



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Inquiry into Allegations, Arising from a BBC NI
'Spotlight' Programme Aired on 3 July 2013, of
Impropriety or Irregularity Relating to NIHE-managed
Contracts, and Consideration of Any Resulting
Actions: Will Haire

9 January 2014

Mr Wilson: Chair, I was not at the previous meeting, so I may be wrong here, but there is another issue that Will was involved in, and that is the single-tender-action decision by Mr Hoodless around the appointment of Campbell Tickell. Can we ask questions about that today?

The Chairperson: I would prefer that, since we dealt with this matter earlier and because some of that — not that particular issue — could be related to it, we will take legal advice next week. I therefore suggest that we deal with that next week formally.

Mr Wilson: It is just while Will is here. It really does not relate to the process, but, given what you said about why he is here today, it might be useful to explore that issue rather than have to bring him back.

The Chairperson: It may well be that we need a number of people back on that matter, Sammy. We are in inquiry session at the moment, so I would prefer that we left that issue to deal with the totality of it. I appreciate the point that you are making. I do not want to be mixing agenda items, if you do not mind. The matter needs proper attention, and rightly so.

I just wanted to make the point, Will, that, as I said in the example that I gave earlier about the email stuff, a number of people have rested their case around the record of the meeting on 16 April. A number of people, in the 'Spotlight' programme and to the Assembly and this Committee, have referred to the record of the meeting on 16 April.

Then, subsequent to us doing our work, we discovered that there were four iterations of the record of that meeting. We subsequently discovered that there were actually six. Albeit that one or two of the changes might not be at all major or substantive, the fact is that people were relying on what they referred to as "the" record of the meeting when, in actual fact, the record changed through six iterations. Now, for me, that is a very important issue to highlight because the Department — your Department — was obviously aware at some point that there was more than one record of the meeting, certainly more than one version of it, and I will come to that in a moment. We will certainly deal with it later when Ms McConaghie gives her evidence.

Also, we did not discover, for example, that we had not been told that the Minister was provided with a briefing before the meeting on 16 April. That was even though we had the Housing Executive officials here who said that they had been invited to that meeting on 16 April, but, unusually, they had not been asked to provide a briefing. Now, for me, that is two examples of where I believe that the Department has been remiss.

We also had written evidence provided to the Committee by Barbara McConaghie that seemed to conflict — well, it did not seem to, it does conflict — with what was provided in evidence by Michael Sands. This week, the Department has provided the inquiry with a table that shows that Mr Sands — contrary to what he has said — amended the document/aide-memoire/minute twice. At what point were we to be advised of that? If it had that information, at what point was the Department going to tell the inquiry that what we had been hearing in evidence was actually incorrect?

I think that these issues run very seriously to the heart of the ability of the inquiry to do its work.

When he was here to give his evidence, I made it very clear to the Minister that this is nothing personal or disrespectful towards him, and he, in my view, seemed to accept that, but a further point that I wanted to ask about is that we have a situation where people from the Department refer their evidence to the Minister before they give it to this inquiry. That puts the Minister, never mind this inquiry, in a very invidious position. We have a Minister against whom allegations have been made, and that Minister is expected to take the evidence that is to be presented to this inquiry from those who are going to give it. So, what role in that should the Minister have or would the Minister possibly want to have?

Will, we want to establish from you, as permanent secretary and accounting officer of this Department, what steps are being taken under your leadership to ensure that this inquiry gets all the relevant documentation in due course and in a timely fashion?

Mr Will Haire (Department for Social Development): OK, fine. Thank you very much, Chairman. It was only on the day of the last meeting that I realised that problems of this nature were occurring.

First, I want to make it very clear that you have my total assurance that I want to make sure that you get all the documentation that you want in a timely fashion, and I realise that there are issues here. I

should say that this process has been a learning experience for us all, for the Committee Clerk and for us. Our main experience of this sort of inquiry is when Northern Ireland Audit Office teams prepare material for the Public Accounts Committee (PAC). Those teams do all the bedevilling and make sure that all the documents are in the right place for presentation to the Committee. In a sense, the way that you are running your inquiry has been slightly different. So, it has been a learning experience.

From looking at this and having had discussions with your team and my team, I can clearly identify some of the problems. The approach that you have taken is for the Committee Clerk to send us very formal notes of the minutes and documents that you want. There are two elements here. We do not have a nice set of documents all sitting there nice and neatly. It is a large Department. You asked, for example, for all our contacts with Turkington. We had to go and ask every different unit of work to look into each of its electronic records to see whether it had any reference to Turkington. That was a large bit of work to do. It also depends on whether they put the right title on the document so that they would know the right process. That takes a bit of time. That is one element. It is our job to get the documents, but I am just saying that it sometimes takes a lot of time and that some of the timeliness problems come from that.

The second issue is that we probably made a mistake in our first phase. We looked at your notes formally and answered the exam question that you set us diligently and quite precisely; overly precisely, I think. I do not think that that worked for you, and it did not work for us. That has prolonged this phase of the discussion. So, although I think that my teams have worked very hard on this issue, looking back on phase 1, I think that it would have been much better if your Committee Clerk's team and me had come together early on to talk about the issues and the documents and for us to show them the documents to see how much more they wanted, including, for example, the iterations of the Trimmed documents. In our system, documents are frequently changed until they are finalised. That is the nature of the TRIM system. You can see that that has happened. You have all the records of that now.

We had a really good discussion with your team when we met on Tuesday. We are setting up a meeting on phase 2 for next week, at which we will talk about the broad set of documents. Phase 2 is massive so there is a really big task of work here. There are vast amounts of documentation. There are some quite good analytical reports, including the work of the PAC etc, that I think will help your Committee in that process. There are some bits that we can pull together. I suggested to Kevin and Claire that we sit down with them, get the guidance from them, get the documents to them and then, as they start reading through those, see whether there are other connections that we can make to build up a full dossier for you. I think that we should do that. We should meet regularly, and, Chair, I will certainly make sure that that is all done. We will work that through so that we produce a new protocol for how these documents are made. Once we have gone through and got you the documents for phase 2, we will move on to the phase 3 documents and cover the same issues. We can get all these materials.

We have been getting notes and letters from you, and we have been answering the exam questions as we understood them. That clearly does not work for you. I think that we can produce a better system that is more open so that, as you start each phase of the inquiry, you have the full set of inquiry papers as far as possible. There will always be issues that come up in discussion about which you will ask for further material. We will get that for you as you go on. I hope that that gives you a sense that we have learnt in the process. I think that it is a joint learning experience for the Committee Clerk and for us. I hope that that will work for us moving forward.

You talked about the fact that all papers coming to the Committee are noted by the Minister. That is the protocol between the Executive and the Assembly, under which all of us operate. Sammy, having been a Minister, you will recognise this issue. We put that issue to the Minister purely to note, and the Minister has never made a query about it. That is the protocol that I am working under and that the Executive and the Assembly have agreed to work under. I can understand why you are saying that, in this circumstance, there is a particular issue. I am just saying that I am working within the rules that were set. Since the Minister is the head of the Department and represents the Department, he has to understand what the Department is saying. We work to the Minister because he is accountable to you and we are accountable to him. That is the nature of public servants, and that is what the protocol is trying to recognise. As I say, when this Committee asks the Minister about issues, those are issues on which the Committee and the Assembly might want to reflect in future. However, those are the rules as I understand them.

The Chairperson: That is fair enough, and I am not suggesting for one second, nor is there any evidence to suggest otherwise, that the Minister has, in any way, wished to interfere in any of that.

However, I recall that the Minister seemed to accept quite clearly the concept of a Minister against whom an allegation has been made. It puts the Minister in a very difficult position. So, if I remember correctly, evidence was presented to this Committee that took two or three weeks to get here because we were told that it had to go to the Minister.

You leave yourself open to an allegation that there is a conflict of interest. So, what you need to do is to go away and speak to the Minister, and, I suggest, to whomever else, to work out that there is absolutely no suggestion, that there can be no suggestion and that it cannot be left open to suggestion that there is any conflict of interest. I do not accept the characterisation that you gave that this Committee has done something different. This inquiry has been set up under statute. This is not an informal Committee hearing; this is a legally based inquiry. We are doing our work strictly to the letter of the law, and everybody clearly understands that. So, there can be no corners cut here.

Mr Haire: I am not suggesting that.

Mr Wilson: I just want to establish a particular issue. Will made an important point, and I can see this from both sides. Very few officials would be very happy about sending stuff out from a Department, especially given, or maybe because of, its sensitive nature, without having notified the Minister first. Indeed, it probably would put officials in far more difficulty if they were not to send papers through the normal channels that are established for communications between the Department and Committees. I do not know that we, as a Committee, can overrule the protocols that are set down. Indeed, I suspect that very few officials in Departments would be happy to be placed in a position where they make the decision about what goes to a Committee, especially if it involves the Minister.

The Chairperson: I want to make it clear that this is an inquiry that we are working on. I am not at all suggesting that we want to overturn or thwart any protocols. However, we need to establish that there has been no interference with any information or evidence that has been presented to this inquiry. That is absolutely sacrosanct. I want to return to that, but a couple of members want to come in.

Mr Allister: Let me just pick up on the point that the Minister must be kept informed because he is the head of Department etc. Is there a reciprocal dimension to that for you as permanent secretary? Are you kept abreast of meetings that the Minister is having and of the content of those meetings? Does the Minister act in a silo in that regard?

Mr Haire: Sorry. The Minister's political meetings are nothing to do with us.

Mr Allister: I am not talking about the Minister's political meetings.

Mr Haire: There are communications between a Minister and a permanent secretary, but I know of no protocol for them.

Mr Allister: For example, at the heart of this phase of the inquiry is the meeting that the Minister had with Turkington's. Did you have knowledge of that meeting before it happened?

Mr Haire: I can presume that I am allowed to look at the Minister's diary every week, partly just to make sure that I understand what is going on. For that reason, I will see the Minister's diary.

Mr Allister: Is that how you glean your knowledge?

Mr Haire: Yes. I also see submissions going through.

Mr Allister: In this case you saw the pre-meeting briefing.

The Chairperson: Jim, I am sorry. I need to address the question of legal and procedural fairness. Will Haire has come here this morning as a witness to the inquiry. Under the legal advice that we have been clearly presented with on this whole question of procedural fairness, if we invite someone here under the terms of the inquiry to answer questions to the inquiry, obviously, we have to give him notice of that so that there are no surprises. I have to rule that out for this morning because Will was invited here to address the issue of how he, as the permanent secretary in the Department, is going to make sure that this Committee is provided with all the relevant information that we are entitled to have. That is the legal advice. I want to make sure that we do not stray into an evidence session.

Mr Allister: Obviously, I accept what you say, but point 6 on our agenda is the inquiry into allegations arising from the 'Spotlight' programme, with Mr Will Haire in attendance. That is very suggestive to me that he is here under the aegis of the inquiry.

The Chairperson: No. Jim, we made it very clear that we were inviting him here to deal specifically with the provision of materials to the inquiry. That is obviously related to the inquiry, but he is not here as a witness.

Mr Allister: Would it be a way forward to indicate to Mr Haire that, if he feels uncomfortable answering any questions, he need not because he has not had notice? However, he is here and he might have useful information to give. Do we not take that opportunity?

The Chairperson: We have established the procedure by which we are working the inquiry. In the interests of consistency and making sure that we can never be accused by a witness that they were misled before they came here, we will not do that. If we feel the need to bring Will Haire here as a witness, obviously we will do that. Will is well aware of that, as is any other official. So, Jim, if you do not mind, we will not do that. That means that we will keep ourselves right, keep all risks to a minimum and treat people professionally and fairly, as we are legally obliged to.

Mr Allister: There is only one other issue that I wanted to raise, and you can tell me whether it is in order or not. Since the permanent secretary is here, I want to get a better understanding of the role of special advisers in the Department and how they sit in their powers, their access to people and papers and their power to give directions. Is that within the ambit?

The Chairperson: We are in danger of straying. I am not as wedded to the initial advice that I gave on that question. If Will is content to answer that, well and good, but I would prefer that we deal with it on another occasion. However, I can see the point that you are making, so I am happy enough to give a certain amount of latitude if Will wants to take that question up, as long it does not impinge on the work of the Committee. It would be a general response as opposed to something specific to the inquiry.

Mr Haire: Mr Allister is an expert in this area. Having done so much work on it for his Bill, he will know the set rules for what a special adviser is to do and the code that sets out that role. There is no better document for setting out the role, so I refer you to that. That document is key. That is all I can say at this stage.

The Chairperson: That is fair enough.

Mrs D Kelly: Will has set out the protocols, which include all the papers going to the Minister before they go anywhere else. Given that this is not a normal request or situation — this is an inquiry, and the Committee, under the terms of the inquiry, is asking for papers — is there a different protocol? Presumably, as the most senior person in the Department, you have to keep yourself right in the protections that the Department and you are afforded. Therefore, does the same protocol apply to our requests as it does to everyday requests?

Mr Haire: My guidance is that that protocol does apply. That is my understanding. Let it be recognised that I and the Minister understand the sensitivity of this issue. We are conscious of that. I can give an assurance from all that I have seen, and I think the Clerk and the Chair have seen, that the Minister is absolutely clear that there is a delicacy to this because of the inquiry. The Committee can be assured that the material will be got to it.

Mr Wilson: Has —

The Chairperson: Sorry, Sammy. Dolores has not finished that point.

Mrs D Kelly: At any stage, has there been a delay when you have given approval to something that has gone to the Minister? Have there been any areas of tension or vetoes in any requests?

Mr Haire: There has been no veto.

Mrs D Kelly: Have there been any delays?

Mr Haire: No —

Mrs D Kelly: There has been a swift turnaround. You will have told the Minister that the Committee is looking for this paper and asked him whether it will be OK for you to send it to them. The reply will be "Oh, yeah sure," and off it goes. The Committee wants it and, given the circumstances and the powers of the Committee as far as the inquiry is concerned, it is more or less a rubber-stamping matter by the Minister.

Mr Haire: It is also important that the Minister knows what information is — *[Inaudible.]* I have a duty to make sure that my Minister is aware of everything. It is impressed and agreed with the Assembly that I have the duty to do that and I make sure that that is complied with. As I said, I think that we can deal with those things and are dealing with them effectively.

Mrs D Kelly: I do not think that that entirely answers the question, Chair. People are aware, but we are not being told whether it is an immediate turnaround.

Mr Wilson: If you did not abide by the protocol as it is at the moment, it is conceivable that information could be passed to this inquiry that the Minister would not be aware of. Since he is the subject of the inquiry, not only would that be unfair but it would put you or other officials who had supplied you with the information in a particular difficulty if the Minister were to say that that information was supplied but that he had no knowledge of it.

Mr Haire: I presume that that is behind the reason why the protocol was written in the way that it was. As you said, I am accountable to the Minister, the Minister is accountable to you. The whole infrastructure that has been established for the system, therefore, is not irrelevant in this area. As I said, we recognise the sensitivity of this issue.

Mr Wilson: I want there to be no misunderstanding. I think that the implication in the question and the points that have been made to you are twofold: either that, somehow or other, the Minister acts as a sift for the information that you send to him and that eventually comes to the Committee; or that he acts as a block to frustrate the Committee by, if not stopping the information totally, delaying it. Given all the information that has been sent by the Department so far, are you aware of any occasions when the Minister has said, "That is not going", "That is going in an altered form" or "Make them wait for it"?

Mr Haire: The Minister has certainly not done anything of that nature. No way. He has been very clear about getting the materials and forwarding them to the Committee.

The Chairperson: It is important and helpful for the inquiry to have that information. Sammy, just to make the point for the record, when anybody is invited here or required to attend as a witness, under full disclosure from this end of the Table, they are provided with any relevant information that would affect them. There is total openness, transparency and procedural fairness under our working procedures.

Mr Brady: Obviously, there are protocols that have been applied. However, this is a unique situation in that, as far as I am aware, this is the first inquiry of its kind that has been conducted by this Committee or, indeed, by any Committee. The inquiry might set a precedent as it evolves. Has the Department considered that protocols might have to be established to deal with this particular type of situation that might vary or be different from the normal protocols that apply on a day-to-day basis within the context of the Assembly?

Mr Haire: The protocol is, of course, between you, the Assembly, and we, the Executive. So, it is a joint protocol. It is your inquiry, so, in a certain sense, it is a joint issue for us as to question whether, when we have concluded this inquiry, we collectively feel that there are lessons that we need to think about. I suspect that that might be an issue that is worthy of reflection. Mickey, I suggest that it is a joint issue for us and not just for me.

From the outset, I have been very aware that this was the first time that this type of inquiry has been used. As I said to Kevin, the Committee thought through its protocols and systems of how it should conduct this inquiry. At one stage over the summer, I thought about whether I should talk to Kevin about the issues that would come up. I said to myself, "No, I must not", because if I did, I would be

seen to be interfering in your inquiry. It is your inquiry. We have had a learning experience and there have been problems, and you have come to us, rightly, and said, "Sort this out". I think that we are sorting it out. It is your inquiry. We are very keen to deal with those issues. I deeply respect the primacy of your role, as a Committee, to do this inquiry.

Mr Dickson: I understand the need for the protocol and the importance of the Minister seeing or being aware of all the documentation that is transferred to the Committee, and I, of course, accept your assertion that there has been no interference in that or any reluctance with regard to it. Who else sees the information that is passed to the Minister before it comes here?

Mr Haire: The rest of the senior people. Whoever is gathering the team together. The special adviser will see it as it goes through as well.

Mr Dickson: That is fine. Thank you.

Mr Haire: The special adviser will see everything that goes to the Minister.

Mr Clarke: Will, you said that the same protocols apply between all Ministers and permanent secretaries.

Mr Haire: Yes, it is a protocol.

Mr Clarke: Mickey Brady referred to this inquiry being the first of its kind. So, if Conor Murphy had still been here, would the same have happened with DRD if it had called an inquiry into his religious discrimination case?

Mr Haire: I do not know the detail of the process. I can only presume. That it is the one that all civil servants work to.

Mr F McCann: You said earlier, Will, that you look through the Minister's diary to look at what meetings he has on over the weeks. If you look at the diary and there are queries or what you might see as a conflict of interest — even if you go over the meetings afterwards — would you advise the Minister about that possibility? I am talking about a contractor meeting a Minister on issues that they may later apply for contracts under.

The Chairperson: We are in danger of straying into substantive inquiry business. We will not deal with that.

Will, I want to come back to you because I do not really accept your characterisation earlier that this inquiry started off, you picked your own rules, it is a learning curve and all the rest of that. This matter has trundled on now for several months and longer. It has been the subject of television programmes, Assembly debates, Committee hearings, and so on. I have a clear impression in my mind that there is a lack of proactivity on behalf of the Department to provide this inquiry with information, and, even before the inquiry was established, I believed that there was information at the disposal of the Department that seemed to contradict what people were saying. I find that very serious, and I am trying to grapple with it in very diplomatic terms. As I identified earlier, in the course of this inquiry, we have discovered additional information or other documents that the Department has provided to us that contradict, on more than one occasion, evidence presented here. When the system throws up something that appears to contradict what someone has either written or given in verbal evidence, at what point will the Department come and say, "Excuse us, we have evidence that suggests that what you heard is not correct"? That is fundamental. That goes to the truth of these matters.

Mr Haire: For example, you made a reference to Michael Sands saying he had not seen the note. If I understand rightly, Michael clearly did see it on 17 April, and the record indicates that he made a change. In fact, you can see what he did. He cut and paste and did a note to the technical experts whom he had sent off to check out the technical aspects. It is quite clear that the private secretary had sent him the note on that date to check that she had got it right. That was her personal note, and she wanted to know what was going on for her records and to keep on top of it. He basically felt that her description of it was not correct. She is not an expert in this area at all, but he took his section and put it in there. Now, he had clearly forgotten about that issue. I suppose that, if he had been here today, I am sure he would have said —

The Chairperson: In fairness to Michael, he is not here and I do not expect you to interpret why or how anybody did anything. If we are going to deal with it, stick with the facts.

Mr Haire: The point is that, if a situation came round that something had not been disclosed — it is a very fair point — and we said that there is evidence there, I take the point that we have a duty to make sure that you would see it, but I think that the point is —

The Chairperson: In taking the point, what did you do about it?

Mr Haire: Sorry, I was working on the basis that Michael was going to be here today.

The Chairperson: OK.

Mr Haire: If it had not been — clearly, if I see somebody not — if the situation comes and something has been, that is a point, it is important that there is transparency for this Committee.

Mr Wilson: I know that a lot of the discussion so far has been around a meeting and how it was described, even though it is fairly clear from all the documentation that we have been provided with that there was no attempt to disguise who was having the meeting because we know from the headed notepaper.

There is one particular area that I am concerned about, Will, and it is not around who attended a meeting or under what auspices the meeting was held, but on the substantive issue of the contracts themselves and the damage that has been done to some of the firms that were named as a result of information that came from the Housing Executive. We have had and we are having difficulty in getting to the bottom of that and that is where the real obstruction has been in this inquiry to date. What help can you, as permanent secretary to the Department, afford to this Committee to ensure that we have information provided on the real issue; that is, the allegations about £18 million being owed by contractors and the damage that that has done to their reputations?

The Chairperson: We are moving into another phase of the inquiry, Sammy. I do not want to frustrate people here.

Mr Haire: That is presumably one of the points that your Clerk will bring to our attention when they come to the meetings. The whole question of access to material is exactly the sort of issue that I hope we can then resolve in that way.

The Chairperson: We will deal with that at a later discussion, Sammy. We will set a date, as the Committee agreed prior to Christmas that we would, at a very early juncture in the new year, to take stock of where we are in this phase. This is taking a bit of time, partly because of the information that we have not been receiving in a timely fashion. We hope to address that. As I said, I do not want to frustrate any member asking questions. They will have all the opportunity to ask those questions, but it has to be at the right time and under the proper circumstances.

At this moment in time, I just want to make it very clear, Will, that I remain to be convinced on a range of these matters. I have given you some illustration of where I think we have had to address some fundamental problems, and nobody wants to have to continue to face what I consider to be obstacles to the work of this inquiry. On that basis, and on your own commitments as I acknowledged earlier on, we can sit down with Kevin and Claire and work out how we best proceed during the time ahead.