



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Section 8 Guidance to Criminal Justice
Organisations — Inclusion of the PSNI:
Attorney General Briefing

6 June 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Stewart Dickson
Mr Alex Easton
Mr Tom Elliott
Mr William Humphrey
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Patsy McGlone

Witnesses:

Mr John Larkin	Attorney General for Northern Ireland
Ms Mairead Bunting	Office of the Attorney General for Northern Ireland
Ms Maura McCallion	Office of the Attorney General for Northern Ireland

The Chairperson: I formally welcome to the meeting the Attorney General for Northern Ireland, Mr John Larkin QC, and Maura McCallion, divisional head, and Mairead Bunting, senior principal legal officer, from the Office of the Attorney General. The session will be recorded by Hansard and published in due course. Members will, obviously, have some questions following your presentation. Attorney General, I will hand over to you.

Mr John Larkin (Attorney General for Northern Ireland): I am very grateful, Chairman. Once again, it is a pleasure to be here with the Committee to assist it in its consideration of these issues.

Members may recall that the nature of the section 8 guidance is such that I consider it to be an area where I need to have a very strong and easy relationship with this Committee. As members will be aware, the Standing Orders have not been made, as yet, to enable the Attorney General of the day to participate in any way in Assembly proceedings. When the guidance is made, it may be uncontentious and there will be no issue. However, if the guidance is made and is prayed against, there is no way in which I can, at present, speak to the issues and defend the guidance. Therefore, I depend on the Committee, in a profound sense, to essentially give me feedback — to examine and scrutinise — so that I can be reasonably confident — I hope that it is not a misplaced confidence — that if guidance, or a proposal that I make with respect to section 8 guidance, finds favour with the Committee, it will find favour with the Assembly at large. That is the approach that has been taken with respect to the right to life guidance, the Forensic Science Northern Ireland guidance and the State Pathologist's Department guidance. In fact, I note from your agenda, Chairman, that the

commencement orders relating to Forensic Science Northern Ireland and the State Pathologist's Department are before you; the guidance, as you know, has already been laid.

One of the things that occurred to me at the very outset of my work as Attorney General, and it has been reinforced through the aegis of the guidance on the protection of the right to life of criminal justice professionals, is that, in many ways, the Police Service of Northern Ireland (PSNI) is an omission from the section 8 framework. As we know, lamentably, police officers are often those at greatest risk among the larger criminal justice community; yet the section 8 guidance, which particularly seeks to address the obligations on organisations to look after their members, cannot extend to the police, at present. It is also odd that while the legislation, in its present form, provides for regard to be had to guidance, it cannot be addressed corporately to the PSNI, so it cannot operate directly, either strategically or tactically, in the operations of that vital criminal justice agency. At a very early stage, I explored that with the Advocate General, who, as you know, I am statutorily obliged to consult, and he was content with the addition of the PSNI.

It is important to remember that there are often two schools of thought about human rights guidance. There is a school of thought, which I do not share, that can be caricatured sometimes as that which seeks to put as many obstacles as possible in the path of criminal justice efficiency. The school to which I unrepentantly belong is that criminal justice helps a just system to operate more effectively and more demonstrably in the interests of the community and that human rights protection and criminal justice efficiency walk hand in hand. So, it strikes me that the PSNI is an appropriate addition to the list of organisations covered by section 8 guidance. I hope that the Committee will support that and, indeed, that it may wish to consult. I have found the consultations that the Committee has engaged in with respect to Forensic Science and the State Pathologist to be of enormous assistance in determining the final content of the guidance.

The Chairperson: Thank you very much. I will pick up on that latter point about consulting. Have you had initial conversations with any —

Mr Larkin: No. Again, it is because of the nature of the relationship that has built up in relation to the section 8 work and this Committee that I seek the guidance of the Committee. I envisage that the Committee would wish to take soundings on that issue of principle with PSNI. The approach that we have taken with both Forensic Science and the State Pathologist is that we bring them in at the earliest stage of guidance formulation. So, it is not the case that we produce it and then hand it over to them for consultation; they are grafted in to the process from the beginning. That is what we envisage happening if PSNI is added to the section 8 list, but that would be with respect to the substantive guidance. That is an exercise that can appropriately and logically only take place after the police have been added. So, I see that, in the first instance, as something that the Committee might wish to do.

The Chairperson: It appears to me to be an anomaly that the PSNI is not included. Are there aspects of the guidance that you have produced for Forensic Science and other agencies that the police need to have regard to?

Mr Larkin: There are aspects of the Forensic Science guidance, as you will be aware, Chairman, which plainly point to where Forensic Science interfaces with the other agencies. As you are probably aware, the Public Prosecution Service (PPS) guidance is the next substantive tranche that we intend to produce; but also PSNI. However, to use that awful new Labour phrase "joined-up government", we cannot actually make it joined-up with respect to PSNI. You may have seen recently in the wake of the Massereene retrial that the detail drew attention to issues about criminal justice agency co-operation. It strikes me that it would be appropriate to have a seamless approach to this and to include PSNI. Obviously, that does not in any way preordain what the content of the guidance is going to be for it or, for that matter, any other organisation. However, at least it opens the possibility for guidance to be made.

The Chairperson: What do you think was the reasoning behind why the police were not initially on the list?

Mr Larkin: I do not know. What I did glean from the Advocate General, and of course it was their responsibility for many years, was that they had thought very long and hard about doing it. I was not able to get a reason for it not having been done. However, it is important to emphasise that the Advocate General supports the inclusion.

The Chairperson: If you were to produce the guidance for the PSNI, what would the implications be for how the Policing Board, for example, would interface with the PSNI in holding it to account?

Mr Larkin: It provides an additional tool along the way for the Policing Board to audit aspects of PSNI performance. It is also, one would say, possibly with equal emphasis, a reassurance for the police to know that, when they are acting in accordance with the guidance, which in many ways simply reflects very high-quality professional standards, they have nothing to fear.

Mr Elliott: I find it slightly unusual that no evidence or information can be offered up as to why they were not included in the first place. It just seems unusual, given the rest of the list, that the police are not there. I just cannot understand it.

Mr Larkin: I, with respect, agree with you. I did not get an explanation from the Advocate General. What he did say that may be of reassurance, and with the benefit of hindsight perhaps, was that he supports the inclusion.

Mr Elliott: I assume that the Policing Board and Chief Constable have been consulted.

Mr Larkin: No. As I made clear to the Chairman, that is what I hope the Committee will do.

Mr Elliott: I appreciate your confidence in the Committee, by the way.

Mr Larkin: The Committee does not always agree with me, and naturally I am independent. However, I think that I can say safely that the relationship with the Committee has been invariably constructive, even when, from time to time, we do not see eye to eye.

Mr McCartney: Looking at the list of organisations under the 2004 Act, I assume that they were not transferred at that time. Most of the organisations listed, from the Public Prosecution Service to the Compensation Agency, were not part of devolution, whereas the Policing Board was. Could that have been the reason why the PSNI was not included?

Mr Larkin: No, because they are all now within devolved competence. I do not think that that would have been the reason. Again, there was no independent Attorney General at that stage, so you would have wanted to make provision, I would think, prospectively. As I said, no explanation has been forthcoming, but the proposal is currently supported.

The Chairperson: If, for whatever reason — although I cannot envisage under what circumstances it would happen — the Chief Constable took a view that he did not want to be subject to your guidance, would the police be entitled to have that sort of veto?

Mr Larkin: No. One would be very worried if one received that kind of response. It would invariably beg the second, inevitable question: why not?

The Chairperson: I suppose I say that just to ask the question: why should we necessarily ask them? If we are of the view that it makes sense and is rational and reasonable —

Mr Larkin: I understand that, Chairman, but I am conscious that I may not have the whole picture. That is the value of consultation. It brings out issues that we may not have thought of.

Ms McCorley: Go raibh maith agat, a Chathaoirligh. Thank you for your presentation. I was curious about why the PSNI was not there in the first place. In the same context, do you think that there could be some other organisation that should be there but has been omitted as well or are you content that every agency and organisation that needs to be there is there?

Mr Larkin: No, I think that other organisations could be on it. Let me give one micro-example and throw out, in the most veiled terms, other possible areas. One micro-example would be the work of the Environment and Heritage Service (EHS), in so far as it relates to pure criminal justice functions. In relation to the prosecution of environmental crime, EHS officials often have considerable powers. They are subject to the Police and Criminal Evidence Act 1984 (PACE), for example, yet they would not have the usual background in criminal justice issues or, indeed, this kind of guidance. I have not yet brought forward that proposal because, again, environmental issues are fully devolved. I have a

programme of work, and I may get round to that. That is a micro-example. Others, of course, are a matter of public note, including issues about the ability of, if I can put it in the abstract, local bodies to hold non-devolved agencies to account. Let me put the matter this way: I hazard that there is a fairly strong consensus that, for example, in relation to the activities to do with proceeds of crime enforcement, people would want the proceeds of crime to be taken away from those who have committed criminal offences. However, there are issues about accountability. It is possible to see how human rights guidance could help to bridge that gap. That is not the meat and substance of today's deliberations. However, since you put the question that way, I think that yes, the list is not closed.

The Chairperson: If no other members have questions for the attorney, I will say thank you very much.

Mr Larkin: Thank you.