



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

Appointment of Chief Constable:  
Minister of Justice

4 February 2014

# NORTHERN IRELAND ASSEMBLY

## Committee for Justice

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**Members present for all or part of the proceedings:**

Mr Paul Givan (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Mr Sydney Anderson  
Mr Stewart Dickson  
Mr Tom Elliott  
Mr William Humphrey  
Mr Seán Lynch  
Mr Alban Maginness  
Ms Rosaleen McCorley  
Mr Patsy McGlone  
Mr Jim Wells

**Witnesses:**

Mr Ford	Minister of Justice
Mr Anthony Harbinson	Department of Justice
Ms Karen Pearson	Department of Justice

**The Chairperson:** I welcome the Minister of Justice, David Ford; Anthony Harbinson, director of justice delivery; and Karen Pearson, who is deputy director of the reducing defending division from the Department of Justice. I am sure that you are aware that this session will be recorded and published in Hansard. Minister, thank you for making yourself available to the Committee at very short notice to have this discussion with us. You had earlier discussions with us in October 2013 on the issue, and members were keen that we would have an opportunity to have a discussion with you as you deliberate on the next steps. I hand over to you, and I am sure that members will have some questions.

**Mr Ford (The Minister of Justice):** Thank you, Chairman. As you have already introduced Anthony and Karen, I do not have to do that. Thank you for providing me with the opportunity to respond to some of the issues that have been raised with regard to the review of the criteria for the appointment of the next Chief Constable. I assume, at this stage, through a combination of the Committee's consideration of the issue in the autumn, my comments in the Assembly and in the media over the past week, that Committee members will be familiar with the background to this issue. If members have questions on the background, I will be happy to go into more detail during the meeting. However, for now, I thought that it would be more helpful to identify a number of the questions that have been posed around the issue during the past week and to provide answers to each of them.

The first question is whether the Minister of Justice has the power to alter the statutory minimum criteria for the appointment of a Chief Constable. The answer to that question is straightforward. The Minister's powers are set out at regulation 11 of the Police Service of Northern Ireland Regulations 2005, which state:

*"no person shall be appointed as Chief Constable of the police service unless he holds or has held such rank, in such force and for such period,"*

— as the Minister —

*"shall determine in respect of such an appointment."*

A determination by me would issue in accordance with regulation 46 of the PSNI Regulations 2005. No other legislative process is required to give effect to determinations.

The second question is whether in making that decision, I have somehow interfered with or in some way diminished the role of the Policing Board. The Policing Board has and will continue to have primacy on the appointment of a Chief Constable. That is enshrined in section 35 of the Police (Northern Ireland) Act 2000, which clearly states:

*"The Board shall, subject to the approval of"*

— the Minister —

*"appoint the Chief Constable."*

Therefore my powers are strictly limited to determining any minimum criteria and to giving final approval to whichever candidate the Policing Board selects at the conclusion of the recruitment process. Rather than interfering with or diminishing the role of the board, my intentions are aimed solely at enabling the board to have more latitude, and I remain entirely respectful of its primacy. My proposed amendments are to the existing minimum criteria. The Policing Board will continue to be able to consider whether, and the extent to which, service in another force, at assistant chief constable (ACC) level or above, is important and to incorporate this into the selection process for the post, as the board deems appropriate. It will also retain the authority to stipulate other required skills, qualifications or experience over and above those minimum requirements.

The third question appears to be whether I have carried out the appropriate level of consultation before reaching my decision. The answer to that is that I have, in fact, gone considerably beyond the requirements of the legislation. The statutory requirement is simply that I issue a draft determination to the constituent bodies of the Police Advisory Board For Northern Ireland (PABNI), those bodies being the Policing Board, the Chief Constable and the staff association, and I consider their responses before issuing the final determination. We are at that stage of the process at present. However, in addition to fulfilling that requirement, when this matter was raised with me by the Policing Board, I undertook what, in effect, was a process of pre-consultation, not just with the statutory consultees but also with your Committee. I also sought the advice of the Equality Commission, not least because the Policing Board asked that I fully explore and assess the potential equality implications of the existing requirement that applicants had served two years as an ACC or above in another UK police force.

A fourth question has been whether, by announcing my intention to issue a new determination, I have somehow compromised the process for filling the Chief Constable's post upon his retirement in September this year. I am absolutely clear that the process for filling that post has not commenced. Although I am advised that the chair and chief executive of the board have discussed, between them, the question of how that process should be initiated and undertaken, my clear understanding is that no meetings of the board or of its business committee have been held to discuss the matter, and that the criteria will not be presented to the board for its approval until its March meeting. Providing that I am not delayed by others, my responsibilities will be concluded well in advance of that.

A related question is whether, in light of the Chief Constable's announcement, I should have delayed any new determination until after the process of appointing his successor. My answer to that is that nobody suggested, during the lengthy pre-consultation process, that this matter should not be finalised, one way or the other, until after the next Chief Constable is appointed. The rationale for reducing the minimum criteria being, in my mind, very strong, and given that the process of appointing a successor is not yet under way, I remain firmly of the view that the best time to do the right thing is

as soon as possible. Why wait five years to address what I am satisfied is an equality issue? The only reason for doing so would be if the competition were already under way, which is not the case. It is, in my view, much better to move now.

A final question relating to the substance rather than the process of my decision is whether my decision to lower the minimum criteria relating to two years' service at ACC level or above in another force from "essential;" to "desirable" is the right one. My response is that I continue to believe that it is. On consideration of a number of possible changes, and the feedback received, I believe that it would be anomalous to retain a provision that has been removed in England and Wales. I have tried, where possible, to retain equivalence in terms and conditions between the various UK jurisdictions. My conclusion was further informed by concerns that the requirement for two years' service outside Northern Ireland may impact unfairly on certain groups, for example females, those with dependents or those who have a disability.

Chair, these comments appear to cover the most significant questions raised during the past week. If there are others, or if members wish to go into greater depth on the issues that I have covered, I am, of course, happy to oblige. In summary, however, I believe that my decision is right; that I have acted in accordance with the powers given to me in statute; that I have consulted more deeply and widely than required to; and that my decision in no way undermines the role of the board — indeed, it enhances it. I also think that, if concluded in my intended timescale, my decision should not cause any disruption to the process that the Policing Board will have to follow in recruiting a successor to the current Chief Constable.

Throughout this process, and in my final decision, I am keen to ensure that the exercise of my powers, in defining the statutory minimum criteria for the post, is carried forward in a way that resolves the potential discrimination that has been highlighted through the process of pre-consultation. I am also resolute that it is for the Policing Board, as the employer, to define the skills and experience that will be required of our next Chief Constable. Although I have moved to remove unnecessary barriers to the candidate pool, the board is, of course, free to add to the minimum criteria as it deems appropriate, including the requirement for service outside the PSNI.

**The Chairperson:** Thank you very much for that opening statement, Minister. I will ask a couple of questions and then bring members in. First, how important is the post of Chief Constable from your perspective and from the public's point of view? Can you outline how significant you believe the job of Chief Constable to be?

**Mr Ford:** It is the most significant post in the PSNI.

**The Chairperson:** How significant do you believe it to be that the Chief Constable be regarded as independent?

**Mr Ford:** It is extremely significant.

**The Chairperson:** How important is it, given the Chief Constable's relationship with the Justice Minister, that the role is actually and is perceived to be independent?

**Mr Ford:** Again, that is clearly important. The importance is not just the relationship between the Chief Constable and the Minister but also the relationship between the Chief Constable and the board, and the board and the Minister. There is a complex tripartite set of arrangements.

**The Chairperson:** What would you regard the consequences to be for a Chief Constable if he or she was perceived to be an appointee of the Minister?

**Mr Ford:** Since the Chief Constable is clearly an appointee of the Policing Board, that would be unlikely to arise. However, it would be potentially damaging if it was perceived that there had been interference by the Minister in the role of the board.

**The Chairperson:** Do you regard your interference, in changing the criteria, as in any way creating a problem for the next Chief Constable as to how that person may be perceived?

**Mr Ford:** I am sorry, Chairperson, but I reject the premise of that question entirely. My responsibility for setting the minimum criteria is absolutely clear in statute. That is not interfering in the role of the

board. If I were trying to tell the board what criteria it should apply, that would constitute interference. Reducing the minimum criteria is entirely within my remit; it is for the board to determine the actual criteria.

**The Chairperson:** You reject that premise, but in the Assembly last week during Question Time you said:

*"I have no reason to apologise to the Deputy Chief Constable for a process that began with correspondence between the Department and the Policing Board in May last year, of which the Deputy Chief Constable was aware. My changes would enable the Deputy Chief Constable to be appointed Chief Constable." —[Official Report, Vol 91, No 4, p31, col 1].*

Do you think that that comment was helpful?

**Mr Ford:** That comment was in response to a specific question about the current Deputy Chief Constable. I responded to the question in the way that it was raised. The fact is that it has been made absolutely clear by the Deputy Chief Constable that she is not and was not intending to apply for the role of Chief Constable, so it is not a relevant point. However, in the context of responding to the question, I responded to the question.

**The Chairperson:** Would it not have been better to say that the Deputy Chief Constable, like anybody else, would be able to apply and, subject to due process and if deemed on merit to be the best candidate, could then be appointed?

**Mr Ford:** Perhaps I naively assumed that people would believe that I was expecting due process to take place.

**The Chairperson:** Surely for a very significant post — the most significant in the Police Service — as Justice Minister you would want to make sure that in no way could you be perceived or indeed actually be regarded as having anointed somebody. To me, having read what you said in the Assembly, that would clearly point to your wanting to suggest that the Deputy Chief Constable could be appointed Chief Constable.

**Mr Ford:** No. Having been asked a specific question about an apology to the Deputy Chief Constable, I made it absolutely clear that there was nothing to apologise to the Deputy Chief Constable for. Given that the Deputy Chief Constable had already resigned and had made it clear that she was not interested in the post, which has been confirmed publicly, I do not see how it could be construed in any way as suggesting that somebody who was not interested in the post was the preferred candidate.

**The Chairperson:** You did not say that last week. Do you regret not putting in all the caveats that, I think, a Justice Minister should have put in and not saying that the appointment would be subject to due process?

**Mr Ford:** If people wish to start assuming the worst intentions on my part, perhaps I should put in caveats to everything that I say. I had not assumed that that was necessary in responding with a straight answer to a straight question.

**The Chairperson:** Surely, Minister, you were aware of the public debate. The Chief Constable had announced his resignation; individuals were already being identified as potential candidates, given the current criteria; and others were being identified as excluded because of the two-year rule criteria. In the middle of that public debate, you made an intervention and stated in the Assembly that the Deputy Chief Constable could now be appointed Chief Constable without any caveat to do with due process.

**Mr Ford:** Sorry, Chair. I did not make an intervention; I responded to a question. Frankly, if the Department of Justice were run on media speculation, we would be in a very difficult position across a whole range of issues.

**The Chairperson:** Surely you regard your proposed changes to the minimum criteria as an intervention.

**Mr Ford:** No, it was carrying out my statutory function. An intervention is intervening in somebody else's responsibilities, not carrying out mine.

**The Chairperson:** At a time when there is public debate about who the next Chief Constable should be.

**Mr Ford:** I repeat that if we ran the Department of Justice on the basis of public debate, we would be in a very difficult position.

**The Chairperson:** You made the announcement without having formally carried out your duty under the regulations, which is to consult three bodies: the Policing Board, the staff associations and the PSNI. Is your consultation a tick-box exercise?

**Mr Ford:** No, it is not a tick-box exercise. I had to produce a draft of a determination that was an indication of the process that I was intending at that stage on the basis of the informal pre-consultation, which, as I have said, was wider than that which I am statutorily required to do. On that basis, it would have been a bit difficult to set out a draft determination without indicating the direction of travel.

**The Chairperson:** You freely admit that you are statutorily obliged to consult with those organisations formally .

**Mr Ford:** Yes.

**The Chairperson:** You are doing that now after you have made an announcement of what you believe the criteria should be. Does that not indicate that you already have a closed mind on the issue? Surely you should have an open mind if a consultation is to mean anything.

**Mr Ford:** No, because the statutory consultation is around a draft determination; therefore, I have to set my mind as to what that should be. The informal pre-consultation had set the direction of travel. However, you cannot do a consultation on a draft determination without having the draft determination to consult on, and that is setting what the Minister's mind is. It does not mean that it is a closed mind, but it does mean that there has to be something set down as the intention.

**The Chairperson:** You say that the pre-consultation set the direction of travel. At what point in your deliberations with the Committee and the Policing Board did you get any indication that there was consensus around removing the criteria at this time?

**Mr Ford:** As I understand it, there was no consensus in either the Committee or the Policing Board. However, that does not mean that there is not a ministerial responsibility to act as the Minister sees best. In particular, there was strong and significant guidance from the Equality Commission.

**The Chairperson:** Why did you ultimately decide to do this? Which, of all the bodies that you had pre-consultation discussions with, indicated that this should be done? What organisation or individual said —

**Mr Ford:** As I have just said, the Equality Commission gave strong guidance that there were significant potential equality issues as the determination stands. Its recommendation was to change the determination in line with the changes that had happened in England and Wales. If there is no justification for service outside another force in England and Wales, where it is much easier for people to move, it is questionable whether the best equality interests are served by maintaining such a process in Northern Ireland, where movement for some candidates would have been significantly more difficult.

**The Chairperson:** Just to be clear for the record: the Equality Commission said, "Make the change", but did the Policing Board say "Make the change."?

**Mr Ford:** The record will establish that I have already said that there was no consensus in either the Policing Board or the Committee.

**The Chairperson:** Were there any individuals from the Policing Board — whether serving PSNI officers or members of those bodies or this Committee — who said, "Remove this barrier"?

**Mr Ford:** There was no specific suggestion from the staff association, the Policing Board or the Committee. If I remember correctly, the Chief Constable's advice was support for adhering to the same arrangements as apply in England and Wales.

**The Chairperson:** When did the Chief Constable indicate that the change should occur?

**Mr Ford:** I do not have the exact date before me, but, if the Committee wishes, I can supply the date on which that was conveyed.

**The Chairperson:** The point that some people make is that, whether you agree or disagree with what you would want to happen — people can argue either way — the timeliness of it is something that even people who agree with you say is inappropriate. There was an announcement by the Chief Constable to resign, and you decided at that point to go public and pursue the draft determination. Do you not feel that it would have been better for it to have been consulted on and a decision taken outwith any discussion about who the next Chief Constable may or may not be?

**Mr Ford:** You say that I decided to go public when the Chief Constable announced his intention to resign. However, the issue has been under discussion between the Department and the Policing Board since May of last year, and the informal consultation happened in the autumn of last year. It was well known that it was under way by all those involved in the process.

I certainly did not expect the Chief Constable to make the announcement when he did. The expectation was that he would have given six months' notice from March to September, not announcing his intention not to seek an extension to his contract in January. The timescale was already under way. The informal consultation had been carried out for the consultation to then happen formally around the draft determination.

**Mr A Maginness:** Thank you, Minister, for coming. The appointment of a Chief Constable is a very sensitive issue; it is one of the most sensitive positions in public life in Northern Ireland. However, it appears that you acted unilaterally on the proposed change to the minimum criteria. On reflection, do you not concede that that was not the best way to proceed with trying to create change, however meritorious that change might have been?

**Mr Ford:** I am not sure exactly how you interpret the phrase "acted unilaterally". If you interpret it as the Minister carrying out the functions that statute says are the Minister's to provide the maximum possible freedom for the Policing Board to exercise its functions, then I did act unilaterally. That is my role, and it was as part of a process that was clearly not unilateral because of the involvement of wider and deeper pre-consultation.

**Mr A Maginness:** You accept that it was unilateral in —

**Mr Ford:** In the context of carrying out the duties that statute puts on me, yes.

**Mr A Maginness:** You had, to some extent, tested the waters by a pre-consultation that commenced last May and involved not just the Policing Board but the Committee in October last year. So you knew at least that the Policing Board had considered this informally, although it did not formally reach a decision. Did you not know that there was an emerging consensus that there should be no change?

**Mr Ford:** No, I did not know that there was an emerging consensus that there should be no change. No consensus was reported to me from the board or the Committee.

**Mr A Maginness:** I suggest to you — you can contest this — that there was a consensus in the Policing Board that there should be no change.

**Mr Ford:** Then the situation is very simple. My determination changes the mandatory minimum criteria. If there is consensus in the Policing Board that there should be no reduction — if you put it in those terms — to the criteria, the board can set whatever criteria it wishes. You will appreciate that I was not involved when Matt Baggott was appointed, but my understanding was that there was a

decision that set the criteria higher than the two years in another UK police force at ACC or above for that appointment. If there is no consensus in the board, no change will happen. The board will set the criteria. I merely changed the mandatory minimum.

**Mr A Maginness:** I put this to you as colloquially as I can: there was no appetite in the board or the Committee — that I could see — for any significant change in the criteria. Nevertheless, you took a decision, which I believe to be unilateral — others may support that view — to effect a change even though there was no real political appetite for that to happen at this time.

**Mr Ford:** No. The only change that I am effecting is to reduce, if you put it in those terms, the mandatory minimum criteria. It is entirely up to the board, and if the board wishes to maintain the current mandatory minimum or enhance it, that is entirely the board's prerogative, which is exactly as it should be. I am merely giving the board discretion to do what it thinks best in a wider range than would have been the case otherwise.

**Mr A Maginness:** Just reflect on what you have said to the Committee. It seems to me that you have not heard what the Chair has put to you quite robustly, which was that, in fact, you were creating a change where no change was desired and where there was no political consensus for that change to take place against the informal consensus that existed on the Policing Board and, in those circumstances, you were effectively out on your own.

**Mr Ford:** No. I am sorry; I was not out on my own. First, nothing was reported to me to suggest that there was any level of consensus against change in the Policing Board and, on the basis of the very specific equality guidance and the changes that occurred in England and Wales, I believed that it was entirely appropriate, and certainly within my personal responsibilities as Minister, to effect a change to the mandatory minimum criteria. However, I entirely accept that the board has the power to set any criteria that it wishes, whether that is at the new minimum level, at the old level or enhanced above that level. Therefore, I do not see how my giving wider discretion to the board is anything other than allowing those who are responsible for making the appointment to have the widest possible discretion in how they apply their responsibilities.

**Mr A Maginness:** With respect, I do not think that the Policing Board would see your action as giving it wider discretion.

**Mr Ford:** I am sorry, but I do not see how it cannot be giving it wider discretion. The board is held to a standard of two years or more as an ACC or above in another police service. That is being removed, and it is up to the board to apply the criteria that it wants. Therefore, it must be giving the board more discretion on any rational meaning of the English language.

**Mr A Maginness:** You said that the Equality Commission indicated to you that the sort of change that you are putting forward might be desirable on equality grounds, if I can put it that way. Did you share that advice with anybody outside the Department?

**Mr Ford:** I am not conscious of its having been shared, given that that was a response by the Equality Commission at the same time as other people were also involved in the informal consultation.

**Mr A Maginness:** Yes, but was that advice — or response if you do not want to characterise it as advice — distributed to the Policing Board?

**Mr Ford:** I do not mind how you characterise it. I do not believe that we shared responses from any of the respondents with other respondents, no.

**Mr A Maginness:** If they were willing to share that response, would you be willing to share it with the Committee?

**Mr Ford:** I am quite sure that if they are happy for it to be shared, there is no reason why it should not be shared.

**Mr McCartney:** Thank you very much, Minister, for your answers to date. With regard to how this was presented to the public and the public commentary that followed, is there anything that you would do differently if you had to do it tomorrow?



**Mr Ford:** I do not see any reason why I should consider doing anything differently. I believe that by engaging in the early pre-consultation more widely and more deeply than I was required to that was a positive demonstration of engagement with people. I believe that I took the appropriate advice where it came from the Equality Commission and, in the absence of consensus elsewhere from either the board or the Committee to the contrary, I believe that it is appropriate that I should move to give that greater discretion to the board, which I propose to do.

**Mr McCartney:** I accept that, but I am asking you, in light of the public controversy that followed, whether there is anything that you would do differently? Did any of your officials in the pre-briefing ask, "Is this the best way to do it?" In times past, you have been very courteous. Last year, when you were making a few amendments to a minor Bill, you asked to speak to the Chair and me and told us that you were going to do that rather than present it to the public. Would you not perhaps have considered going to the Policing Board, meeting the Committee or meeting the Chair and Deputy Chair to say, "This is going into the public domain and it may be controversial"? Did anyone say to you in your briefing that this could be controversial?

**Mr Ford:** With respect, I do not want to get dragged into the issue of what may have been said by officials, but I will answer this point. Nobody said to me that that point arose. I suppose I thought that the pre-consultation, as we are describing it, had covered that particular issue.

**Mr McCartney:** So, no one gave you advice that this may play out in the public commentary as being controversial?

**Mr Ford:** I am quite happy to say that nobody gave me advice that I should do anything further in terms of that. I am really not going to go into the issue of officials any further.

**Mr McCartney:** I understand the point perfectly, that people told you that what you were doing was within your gift. That is fine. I am not disputing that at this time, but I am asking you whether anybody said to you that if you do it in this particular way — or if we do it in this particular way — then it will end up looking like it is going to be controversial? The reason I ask this is because the Department, or its predecessor, has been accused of interfering in other processes. It has been accused of interfering in the criteria midstream in relation to the appointment of the second Police Ombudsman. With that in mind, did no one say to you, "Perhaps we need to be careful how we present this"?

**Mr Ford:** I am not going into the detail of the advice that was given. Whatever concerns you may have about my predecessors, I am quite content that it was not necessary to do any further informal consultation given the informal consultation that happened last year. It is in the context where, on a number of occasions, I have spoken to the Chair and vice-Chair on issues coming up. I had not seen this as being anything other than giving a little bit more discretion to the Policing Board in line with my responsibility and had not seen it as necessary at that point.

**Mr McCartney:** And that opinion has not changed given the way it has played out in public? Is it just a case of; "What is all the fuss about?"

**Mr Ford:** Indeed, I could say, "What is all the fuss about?" If you —

**Mr McCartney:** Precisely. What is all the fuss about?

**Mr Ford:** Well, I am not sure what the fuss is all about because I believe that I did my duties correctly.

**Mr McCartney:** Why, as part of the public commentary, are people saying that there was interference, or that this was done in a cack-handed way? Why are people coming to that conclusion if it is a case of, "What is all the fuss about?"

**Mr Ford:** I am sorry, but I can say only that I believe that those who are saying that it is being done wrongly and that it is interference have been ill-informed about the process in which I have been carrying out my duties and giving wider discretion to the board, not narrowing its discretion. That would be interference.

**Mr McCartney:** We have seen how this has played out. Nowhere in your thinking was, "This is going to be controversial. Perhaps I should handle it a little bit better."?

**Mr Ford:** I did not see a modest widening in the discretion of the Policing Board as being controversial.

**Mr McCartney:** Modest?

**Mr Ford:** It was modest, yes, because —

**Mr McCartney:** When this was brought in, and we go back to the formation of the PSNI, it would have been seen as being a significant move that a Chief Constable would have to have served two years in an outside force. That would have been seen as being one of the things that changed the perception of policing; so, I do not think you can call lowering that standard modest. I think you are doing a disservice to the criteria in the first instance.

**Mr Ford:** No, because discretion remains with the board. The board has the discretion to set the criteria it wants to set. That is the way it should be.

**Mr McCartney:** You have stated your intention, as Minister, that it is no longer required. To say that this is a modest change flies in the face of the reason it was brought in. If it is a modest change, then why would people see it as being significant? Why would you have said earlier that regarding Matt Baggott, which was the first time I knew about it, the criteria were heightened to more than two years? It is not seen as modest; it is seen as a significant signpost in appointing a Chief Constable.

**Mr Ford:** No, because when it was introduced to the PSNI it was exactly in line with the position in England and Wales and that position has changed. In the context of our seeking to maintain uniformity of terms and conditions as far as possible across the United Kingdom, that was one reason why the issue should be looked at. Indeed, that was the point raised by the Policing Board with the Department in May 2013. With respect to allowing the Policing Board to set the appropriate criteria, it now has the opportunity to set whatever it believes to be appropriate, given that the PSNI is now a significant period on from when this was introduced.

**Mr McCartney:** If it was as modest and straightforward as that, it begs the question as to why you did not go and meet the Policing Board and say that, rather than making a public pronouncement, giving your point of view, and people making a fuss out of nothing. If that was not predicted beforehand, I think it was just bad political judgement, or perhaps that someone who was advising did not say: "We need to be careful here. This might be misread from your point of view. Would it not be better, perhaps, to announce this to the Policing Board, rather than announce it to the public and then let everybody pretend that it is controversial when it is not?"

**Mr Ford:** Given that there was no clear consensus in the Policing Board or in this Committee, and that in October 2013 members of this Committee were invited to make party submissions to the Department but none did, I am not sure how I am expected to regard it as controversial.

**Mr McCartney:** The way this has played out proves that that wisdom of yours is wrong. Most people now, in relation to this particular appointment, will see it as being controversial. There are people —

**Mr Ford:** If I were to be controversial —

**Mr McCartney:** Let me just finish this point. You can see that people take party political positions, and they do so for whatever reason. However, many of the people who are following this, commentators and those who are interested in human rights and policing, are all saying that this is now nearly a flawed process. People are saying that the criteria were changed after Matt Baggott announced his resignation. People can have a view as to whether the competition has started. Take the matter away from policing: if a football manager is sacked this afternoon, the board of directors of the club may not have met to say that it is going to appoint a new manager, but everybody will immediately say that the competition starts when the person resigns.

**Mr Ford:** I do not see how, in the case of a statutory body, the competition can start when there has not even been any formal consideration by the board or its relevant committee.

**Mr McCartney:** It was very interesting that, when Matt Baggott announced his resignation, the news programmes were filled with potential candidates. When someone resigns, people automatically look

to who is going to be the next Chief Constable. Whether the formal process has begun, in most people's mind, the competition has begun. Lowering the criteria in the way that they were lowered, I think, was handled very badly. I do not want to blame officials because that is, perhaps, to personalise this. However, if no one said to you prior to this that, "We need to be careful here", then I think that in the future you should be mindful. In the past, to your credit, you sought the views of the Committee. In circumstances less controversial than this, you have come to us and said "I am going to propose a change and I want to give you the courtesy of telling you." I think you made a mistake by not doing so in this instance. That is my view.

**The Chairperson:** Minister, you made the point that no parties made a submission to you, but, if you read Hansard on 10 October 2013, Jim Wells outlines the DUP's position on this in absolute clarity. Jim might want to elaborate, and he is next on the list to speak, but I just wanted to address that particular point.

**Mr Wells:** If this ever got to a court case, the facts of the aggrieved person would be as follows: you held an informal consultation and this Committee said no. Certainly, I remember, as the Chair does, making it absolutely clear that we were not prepared to accept the change. The Policing Board was also unhappy. Then the Deputy Chief Constable resigned, and one of the reasons she gave for her resignation was the fact that she did not fulfil the criteria to become Chief Constable. You then announced a change in the criteria, and you referred directly to that lady in your response to an oral question to Mickey Brady.

I have to say that any reasonable person looking at this would believe that there is some indication that the events are related. My difficulty with all this is that if someone goes for the position and does not get it, and they then go to court, there would be strong evidence to suggest that the whole process should be set aside as null and void. Surely, a responsible person outside your Department looking at these facts would think that something is not right.

**Mr Ford:** I have one minor point. You said that I referred to the Deputy Chief Constable in answer to a question from Mickey Brady. I referred to her in an answer to Mickey Brady's specific question about the current Deputy Chief Constable. It is a bit difficult to answer a question about the current Deputy Chief Constable without referring to her.

You might suggest that there was some issue if I were the person who made the appointment. However, in the context in which I merely set the minimum criteria and it is then up to the Policing Board to carry out the appointment process in its entirety, setting criteria, shortlisting, conducting interviews and making a decision, neither you nor I are employment lawyers — possibly to the benefit of society in both our cases — and I do not see how that could be construed as having any level of interference.

**Mr Wells:** Let us assume that your motivation was as pure as the driven snow —

**Mr Ford:** Thank you.

**Mr Wells:** I said, "Let us assume".

That being the case, did it ever occur to any of the mandarins in the Department of Justice that, even if that was the case, what you were about to announce — given the facts, which you have accepted — would mean that there may be a cloud hanging over the whole process? Did nobody say, "Hold on; what you are doing is absolutely right, Minister, but be aware of how the public will perceive what you are doing."? Did that not occur to anybody?

**Mr Ford:** You are trying to go further down the line of questioning that I did not wish to pursue with the vice-Chair. I took the decision and it was my responsibility. It is not up to me to answer as to what advice I may or may not have received from officials.

**Mr Wells:** Does the decision require any subordinate legislation?

**Mr Ford:** No. A determination is simply a ministerial determination.

**Mr Wells:** I think that you have the Hansard report of our meeting of 10 October. Given that it was quite clear from that meeting that there was deep unhappiness in the Committee with what you were

proposing and that the signals that came back from the Policing Board were not particularly positive, then, regardless of the nature of the decision, was it not awfully rushed? I would have thought that you would have come back to the Committee.

I have been the Chair and Deputy Chair of Committees for many years and, even on very minor matters, Ministers call Chairs and Deputy Chairs in for informal private briefings. I would have thought that, with something of this magnitude, the very least you should have done was to call Mr Givan and McCartney into a room and tell them that you were going to make that announcement. The first that anybody in the Committee knew about this was when you rose to your feet. Was that proper procedure?

**Mr Ford:** Given that the Committee has no formal role in this matter, I believe that the informal consultation last autumn gave the Committee a place. That is certainly a place that I want to give to the Committee, but it is one that is significantly more than the legislation prescribes.

**Mr Wells:** Has the Deputy Chief Constable resigned? Am I right in thinking that that does not take effect until the end of March?

**Mr Ford:** That is between the Deputy Chief Constable and the Policing Board. However, it is certainly my understanding that she has indicated a definite intention to resign at the end of March.

**Mr Wells:** I accept that. However, for anyone in that position — and I am not referring to her specifically — there is clearly a period between when they announce their intention to resign and when they go. Secondly, under what you are suggesting, there is nothing to stop someone who has gone to come back and apply. Is that right? They can come back, and the fact that they have resigned would not preclude them from applying for the role of Chief Constable.

**Mr Ford:** I do not know the exact terms for that particular position.

**Mr Wells:** My understanding is that there was a management meeting of the Policing Board three weeks ago to discuss this issue. So, the board had, in effect, started the process of searching for a new Deputy Chief Constable and a new Chief Constable. If it had got to that stage and you were aware of it, why did you make the decision to make announcement when you did?

**Mr Ford:** My understanding is different from yours. My understanding is that the meeting that you referred to took place a day or two before the Chief Constable announced his intention not to seek an extension, and it was purely to consider the question of the Deputy Chief Constable. That is the information that I have been given.

**Mr Wells:** So, there was no discussion of anything else beyond that at that meeting.

**Mr Ford:** I do not know what was discussed. However, at that point, the Chief Constable had not indicated his intentions.

**Mr Wells:** If it became apparent that you were not fully informed about what happened at that meeting and that there was a discussion on both positions, would that not indicate that the process had started and what you did interfered in what would have happened?

**Mr Ford:** I do not see how that process could possibly have started. Mr McCartney suggested that the process had started when the Chief Constable announced his decision to terminate his contract.

**Mr McCartney:** In the public mind.

**Mr Ford:** Yes, in the public mind. That is a point that I do not accept in technical terms, but Mr McCartney makes that point. You are now trying to make the point that the fact that the Chief Constable might possibly not seek an extension had somehow started the process. If I cannot accept Mr McCartney's point, I certainly cannot accept yours, I am afraid.

**Mr Wells:** I think we need to refer back to the Policing Board and find out exactly what happened at that meeting. The information I have is that it was much more all-embracing than you were led to

believe. Again, if that were the case, alarm bells should have been ringing in the head saying, "Hold on here. Even if this is the right decision, it is the wrong time to make it". Timing is everything.

**Mr Ford:** If that occurred, as I understand it, before the Chief Constable made his intentions known, I cannot see how any process could possibly have started. I have had a discussion with Mr McCartney about when the process started, but it certainly did not start before the Chief Constable indicated his intentions.

**Mr Wells:** We will follow that up.

You admitted that you did not inform Mr Givan and Mr McCartney, and I understand that you did not inform the chair of the Policing Board before you made this announcement. That person, a lady, was totally flummoxed when she heard on the news that this decision had been made. Surely, the due process should have been to have had an informal meeting with her and her deputy before that decision was made.

**Mr Ford:** I do not know whether a meeting was necessary. The fact is that the formal consultees were notified by email before the issue was made public. I have been told that there was a problem with the email system in the Policing Board and that, although the Department's email was received at Policing Board headquarters, it was not communicated to members.

**Mr Wells:** I am on the Health Committee, and Maeve McLaughlin and I are regularly summoned to meet Mr Poots, the Health Minister, to be informed privately about things that are of much less significance than this, because it is seen as being the proper way to do things so that we are not suddenly getting a microphone thrust under our noses asking our views when we know nothing about it.

I would not have thought that an email is sufficient on such an absolutely fundamental issue. You define it as being a "modest widening", but I do not think that there will be too much support for that view in the community. I would have thought that summoning them up to your office at Stormont maybe the day before and saying, "Look folks, I think you should know what I am about to do" is the least that should have been done. The issue of replacing these two crucial positions will dominate the work of the Policing Board over the next six or seven months, and for very good reasons. As you admitted, these are crucial appointments. For future reference, you need to do that with this Committee and with the board.

**Mr Ford:** There are issues about the relationship between the Department and the board. I do not think that the Chair or Deputy Chair will think that I have ever "summoned" them to a meeting. We have invited the Chair and Deputy Chair to meetings on occasions, which, generally, have been productive. I repeat my point that, in the context of a modest change in the minimum criteria, where the criteria will be set by the Policing Board and not by the Department or the Minister, I do not accept that the change is of the scale that you are suggesting.

**Mr Wells:** I think that we will have to agree to differ on the phrase "modest widening".

The other issue is crucial. If your officials did not step in to advise you on how the public would perceive this, surely someone should have stepped in on whether there is a possibility of you opening up the process to judicial review. Clearly, there is a view that this series of events may, as I said, be entirely as pure as the driven snow or have an indication of coordination and collusion between them. Someone should have said that this could leave the entire process ending up in the courts, because, clearly, given what is now out in the public domain, an aggrieved person would have good grounds to appeal to judicial review and would certainly get leave to do so. Was that taken into account?

**Mr Ford:** I have some very good officials in the Department, and I have no doubt that, if anyone had thought that we were liable to judicial review, I would have been so advised.

**Mr Wells:** I have to say that what has happened here looks like a QC's charter.

**Mr Ford:** With respect, neither you nor I are employment lawyers, so let us leave it to those who are.

**The Chairperson:** I appreciate members indicating about whether I or the Deputy Chair should have been briefed about this. I am not precious about that. The Minister talks to us on occasions when he

deems it appropriate to do so. That is entirely a matter for the Minister. My reaction in dealing with this matter has nothing at all to do with feeling that my nose may have been put out of joint. So, I do not want anyone thinking that that is the case. The point is made, and, obviously, the Minister can decide when he wishes to deal with us or not. I want to make that clear.

**Mr Dickson:** Thank you, Minister, for coming along to clarify this matter. Many of your answers to the questions at the beginning were very helpful for anybody who really wants to understand the process.

If you had not made the announcement that you made about taking the matter further forward, do you agree that there might have been a great deal of speculation, when the Chief Constable resigned, because you had undertaken a pre-consultation back in May and October and people might have looked back to that point and wondered, if you had said, "I'm not making any changes", why you had done the pre-consultation and then not made any changes?

Mr Wells referred to what may be raised by way of judicial review. Doing nothing could equally result in a judicial review. Given that you undertook a pre-consultation, people might have wondered where that had disappeared to and whether you had created a black hole down which it had disappeared.

Members should take caution in their recollection of things, particularly the Hansard report of the Committee's discussion on the consultation. A couple of members raised very serious issues about the equality-proofing of the process. Indeed, you highlighted the value of that through at least one set of representations.

**Mr Ford:** Concerning the speculation about what would have happened if we had not gone ahead, I repeat the point that, as far back as May, the board raised the issue with the Department in the context of the changes happening across the water, and that was what led to the informal consultation. It is open to speculation about what the position would have been if things had not moved on, especially in light of the equality guidance. In light of that, it remains for the board to determine whether to maintain or enhance the existing minimum criteria. If it can satisfy itself that there is not an equality issue with enhancing the guidance, it is entitled to do so. From my point of view, I believe that it was appropriate to follow the advice that there would need to be good reasons, but those good reasons will be determined by the board and not by me.

**The Chairperson:** Members, mobile phones are causing some interference on the microphones. If phones are not switched off, can you at least keep them off the table and away from the microphones? That would be helpful.

**Mr Humphrey:** Minister, thank you for coming at such short notice. I proposed only on Thursday that you come to the Committee, and I appreciate your taking the time to be here.

I must say that I do not agree with Mr Dickson's point and assertion about there being clarity. I think that there are still more questions than answers. Whatever the view of members around the table and, indeed, whatever your view on this position and the decisions taken by you and your Department, do you not accept that the timing of the remarks and the announcement was just wrong? I took note of what you said that the process is not under way, and that the right time is as soon as possible.

I believe that at the point when you made the announcement, suggestion or whatever it is deemed to be, the hare was set. There has been febrile activity not only in the public but in the media and in the various police services across the United Kingdom around who might be the successful replacement candidate.

**Mr Ford:** The reality is that the process, as far as my role is concerned, was under way when the Policing Board asked the Department about it last May and when the consultation was carried out informally in autumn last year. As I said earlier, I was unaware of the timing of the Chief Constable's announcement about his intention not to seek an extension. That was at the point when the draft determination was being drawn up.

When you talk about the issues across the various police services of the United Kingdom, I am not sure how many people would be qualified under the current criteria, but it is in the region of 140 or 150 officers. We are talking about a significant number of people being affected and potentially minor changes in the numbers who may be qualified for it. So, I do not see that the speculation across the United Kingdom in policing circles is likely to be very significant. The real issue is whether I should be guided by what is happening when commentators, many of whom were unaware of the process that

was already under way, choose to start discussing the issue. As far as I was concerned, my duty was to carry forward the process properly, regardless of what media commentators were saying.

**Mr Humphrey:** I have to contest that. From my perspective and that of my party, the real issue is whether we are going to have a fair, open and transparent process to recruit a new Chief Constable and whether there will be confidence in that process. Can you, in giving evidence to the Committee, honestly contend that the announcement you made and the huge and considerable media speculation have helped that process and will deliver a fair, open and transparent one in which people will have confidence?

**Mr Ford:** I cannot be responsible for media speculation on any of the many things that the Department of Justice is involved with. There is nothing in what I have done under my former duties and responsibilities to the law that should in any way create any concerns about the fairness and transparency of the process.

**Mr Humphrey:** Do you mean, in your opinion?

**Mr Ford:** I can only state my opinion. However, nothing that I have done has been anything other than to carry out my statutory responsibilities and enhance the role of the Policing Board.

**Mr Humphrey:** Do you not believe that the timing was wrong?

**Mr Ford:** The timing that I was engaged on was entirely appropriate, given that the issue was raised by the Policing Board, in the context of changes across the water, in May last year and was carried on through the informal consultation on a wider and deeper basis than required, and which was being carried through to the process of a draft determination at the point when the Chief Constable announced that he would not seek an extension.

**Mr Humphrey:** Finally, do you not believe that the advice that you sought and were given was naive and that the political judgement was also naive and wrong in this whole process?

**Mr Ford:** I believe that I took the decision, as Minister, which was mine to take, in accordance with the legislation; it was appropriate in substance and timing and will enable the Policing Board to carry out its functions properly.

**Mr Elliott:** Thank you Minister. I will not hold you up, because I have to get into the Chamber for questions. I apologise for missing the start of the meeting, but thanks for coming.

I have two quick questions. First, you said that it is now up to the Policing Board to determine the criteria and all that you are doing is widening the process.

**Mr Ford:** Yes.

**Mr Elliott:** Do you foresee any legal challenge in respect of this at all? Secondly, and just to roll two questions into one, do you believe that you were right to make the decision on your own or should it have been directed by the Executive, bearing in mind that they and OFMDFM have called it in?

**Mr Ford:** I see no reason for believing that there is any possible legal challenge to the process. I have exercised my responsibilities and widened the opportunities for the board to make its best decision on the criteria for the job as it carries out its role, which is fundamentally to appoint the next Chief Constable. I can think of many issues of significantly greater substance that have not been called in to the Executive. I am not aware of any occasion when, for example, Transforming Your Care, which affects every person in Northern Ireland, has been called in for discussion at the Executive. I am not aware that the common funding formula, which affects every child —

**Mr Elliott:** Setting those aside, Minister, do you believe that your particular decision should or should not have been called in?

**Mr Ford:** On that basis, I believe there to be no reason why this should have been called in. I was happy to explain the basis of my decision to ministerial colleagues last week. However, in light of the

sorts of decisions that are left with Departments, I believe that this was entirely appropriate, in line with the legislation, to be a ministerial decision within the DOJ.

**The Chairperson:** You do accept that it is now, however, an Executive decision.

**Mr Ford:** I accept that FM and dFM have called the issue into the Executive. I have given an explanation and have undertaken to report back to the Executive.

**The Chairperson:** Just to be absolutely clear, are you accepting that, if a majority of members on the Executive decide to retain the status quo, it will be a binding decision of the Executive and you cannot change it?

**Mr Ford:** With the greatest respect to you and the Committee, Chair, my relationship with the Executive is for discussion between me and the Executive, not with this Committee.

**The Chairperson:** I do not want to predetermine the outcome, but should the Executive decide to retain the status quo and not accept your arguments, particularly about timeliness, will you accept that decision? From a purely technical, legal point of view, you are not in the position to take any decision other than what the Executive decide.

**Mr Ford:** I am sorry, Chair; I will repeat the point. My relationships with the Executive are a matter that I will discuss with the Executive.

**The Chairperson:** Minister, with the greatest respect, this is nothing to do with your relationship and private conversations. It is a purely legal question. Can you, as Justice Minister, decide to take a decision that is contrary to what the Executive may decide when it meets to deal with that particular issue?

**Mr Ford:** I repeat that I will discuss that issue with the Executive.

**The Chairperson:** Surely, Minister, your officials have advised you that the legislation empowers the Executive to call in anything that is deemed significant. That then makes it an Executive decision as opposed to a ministerial decision of that particular Department. Do you accept that that is, legally, the position that the Executive have now taken in respect of this particular issue?

**Mr Ford:** I will discuss that issue with the Executive.

**The Chairperson:** So, you have not got advice from officials to say that you can take a decision on your own without recourse to the Executive?

**Mr Ford:** I will not discuss any advice that I get from officials with this Committee. I will take decisions on behalf of the Department.

**The Chairperson:** That is a very interesting response to that. Either you accept that the Executive have the legal authority to call the issue in, which now deems it an Executive decision, as opposed to a Minister of Justice decision, or you do not. It is a simple yes or no. Are the Executive acting within their legal remit to call the decision in, making it now an Executive decision? Yes or no?

**Mr Ford:** I will discuss that issue with the Executive.

**The Chairperson:** Minister, based on what you are saying — and, clearly, it is a particularly strong issue for you in terms of relationships with the Executive — if you do not get your way, is it a resignation matter for you?

**Mr Ford:** I think, Chair, you are now straying way beyond the Committee's remit. With respect, I have come here and have answered questions for an hour, as I said I would. You are now way beyond the responsibilities of this Committee.

**The Chairperson:** OK. We can ask; you do not necessarily need to answer, Minister.



**Mr Ford:** When you ask five times, it suggests that you do not accept that.

**Mr Humphrey:** Can I come in on this?

**The Chairperson:** This is the very last question, and I appreciate, Minister, that you have been very generous with your time. Mr Anderson had indicated, so, very briefly —

**Mr Anderson:** Thank you, Minister, for coming along today at such short notice. I think you stated that you consulted widely on the issue.

**Mr Ford:** I am not sure I said "widely". I certainly said that it was wider than required by statute and earlier than required by statute.

**Mr Anderson:** Beyond your requirement; is that what you are saying?

**Mr Ford:** Yes.

**Mr Anderson:** Bearing in mind the consensus of this Committee, which we have talked about, and the Policing Board, where there was no consensus, for a change, what was your driving force behind going down this road, with the wide consultation that went beyond your requirement, as you said? Where was the driving force to enact that change?

**Mr Ford:** I am sorry, I was not given the impression that there was any consensus in this Committee or in the Policing Board. There was a very strong piece of advice from the Equality Commission that I needed to consider those issues. That was on the back of the Policing Board having raised the issue in the first place because of changes to the equivalent regulations in England and Wales. It was on that basis that I deemed it appropriate to make the same changes in Northern Ireland as were happening in England and Wales.

**Mr Anderson:** So, it is really the equality aspect that you are using as the main driving force.

**Mr Ford:** It is a combination of comparability across the UK and the equality guidance. To repeat again: I set the mandatory minimum criteria but the board will determine the actual criteria.

**Mr Anderson:** There was no consensus in the Committee as far as I am aware, or within the Policing Board. Setting that aside, we have covered a lot today. Would you not say that the process has been tainted by what has taken place?

**Mr Ford:** No.

**Mr Anderson:** Even after today, to someone across the way, you even went as far as to say that those who see this as interference are ill-informed. Are you saying that we are all ill-informed and that everyone outside this room is ill-informed? Are you saying that you were 100% correct and everyone else was ill-informed?

**Mr Ford:** I said that in the context of the initial response in the media from people who were unaware of the pre-consultation and of the distinction between my role as Minister and the role of the Policing Board. That was the context in which I used that term.

**Mr Anderson:** You could not say about fellow MLAs that we were not informed.

Finally, we have talked a lot today and gone over a lot of ground here. Are you still adamant that your decision was right? On reflection, would you not change that decision? Would you still say that the decision and the way you went about it was right and that you would do the same again?

**Mr Ford:** I believe that the decision was right. I believe that the way I went about it, including the wider consultation over an extended period, was also right.

**Mr Anderson:** And you would do the same again.

**Mr Ford:** I may well not be the Minister to have the opportunity to do such a thing in five years' time.

**Mr Anderson:** On reflection, you would carry it out in the same manner again.

**Mr Ford:** I would carry out what I have done in the same manner, yes.

**The Chairperson:** OK, Minister. Thank you very much for making yourself available to the Committee.