Northern Ireland Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Civil Service (Special Advisers) Bill: Human Rights Issues

21 November 2012

NORTHERN IRELAND ASSEMBLY

Committee for Finance and Personnel

Civil Service (Special Advisers) Bill: Human Rights Issues

21 November 2012

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

Witnesses:

Professor Brice Dickson	Queen's University Belfast
Dr Rory O'Connell	Queen's University Belfast
Dr Anne Smith	University of Ulster

The Chairperson: I welcome Professor Brice Dickson and Dr Rory O'Connell, who are both from the school of law at Queen's University. I also welcome Dr Anne Smith from the Transitional Justice Institute at the University of Ulster. I invite you to make an opening statement, and I will then open the meeting to members for questions.

Professor Brice Dickson (Queen's University Belfast): Thank you, Chair. I do not have a prepared statement. I am here in my capacity as a so-called human rights expert, and I am happy to try to deal with your questions. I cannot speak for Rory or Anne.

Dr Anne Smith (University of Ulster): Likewise. Thank you very much for the invite.

The Chairperson: We have already received some evidence from different parties, including the Attorney General. When the Attorney General made his submission, he had a number of concerns that stemmed from article 7 of the European Convention on Human Rights (ECHR). He said:

> *"it prohibits an increase in penalty or the imposition of a heavier penalty than was available at the time."*

He went on to say that that retrospective aspect "does loom large" in the legislation as proposed. Are you aware of any cases where such retrospective penalties in legislation have been permitted recently?

Professor B Dickson: Yes, Chairperson, I know of some cases that have gone to the European Court of Human Rights on that kind of issue. They tend to turn on whether the disadvantage suffered by the ex-prisoner is a penalty as interpreted by the European Court. It tends to adopt a criminal law approach to the word "penalty", in the sense that it denotes a punishment, a fine, a confiscation of assets, or, perhaps, a deprivation of liberty. It does not cover all disadvantages, such as ineligibility for employment as such. My estimation is that if the clause were to see its way to a court in the UK or in Strasburg where the European Convention was applied — courts can change their views over time — on current law, there would not be an inconsistency or an incompatibility between what is proposed in the Bill and the current interpretation of article 7 given by the European Court of Human Rights.

The Chairperson: Obviously, a number of different countries or areas globally are emerging from conflict. The obvious one that is always cited is South Africa. Are you aware of any examples in those countries where such a retrospective penalisation of offences has been introduced within that context? Obviously, in this legislation, it arises from one particular case from our recent conflict and where a sentence has already been served. Would it be a given, or would it be the case that, in most of those situations and the respective peace processes in those countries, the general view would be that this would be a punitive measure and that it would undermine the peace processes that are being undertaken?

Professor B Dickson: That is something that my colleagues would want to comment on. My view is that international human rights law, as such, although it contains a thrust towards the rehabilitation of offenders — all offenders, including murderers — it does not lay down hard and fast rules for those states that have ratified the treaties in question. In other words, it gives some discretion to those states to decide whether a particular individual needs to be rehabilitated in the sense of being given eligibility for a certain job. At the same time, in those countries where there have been conflicts, it is common for the peace processes to contain provisions, as the Good Friday Agreement does, to encourage the rehabilitation of offenders or of all of those who were involved in the conflict in one way or another. However, again, they have tended not to lay down any hard and fast rules. I cannot, offhand, give you any particular examples, from South Africa or other countries where there have been recent conflicts, of particular legislation that would be analogous to the Bill that we are looking at today. However, there is certainly a tendency in those peace agreements to rehabilitate those who were involved in the conflict.

The Chairperson: How will this Bill rest with the UN standards of human rights? Is it compatible with those standards?

Professor B Dickson: The UN standards are not that detailed on that issue. Article 10 of the International Covenant on Civil and Political Rights (ICCPR) places an obligation on states to seek the reformation and rehabilitation of prisoners. That refers to all prisoners and not just those who were imprisoned during the conflict. However, again, that is a rather vague standard and, as far as I know, the International Covenant on Civil and Political Rights does not go beyond that.

Other so-called soft law documents, which are not binding on states, have emerged from the UN that encourage the rehabilitation of prisoners. However, as far as I know — my colleagues can supplement this if they wish — there are no precise standards on whether someone should be rendered ineligible for a particular appointment, especially such an appointment as we are discussing today, as a special adviser.

The Chairperson: Two pieces of legislation that have come to our attention are the European Convention on Human Rights and the International Covenant on Civil and Political Rights, which the Executive and the Assembly are subject to. I found the UN Human Rights Committee's comments on compliance with the ICCPR interesting. It stated that article 15 includes a requirement for:

> *"liability and punishment being limited to clear and precise provision in the law that was in place and applicable at the time the act or omission took place".*

Given that perspective from the UN on a set of standards that the Executive and the Assembly have to comply with, surely that makes this piece of legislation non-compliant? It is reliant on what was in place at the time, as opposed to what is now being applied in regard to past offences.

Professor B Dickson: I am not sure that that follows, Chairperson. The word "punishment" is used in article 15, and I do not think that you can categorise the rendering of someone as ineligible for a position as a punishment as such. It may be a disadvantage to that person, but I do not think that the UN Human Rights Committee or the European Court of Human Rights would regard it as a "punishment" or a "penalty", which is the word that you will find in article 7 of the European Convention on Human Rights.

Dr Rory O'Connell (Queen's University Belfast): May I comment on article 7 of the European Convention on Human Rights? As the Attorney General pointed out in his evidence, the European Court has said that there are about four different factors to think about in deciding whether something is a retrospective penalty. The first one that is mentioned by the European Court of Human Rights is something that follows upon a conviction, which seems to be the case here. The other factors include the purpose of the measure and its severity. On the point about severity, the exclusion from a relatively small number of offices might not be thought to be a particularly severe penalty. The purpose of the measure is a bit nebulous, because it is very easy to characterise it differently. You could characterise it as a question of what the necessary qualifications are to hold this particular post, and that is not in the nature of a penalty. I suppose it could also be seen as having an element of punishment in it and that the purpose is one of retribution, and that steers us back to a possible problem with article 7.

As Brice indicated, you are never entirely sure which side of the question a judge will come down on. There have been cases in which people have been deprived of their driving licences because of previous motoring convictions, and that has been found to be a retrospective penalty that is in breach of article 7. On the other hand, where measures — I think the Attorney General referred to these — have been introduced that require people who have been previously convicted of, say, sexual offences to report to the police and to keep the police informed of their whereabouts, that is seen as a penalty. The aim of it is not punishment, but rather to prevent the future commission of crime. That just gives a bit more detail on how the European Court of Human Rights approaches the article 7 question.

You referred to the international covenants. As well as the ones that deal with rehabilitation of offenders, there are also issues about the right of access to the public service, which is a right that is explicitly set out in article 25 of the International Covenant on Civil and Political Rights. There are also questions about the right of access to employment or the right to work, which is a right under the International Covenant on Economic, Social and Cultural Rights. I suppose that the key thing is that the right to work and the right of access to public service are not absolute rights, whereas the prohibition on retrospective criminal legislation is. The right to work and the right of access to public service can be limited where there is objective and reasonable justification to do so, or where the European Court of Human Rights finds that there is a reasonable, proportional relationship. That would suggest that the attention should be focused on the purpose of the measure and whether it is relatively necessary to adopt that measure to achieve that legitimate purpose.

The Chairperson: On that final point, Rory, you referred to the right to seek employment. There has been some discussion that the right to seek employment forms part of the right to a private life. Do you have a view on that?

Dr O'Connell: Yes. That issue has become quite lively in European Convention on Human Rights case law. The starting point is that the convention does not include an explicit right to work or an explicit right of access to the public service. You will find comments from the European Court of Human Rights that stress those points. However, there are circumstances in which prohibitions on access to employment may be so wide-ranging that they affect the right to have a private or personal life. The European Court of Human Rights' reasoning is that, for many people, the forum in which they develop relationships with others is, frequently, employment and to exclude people from wide areas of employment may affect their private life.

That came up in Sidabras and Dziautas v Lithuania, which concerned a rule that excluded former agents of the committee on state security in Lithuania from a range of employment in the public sector and, crucially, in the private sector. That was held to be such a sweeping prohibition because it affected private sector employment, which was a breach on the non-discrimination principle and the right to a private life. Subsequently, the same argument has been made in relation to rules in Italy that deal with people who have been declared bankrupt. As part of that, they were denied the opportunity to engage in various professional activities.

A key point about that argument is that most of the cases that I am aware of involved fairly sweeping exclusions from ranges of employment, much more so than is the case in the Bill you are considering, which concerns only a small number of offices.

There is also the Irish precedent of Cox v. Ireland. It stated that people who had been convicted under the Offences Against the State Act in the Special Criminal Court could not be employed in the Civil Service for a period of seven years. That was found to be a breach of an enumerated right in the Irish constitution to earn a livelihood.

Dr Smith: In the cases that Rory referred to, article 8 was argued in conjunction with article 14, which, as you may know, is the non-discrimination provision of the European Convention on Human Rights. As it stands, in the UK, because article 14 is a non-independent right, it has been referred to as a parasitic right. In other words, it cannot be argued alone and has to be argued in conjunction with another convention right. The Council of Europe recognised that weakness and introduced protocol 12, which makes article 14 a stand-alone right. However, the UK has not signed or ratified that protocol. So, at the moment, article 14 has to be argued in conjunction with another ECHR right. In the employment cases that Rory mentioned, article 8 was argued in conjunction with article 14.

The European Court of Human Rights has stated that the wording of article 14 prohibits discrimination on a number of grounds. Criminal record or criminal conviction is not listed as one of those grounds. The phrase "other status" is included in the wording of article 14. The European Court of Human Rights has held that a criminal record comes under the phrase "other status". So, there is precedent for criminal conviction to be regarded as "other status" to prohibit discrimination. However, as Rory said, it would come down to the whole issue of proportionality. At times, the European Court of Human Rights has given what is known as the margin of appreciation to member states; i.e. they give them a certain degree of discretion in determining whether or not certain legislation or a certain policy is compliant with the European Convention on Human Rights.

The Chairperson: The Office of the First Minister and deputy First Minister (OFMDFM) issued guidance for employers on the recruitment of people with conflict-related convictions back in 2007. Do you have a particular view on its compliance with the aforementioned conventions?

Dr O'Connell: As I understand it, an individualised approach is required for decisions in this area rather than applying a hard-and-fast rule. An individualised approach is probably a more proportionate response in that it could be tailored to particular circumstances. That is not to say that hard-and-fast rules are necessarily disproportionate. It would have to be looked at in the particular circumstances of each case. For instance, there was a High Court decision in England and Wales concerning the denial of licences to door supervisors or bouncers who have had a criminal conviction within a certain number of years. In that case, the High Court said that it would not be practicable to have an individualised assessment, given the sheer number of people who would be involved. So, in that particular case, the High Court did not think an individualised assessment was necessary.

The Chairperson: Might it be more proportionate because, in the case of this post, we are talking about a relatively small number of people?

Dr O'Connell: Yes; it is a small number of people. You might also to look to see whether it works for analogous office holders other than those who cannot work in this case; that is the proportionality argument. Having said that, as we have already indicated, it is always difficult to predict what courts will decide and, in particular, how much respect, deference or margin of appreciation they will want to show to democratically legitimated decision-makers. Courts are sometimes wary of insisting that policies or legislation be absolutely perfect, and they recognise that that is an unreasonable expectation on legislators and decision-makers.

Mr D Bradley: Anyone who applies for a job in the Civil Service is subject to vetting, and the new regulations that the Minister has brought in will also subject special advisers, who are classified as civil servants, to vetting. Anyone who is rejected on the basis of that vetting has the right to appeal. Is that approach and that system compliant with human rights legislation?

Professor B Dickson: As Rory said, the more attention that is given to individual circumstances, the better it is from a human rights point of view. The European Convention and the European Court do not like absolute rules, particularly absolute bans. They do not like absolute restrictions on people's rights, as we will no doubt see in the next couple of days when Westminster considers the right-to-vote issue, because the European Court has made it quite clear that absolute bans on prisoners voting are

not acceptable. In so far as the guidelines that OFMDFM has issued allow for that individualised approach, I and other human rights lawyers would approve of that. If the Bill could somehow provide for an appeal mechanism or for some sort of challenge to the ban that it seems to impose automatically, that would no doubt assist its compatibility and make it more likely that it is compatible overall with European Convention standards.

Mr D Bradley: According to the briefing from the Department, the new regulations recognise that people change, that they may not have reoffended in the interim and that they possibly express remorse about what they have done in the past. All those are mitigating circumstances, and, as I say, an appeals mechanism is included in it as well. That applies to all civil servants. Is it not the case that if a group that is classified as civil servants were excluded from that mechanism, there would be an inequality in that approach?

Professor B Dickson: It is possible to argue that. However, it is clear that although special advisers are civil servants, they are in a subcategory in that they are not appointed on merit, and that could have knock-on consequences for other aspects of their appointment. Yes, potentially, your point about equality might come in, but there are existing differences between special advisers and other civil servants, and that implies that other differences could be permissible as well.

Dr Smith: Last week, the European Court of Human Rights held that the fact that there was no mechanism to individually review a person's circumstances gave rise to a violation of the European Convention on Human Rights. That case came from Northern Ireland. So, to make the Bill human rights compliant, it is essential to have a mechanism to ensure that there can be a right of appeal or to enable an individual to review his or her position.

Mr Weir: I apologise for being a minute or two late. A lot of the ground has been covered, but, in summary, the position, the validity and, indeed, the case law has tended to hang on the scope or range of any level of restriction. The wider that is, the less likely it is to be legal, and there is the matter of context. Would that be a fair comment?

Professor B Dickson: Yes, I think so.

Mr Weir: You mentioned a couple of examples of recent European case law in relation to restricting from employment people who had been involved previously in totalitarian state security regimes and where the blanket ban was found to be unlawful on the grounds that it was a complete restriction. You mentioned another example in relation to the bankruptcy situation in Italy. You have taken examples from one end of the spectrum. Have there been examples at the other end, where there have been restrictions on a particular form of employment for someone who is a convicted criminal and where the restriction has been tested and been held to be lawful?

Dr O'Connell: I cannot come up with a particular example of that.

Professor B Dickson: No. There are situations where the court has said in relation, for example, to sex offenders — I am not sure whether there was a European Court decision, but there are UK court decisions — that the requirements to notify an address and movements to an authority, even if it is a very long-lasting requirement, are acceptable. A lifelong requirement is unacceptable, but long-lasting is acceptable. That kind of restriction or disadvantage is lawful. I do not know of any particular cases relating to employment as such.

Mr Weir: Let us look, then, at the two examples that you gave. In the court ruling, was there any specific mention in the judgement that the scope of the restriction was unlawful?

Dr O'Connell: This goes back to the Lithuanian and Italian cases that I mentioned. By scope, do you mean the breadth of employment opportunities?

Mr Weir: Clearly, when a ruling was made, a judgement arising from that was issued. That will have gone through the interpretation of the law. Did that specifically make reference to the scope? Was there any commentary around it that implied either that any form of restriction would be wrong or that the restriction goes too far because of its very wide-ranging nature? Can you expand on any commentary that was made in the judgement? I appreciate that that involves an element of detail, and I do not know how much detail you have in relation to those cases.

Dr O'Connell: There was an issue of scope in both those cases, and the European Court pays attention to that. In the Lithuanian case, which is different from the Bill that you are considering, there was a particular problem because there was a prohibition on employment in quite a few areas of the private sector as opposed to the public sector. The European Court thought that that particular measure was about ensuring the loyalty of public servants, and so it did not really apply to private sector employment. There is a question about the breadth of employment opportunities that would be curtailed and in which sector they would be curtailed.

Mr Weir: So was that specifically targeted at the fact that it was the private sector restriction that was particularly wrong? Was there any comment on the public sector restriction on that basis?

Dr O'Connell: The Sidabras judgement was particularly focused on the private sector. There have been other cases. In the Thlimmenos case in Greece, the court found a violation but in passing judgement seemed to accept that, in relation to employment as an accountant, you could have a rule prohibiting people with serious criminal convictions. However, it then found that, in the particular circumstances of that case, that rule was disproportionate because it was being applied to somebody who had, for religious reasons, refused to wear a military uniform and had been punished. That was the nature of the conviction in that case.

Mr Weir: So, that case was largely struck down because of the nature of the conviction, which was relatively minor, and because the response was disproportionate?

Dr O'Connell: It was specifically because it was related to a person having been convicted, essentially, because of his religious beliefs. The court thought that an exception should have been made for that circumstance rather than the application of a blanket ban of the nature described.

Dr Smith: To go back to your earlier question, there is a UK case that may be relevant to what you were asking, which is the case of McConkey and Marks, who applied to work for the Simon Community. It came to light following pre-employment checks that they had serious criminal convictions. I think that one served a prison sentence for murder and the other for conspiracy to murder. They were offered jobs, but when it came to light that they had those previous convictions, the offers were withdrawn. They brought a case under article 2(4) of the Fair Employment and Treatment (Northern Ireland) Order 1998. The Fair Employment Tribunal, Court of Appeal and House of Lords held that there was no discrimination. I do not know whether that answers your question.

Mr Weir: That may not be European law, but at least —

Dr Smith: No, it is not European law, but it is domestic and still relevant.

Mr Mitchel McLaughlin: Thank you very much. You are very welcome.

What are your views on the post — as opposed to personalities — that we are discussing? Is there anything in relation to that post that you think would have legal significance or any impact on the rights of any individual appointed to it? Clearly, a number of special advisers are appointed by Executive Ministers across the piece. I suspect that most, if not all of them — with the exception of Mary McArdle — would be completely unknown. It is not a high-profile post. Those people do not issue statements, deliver policy positions or engage in overt political discussion across the political spectrum. They act with and on behalf of a Minister engaged in that fairly close, collaborative process. Would a court, such as a European court, consider that there is something of significance in the post that would create an unusual or unique set of circumstances in coming to a view on whether there should be restrictions on employment opportunities?

Dr Smith: The European Court of Human Rights looks at the nature of the job. That helps to determine whether a person is suitable, if you like, for the job. Generally, the important point is that the principle of non-discrimination is about providing everyone with equal opportunity to access employment. At the same time, however, there has to be a balance between the rights of that individual and the rights of the wider public. We then go back to what was said about the balance and proportionality of the issue. So, it is hard to give a definite yes or no, but the nature of that particular job would be a determining factor, as would the issue about proportionality and the balance between the rights of the individual to access employment as opposed to the rights of the wider public.

Professor B Dickson: I agree with what Anne said. Clearly, the reason behind the disadvantage imposed on an ex-prisoner must be considered in connection with the particular job that that ex-prisoner wants to do. Most people released under the Good Friday Agreement are deemed not to be a danger to the public, for example. If the job that the person was claiming to do involved potential danger to the public or was connected to those sorts of issues, you could not say that the ex-prisoner was ineligible for that job, because they have already satisfied the law that they are not a danger to the public. However, the European Convention's standards in article 7 are broader than just matching the particular job with the particular individual or offence that the individual has committed previously. You have to look at the whole nature and purpose of the ineligibility. So, in the case of special advisers, you might say, for example, that part of the purpose of the ineligibility is to reassure the public in general and victims or families of victims that people of influence at the top of the Civil Service do not have a particular attitude, background, mentality or approach to, for example, the use of violence for political ends that would render them unacceptable to the majority of people in the community. That kind of overall purpose of the ineligibility requirement would, I think, be taken into account by a court of law.

Mr Mitchel McLaughlin: If we were to consider, for example, that people with conflict-related convictions could stand for election, be elected and, indeed, become Ministers, as opposed to the virtually private function that a special adviser would conduct, how do you think that sits with the European Court and human rights law?

Professor B Dickson: That is a completely different situation. The European Court and the convention uphold quite staunchly the right to free elections. So, if people with that kind of background are elected by the people, they have full legitimacy in the eyes of the law and should be able to exercise their functions accordingly. You might argue that special advisers are, in a sense, closer to elected officials than they are to people who compete for employment because they do not compete for employment. They are chosen by elected Ministers and others. Nevertheless, I think that because their role is similar to that of other senior civil servants and they do not have the democratic legitimacy that elected people have, the European Court would have regard to the public acceptability of giving that kind of senior appointment to somebody with such a background and would allow states a certain margin of appreciation to decide who should be eligible for that kind of position.

Mr Mitchel McLaughlin: Let us consider, for example, the position of the Civil Service Commissioners. Taking account of the Good Friday Agreement and the St Andrews Agreement, it issued guidance on the employment and rehabilitation of former prisoners that made provision for and reference to best practice for employers in those circumstances. Does that represent the use of that appreciation that Governments can apply in how they address the rehabilitation of former prisoners or individuals with conflict-related offences in a post-conflict situation?

Professor B Dickson: Are you referring to guidance that has been issued by the Civil Service Commissioners?

Mr Mitchel McLaughlin: Yes.

Professor B Dickson: I am not totally familiar with that, I have to say.

Mr Mitchel McLaughlin: Is any member of the panel familiar with that guidance?

Dr O'Connell: Perhaps I might reiterate that, looking at this from a European non-discrimination perspective, there are a couple of questions. One of them is whether the particular people who are affected are in an analogous position to others who have been treated differently. There is an argument with regard to special advisers, who say that they are, of course, in an analogous position, but are subtly different from elected politicians and senior civil servants. Looking at the European Court's past practices, one possibility is that it just leaves it at that and says that, because they are in a different position, no issue of discrimination arises. That approach is sometimes criticised because it is argued that you should really look a bit more closely to see whether there is proportionality — a reason to treat people differently other than just the fact that they are so situated. That goes back again to what we said earlier: if there is some other mechanism for dealing with the legitimate concerns of the public authority that would be less restrictive of the rights, there is an argument for saying that there is a lack of proportionality. Again, all this is subject to the recognition that domestic courts and the European Court of Human Rights are sometimes quite wary about treading on the toes of elected politicians.

Mr Mitchel McLaughlin: Yes; and a couple of references have already been made in this session to the fact that it is very difficult to have a blanket position. One of the anomalies is that Mary McArdle, who is the particular personality in question, could have stood for election, been elected and then been nominated a Minister. Yet, in her case, the Bill would retrospectively require her dismissal. That is one of the anomalies that I envisage being tested by this.

It is also the case that it was through no act of Mary McArdle that this issue became such a cause célèbre. I accept, and we will hear from witnesses, that non-combatant victims, of which there are many in our community, can be re-traumatised. I am mindful that not only do we have responsibility for managing the political process, as represented by the various parties in the Assembly, but there is a wounded and divided community that we have to try to heal. So, the situation is that we have tried to remove all the barriers to equality of opportunity. We have attempted to address the issues. Although we have not succeeded in all of them, we have made progress on issues that gave rise to the conflict in the first instance.

This particular appointment attracted widespread media coverage, debate and discussion that drew in the political parties. More than anything that Mary McArdle said — because she did not say anything and went through a torrid time herself when the Travers family was drawn into and was deeply impacted by the controversy — the media reaction and the publicity that was generated confronts us with a real challenge. We have great sympathy with and sensitivity for the individuals who have been hurt as a result of the actions of others, but we also have an absolute duty to try to move beyond post-conflict into reconciliation processes such as truth recovery to deal with the fact that there are many victims in our community who have never had redress.

The authorities have pursued, arrested, charged and sentenced some but not all of the combatants. Certainly, people who were involved in state killings, which have proven controversial and, in the case of Bloody Sunday, have been demonstrated to be illegal, have never seen the inside of a prison, and there is nothing in the Bill that would disbar them from being ministerial special advisers. Is this exercise not taking us into a situation in which there is a form of continued victimisation and discrimination? Or do we say that everyone is equal before the law and that law is genuinely blind as to whether people were wearing a British Army uniform? Does the Human Rights Commission have a view on that?

Professor B Dickson: We are not with the Human Rights Commission; we are independent academic so-called experts in human rights law. I, for one, came here today to try to explain the current state of the law and the trends in the law rather than to get involved in the politics of all this.

Mr Mitchel McLaughlin: I would not invite you into the politics of it. It is a simple statement of whether, in a situation in which the actions of combatants were adjudged not to be compliant with international human rights standards, they were pursued with the same vigour and focus as others. Is that the background, or not, of our recent history? Bloody Sunday is a very easy example, but there are many examples. Consider state agents in paramilitary organisations who were being quite blatantly protected through the legal process here. What about the victims? If the Bill were passed by the Assembly, it would extend that protection, because they could emerge, in theory, as special advisers and no one could do anything about it.

Mr D Bradley: Mr McLaughlin has now been speaking for longer than the witnesses whom we invited here to hear from.

The Chairperson: To be fair, I allow all members to —

Mr D Bradley: Fifteen minutes is quite a long slot. If we all get 15 minutes, we will be here all day.

The Chairperson: — ask all their questions. Mitchel, are you finished on that point?

Mr Mitchel McLaughlin: No. I am sorry if Dominic is bored, but he will have to just put up with it.

Mr D Bradley: He has already had 15 minutes.

Mr Weir: Chair, just —

The Chairperson: Hold on; Mitchel is speaking. Peter, I will let you in in a minute.

Mr Mitchel McLaughlin: I do not mind how long other members wish to speak for; I will not attempt to curtail their particular line of questioning. I am very passionately committed to the peace process and the reconciliation and truth-recovery processes. I believe that all of this has direct implications for those. I say that by way of explanation to you. It is not an attempt to entrap anyone. I am very conscious that there are very strongly held and divided opinions. The physical conflict, when we were hearing reports of bombings and shootings on a daily basis, is behind us, but only a foolish person would say that we have healed the divisions that caused that. I intend to do my utmost to ensure that we do not return to it. There are some issues that just have to be confronted.

Some people appeared before the courts, and some people did not and, quite probably, never will. That is an issue that the Assembly should be challenged to think about. That is why I am taking this particular approach. I would respect it if you declined to answer any of the points that I made or if you needed some time to consider them. We are going to have to explore the guidance that was produced by OFMDFM and the responses that were developed by the Civil Service Commissioners. Those took account of the OFMDFM process and the Good Friday Agreement, which was ratified by the people of this island. We should explore the international agreements involving both Governments and the subsequent agreements, including St Andrews, which dealt specifically with the issue of persons with conflict-related convictions. The Assembly is going to have to take its time to work through those issues. If that takes 15 minutes of this meeting, it is a small enough price. We are in danger of simply keeping the conflict going and passing it on to another generation, unless we get to the point at which there is reconciliation and a genuine, across-the-board exchange of the truths, the information and the perspectives that people across the political spectrum here in this region and at governmental level are prepared to join. So, rather than attempting to invent ways and means of excluding people or continuing to punish people, we would be better off getting on with the job of reconciliation.

Mr Weir: I want to raise a procedural issue, in line with what the Deputy Chair said. I will be brief, and I will not comment on the content of Mr McLaughlin's comments. I am a little concerned that when we have witnesses, it should be on the basis that those witnesses are here to be questioned. Members will have the opportunity, very legitimately, to put across their points when we are deliberating on these issues. I am bit concerned that we have strayed beyond simply putting things in context to effectively giving a speech and asking the witnesses whether they agree. With respect to Mr McLaughlin or anyone else, we need to keep largely focused on asking questions. If we get a very lengthy context, preamble or whatever, it somewhat defeats the purpose of having witnesses and asking them the questions. I wanted to express that concern.

Mr Mitchel McLaughlin: OK. I understand exactly what Peter is addressing here. I want to put two suggestions to the Committee and to you, Chair. In evidence on the Bill in September, the Department of Finance and Personnel (DFP) and then John Larkin, Attorney General, pointed to the possible need for the Secretary of State to consent, as the Bill amends the Civil Service Commissioners legislation. That is why I was labouring the point. That is a reserved matter. So, I propose that the Committee seeks clarity around this and related matters by two forms of correspondence, and we may need to speak to people about that.

First, I propose that we seek clarity from the Secretary of State to establish whether any necessary consent has been provided, given that the Bill includes provision dealing with a reserved matter, and also ask for the Secretary of State's views on the compatibility of the Bill with the fulfilment of British Government commitments. That includes, I think, international obligations on political ex-prisoners that were made in the Good Friday Agreement and the St Andrews Agreement. It includes the implications for the ability to apply the best practice employers' guidance on recruiting people with conflict-related convictions, which was published in 2007 and was expressly designed to fulfil those commitments. I will supply that in writing.

The second letter should be to the Civil Service Commissioners. That is an independent body, and we should ask for its view on the Bill, given that it would have an impact on the legislation under which it operates. We should seek clarification on the extent to which that body's mandatory recruitment code for appointments throughout the wider Civil Service takes account of the best practice employers' guidance on recruiting people with conflict-related convictions, which was published by OFMDFM in 2007, in light of the fact that the guidance expressly aims to fulfil British Government commitments on political ex-prisoners that were made in the Good Friday Agreement and the St Andrews Agreement.

The Chairperson: Are members content with those information requests?

Mr Weir: Chair, at some stage we will have to check out compatibility. We need clarification on the legitimacy of this by getting a view from Legal Services in the Assembly before we take the next step. I am not that long in the Committee, so I do not know whether we have got that internal advice already.

The Chairperson: The other concern about completion of this work is with time. Could we do the three requests in parallel?

Mr Weir: I appreciate where Mr McLaughlin is coming from. The only slight exception that I take is that I would like it written in slightly more neutral terminology than the use of "political ex-prisoners". I am happy enough for us to write to each of those to see what the scope of the compatibility is.

The Chairperson: The key thing is to get the information.

Mr Weir: Yes, on that side of things, I agree.

Mr Mitchel McLaughlin: Obviously, I will not die in the ditch over the use of the term "political ex-prisoners". If we are looking for a term that satisfies the breadth of opinion on the Committee, let us talk about "persons with conflict-related convictions". I am perfectly happy to use that term.

Mr Weir: Chair, I think that we are looking to see whether it is compatible in that regard. Does the Bill not cover all convictions in that regard, beyond just conflict-related convictions?

Mr Mitchel McLaughlin: Let me explain. These are reserved matters. In September, DFP advised us that this is an issue that could go to the Secretary of State for consent because it affects powers that are reserved to the British Government. I am simply saying that we follow that up with correspondence to say whether —

Mr Weir: I have no problem with that, provided that the language is put in a neutral way that asks whether the provisions of the Bill are compatible with a reserved point of view.

The Chairperson: OK, agreed?

Mr Cree: No. Chair, may I make a point? I think it is, at least, discourteous that we should be discussing possible actions here in the middle of an evidence session, with other people still waiting. I think this is the sort of thing we should do when we have completed taking the evidence, which could be later this morning. This is simply extending the time and is very discourteous towards people who are here to give evidence.

Mr Weir: I am happy to come back to it, if Mitchel is. I am content to wait until we have completed all three evidence sessions.

Mr Mitchel McLaughlin: I will explain why I did move to that, Leslie, because it was not intended to be discourteous in any way. Dominic was getting a bit agitated as to why I was setting out my case. I think I have given you an explanation. My intention was, in fact, to be courteous, by explaining why I was taking such time.

The Chairperson: Members, can we park this now? Rory, you wanted to make a comment.

Dr O'Connell: It is OK.

The Chairperson: No other members have questions. Brice, Anne, Rory, thank you very much.

Mr D Bradley: For the record, Chair, I was not getting agitated, and I was not bored during Mitchel's long diatribe. I was pointing out that there are procedures that the Committee should follow. I think that Mr Weir reflected my views.