean, I have a 'News Letter' email account. I have my own Google account or whatever it is. Overwhelmingly, I use my 'News Letter' account. It comes to my phone, it comes to my laptop. I do not see a great difficulty there. Yes, now and again, you might forward something to another account to print a document or something, but I do not think that it is a great burden on civil servants given the scale of the problem here.

Mr O'Toole: I think I got out, then, and I am not sure if I can be retrospectively prosecuted under the *[Inaudible.]*

The Chairperson (Dr Aiken): I said I was not going to interrupt, but I think the answer is probably bigger batteries.

Mr Frew: Just on that point, I get it, Sam, when you say that you always keep your phone charged, you always have another device with you and you do not see it being a massive problem, but have you ever sent an email from your phone when you have two accounts on your phone and, by mistake, you have sent it using the wrong account?

Mr Wells: Do not have two accounts.

Mr Frew: You do not want to end up making it an offence when it is a mistake. I have concerns around clause 9, because I have done that. My staff tell me off all the time about sending an email from my phone, and it has bounced from my private account because that is maybe the last email I sent. So when you type in somebody's email address, you put in the content and you hit send — "Oh crikey," you realise, "I have sent that". So it can happen by mistake very quickly when you have multiple email addresses in your device. It may then be a reasonable excuse to say, "Crikey, I've made this mistake. I will now forward that email on to my business account — my job account — and also send it to my line manager to say that this breach happened". I think that is quite reasonable. Where you are coming from — and I get it — is all about secrecy, and I am there with you on that page on this. I will let you answer that with regards to the mistake happening. What are your thoughts?

Mr McBride: As somebody in the private sector, I do not work in a terribly bureaucratic organisation, although sometimes it can feel that way with the owners in England. I do not want to see a situation like that. We have far too much bureaucracy as it is, in many cases. This is not about bureaucracy; this is about common sense. These were not situations where people inadvertently used the wrong account. I do not think that anybody even really suggested that. There has to be a reasonableness aspect to this. Maybe the retrospective period should be quite generous; maybe it should be a month. You have got this period to put it right, and, even then if you do not, there is the test of the public interest. Is it in the public interest to prosecute you for it? It may well be that, actually, you just forgot about it, even after the month, but it is judged that there was no benefit to you and there was nothing improper about it.

In many of these instances, it would be pretty obvious from the content of the email. Let us give an example of forwarding documents to a family member. It is pretty obvious there that, if you have used a private account to do that and you have not informed your manager after a month, a reasonable person and a judge would look at that in the terms of this legislation and say, "You didn't do that out of a mistake". The onus is on you to explain why you did that. Therefore, yes, there will be extreme cases here that will have to be captured by the reasonableness, the public interest and some of the defences, but that is the exception, I think, rather than the rule of what is involved here.

Mr Frew: Matthew asked you about culture and your experience of a change, if there is one. I do not see much cultural change. I have seen, sitting on this Committee, the Department and the Minister, by letter, refusing to disclose emails. We will be talking about that later in correspondence if you want to hang about. We have a Justice Department that will not tell its Committee about a £39 million bid. We still have Departments, including the Department for the Economy, not answering ministerial questions. So there is still this accountability, public interest and confidence issue that needs to be addressed. Do we need reform? The answer to that is absolutely yes. It is the method and travel of reform that is the question.

On to your suggestions for clauses. Number 1 is reasonable enough for a journalist to come up with. Number 2 scares the devil out of me, it really does. Given that we have talked about mistakes happening with a device, to think that a civil servant of any hue, at any level, could rake through somebody's personal emails, their personal baggage and their personal life sounds horrendous. If there is a reasonable suspicion that someone has sent something via a personal email, there is no way of shortening that search. When you go into somebody's email, you have it all — guts and all. That really scares me: that a government official can get into a human being's life like that and look in. They may be looking for a certain thing, but they are going to have to look at it all. That really scares me, so I am really worried and nervous about that suggestion. What are your thoughts on that?

Mr McBride: Any human being would be rather nervous of somebody rifling through their email account, and I am not suggesting that anything improper is in anyone's email account. The nature of it is that it is personal and private; it is like going through somebody's diary. It is not something that any of us would relish. Therefore, first of all, it can be curtailed a bit, so it is not as simple as saying that they can go in and see everything. You can into an email account and search for "RHI + Moy Park". That is what I was asking for; I had no interest in what else might be in there, and I had no idea what else might be in there. I had a very specific request, and I asked them to search for those specific terms. It can be done like that. It can be done in the presence of the individual, so that they can see that there is no improper activity and that no one goes beyond their remit as a civil servant. It is meant to scare them; that is the point of it. It is meant to be a deterrent. And so it is — *[Interruption.]* I am sorry; I will say this very quickly. It is a choice by the individual to use that account for government business. Once they do that, they open themselves up to this. If they do not, how else do we stop them doing it?

Mr Frew: Is the clause in statute not enough of a deterrent, with a penalty and a tariff? Is that not enough?

Mr McBride: There are two points on that. First, partially, that is suggested in terms where it gets rejected. People say that it should not be a criminal offence and that that is disproportionate. You are not going to go to jail; it is going to be a bit embarrassing and awkward, but it is nowhere near the threshold of going to jail for it. Secondly, even if the other clause stays in the Bill and there is still the criminal sanction, that just deals with cases where we get to know about it. How do we get to know about it? That is the key element. We know about those emails because of the RHI inquiry. We would not have known that Máirtín Ó'Muilleoir used mairtin@newbelfast.com for, it seems, most if not all of his government business etc, and, throughout this, Jonathan Bell used jonathanbell620@hotmail.com. It is ludicrous, but we only know about that because we got access to it. How do we get access to it? I am trying to address that issue here. We get access to it through FOI, in proportionate terms, where it is not a journalist doing it; it is an independent person. Yes, clearly those issues have to be looked at in terms of proportionality, data protection and human rights, but if it is not done in that way, how else do you stop a spad or a civil servant simply saying, "This is inappropriate. I know that it is inappropriate. I am not putting it in my government account. I am using a Gmail account". I see nothing at the moment to stop them doing that.

Mr Frew: Why would you suggest that the Civil Service should conduct that search, and not a scrutiny Committee?

Mr McBride: That is a good question.

Mr Frew: We have powers to compel. When we ask a question of an official, a Minister or a permanent secretary and say that we want to see all emails around RHI or personal protective equipment or a certain policy, we expect them all, no matter what account they are from, no matter who sent what to whom. We want to see all those exchanges, so, when we ask for all the emails, we expect to see them all. OK, it is hard to know the unknowns; I get that point. We end up having to trawl through exchange after exchange to say, "Here is a gap. There are a couple of days where there have been no email exchanges. That is really strange". We ask whether there were no emails on those days, and the answer is, "Yes, there were, but they are very mundane. you will not want to see them, so we are not sending them". Were there to be such a clause — it scares me — should it not be a scrutiny Committee that does that?

Mr McBride: I will say two things in response to that. First, I do not think that scrutiny Committees need that power, because I think that they have that power. One of my disappointments with scrutiny Committees in this place —. I think that scrutiny Committees represent the best of this institution, where the best work goes on. Often, based on my trade, I think that they do not get reported on as

widely as they should do, but that is the nature of the constraints on our industry. The Clerk may know more about this than I do, but one of my disappointments with Committees here is that, to the best of my ability to ascertain this from the Assembly authorities, no Committee since 1998 has ever forced anybody to attend or to bring documents to a Committee. They have beaten their chests about it. Daithí McKay did it, rightly, over the National Asset Management Agency stuff, as did other members of this Committee as it then was. They have always backed down, for various reasons. There may be good reasons in individual circumstances, but the Committees have incredible powers. They seem to me in law to have most of the powers that the public inquiry had, but they just do not use them. They could bring spads here. They could ask spads to turn over their emails and WhatsApp messages.

That power does exist, and it is there as part of the democratic process, but I think that there is a difficulty in this legislation in turning that over to a political body. I think that the benefit of the Civil Service, as flawed as the Civil Service is, is that it is not political and is not partisan. You are all incentivised in political directions, and it can very quickly descend into situations not just where MLA X — I am not looking in anybody in particular — could be asking for something for a party political motive, but the person who is sitting here refusing to hand that over throws back at the MLA. "You are only doing this because you do not like my party". You cannot do that as easily with a civil servant.

Ms Dolan: This might have been covered, but what is the basis for your assertion that it should be a criminal offence to give government information out as a spad?

Mr McBride: I am not sure that I have asserted that. I have said in my written evidence and, I think, at the start of this — correct me if I am wrong — that it is not for me to say whether this Bill is the correct way or the proportionate way of dealing with this. I think that the intent of this Bill, most people agree, is right. The debate is over whether this Bill is the appropriate way to do it, and whether the clauses as they stand are appropriate or whether they need amended or added to or whether a code should do that. Should it be a criminal offence? That is for you to decide.

Ms Dolan: You have read the codes?

Mr McBride: Yes. I have spoken to the people who were involved in drafting them, and I see nothing —. I listened very carefully to the Minister's evidence and to Sue Gray's evidence. It might have been Matthew or Jim Wells or both of you who asked the question of what ultimately happens if a spad has to be disciplined and the Minister says, "No, I am not doing it", as has happened in the past. Essentially, the answer is that it is up to the Minister. How does that move us forward? How does that deal with bad behaviour?

Ms Dolan: Do you have a suggestion as to what that could be?

Mr McBride: As to how to deal with that?

Ms Dolan: Yes.

Mr McBride: I think that there has to be some tough sanction. Is it criminal? Is it through the suggestion of looking in private email accounts? Is it something that they fear, such as being demoted on the salary scale or being fined? There is no reason that I can see why anyone would have any fear of doing these things, particularly if the Minister said to you that they were OK with it. Correct me if I am wrong, but —.

Ms Dolan: I am not a spad, so I do not know. I am not a Minister either. That is grand. Thanks.

The Chairperson (Dr Aiken): You will be one day, Jemma.

Ms Dolan: I hope not.

Mr Wells: You were quite charitable about the incident involving Simon Hamilton and John Robinson leaking material. I assume that you do get material leaked to you regularly as a journalist.

Mr McBride: Of course.

Mr Wells: You may actually make use of some of that material at times.

Mr McBride: Yes.

Mr Wells: Do you honestly believe that that disgraceful incident was being done as a whistle-blowing exercise to protect the Department?

Mr McBride: No.

Mr Wells: Why do you think that it was done?

Mr McBride: It was very clearly done at least to protect the party. That is the public position of Simon Hamilton and, I think, to a certain extent, John Robinson. My analysis of it, from looking at the timeline and what was involved, is that it was not to protect the party. John Robinson had these documents for about a month, and Richard Bullick was putting pressure on him to release them to the media. From his evidence to the inquiry, he could not understand why this had not been done. Then suddenly, two or three days, I think, after John Robinson's father-in-law was revealed to be an RHI claimant who had a boiler — no suggestion that he had done anything wrong, but there was a bit of pressure on John over why he had not revealed this and declared a conflict of interest. There was a lot of internal pressure on him in the party. MLAs had gone out and defended him on the basis of his statement of a couple of days earlier that he and his family had no links to RHI. Suddenly it turned out that that was not quite the whole story, and it landed on my desk at that precise moment. Was that about protecting the party or about protecting him? What I am saying is that even though his motives seem to me very clearly to be impure or complicated, I do not think that that should necessarily be a criminal offence, because there was some public good in what he did.

Mr Wells: Where was the public good?

Mr McBride: The public good was in exposing that civil servants had been briefing all round them to the industry and that that had helped to drive the spike. It was two-fold: partly the spike was driven by Andrew Crawford and various other individuals — Tim Cairns was involved in delaying cost controls — and that was in tandem with the industry being leaked to like a sieve from within the Department. We did not know that at that point, so that moved things on significantly.

Mr Wells: The public good was to you as a journalist because you had a front-page scoop, which you used relentlessly, as you know.

Mr McBride: That was not the public good; that was a personal good, I suppose, or good for my employer. There was a public good in knowing that civil servants, who are paid by taxpayers, had been acting in that way. There was a second reason why it was important. The day before, the permanent secretary, Andrew McCormick, had appeared before the Public Accounts Committee and had named Andrew Crawford as the person who he had been told had delayed cost controls in 2015. He said that he had done that on the basis of hearsay; he had no evidence of it, but he thought that it had happened.

As soon as we got those emails, we went to the Department and said, "We are going to name those individuals, this is what they have done, it is not disputed that they acted in this way". The Department threatened to injunct us, using public money to prevent those people from being named, even though there was no suggestion that that was hearsay; it was fact. There were different standards being applied to spads, who were being treated very robustly, and, based on flimsy evidence, being named. We know, retrospectively, that that evidence was largely correct. At the time, the Civil Service was applying a different standard to itself from what it was applying to DUP spads. I do not think that that was fair.

Mr Wells: Would you have taken the same view if you had not earned a vast number of brownie points by publishing that leaked material?

Mr McBride: Absolutely.

Mr Wells: In other words, you do not want to do anything that would damage further leaks from Departments to you?

Mr McBride: Not in any way, of course not. I am a journalist, and my interest in that is very open, I suppose. What I am trying to draw out from that example is that we should not look at someone and

think, "Do I not like what they did in this instance? Do I not like them or their party?" or whatever it might be. The question is whether there was any public good. If the answer is yes, whatever else went on, we should err on the side of saying that that is OK.

Mr Wells: It does not matter how reckless you are, or how underhand, as long as there is some public good because a journalist gets a scoop.

Mr McBride: It is not about a journalist getting a scoop; it is about the story entering the public domain and the public's right to know what the people they pay and employ are doing in their name and holding them to account.

Let us not forget that no civil servant has been disciplined for RHI. Indeed, many of them have been promoted, including Stuart Wightman, who was one of the individuals involved in the leaks. All that came to light only because we got leaks. Leaks are, by their very nature, underhand, if you want to use the pejorative term. That is their nature. They are confidential; they have to be.

Mr Wells: There is also a whistle-blowing policy in the Civil Service: if you have a concern, you bring it to your line manager first. You exhaust all remedies, and if you still feel that it is in the public interest to leak, then you do. That clearly did not happen in this instance.

Mr McBride: It partially happened in the sense that John Robinson sent the emails to Andrew McCormick a few weeks before he sent them to me, but he certainly did not wait for the conclusion of an investigation. I am not seeking to claim that he acted in anything other than a personal attempt to deflect blame from himself. Of course he did, but we should be cautious about criminalising that.

Secondly, Janette O'Hagan, the whistle-blower who initially went to Arlene Foster, went through all those channels, including the Department. She did not describe herself as a whistle-blower, but, in every other instance, she was in that category. She retrospectively said that her big regret was that, looking back on it, she had not gone straight to the media because, when she did so, that is when things really started to happen.

I have a vested interest in this. You all know that. I am a journalist. I think that public accountability is healthy in the system.

Mr Wells: Yes, but remember also that it was an attempt to put the blame on a senior civil servant, and it could have sunk him and ruined his career. Is that not —?

Mr McBride: It did not ruin his career. He was promoted.

Mr Wells: Yes, but your article could have been extremely damaging to him.

Mr McBride: We were very fair to him. We waited seven days before naming him. We ran the story the next day, saying that civil servants had been involved in leaking. We then waited seven days, we took legal advice, and we repeatedly went back and asked for his side of the story. He declined to give it. That is his prerogative. I am sorry, but he is paid from public funds. He is paid a bigger salary than I am. He is trusted by government to brief Committees and give them information about legislation. If he cannot be accountable, there is a difficulty in the system.

Mr Wells: You are saying that, having looked at all that, no criminal sanction should have been taken in that situation.

Mr McBride: I do not think so, on the basis of the whistle-blowing aspect of this law. That is my opinion, but I understand that somebody from the Civil Service unions can come here and say, "That is appalling; it is the wrong way to do things". I understand that. However, we should be careful about looking at hard cases and thinking, "That it is always necessarily entirely wrong". It may be partially wrong, but is it wholly wrong? I think that some public good came out of it.

The Chairperson (Dr Aiken): Pat.

Mr Catney: Thanks very much, Chair — *[Interruption.]*

Mr McHugh: Chair, I want to make one point. We are having a rerun of the RHI inquiry. This discussion should be much more focused; we should be dealing with the legislation. That is what the meeting is supposed to be about.

Mr Catney: I will not keep you long. Sam, thank you. I, for one, will defend the freedom of the press as best as I can. Well done. I am glad that you are here. You talked about the private sector. I came from the private sector. However, late in life, I was elected to the Chamber to represent Lagan Valley. My first role was on the Programme for Government. That was after three years of doing nothing. It filled me with great hope, and I thought that I was coming into something. However, I have read your book and listened to your evidence. You said that there are good special advisers who operate to the best and highest standards. We would not have been allowed to operate like that in the private sector. We would have been lynched or run out of the place.

Things have happened here. We need accountability and strengthening from the Bill. I look at the two clauses that have come into it — I see that they have gone. Human rights have been mentioned. What about the rights of the electorate? What about the money that they work for — morning, noon and night — and the taxes that they pay to see that all here is fulfilled? There has to be honesty. How can we instil the private sector with trust in this place? I want this place to work; I want Northern Ireland to work. I have spent the best part of my life trying to grow an economy as best I can and give people jobs. I see that we have eight advisers; they use only six in the Executive Office. The spend and waste of money drives me insane, but I am prepared to go along with it, provided that it is honest, fair and above board. It is not; from what I have heard today, it does not seem to be. How do you see that changing? How can we change it?

Mr McBride: It is important to say that there are good spads. We all know good spads, and we know people who have done their jobs conscientiously. I am not speaking for the intent of the proposer of the Bill, but, looking at the wording, it would be a mistake to think that this is some sort of anti-spad legislation and an attempt to get at spads and civil servants.

I have always been astounded by the short-termism of this place, particularly from the DUP and Sinn Féin. I say that because they were the dominant parties; they had the power. The other parties did not have that power. Perhaps, if things had been different, other people would have acted differently; I cannot say. However, based on where we were, those two parties acted with gay abandon. There was no sense of looking at the situation and saying, "Will we still be here in 15 years' time?" It was a case of asking themselves, "Can we get through this crisis?" and threats to the media, behind closed doors, about government advertising being pulled if we did not act in certain ways. There was all sorts of reprehensible behaviour. Rather than looking at public confidence in this place and saying, "Actually, we want to nurture this. We want to get people onside with us and get them to work with us", we got to the stage where, when Stormont fell for three years, nobody really cared until the point at which people were literally dying in hospitals. That is when people said, "We do not really like Stormont, but we need it back because people are dying, and there's no alternative". What on earth does that say about this place? I do not yet get a sense, from some of the evidence to the Committee from the Minister and others, that they get the significance of the public anger. They are dabbling round the edges, and there is no ultimate sanction for people who step out of line.

Mr Lynch: Sam, at the outset, you said that the issue to be addressed was a cultural one of integrity. You named a host of people, and you did mention Sinn Féin, but it was about how they employed their spads. However, I asked Sue Gray — who is no shrinking violet on tackling these people — and she said that the codes were stronger here than anywhere else on these islands. Do you agree with her?

Mr McBride: She is in a better position to comment on that than I am. However, her background is in the Cabinet Office, and, at the moment, the Cabinet Office seems to be pretty toothless in dealing with Mr Cummings. Therefore, do we look to London and say that it is good enough that the Prime Minister simply decides, regardless of anything else, as to whether a spad, in this case, has allegedly broken the law and not just behaved badly. We are told that he has literally broken the law by people who have looked at this in some detail. Is that enough?

The second element is that there are particular circumstances here. London, Dublin, Cardiff and Edinburgh have not had RHI scandals; they have not had these specific practices. This is a response to particular circumstances, and, therefore, I am not entirely clear that it helps much to compare us to London, Dublin, Washington or anywhere else. These are particular difficulties that we have in this place.

Mr Lynch: That is fine, Chair.

The Chairperson (Dr Aiken): OK. Thanks very much.

Mr McHugh: Tá fáilte romhat anseo inniu. You said initially that it was not your position whether or not we should have a code of conduct or statutory legislation for spads. You are doing a good job of arguing for statutory legislation, I will put it like that. To be honest, some of the language that you used to describe Aidan McAteer, and others, such as "super-spad" and so on, is your opinion.

Mr McBride: It is based on the evidence to the RHI inquiry.

Mr Catney: That is unfair. I am sorry, Chair, but that is unfair. This witness is here of his own accord.

Mr McHugh: I am talking.

The Chairperson (Dr Aiken): You must address your comments through the Chair.

Mr McHugh: That is your opinion. As I say, I read that type of criticism of him, and other party members, in your book as well. You are very good at giving those opinions, but I will push you further to give an opinion: what was it that you were surprised to find not being described as corruption?

Mr McBride: I did not say that. I was surprised at the inquiry. I did not say that I was surprised at that finding.

Mr McHugh: You were surprised at the inquiry in that it did not find that *[Inaudible.]* I find that, in painting a picture here, it is more or less implied that it was the two larger parties at a time when there was no Opposition, is that correct? Is it correct that there was no Opposition?

Mr McBride: It is correct for most of the time.

Mr McHugh: Prior to the Assembly coming down, I thought there was an Opposition.

Mr McBride: For a few months.

Mr McHugh: In other words, there was an Opposition. Therefore, to say that there was no Opposition is not correct. At the time, there was an Opposition.

Mr McBride: Overwhelmingly it was the case.

Mr McHugh: At the same time, for you to describe this as just the two big parties is almost implying that they were equally culpable for what has been identified as those situations in which there could have been corruption such as RHI, NAMA or —.

Mr McBride: SIF?

Mr McHugh: Yes, in all those cases you are implying that the parties were equally culpable. They were not, as they carried entirely different responsibilities. I want to make that statement. Whilst you have said from the outset that you do not think that it is your role to suggest whether it should be statutory or otherwise, you are going a hell of a long way to actually doing that.

Mr McBride: You have fundamentally misunderstood what I have said, Mr McHugh. I said that it is not my role to say whether you should support this Bill; that is a matter for you as legislators. I am not taking any position on that, whatsoever.

What I am saying is that there has to be some tough sanction. I am not saying that this is the tough sanction. I am saying that the code, as drafted, is toothless. Now, convince me if I have got it wrong and that there is some incredibly big carrot and stick hanging over spads here if they continue to do what they were doing beforehand. Based on the Minister's evidence, it seems that, ultimately, if a Minister decides that nothing is going to happen to a spad, so what? That is it, let us move on, nothing can be done.

Mr McHugh: On that point, you have accepted that we have moved forward with the code.

Mr McBride: That is not saying very much, though.

Mr McHugh: You said not very much; that is quite right. However, it is significant that the Minister has said that the buck stops with a Minister, which is not how it was at the time.

Mr McBride: The buck has always stopped with the Minister; there is no difference there.

Mr McHugh: No, it was not always the case. It was very obviously not the case.

Mr McBride: It was. *[Interruption.]*

Mr Allister: Not when you were making Northern Ireland Water appointments.

Mr McHugh: It was very obviously not the case when, in fact, they were dancing on the head of a pin about whether one had accountability or whether one had responsibility.

Mr McBride: Which was Arlene Foster.

Mr McHugh: Yes. Exactly right.

Mr McBride: What would stop that —? *[Interruption.]*

The Chairperson (Dr Aiken): I am sorry —.

Mr McHugh: May I just finish? The point that I am making —.

The Chairperson (Dr Aiken): Sam? Through the Chair.

Mr McBride: I am sorry. I want Mr McHugh to fully understand the point. What would stop Arlene Foster behaving as she did, based on the new code?

Mr McHugh: I made the point previously that it is not the code per se that is the problem; it is the culture. That is what has to change in parties. We need a culture in which people do not look to circumvent a code one way or the other. The code, as it is now constituted, has been strengthened —.

Mr McBride: It does not stop her doing that.

Mr McHugh: At the same time, irrespective of whether it is in statute or in a code, if there are people who are determined to undermine or circumvent it, they will probably still go ahead and do that in every way. I made that point earlier as well.

Mr McBride: At some peril to themselves, though, if they breach the terms of what is proposed here.

There is one other point to make in relation to what you said about my remarks concerning Aidan McAteer. There is nothing of my opinion in that. That is based on evidence from Máirtín Ó Muilleoir, who was the Sinn Féin Minister who gave evidence to the inquiry. He was very clear, not just as to what happened, with the appointment being outside the law. Sinn Féin saw itself as being, quite literally, above the law. He was very clear as to the intent of that. The intent was that he would continue in his role as if nothing had happened. Those are not my words; that is the evidence of a Sinn Féin Minister. I do not see why I should dispute that.

The Chairperson (Dr Aiken): Sam, thank you very much indeed for your evidence. If we have any further written evidence arising from our discussions, may we forward it to you and, perhaps, you will respond to it?

Mr McBride: Yes.

The Chairperson (Dr Aiken): Thank you very much for your time.