

Good afternoon,

I am making this submission in a personal capacity as the author of Burned: The Inside Story of the 'Cash-for-Ash' Scandal and Northern Ireland's Secretive New Elite and not on behalf of my employer, the News Letter.

Like everyone else, I am under pressure due to the changes to working arrangements as a result of the pandemic. Therefore, please accept my apologies for this being a somewhat terse response to the call for evidence on this bill.

I do not believe that it is for me as a working journalist to say whether this bill should be supported or opposed.

I can, however, set out from my own knowledge and research over more than a decade of covering Stormont some of the problems with the current system of spads.

I have attached a chapter from my book, Burned, which sets out some of the problems with the existing system of spads which the bill is designed to counter.

Set against this, it is crucial to recognise that there are fine special advisers who operate ethically and provide important advice and support to their ministers. Therefore, it is important that those spads who have been acting in ways which bring disrepute on not only other spads, but the entire Stormont system, are dealt with robustly - and seen to be dealt with robustly.

I believe that central to the flaws of the Stormont system which enabled disasters such as RHI was secrecy. By allowing spads to keep their work off the government system (at least in part to evade FoI), there was no accountability and an inherent danger of dark practises up to the level of corruption.

If it is recognised that using private phones and email addresses, thus hiding things from the official record, is dangerous, then there needs to be some tough sanction for those who do so.

I do, however, suggest two possible amendments to the bill as it stands:

1) Clarity that whistleblowing to journalists or others should not be subject to the new criminal offence for a minister or special adviser to communicate confidential government information to a third party (clause 11).

2) The possibility of a new clause which might encourage spads not to conduct work on private electronic devices or accounts - that clause would make clear that if they do so then civil servants should be able to go into their private email accounts or devices to search for information relevant to FoI requests or relevant to the department's official files (both for present purposes and for the historical record).

Many thanks for your consideration of this evidence,

CHAPTER 25

THE SPECIAL WORLD OF SPADS

In proportion to its size, Stormont had more special advisers than any other legislature in the UK or Ireland. Paid almost double the salary of an MLA, and in some cases more than ministers, spads were often the real power running Northern Ireland – yet with less accountability than their counterparts in other systems of government. While expedient in the short term, RHI exposed how in that system thrived bad behaviour – nepotism, laziness, greed and an arrogant disregard for rules.

The inquiry forced the DUP to admit that even the way in which it appointed spads was sometimes unlawful, while Sinn Féin put in place a system to circumvent the law. In the words of former DUP spad Tim Cairns, politics can be a ‘grubby world’ and spads were often the dispensable and deniable firewall between a minister and controversial decisions.

Many spads operated as quasi-gods in the Stormont system. DETI Deputy Secretary Chris Stewart, a vastly experienced civil servant, said: ‘I can think of few, if any, instances of officials challenging spads in any way in terms of their activities.’ Cairns’s minister, Jonathan Bell, claimed that the spad had said to him at one point ‘ministers come and go, but spads remain.’ Looking at Stormont over almost a decade since its restoration in 2007, that was largely true – especially for the DUP. At the top of the DUP spad tree were two figures who were there for the entire time: Timothy Johnston and Richard Bullick. Curiously, Johnston initially denied to the inquiry that there was any DUP spad hierarchy. But, after that evidence was challenged by witness after witness, he changed his evidence, accepting that he had been one of the most powerful advisers.

Johnston was always kept close to the DUP leader – and always stayed close. Intellectually sharp, politically shrewd and willing to be ruthless, he has been the beating heart of the DUP for about 15 years. Though he had never been elected nor had any ambition to enter electoral politics, he wielded power far beyond that of most elected politicians. When Johnston arrived in the DUP from PwC in 2002, the other key adviser to Peter Robinson was Richard Bullick. Although Bullick remained a key

aide up until he left for a public affairs job after the collapse of Stormont in 2017, it was Johnston who quickly became Robinson's chosen emissary. Whereas Bullick was the strategic brain of the party – and unusually for a senior political figure had almost no enemies – Johnston was the internal enforcer. The young accountant could be brutal with colleagues and had the authority to tell them what to do. Unlike Bullick, who had a languid and light-hearted style, Johnston was a bundle of energy. He would stride into a room, perhaps filled with party colleagues or civil servants, and briskly announce: 'Right, clear the room' so that he, Bullick and the leader could talk candidly. Even his many internal enemies never accused Johnston of laziness. Johnston's power extended through patronage. His future brother-in-law, John Robinson, went straight from university to succeed him as the DUP's director of communications in 2007 when Johnston first moved into Stormont as a spad. Robinson (no relative of Peter) had not even finished his exams when at the age of 22 was offered the job of chief spin doctor for Northern Ireland's largest political party. When asked at the public inquiry how he got the job, Robinson could not recall whether the post had been advertised or even whether he had submitted an application form. While Johnston would highlight that as an adviser he had no power to appoint anyone, the fact that Peter Robinson trusted his judgment and that he was one of a tiny handful of aides who had the leader's ear meant that if Johnston was against an appointment it made it much less likely to happen.

But it would be misleadingly simplistic to paint Johnston as some sort of swaggering bully who just whipped DUP politicians into line. His relationship with colleagues was more complex and more codependent than that. One shrewd Stormont observer, who has watched the most senior DUP figures at close quarters over many years even though he is not a DUP member, says: 'An awful lot of MLAs do trust Timothy. He's sorted problems for them with the media or elsewhere and they would have a bond with him.' And although Johnston was the most powerful backroom figure in a party that was frequently facing allegations of financial or other impropriety, even his internal enemies did not believe that he was corrupt. Behind closed doors, Johnston, who for most of his time as a spad drove an old car and lived in a terraced house in Portadown before building a large house in the County Armagh countryside, would be heard bemoaning that 'there's too much sleaze in this party'.

But there was a fundamental difficulty in how Johnston – and to a lesser extent, other spads – were operating. They were being paid by taxpayers up to £92,000 a year as temporary senior civil servants. Yet Johnston's role extended far beyond departmental business. In effect, the DUP was having the salary of its de facto chief executive – a role to which he was formally appointed after Stormont collapsed in 2017 – funded by the taxpayer. That gave the party an advantage on its rivals, who had to fundraise in an attempt to pay their staff far more modest salaries.

When Cairns appeared before the inquiry, he spoke freely, providing an unprecedented window into the kitchen cabinet of powerful aides around the DUP leader. He said that Johnston wielded far more authority than even senior elected DUP politicians up to the rank of deputy leader Nigel Dodds. Real power within the party, he said, resided with a tiny handful of spads. Cairns set out a situation in which he said Johnston was essentially acting as the DUP chief executive who was involved in everything from discipline to choosing more junior spads. He said: 'Mr Johnston's influence was seen in the party from top to bottom.'

Cairns, whose family was steeped in the DUP, said:

He controlled all party matters and was viewed as being the most senior DUP employee by elected representatives and staff. I believe that Mr Johnston in running party matters while a spad was operating outside of what he was permitted to do. This would obviously be problematic for the DUP if the media were to get hold of the story.

During the writing of this book, a large brown envelope was handed into reception at the *News Letter's* office, marked for the attention of the author. The envelope was bulging with printouts of internal DUP emails stretching over years. An unsigned handwritten note showed that whoever was behind the leak was aware of this book being written and wanted to draw attention to the centrality of Johnston's role in the DUP. The scores of emails were described as a 'small sample' of what the individual or individuals behind the leak said was available.

The emails show a figure who was involved in the biggest DUP decisions and the smallest. He was the one to whom DUP associations went to seek clearance for election literature. He gave detailed instructions

to the specialist designer contracted by the DUP to design its posters and manifesto as to how his work should be improved, advising him on everything from the white space in his designs to the colour of the text. The first draft of the manifesto went to him. He was involved in advising on Facebook and Twitter advertising. He was involved in decisions about newspaper advertising. Quotations for the purchase of DUP equipment were sent to him. He directed the party conference schedule. Requests for holiday leave went to him. Even the party rule book was approved by Johnston.

In a July 2013 email to party headquarters staff, Johnston said: 'I apologise for the late notice of holiday leave. Offices will close tomorrow at 3pm ... I would ask that staff make themselves available on Tuesday unless they are booked to be on pre-approved leave and/or are out of the country.' In October of that year, Johnston sent a lengthy email to DUP headquarters staff 'to again clarify staff responsibilities'. The spad, who was funded by the taxpayer to solely work at Stormont, told staff that 'above all else our priority is the forthcoming European election and the poll to the new councils. Election preparation from now on will place a greater burden on all our time. We are in the business of winning elections and that must be reflected in our time priorities'. He then said that John Robinson would 'have overall responsibility for [party] conference preparation' and told various staff what they would be doing over coming months. He added: 'I am instigating a new staff meeting which I will chair every Friday afternoon commencing next week at 3pm in Dundela [DUP headquarters] for a max of an hour. I expect all HQ staff ... to be present.'

On another occasion, Johnston made clear to the DUP's team of handsomely paid spads that they should make a financial donation to the party's election campaign, asking them 'if you are agreeable to contribute £500 to the party centrally'. He was heavily involved in esoteric details such as the design of DUP candidates' posters, describing a proposal for colour on the back of posters as 'bonkers'.

Elsewhere, in a message to the party press office the taxpayer-funded temporary civil servant suggested that they needed to organise party members or sympathisers to phone BBC Radio Ulster's *Talkback* phone-in programme. On 7 May 2014, he said:

I'm struck by the number of supportive questions that TUV have managed to get through to Jim [Allister] on his Talkback slot. Many of them appear to be detailed and it suggests they have been placed. We need to start work on questions we want submitted for DD [Diane Dodds] appearance on Tue 20th May and who will phone in.

That evidence was not made available to the inquiry. However, in response to similar allegations from Cairns, Peter Robinson told the inquiry:

If his allegation is intended to suggest that Mr Johnston was running the operation and functioning of the party then it is palpably absurd. Mr Johnston was fully employed as my special advisor working hours well beyond what would be expected. The idea that in addition he was moonlighting as a DUP manager involved in all the party's business is risible. If, on the other hand, it is intended to convey the fact that his role as a special advisor to the First minister required his regular and frequent involvement in aligning the position of the party in the Assembly with the party in the country then, of course, that would be accurate. However, that was part of his remit as a special advisor and not contrary to it.

It is unclear how a role which encompassed suggesting planted calls to a BBC radio programme, approval of party staff leave, quotations for the party's purchase of equipment or approving the party rule book meets with Robinson's description of his spad's activities – nor why taxpayers should have been funding such a party role. While the DUP got at least one free part-time party manager, Sinn Féin got a small fortune. The party operated a rule that all its elected or unelected staff received the same 'average industrial wage'. In a court case in 2016, former Sinn Féin MLA Phil Flanagan revealed that they were allowed to retain £24,000 a year. That meant that for a Sinn Féin spad being paid £92,000 a year, £68,000 gross was the party's, enough to employ almost three other individuals on its average wage. The justification for such high spad salaries was that it was necessary to retain exceptional talent. Yet in Sinn Féin's case that was demonstrably not true – all of its staff had to be prepared to work for £24,000. But by paying them huge salaries, the party was receiving a backdoor subsidy from taxpayers.

When Johnston was asked why he was acting in a party management function – and in an explicit election function during purdah – when he

was paid by taxpayers, he did not answer the question. Robinson was asked if he accepted that Johnston's role extended far beyond what taxpayers ought to have been funding. He did not answer the question. Rather, both men responded with a solicitor's letter which threatened to sue.

Special advisers have long existed in many guises, but the role as it is now known was created in Whitehall in the 1970s. Under Margaret Thatcher, the power of the roles increased, and under Tony Blair a powerful network of spads almost became an alternative to the senior civil servants who traditionally advised and assisted ministers. But in London, spads increasingly became synonymous with scandal – often involving poisonous, deniable briefings against party colleagues. Thus, by the time devolution was restored in 2007, there was not the excuse of ignorance about the difficulties and dangers of powerful but unaccountable political advisers.

It was not that there was no value in having spads. One former veteran spad said that the role was democratically important in giving the minister a trusted pair of eyes and ears within the department, while also reminding officials that it was the minister who had a democratic mandate for their policies and ensuring that they were implemented. But the only defence of the salaries, power and lack of accountability for spads was if ministers took full responsibility for what they did. Foster's response to RHI demonstrated the opposite.

Setting out what to many people appeared a semantic distinction to accepting blame, Foster admitted that some of Crawford's activities had been wrong, yet said that she was 'not responsible'. She said: 'If he had committed a criminal offence as a special adviser, I wouldn't think that the panel would be asking me to be responsible for that. I am accountable, perhaps, for what my special adviser does, but I'm not responsible for it.' There was some logic to what Foster said. But she was not the best person to set out such a defence, given that she had shown little inclination to be either accountable or responsible for what had gone on with RHI until forced to confront the issue.

Looked at as a principle, and not in relation to RHI specifically, there were inherent difficulties in a situation where a spad was not able to be held accountable for their actions and the minister who appointed him refused

to take responsibility. There was in this a very dangerous perverse incentive for ministers to use spads as deniable conduits for anything questionable or controversial. The spad would know that the worst that might happen to them would be that they might have to quit – but they would have the comfort of a bumper salary and quite possibly a large golden handshake. The minister would meanwhile be able to evade censure for what otherwise – had they acted alone – may have cost them their job.

Andrew McCormick told the inquiry that after the 2016 Assembly election – Arlene Foster's first as leader – he and the other permanent secretaries in DUP departments were called into Stormont Castle for a meeting at which a rank structure for DUP spads was set out. What until then had been implicit – that Johnston was the central figure – was now made explicit, at least verbally. As ever, nothing was written down to record the truth of what was going on. McCormick said that Bullick and Johnston were the only spads present at the meeting, and most of the talking was done by Foster and Johnston.

They made it clear that there would be strong degree of control from the First Minister's office – for example press comments would normally be subject to clearance by Timothy Johnston; copies of first day briefs for all the DUP ministers had to be provided (promptly) to the First Minister's office. The clear message was that Richard Bullick and Timothy Johnston as the First Minister's senior spads had in effect a role as 'primus inter pares' to speak with her authority and backing on any difficult issue that required resolution. While this post-dated the main events in relation to the RHI Scheme, it was not presented as a new arrangement, though clearly it was an implicit correction of the disorder that had applied in DETI in the previous few months under Jonathan Bell.

There was one point where issues with spads threatened to derail the DUP and Sinn Féin's Stormont arrangement. In 2011, the Sinn Féin Culture Minister, Carál Ní Chuilín, caused outrage when she appointed Mary McArdle to be her spad. McArdle was a convicted murderer, having played a key role in the IRA killing of 22-year-old schoolteacher Mary Travers,

who had been shot in the head as she left Mass with her family in 1984. Ann Travers, the slain teacher's articulate and unimpeachable sister, led the charge against what had happened. She said: 'She's now [McArdle] in the position in which she is paid by the taxpayer – of which my mum is one. I am absolutely horrified that she has been given such a position.'

The TUV leader Jim Allister, the most vocal opponent of the entire Stormont system, brought forward a private member's bill to bar those with serious criminal convictions from acting as spads unless they had shown contrition for their actions and assisted the investigation of all others connected with the crime. Under enormous public pressure, the legislation was supported by the unionist DUP, UUP and TUV, and the centrist Alliance Party. Crucially, the nationalist SDLP abstained, allowing the law to pass. But it was opposed by the Greens and viscerally opposed by Sinn Féin which denounced it as 'sectarian, anti-equality and anti-Good Friday Agreement'. Yet after the legislation passed, Sinn Féin appeared to accept that it had lost the argument in the legislature and now had to obey the law. The party removed its spads who had serious criminal convictions and replaced them with party colleagues. For many people, the issue was then forgotten.

However, unknown to the public, Sinn Féin immediately put in place a parallel system to circumvent the law. It appointed Aidan McAteer, whose criminal conviction for IRA activity would have barred him from being a spad, to a role where he was effectively a 'super spad' – senior not only to the party's spads but also in a role where he 'managed' Sinn Féin's ministers.

Former Sinn Féin minister Máirtín Ó Muilleoir openly told the inquiry that his party did not agree with the law, so had worked to nullify it by appointing McAteer and others to de facto spad posts. He said: 'I don't think there would have been any difference in Mr McAteer's role pre and post the 2013 act in terms of how he would have behaved and done his job every day.' In doing so, Sinn Féin was confident that the DUP would go along with it, since, in the words of the then Head of the Civil Service, Sir Malcolm McKibbin, they viewed McAteer as a 'pragmatist' with whom they had a 'constructive' relationship.

The approval of civil servants was also necessary for the system of unofficial spads to operate since they worked out of Stormont departments, daily meeting officials. McKibbin said that he reconciled himself to the

arrangement because ‘whether or not Aidan McAteer had been in the building or not, and whether I had ever seen him, he could’ve exercised that same function from party headquarters’. Sinn Féin’s actions meant that its key advisers were even less accountable than the DUP’s. Since its unofficial spads were not registered on paper as departmental advisers, they were no longer bound by the limited checks that did exist, including a code of conduct.

But while Sinn Féin was deliberately working to evade a law which it had always opposed, the DUP was breaking the same law – despite having voted for it in the Assembly. The terms of the Civil Service (Special Advisers) Act (Northern Ireland) 2013 stated that all spad appointments ‘shall be subject to the terms of the code’ for appointing spads. The code required the minister to be the decision-maker on his or her spad, after considering several candidates. But Bell told the inquiry that he did not consider a number of candidates, and it was the DUP leadership which allocated Cairns as his adviser. When confronted with the letter of appointment signed by him – in which he claimed that he was the decision-maker and he had considered a pool of candidates – Bell admitted that it had been a ‘false’ declaration.

Despite their many areas of dispute, Cairns agreed with Bell that he had been appointed outside the rules. He said that ‘whilst there is an official procedure, the Democratic Unionist Party exercised an unofficial procedure which took precedence’. Cairns said that he did not apply for the role or go through any formal process. Instead, he said that the then First Minister Peter Robinson approached him at a DUP executive meeting and took him into another room with Johnston, where he was informed that there would be a vacancy for a spad to Bell ‘and would I move from my position in the party to become a special adviser in his office’ four days later. Bell was not even in the room. Both the DUP and Sinn Féin quite literally saw themselves as being above the law. And, as with many of their other excesses, they were only able to circumvent the law because civil servants acquiesced in the process.

Throughout almost a decade in government, some of the DUP and Sinn Féin’s most senior figures shunned departmental email addresses in favour

of private email accounts. The First Minister and his spads down would forward sensitive government documents – some relating to decisions worth hundreds of millions of pounds – to Hotmail accounts, Gmail addresses or email servers run by their party. Their explanation for this was that it was incidental: a minor issue explained by the convenience of using an existing email account. But, given how instinctively secretive the DUP and Sinn Féin were, it would be entirely in keeping with their wider thinking for the decision to have been conscious and strategic. Keeping their emails – the life blood of modern government business – off government servers removed control of that information from the department to themselves or their party. The significance of that became apparent during the inquiry when questions about why some DUP spads had not handed over certain emails or text messages were being put to them, rather than to civil servants in their former departments. These two ultra-centralised parties would not have wanted the threat of their sensitive government communications lying in the hands of others.

In approving the practice, civil servants were allowing the official record to be corrupted. In writing this book, the author submitted a Freedom of Information request to DfE for material about Moy Park in Crawford's private email account. DfE refused the request, saying "the department does not have direct access to Dr Crawford's private email account and access is, therefore, a matter for Dr Crawford". Having allowed a DUP spad to retain control of his government communications, it then pleaded an inability to get control of the information. The problem for the department – and the attraction for political figures – was obvious.

Whatever the motive, their decision to use private communication systems for government work further lessened scrutiny of their actions in government – even though Stormont was already one of the least scrutinised democratic governments in the world. At one point, there were only two MLAs out of 108 who were not members of governing parties.

But the practices adopted by many DUP and Sinn Féin ministers and spads had implications which were profounder still. In rejecting secure government communication systems in favour of basic free email accounts or party-run systems, they were leaving Stormont wide open to attack from commercial interests or a foreign power.

The private secretary to Jonathan Bell told the inquiry how he believed that the only email address the DETI minister ever used for government business was a Hotmail account. Bell was asked how he ensured private departmental information was secured in his Hotmail account. Alluding to an alarmingly simplistic understanding of cyber-security, he responded: 'My private email account is password protected. Access to my email account can only be made with the knowledge of my password.' That was the same account to which Bell handed the password to BBC journalists in December 2016.

The Sinn Féin Finance Minister Máirtín Ó Muilleoir routinely used *mairtin@newbelfast.com* (his personal website) rather than his official departmental email. When asked by the inquiry about its security, he said with a degree of pomposity: 'In terms of security I was and am confident the email account, the only email attached to a secure and stand-alone domain, is best-in-class.' Ó Muilleoir's use of a private email account for government business was in keeping with how most Sinn Féin ministers and spads operated. Yet it was contrary to the standards the party demanded of others. In December 2016, Sinn Féin's press office issued a statement which described as 'shocking and extremely concerning' that the Taoiseach, Tánaiste and other Irish government ministers had been using private unencrypted email accounts for government business. In a statement reeking with hypocrisy, Sinn Féin said at the time: 'No minister should be using any private unsecured email accounts for any official business whatsoever.'

First Minister Peter Robinson and many other ministers also used non-departmental email accounts to transact departmental business. Crawford said that his government-issued iPad had 'no security settings on it' – a fairly obvious clue as to why it should not be used for confidential material – and he therefore could not access his departmental emails on it. Instead, he forwarded emails from his secure government email account to his personal Hotmail account and read them on the unsecured iPad. He told the inquiry: 'I would have got the iPad ... when I was travelling with the minister to places where there was not a secure network. So there would've been places where you're advised not to use the government phone. And, you know, for that reason I would've had the iPad that I could access information ...'

But it was not just Stormont's political elite that set aside security protocols – civil servants, from the highest grades down, were also doing it. Civil servants got around Stormont's IT security rules by forwarding information from their secure BlackBerry devices to personal email accounts so they could view them on their home computers. McCormick said that it was common for confidential emails to be sent outside the government system because it was 'expedient'. He said:

It's not good practice. It's not secure in that sense, and we — It is relatively easy to work without it. I used my personal account at times, simply because it gave me access to a much larger screen at home to work on, so it's just expedient in a context where nothing was ... We weren't dealing with high state secrets, so it was not regarded as good practice but also not a great harm, either.

What ministers and officials were doing was contrary to Stormont security protocols, which deliberately locked down access to such information outside the office to secure devices. The civil service's security policy said that 'the transfer or storage of data is only permitted on Ironkeys [encrypted USB pens] issued through IT Assist or on encrypted hard drives, and not on any other device.' It said that 'any breach of this policy will be viewed as a security incident and dealt with as such, possibly leading to disciplinary action'. Yet, despite the fact that this policy was disregarded across the department, DETI's 2015–16 resource accounts said that a security risk overview report to the Head of the Civil Service was completed in July 2015 'with no significant issues identified'.

Stormont's amateurish approach to data security was particularly significant not just because it was handling an annual budget of around £20 billion but because it was increasingly interacting with foreign governments and companies. Ministers and officials regularly travelled to China – a state accused by the British government of being responsible for sophisticated state-sponsored cyberspying – to negotiate lucrative financial investments.

Professor Anthony Glees, director of the University of Buckingham's Centre for Security and Intelligence Studies and a member of advisory board of the Oxford Intelligence Group, said that what had been going on was

‘totally astonishing’ and that it ‘certainly affects our national security given the important role that Northern Ireland politics and politicians now play in our national life.’ He said: ‘Just as we should not allow criminals to make laws – as MPs or peers – so we should not allow people who are careless with the security of official communications to help determine the security boundaries in the UK as a whole.’ Professor Glees said that the ‘reckless way’ in which communications relating to China had been conducted ‘gives rise to the gravest concern.’ He said that

any Northern Ireland links with China, even if they appear to be wholly about the economy and not politics, are always going to have national security implications for the whole of the UK. One can only assume that GCHQ and MI5 either did not know what [Stormont figures] were doing, or, if they did, felt that Northern Ireland was a ‘special case’ and that they ought to be reluctant to interfere in any way. For them, as for all of us I suppose, peace in Northern Ireland is the number one consideration.

Pointing to Hilary Clinton’s use of a private email server – and the hacking of her emails by Russia – he said that standard private sector electronic communications, whether by email or services such as WhatsApp, do not have the safeguards which are built into government communication systems.