Northern Ireland Assembly

Committee for Finance and Personnel

OFFICIAL REPORT (Hansard)

Civil Service (Special Advisers) Bill: Briefing from Mr Jim Allister MLA

19 September 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Daithí McKay (Chairperson)
Mr Dominic Bradley (Deputy Chairperson)
Mr Roy Beggs
Mrs Judith Cochrane
Mr Leslie Cree
Ms Megan Fearon
Mr Paul Girvan
Mr David Hilditch
Mr William Humphrey
Mr Mitchel McLaughlin
Mr Adrian McQuillan

Witnesses:
Mr Jim Allister MLA Northern Ireland Assembly

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

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

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

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

would be two months before that clause would come into effect, which is, de facto, two months' notice to the person.

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

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

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

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

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

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

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

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

circumstances, be subject to the rules and constraints that apply to senior civil servants. That is why the code governing their appointment and conduct should be placed on a statutory basis and should include the requirement that their vetting be the same as applies to other senior civil servants.

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

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

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

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

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

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

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

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

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

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

Mr Allister: The Bill does say:

"This section applies whether the person —
(a) was convicted in Northern Ireland or elsewhere".

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

Mr D Bradley: Morning.

Mr Allister: Morning.

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

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

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

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

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

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

Mr D Bradley: The Minister will probably argue that he has introduced vetting. In any case, what you are proposing goes beyond the current Civil Service vetting procedures by automatically placing a bar on anyone who has been appointed or is to be appointed as a result of a serious criminal conviction

that has received a five-year sentence. Your proposals do not allow for the usual mitigating factors to be taken into consideration. Why are you proposing to single out the special advisers in this way beyond the policy on convictions that is current Northern Ireland Civil Service recruitment policy and procedure?

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

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

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

There is nothing novel about interposing as a qualification for a job a prohibition on having a criminal conviction. My proposed legislation is not novel at all in that regard. In fact, it is falling in a line of statutes that have done exactly that. They have all done it on the basis of saying "Here are the qualifications for the job, and one of them is that you cannot have a criminal conviction". That seems to me right and proper for a position of the nature of special adviser. It is not that — as indeed turned out in the Mary McArdle case — such people cannot be accommodated elsewhere within their party's structures and processes, but the Bill simply says that it is a step too far to put such a person in such a high-profile, publicly paid position, bearing in mind the adverse impact that that can, and did, have, in that case, on the grieving family who had been her victim.

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

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

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

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

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

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

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

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

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

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

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

Mr Allister: Before the Bill?

Mr McQuillan: Yes.

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

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

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

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

Mr Allister: It lasted for six weeks. I simply followed the advice that the Bill Office gave me. I believe that the consultation happened about this time last year. I think that it ended in October, if I recall correctly, so I think it straddled September and October. I am depending on my memory in that regard, but it certainly was for the recommended and required six-week period. If that detail is important, I can get it to the Committee.

Mr Cree: The deadline was 30 November.

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

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

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

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

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

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

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

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

Mr Mitchel McLaughlin: Good morning. In your evidence on the Bill, it was clear that the catalyst for drafting it was the appointment of Mary McArdle. I have a number of questions about that. Do you

accept that any person who was released under the terms of the Northern Ireland (Sentences) Act 1998 — all of this, of course, flows from and gives purpose to the Good Friday Agreement — has been adjudged not to be a danger to the public?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr Allister: Well, it has been.

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

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

Mr Mitchel McLaughlin: OK. Thank you.

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

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

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

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

Mr Mitchel McLaughlin: Were you aware that —

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

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

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

Mr Mitchel McLaughlin: By?

Mr Allister: The Bill Office.

Mr Mitchel McLaughlin: Thank you.

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