



Northern Ireland
Assembly

Committee for Finance

OFFICIAL REPORT (Hansard)

Functioning of Government (Miscellaneous
Provisions) Bill: Ms Felicity Huston

3 June 2020

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Members present for all or part of the proceedings:

Dr Steve Aiken (Chairperson)
Mr Paul Frew (Deputy Chairperson)
Mr Jim Allister
Mr Pat Catney
Ms Jemma Dolan
Mr Seán Lynch
Mr Maolíosa McHugh
Mr Matthew O'Toole
Mr Jim Wells

Witnesses:

Ms Felicity Huston

The Chairperson (Dr Aiken): This item is being reported by Hansard. Felicity, would you care to make an opening statement? Thank you very much, indeed.

Ms Felicity Huston: Committee members, thank you very much for inviting me along this afternoon. I will just give a few brief words of background further to what I have sent to you.

I took the opportunity to comment on the Bill, because, as you may have seen from my paper, I have a long and rather extensive experience of selection and appointment at the most senior and sensitive areas of government in Northern Ireland and Westminster. As you will see, I was appointed by Prime Minister Tony Blair to the first House of Lords Appointments Commission, and you may have noticed from this weekend's coverage in the papers that those who get a peerage and those who do not remains a great source of controversy and gossip. *[Laughter.]* I also have extensive experience of codes of practice: drafting them, implementing them and trying to enforce them.

As the Commissioner for Public Appointments, I also had an unusual and possibly unique opportunity to see Ministers and their special advisers operating across all Departments. Most civil servants are limited to seeing their Minister and spad or the occasional cross-departmental interaction. My observations were that, to be honest, the relationship varied tremendously, depending on the personality, experience and confidence of both Minister and special adviser. Some spads were clearly the shadow Ministers; if you could get the spad's attention, the Minister would follow. Others were there more to protect the Minister, particularly from any attack from the Civil Service in full gallop. I have to admit that one or two were just there to make up the numbers; a ministerial perk, a little like the chauffeur-driven car or not having to carry your own briefcase.

I hope that my paper drew out some of the issues and dilemmas that I see facing the Committee as it examines the Bill and tries to find a way forward. I have tried to provide support with some examples.

First, let us consider the current code of appointment for special advisers that was published in January. For a post that is to be paid up to, I think, £95,000 from taxpayers' money, when, let us face it, the average salary in Northern Ireland of said taxpayers is about £28,000, we have to ask ourselves whether the code as it stands looks like a credible document in the eyes of the public. Does a code that sets aside all recognised appointment procedures, because of the personal nature of the *spad* appointment, persuade the public that all is well?

I was heavily involved in the referendum campaign for the Good Friday Agreement, and I remember the enthusiasm and excitement when we all thought that we were finally getting our own Government. We would have our own lawmakers, which surely had to be better than being run as a colony from London. Recent events have shaken that belief and hope. Surprising numbers of people from the most unlikely walks of life now think that we should maybe go back to, dare I say it, direct rule. I think that the job of the Assembly, at the moment, is to campaign to re-establish public confidence and to clearly demonstrate that that is not a good idea and that we do not want it.

The Bill could be seen as part of that campaign by demonstrating that there is a genuine commitment to halting some of the frankly bizarre practices that were unearthed by Sir Patrick and his inquiry. The Committee must judge what message the current two-page code sends out and what it might want to do about it.

The other fundamental and more philosophical issue for the members to think on is whether a code, without legal underpinning, can ever bring about thorough compliance. Codes of practice seem a great idea: pragmatic; they are swift to bring in; they do not require convoluted legislation; a reasonable approach; a genuine gentleman's agreement amongst good chaps. However, unfortunately, speaking from personal experience, I know that such codes get bogged down in obfuscation, distraction and clear obstruction.

Of course, legislation is not without its issues and can be the subject of extensive litigation. We have all suffered from the fact that much progress in Northern Ireland has been throttled by judicial review. It is often referred to as government by JR. Despite that, I have found, through experience and observation, that the power of statute concentrates minds wonderfully.

Steve, if anybody wishes to ask questions, I will do my best to answer.

The Chairperson (Dr Aiken): Thank you very much, indeed, Felicity.

Mr Allister: Can I stay with the code of appointment for a moment? Sir Patrick Coghlin was very vigorous in some of his findings. Indeed, he was aghast at how the original code of appointment was simply ignored by some. In that context, in recommendation 41 of his findings, he recommends that:

"there should be robust compliance with both the letter and spirit of the Civil Service (Special Advisers) Act (Northern Ireland) 2013 and the codes emanating therefrom".

Before that report and its recommendation was published, the Executive had unilaterally stripped out the code of appointment, taking out the need for a panel of candidates, criteria for appointment, a job description, and documentation of the reasons and the process. In stripping all of that out, how compatible was that — in your view as an overseer of public appointments — for what you would normally expect in the public service?

Ms Huston: It is not what is normally expected. In my submission to the Committee, I itemised the basic things that one would expect in any appointment process for any job, anywhere, particularly one as well paid as this. Those include the criteria for selection and some form of objective assessment to judge who seems to be the person best suited for the job. In this case, we do recognise that the Minister has a very close working relation with the *spad*, so some extra personal interaction may be required. Then, there needs to be some form of record for explanation.

The thing that I was struck by, when I watched Sir Patrick's inquiry — and some of us were more junkies of it than others, I confess — was, "Who are these special advisers?". They were trotted out, many of them. One cannot help but think, because I am getting older, "Goodness, those are young lads. How do they have the skills and experiences? I wonder why they picked them". Some of them

had been in the job quite a while; others seem to have come straight from university. For a taxpayer — never mind somebody who has a particular interest in this — it kept striking me, "How did these people get these jobs? Why was it him and not somebody else?".

That is one of the problems of leaving out those fundamentals and, particularly, some sort of explanation of why x is appointed and what they are bringing to the job. That is one of the things that is lacking. The code has been stripped back to "and the Minister shall appoint", and that is it.

Mr Allister: Yes. When I drafted the Bill, the old code was in vogue. I must say that even I did not expect that it would be stripped back in the way that it was. I am contemplating an amendment that will put a statutory requirement to insert many of those things back into the code. Would that seem like a good idea?

Ms Huston: Given that there is a philosophical discussion to be had about codes and whether we end up having to have them as statutory rather than advisory, it would provide tremendous confidence for the public if they thought that, in appointments like this, some sort of process could be seen and there was some of sort evidence of why x or y had been appointed. It does not have to be very detailed. These can be fairly broad things, as I have suggested there:

"Criteria for selection - which encompass the skills and experience required to do what ... is a very demanding ... job"

as we all recognise.

"An opportunity for candidates to demonstrate"

whether they can do this or not. That can be done in different ways, but, often, it is initially an application form.

"Some form of objective assessment"

of those people who are being considered for the job. Then:

"Records of the above and why the successful candidate was selected."

Those are the basics. The previous code ran to 33 pages, much of which was actually an HR document that any civil servant at different levels would get. Much of it was not really about appointments.

Mr Allister: The previous was the code of appointment and the code of conduct, which together ran to 30-odd pages.

Ms Huston: Yes. It included things like your holiday entitlement; that should not be in there. It could be longer, but it does not have to be 33 pages. It got muddled up with what would be a document expected for civil servants.

Mr Allister: Codes, of course, sit below legislation. If legislation says, "You shall have a code, and it shall cover the following issues", that necessitates its covering those, but it can also cover much more.

Ms Huston: Yes, absolutely. It does not need to be prescriptive. That is probably the way to do it: to have some of the key and fundamental principles of good assessment, good selection and good appointment there. You do not have to be producing all sorts of information and records about individuals' personal history and things. It is not like that. It is possible to summarise such things.

Mr Allister: Could I ask you about another part of your written statement? The Functioning of Government (Miscellaneous Provisions) Bill is wide in its ambit, so it is capable of addressing other things than are presently in it by further amendment. You drew our attention to the fact that you held an office as a Commissioner for Public Appointments that, in your view, was not sufficiently independent and did not have the powers that, say, your Scottish statutorily appointed counterpart had to stop a competition if it was not being run properly. Elaborate for me, if you would, on how the office of Commissioner for Public Appointments could be improved, because that is something that we could do in this Bill.

Ms Huston: I certainly suggest that you speak to the current commissioner, who is obviously working with whatever environment she has at the moment. I do not pretend to be on top of the detailed structure at the moment, but, certainly, things do not seem to have changed much. The commissioner between myself and the current one resigned in despair at what was going on. The issue has always been basically that, because the legislation is very loosely written — the order that sets up the —.

Mr Allister: The fact is that it is a prerogative order; it is not even legislation.

Ms Huston: Quite. It is a prerogative order; absolutely. It just says that there should be a commissioner and you can do these things. What it does not say is that the commissioner must have control of his or her own budget; I was not a budget holder at all. The commissioner could not appoint their own staff. It is that sort of thing; those basics. My staff were civil servants who were seconded to me not by my choosing. I would never criticise any of the staff that I had, but that is not the point. Previous to my taking the job, it had been done by the commissioner for GB. She was also part-time commissioner here, and she did not even have an office. When I set up, my office was put in Castle Buildings, which people who wished to come and see me found very disconcerting and confusing. They saw this independent person, who was supposed to be a regulator, sitting right in the middle of the structures of government. When I raised this with civil servants, they could not understand it, because it was their workplace; "Why would you not be happy? You have a nice office. It should be all right". Again, they could not understand why I was not happy about not having my own staff.

One of the few roles that were clearly laid out for the commissioner was to audit appointments. Due to circumstances that I will not bore the Committee with, we ended up without an auditor. We are not talking about a financial auditor; this was a process auditor. The Civil Service, which was OFMDFM, just refused to help me find a new one and wanted to impose somebody on me etc. Eventually, the Comptroller and Auditor General (C&AG) at the time lent me a member of his staff because I did not have an auditor. I was not allowed to have the person whom I wanted; I was prevented from doing that by the Civil Service. I got somebody from a department that everybody recognises is entirely independent etc. Thankfully, at the time, John Dowdall was the C&AG, and he recognised the difficulties that I was having. He had to lend me a member of staff. The Commissioner for Public Appointments should not have to borrow a member of staff from the C&AG to be able to fulfil one of her very few clearly laid out statutory duties, but lacking financial independence and lacking the ability to appoint staff caused tremendous difficulties. You will want the current commissioner to tell you how things are these days, but you cannot have a regulator who cannot appoint her own staff.

Mr Allister: The staff were being appointed to multiple quangos.

Ms Huston: I am talking about my personal team.

Mr Allister: Yes, but the staff whose public appointments you were overseeing.

Ms Huston: Yes, they were the board members — not the functionaries but the oversight board. I do not know how many quangos we had back then — 70 or 80 — and we oversaw, in some way or other, the appointment process for those.

Mr Allister: Tell me a little about the Scottish system, where a commissioner who is unhappy with how a process has been operated can stop it.

Ms Huston: I note that the system in Scotland has changed since my day.

Mr Allister: All right.

The Chairperson (Dr Aiken): The illustrious First Minister of Scotland.

Ms Huston: Yes, things have altered, but, when I was commissioner, the Scottish commissioner position had been set up, and instead of just copying the legislation from England, they wrote their own legislation to set up the Scottish commissioner's office. She had authority to appoint her own staff and a budget of her own allocated to her, She also had, more importantly, the power to halt a competition for a public appointment if she believed that things were not being done correctly and in compliance with the code. She had a duty to present a report to the Scottish Parliament, I believe, every year, but she also had the right to present a report to the Scottish Parliament if she believed that

a Minister had contravened her code and that the issue had not been resolved. Most of these incidents are resolved.

The Chairperson (Dr Aiken): Is that in Scottish statute?

Ms Huston: It was, yes. I cannot put hand on heart and say quite how it works now, because Scotland amalgamated several commissioners into the equivalent of a public standards commission. Things will have changed because of that, but Scotland recognised, certainly back then, the need for clarity and the authority that comes with having your own legislation, which is why I flagged up the contrast between the treatment of my office and that of the Information Commissioner, which was established fully. Even though it was an office here in Northern Ireland that did not have a separate commissioner, there was a strong recognition of the need for that office to be separate and independent.

The Chairperson (Dr Aiken): I have a quick question about the role of the Scottish commissioner. I recollect that Scotland decided to do this because it was deemed that Scotland had unique circumstances, with the Scottish Parliament and the roles in the various places. That is why they wanted to put it on a statutory basis.

We have heard from the permanent secretary, David Sterling. When giving evidence, he referred, about four or five times in the same session, to the unique circumstances in Northern Ireland. That raises a question. We have been asked to look at one of your previous roles. We have been told by senior civil servants, including Sue Gray, who worked in the Cabinet Office, that the purpose of not going to a statutory basis was that the pressure of public opinion would force people to modify their behaviour. Yet, when Scotland was placed in this situation, it decided to go down a statutory route because there needs to be weight to the decision-making process. You have identified two distinct systems. What are their pros and cons? I want to get that clear.

Ms Huston: In Scotland, when the Parliament was established, it was decided to peel many of the structures back to the basics, maybe partly because it is a Parliament rather than an Assembly. That may have given them a certain outlook on how to write their statute, and it meant that the commissioner had that power and authority. It did not prevent her from having many a run-in with senior members of the Scottish Government, but it gave her the final oomph, and she was able to decide where she wanted to run her office from. It may sound petty, but it is not. It is one of the internationally recognised standards for independence. I mentioned the independent international ombudsman's organisation.

The Chairperson (Dr Aiken): Sorry, the international —?

Ms Huston: The international ombudsman's organisation, I think they call themselves these days. Sorry, it is the International Ombudsman Association. The association has a set of standards to recognise and measure the independence of an ombudsman, a regulator, somebody who deals with complaints — those sorts of things. There is a series of tests, such as having control of your own funds, having your own staff etc. When I was Commissioner for Public Appointments, my office failed all of those. The Scottish commissioner would have been able to say, "Yes, yes. Tick, tick, I have all that".

A good situation came out of that. The reason that we ended up with what we had was, I believe, because the Commissioner for Public Appointments was set up in England. It was for GB. Then, it was "Oh, goodness. There's Northern Ireland. We'd better stick that on. We'll write a prerogative order". However, it is not really a separate person or body, because the commissioner is based in England. That went on for quite a while before it was decided to make a separate appointment.

Peter Hain appointed me, and forgive me if I cannot remember the particular structure of the Assembly at that point, because it had been decided that there would be a separate Northern Ireland commissioner, but no thought was given to the need to look at the legislation etc. It was just sort of left.

In defence of the Office of the First Minister and deputy First Minister (OFMDFM), who would think that I would say that, it was kind of left with it, and there was no particular guidance on what to do and how the commissioner should be looked after and run etc. It was just left like that, but it meant that we struggled along. There is the constant issue of whether your code has to be followed, whether there are special circumstances or, as I said, it can be set aside.

I think that, in Scotland, there were fewer such issues at the time. There was more respect for what the commissioner in Scotland was trying to do, because, ultimately, there was her legislation.

The Chairperson (Dr Aiken): With the force of law behind it.

Ms Huston: That helped, whereas I was constantly told, "That's outside your remit, remit, remit", like frogs, but nobody ever could clarify quite what the remit was, and I was not allowed to take independent legal advice, nor was I allowed to use the Government Legal Service to see what my position was on certain things.

The Chairperson (Dr Aiken): If you cannot get independent legal advice and you cannot use the Government's legal service, what can you do?

Ms Huston: Exactly. Argue and see what happens. Often, I was told, "Sorry, the legal opinion is this" or, "You do not have the money to do that, and, in fact, you do not control your own budget, so you cannot take legal advice". I used to go and talk to the Attorney General sometimes, but that was not an official response. He occasionally helped by replying to a letter to me, but that is not the same thing. Stuff like that went on all the time. I think that some of that came from a lack of statutory authority and from having a code rather than legislation and the power of legislation.

The code of practice for public appointments is a code for Ministers, and, of course, for civil servants, by way of working for Ministers, to use. In England, at the time, the ministerial code said that, if a Minister failed to follow the code of practice in England, he was in breach of the ministerial code. We did not have that in our ministerial code here. There was even less pressure within the system to comply because there was no sanction of any sort. When they did not follow the code of practice for appointments, there was just, as I said, a flurry in the press, maybe some embarrassment and then we moved on.

The Chairperson (Dr Aiken): Thanks.

Mr O'Toole: Thanks for coming and giving evidence. You talked a bit about public appointments and your experience as a commissioner. Do you think that spads are public appointments or political appointments?

Ms Huston: They are political appointments.

Mr O'Toole: Should they be public appointments?

Ms Huston: That is really not for me. I do not know what that would bring to the party, really. A public appointment is, as I explained, legally quite messy. Normally, it is at arms-length from Ministers so that they have that distance. They put someone in to run something, but they are not actually directing them or responsible for them etc. I am not sure what it would bring to the party to make them public appointments as such.

Mr O'Toole: Understood, but the implication of your oral evidence today is that spad appointments do not meet the standards for public appointments.

Ms Huston: Or any appointments. This is not just public appointments. I do not think that they meet the Civil Service Commission standards that are to be expected. They would not meet the standards that —.

Mr O'Toole: As in, to be appointed a civil servant through recruitment?

Ms Huston: Yes.

Mr O'Toole: You talked about Westminster and comparisons with Westminster, and direct rule as well. Do you think that we should revert to direct rule?

Ms Huston: No, that is why I said that I would hardly mention it. I just mentioned that it had become quite an issue —

Mr O'Toole: Indeed.

Ms Huston: — before the Assembly came back. It is one of the remarkable outworkings of the lack of public confidence in the Assembly that more and more people were starting to say that we should go back to direct rule. I think that it would be a terribly sad state of affairs.

Mr O'Toole: But you accept that spad appointment standards are, in effect, roughly the same in Westminster as they are here, in that they do not meet the standards that you have talked about.

Ms Huston: No, I do not know how they are appointed in England. I see from reading their research papers and so on that the Prime Minister is ultimately responsible for the appointments. How special advisers get to where they are, and why they are, has always been one of those mysteries, throughout the country. However, I think that, as we are saying, this is about an opportunity for Northern Ireland to do it better.

Mr O'Toole: What you are effectively saying is that Northern Ireland should go further than any jurisdiction in —. I do not know about continental Europe, but I am fairly sure that in the Republic of Ireland it is roughly the same in that they are political appointments, and also, as we have talked about, in GB, so are you saying that we should go further and that we should be a model?

Ms Huston: Well, I think that would be a very good idea. We have to remember the context in which we are looking at this: what we found out was going out in the special adviser environment when the curtain was pulled back due to the renewable heat incentive (RHI) and so on. Therefore, it is an opportunity for us to say that we recognise that things have not been done as we would have hoped.

Mr O'Toole: Given that both the Westminster spad code of conduct and the new one that was introduced here earlier this year specified that a spad is appointed as a political adviser to advise the Minister on how to handle their party, what political issues they need to face — stuff that implies that you have to understand the context. I am a member of the SDLP and a SDLP MLA as of the last few months. I do not think that I will ever be in a position to appoint a spad, but if I am, or if someone else in my party or any party is, then there is the broad understanding that that person, whether they are a member of a party or not, needs to understand the complexities of that person's political context. Would it be quite difficult to write that into an acceptable — how do you write that into a conventional appointment process, if you see what I mean, given that most appointment processes tend to filter that out for very good reasons around equality and all the rest of it? If you are saying that, in order to be a spad for the Conservative Party, the Labour Party, the SDLP, the TUV or any other political party, you have to meet the requirements of, for example, the Civil Service code, which requires no discrimination on the grounds of belief or —. Do you see what I mean? Is there a contradiction there?

Ms Huston: That is why the code has to be different for special advisers. We have always accepted that they are political. They may be civil servants in terms and conditions and in who pays them, but they are not functioning in the way that a civil servant normally does, with the disinterested role that they have. With public appointments, it was always for the Minister, on the advice of his civil servants, to decide on the criteria and the special skills etc that he or she wants for the people that they are about to appoint. That would be the same here. One would expect a Minister to appoint people who have similar political views to them. That is up to them, and it is not unrealistic to be able to write criteria about understanding how a political party works, what its policy objectives are and so on. It does not mean that they have to have signed up to those exclusively in order to understand them. However, it is very much a ministerial decision on what they want.

Many years ago, I worked with Damian McAteer, who was Seamus Mallon's first special adviser. Damian was a well-known economist, and he also worked in business. He ran his own company. It was quite obvious why Damian had been Seamus Mallon's special adviser. He was a man of great experience and eminence, and he had great ideas and so on about how Northern Ireland might be improved. That sort of made sense, and this was in the very first days of appointments. As far as I know, Seamus may only have had one special adviser, which is very different. When you are the deputy First Minister and are almost trying to set up a country, you might want a specialist economist who would know about that but who would also understand the context in which Northern Ireland functions. Those are the sorts of things that you might be looking for.

Mr O'Toole: What you are saying is that part of the fraying of public confidence comes from just seeing people appointed without qualifications. That seems to stray into a broader question, less about conduct and more about experience.

Ms Huston: It is part of it. It is part of the public confidence issue. I keep using that phrase, but the public do not understand how these young men, as they were to their eyes, have been doing these jobs and they were so well paid and, goodness, they did not follow the codes and, apparently, their conduct was very strange. Why were they there? That is not an unreasonable thing for people to ask. When you look at a senior civil servant, you know that he or she has been in the job for years and has had their career and so on, so you can see, most of the time, how the permanent secretary has got to where they are. Many of these special advisers seem to have come straight out of university, and I think that the public just thought, "What?" If there was evidence that these skills that they had were recognised and that they had done their research into, for sake of argument, green energy schemes, and had experience in that sort of thing, maybe people would understand. I am going to find it harder and harder to come up with examples and speculation of what that experience might be, but it could be those sorts of things. It is just asking for an explanation of why. It is not that you have picked the wrong person and we are going to argue with it, but what is the evidence?

Mr O'Toole: I have two more very brief questions, Chair.

The Chairperson (Dr Aiken): Your length of questions, or normal short questions?

Mr O'Toole: They will be shorter than normal. As a very experienced ombudsman, how do you think you would have handled a complaint in Northern Ireland if it was in the kind of enhanced public appointments or ethical standards commission that they have in Scotland? It sounds like you are advocating such an office. How would you have handled a complaint about the most powerful adviser of all driving across the country in the middle of a public health emergency and being seen to undermine confidence? Presumably, you would think that that was a pretty shocking —.

Ms Huston: I would have recommended that he be sacked.

Mr O'Toole: That is good — short question, short answer.

My final question is about the Commissioner of Ethical Standards in Scotland. You mentioned that it is on a statutory footing, as in it was created by legislation. The Commissioner for Public Appointments at Westminster was, I think, also created by an Order in Council. The commissioner is Peter Riddell, and he may be someone who we want to take evidence from. That is just a thought. You said that the Commissioner of Ethical Standards in Scotland was created by legislation. Do you know whether the code or codes that they enforce are in statute or are just codes?

Ms Huston: No, I am sorry. I do not know. As I said, there has been a lot of reform and change in Scotland in the past few years, so I am not on top of the details of that.

Mr Frew: Thank you very much, Felicity, for your attendance today. It has been very informative. I have a couple of angles to go at here. They have probably been covered with the range of questions that you have had, but one is on the merits of appointment, whereas we have always been concentrating on the conduct of someone already in post. We are clear that it is a political post; a political appointment by the political party or a Minister to be a spad for that Minister. I get that, and I get how it would not work for civil servants to be in that space. It would undermine the Civil Service, apart from anything else. I think that you are suggesting that some sort of pro forma has to be filled in about the rationale for that appointment, whether it be on merit, experience, qualifications or specialities — just something which can be presented to the public. Is that right?

Ms Huston: Yes, as a bare minimum. When I was Commissioner for Public Appointments, one of the changes I brought in — obviously, this was about quangos rather than spads — was that there had to be a note of the reasons why the Minister had chosen to appoint the individuals that he or she did, because previously nobody had any idea. Actually, that was as much about feedback for the unsuccessful candidates as for the public. It obviously would not have been in the public domain, but it could be if required. It is about the rationale, and the minimum should be some sort of biographical note that explains why the Minister has decided that this is the person to work with.

I would like more than that. As I have suggested, the code should ask for minimum criteria, which gives a Minister the opportunity to think about what they would like from their spad. From RHI we heard about spads just being doled out to Ministers — "You are having this one, and that one is over there" — and that is not how it is supposed to work. It is supposed to be a working relationship where people can work together for a positive outcome for the Minister in his or her job. The Minister should be given the opportunity to look at the criteria and say, "Well, actually I would like a special adviser who —. I have got some ideas here. Our new policies are about this, and I would like to have someone working with me who knows about this". Imagine if Minister Swann has decided to try and sort out our social care problems. He might decide that he would like a special adviser who actually knows about it, has worked on it or has done a lot of research on it. So you are not just having a complete generalist or someone who knows nothing about it and has come in with a geology degree. That is the sort of thing that, when it is laid out, gives the Minister an opportunity to think about it as a positive thing for them.

The issue about how you find a pool is complicated in this particular environment. However, people who are asked if they are interested can, somewhere or other, in a short application demonstrate what they have got going for them.

Mr Frew: Are you actually suggesting that there be a recruitment exercise?

Ms Huston: Well, that is one word for it. Special advisers are recruited. They do not just wake up one morning and find themselves sitting in an office. They have been recruited, appointed or selected. What does the word mean? Ministers should have a chance to look at one or two potential advisers, which could be called a recruitment exercise, and then say, "That's the one. I really like that policy paper they wrote a couple of years ago on how we should fund social care. That's the one I want".

Mr Frew: It strikes me that, with most spad appointments throughout the democratic world, you have to have a really deep, meaningful and trustworthy relationship with your Minister: spad to Minister, Minister to spad. At the very least, there probably has to be a knowledge of the person before they are appointed. I do not know if a political appointment like that can be pushed through the churn of a recruitment process where there will be losers.

If you are a Minister, you may have racked your brain about the expertise in the country on a certain subject, such as energy. I am interested in energy, and I know a lot of people and players in the energy game. Imagine that I am a Minister, and I ask one person, "Do you want to be my spad? I think you will bring something to it", and he says, "No, I do not want to go anywhere near it". Then you go to someone else and ask them, until somebody says yes. A Minister will not want to advertise, "I am looking for a spad, please roll up".

Ms Huston: It is one of the difficulties, because of what is referred to as the "pool". Where do you find these people? How do you get them to come forward? Even the previous code said that there should be a selection of candidates for the Minister to consider. The Minister was supposed to consider "candidates". So, even back then, there was an expectation that there would be some sort of judgement. If that is seen as politically impossible, and the Ministers do not want to be seen picking, then the minimum has to be some sort of written note of why this individual is meritorious enough to be paid £95,000 per year.

Mr Frew: I understand.

I will take you to the world of quangoland again. You were the Commissioner for Public Appointments, but you have demonstrated that you were not independent. You had an independent mind and an independent voice, but, ultimately, if you do not own your budget, you cannot control your budget. When someone can tighten that budget string on you, you have to question whether there is a level of independence, for fear of them taking money from you.

Ms Huston: Absolutely.

Mr Frew: That worries me, even today, about quangoland. You should have powerful influential groupings, who can do a very good job for the consumer, but, implicitly, the Department could phone them and say, "[*Inaudible*] really have the expertise". That is an implied threat of, "Be careful what you are saying. The Budget is coming up in the next year". You lose a degree of independence if you are fearful of that. My mind tells me that it is the Minister who appoints someone to quangos and boards. What was the role of the Commissioner for Public Appointments?

Ms Huston: The commissioner sets the standards, writes the code of practice for appointments and sets standards that are to be used for all relevant public appointments, which, as I said in my paper, can be complicated. The commissioner then oversees implementation, provides advice to Ministers and civil servants on how it is to be implemented, deals with complaints where the code has not been followed and audits competitions, which means that the commissioner looks at competitions to see if they comply with the code. Things have changed a bit since I was commissioner. Many of you will be aware, from any form of recruitment process nowadays, that there is often an independent person on the board or selection panel, as well as the people who work in the area. That person is there to bring independence and a fresh eye, etc. When I was commissioner, I was responsible for the allocation to panels of commissioner's assessors who would try to ensure that the code was being applied. That was another role of the commissioner. That helped *[Inaudible]* knowing what was going on at selection stage.

Mr Frew: Most selection panels come up with a pool of names.

Ms Huston: No, it was up to the Minister. If they were looking for a chairperson, for instance, the Minister could say, "I would like a pool of names" or, "I would like one name". That is a ministerial decision. Very often, it was a pool of names of people who had passed the necessary threshold by assessment, and the Minister would decide which of those people he or she wished to appoint.

Mr Frew: In my experience of boards and of working closely with some boards through my career and passions, I have been struck by the fact that you come across individuals who happen to be on a number of boards —

The Chairperson (Dr Aiken): The golden circle.

Mr Frew: — to the point at which you could ask if there was a conflict of interest.

Ms Huston: Oh, how long have you got?

Mr Frew: Is that something that you have experience of and were concerned about, even back then?

Ms Huston: It is a problem. People are convinced that certain people are sitting on lots of quangos, but it tends to be the case that they move from one quango to the next and to the next. At home, we used to play 'Guess Who?', 'Name that Quango Sitter', 'Who's got the Job this Time?' There are lots of people. Part of it comes from their experience. They are people who know how these organisations run —.

The Chairperson (Dr Aiken): I will interrupt you there. When the essential and desirable criteria for every board member seem to read as "a retired senior civil servant who happened to be at PUS grade", the only people you are going to get on those boards are retired senior civil servants at PUS grade.

Ms Huston: That is an outrageous suggestion. *[Laughter.]*

The Chairperson (Dr Aiken): Am I incorrect?

Ms Huston: It is the problem: like appoints like. That is a fundamental issue throughout recruitment selection everywhere. It is a fundamental challenge to say to the civil servants, who are normally the people drafting the criteria that the Ministers agree, "You have to stop asking for somebody who has had five years' experience sitting on a board". They will ask, "Why?". The requirement may be five years in the last 10 years, but, if you have eight years, that is too many years, and you must have experience of project management, but that is interpreted only as the Civil Service's understanding of project management. It could be about budget holding, working with government agencies and all those sorts of things. You just got the same things over and over again, and it was very difficult to get those who were doing the same thing to come up with new ideas. I used to unkindly suggest that, when an appointment was being made, they pulled the file out, blew the dust off it and just reused it. As I say, that is a little cruel, but it did feel like that sometimes. It is a real challenge to bring fresh thinking.

Mr Frew: Do you worry that there is real conflict of interest whereby some of the most powerful bodies, semi-private company relationships, could well be voting boards for their own interests?

The Chairperson (Dr Aiken): We are straying slightly off the topic here, but I will allow this one because I know exactly where you are going.

Ms Huston: There is one organisation in the construction sector in which, given its very make-up, that is unavoidable, because the people who are on it have to have specific roles in the business. There is a real issue there. It is an institutional problem; it is not the fault of the individuals. The bigger problem, to be honest, is people who do not recognise a conflict. Not only do they not recognise it, but very senior levels of the Civil Service often do not recognise it. Therefore, people were doing the most extraordinary things.

A very famous example from some years ago involved the Northern Ireland Tourist Board. There was a very large printing and publication contract for the Tourist Board, and the chairman ran a printing and publications company, and he got the contract. Not only did he get the contract, but he actually ensured that other companies were not able to apply for the contract. We had no Assembly at the time, so that made it to the Westminster Public Accounts Committee, the members of which said that they had never seen anything like it in their lives. That is a very extreme example. It did not prevent that issue moving on to other bodies either. That has been an endemic issue.

Civil servants cannot really imagine that people would do such a thing. It is a bit like we saw in some of the evidence during the RHI inquiry, where civil servants seemed to be gobsmacked that people would take advantage of financial information that happened to come their way. It has been a fundamental problem. It might be interesting to find out the views of my successor, the current commissioner, on how things are and whether they have got better.

The Chairperson (Dr Aiken): I want to take that back slightly. The big question here is coming down to whether we accept the process of using a code or we go to a statutory basis. We hear time and time again about the unique circumstances in Northern Ireland, but, across many aspects of public life in Northern Ireland, there is nearly a — I hate to use this terminology — Stockholm syndrome in that they all seem to be part of the same process. We are not really getting good thinking or fresh thinking about where we are going. It would be different if we had a much bigger pool to choose from, but we do not, so, because of the implications, we are not able to allow the normal pressures to apply.

Mr Lynch: Thanks for the presentation. The Human Rights Commission was here last week and said that one of the key issues and difficulties with the legislation is around proportionality, how you define it and what misdemeanours then fall in. We have criminal law and, if somebody breaks the law, it is fraud or whatever and there is due process. This is a very difficult one. Where do you stop in terms of proportionality?

The other question is about whistle-blowers. Sam McBride was here and he got a bag of emails from a particular party. A person could argue that — it could be two ways — they were acting in the public interest or they could be divulging internal or sensitive information. Therefore, legislation may deter people who want to highlight malpractice in any organisation or in government or involving spads. You talked about bizarre practices by a host of spads when you were watching the RHI inquiry, like many other people. What difference would legislation have made to the behaviour of those people who were dishing out information and acting on behalf of their friends?

Sue Gray was here. She has, maybe, a similar background to yourself on the appointment of a spad. She has said that this is robust and the strongest codes in these islands. All five parties were part of the negotiations for the restoration of this place and in bringing these codes about.

Ms Huston: I did not watch all the evidence, but I saw some of it, and one of the issues that were talked about was the culture within the system. That is fundamentally what has to change.

If we had a culture that respected compliance and was outraged, as the public were, about what was going on in Departments, we would not need legislation that becomes so minute and detailed. The legislation being put forward has been brought in because it appears that decency and doing the right thing were thrown to the side by some people for whatever reason. They just started to behave like that and nobody ever seemed to say, "Stop it". The guardians of the system, the civil servants, were there, in many ways, as the white knights, more Caesar's wife and above suspicion. Therefore, they were supposed to say, "Look, this can't go on. Minister, do you know what your special adviser is

doing? We can't work with him". That just did not seem to happen. Things just snowballed out of control. The difficulty is that, perhaps, to enforce proper, respectable, decent behaviour within senior-paid public-sector staff, there has to be very detailed legislation.

I mentioned at the end of my paper to you that I am from a tax background. I am an accountant in my day job. I used to be a tax inspector, so I am soaked in the minutiae of tax legislation, which is all written because somebody came up with a loophole. I am not one of those smart alec tax consultants who think of a way of getting past the law. The Government then have to issue loads more statute to try to stop it. Every time they try to simplify the tax law, it actually ends up longer because people think of more ways of getting round things.

This is where this has come from: an attempt to introduce clear standards that everybody would expect people to follow but that are just more honoured in the breach than in the observance. That is the difficulty.

Mr Lynch: Would you not agree that the new codes are clearer standards, and that it is about culture? It is not often about the codes; it is about the behaviour of the spad.

What about proportionality and whistle-blowing?

Ms Huston: The whistle-blowing is a problem. If I understand it correctly — please tell me, if I have picked this up wrongly — the issue is the fear that a special adviser releases information because they feel that it needs to go into the public domain for good reason, and what happens if the legislation then catches them. Presumably, a public interest defence, or whatever the appropriate phraseology would be, will get past that.

I have seen some of the suggestions that a junior civil servant will not mind going through all these levels, and that will be fine and make them happy about whistle-blowing. From what I have seen of how things operate, civil servants will still be very nervous, whatever the legislation says and however much protection is put in formally on whistle-blowing. If you are a relatively junior clerk, a clerical member of staff, you will not want to go, as is suggested, to the next person up in the management team, because all that will happen is that things may well not go well, or you will fear that things will not go well, and so on and so on.

Therefore, one would not want to do anything that would put people off having an opportunity to go out to the public domain. It is a shame if it has to be the media. I gather that the individual in the RHI inquiry wished that she had just gone to the media, because she fell into the morass that can be the Civil Service response to something difficult.

I do not have straight answers to it. It is unfortunate that we seem to live in a political culture where legislation like this needs to be drafted. You should just do the right thing. "Tell the truth and shame the devil", granny said, and, I think, that is it.

Mr Lynch: I want to make one more point. You talked about £93,000. Even the remuneration has completely changed. I have the document in front of me: up to £54,000; £55,000 to £69,999; and £70,000 to £85,000. It is not £93,000.

Ms Huston: *[Inaudible.]*

Mr Allister: It was £95,000.

Mr Lynch: The codes have been updated, and I do not have evidence that too many people are on £85,000. Most are in the middle range.

Mr Allister: There are four.

Mr Lynch: The codes have been updated and strengthened. What we hear from the permanent secretary is that she is keeping a good eye on this and that there seems to be better working and cultural change.

Ms Huston: I hope so.

Mr Catney: Thanks very much for coming here today. How can we make the Bill as strong as possible and the code mandatory? The more that I hear, the more that I favour a legislative approach and for the standards expected to be included in the Bill. Are you of the same thinking?

Ms Huston: I am, yes. My experience is that codes are there for guidance and to be applied. Unfortunately, that does not happen. Time is spent working out how to get around codes. I once upset the head of the Civil Service terribly with the example of a phone call made to my office, when somebody said, "We know whom we want to appoint. Now how do we get around that code?".

Mr Catney: That is enough for me. Thanks. *[Laughter.]*

The Chairperson (Dr Aiken): That is about it.

Mr McHugh: Tá faillte romhaibh anseo inniu fosta. You are very welcome. I have a couple of points. Much of the discussion has been about appointments. I do not think that an appointment requires legislation. When one talks about what was happening with spads and their roles, particularly what we heard in the RHI inquiry and so on, that was not as a result of their appointment. As you confirmed today, and I totally agree with you, it was a culture, especially in a particular party, where what went on seemed to be the name of the game. Irrespective of whether a code of practice or legislation is in place, if that culture persists, you are dealing with exactly the same problem. That is what has to change.

If anything, from your former role as a tax inspector, you confirmed that in one respect when you said that, immediately after legislation was passed, a particular taxation practice was established and that many's the tax accountant was looking at ways to circumvent it. That was the culture, so that circumvention required additional legislation. It is a never-ending process. In one way, whether it is a code of conduct or legislative practice, one can be as good as the other, but, if the culture persists, it undermines both. It is the culture that has to be addressed.

I would like to think that, in the case of the North of Ireland, with the re-establishment of the Government, and given our experience when the Assembly was closed, people have recalibrated their modes of practice. Hopefully that culture will not continue to exist, but there is always a doubt that it will remain.

Ms Huston: You mentioned appointments. I spoke about appointments because that is my particular area of expertise and experience. Sir Patrick brought up the fact that appointments were not following the code of practice at the time. Ministers were quite open about that: that was how it was done. Civil servants accepted that that was how it was done, even though permanent secretaries certainly knew better and should have been keeping notes on how things were being done. We then found out, however, that they did not keep notes on anything.

It is a flow chart. A certain person is put there, and this is how he or she behaves. We start with this: how do we find the individual, and how does he or she get the job? That is where the appointment issue comes from — it is important that that is clear — and then the behaviour comes afterwards.

There is no answer to the problem of legislating to try to change. When does one take the risk? In 30 years in the taxation world, no one has ever come to me and offered to pay more tax *[Laughter.]* Taxation is something that would not happen if we just left it to be voluntary. People understand why they pay tax, what it does and what it provides for in society, but it is still very hard for them to write the cheque to HMRC or have it taken out of their monthly salary.

It is a real issue, and things got so bad that the Assembly has to be seen to do something. I know that this is something. There is always that potential as well. Can we risk another five years — perhaps — of things going wrong again, after which, I fear, the public would just say, "A plague on all your houses"? That is why you have to do something and see what happens from there. After a few years with this, things could perhaps be rolled back a bit. Unfortunately, at this stage, I think that legislation is your only hope, but I understand its dangers and problems.

Mr McHugh: You said that no one goes to the tax accountant looking to pay more tax, but it is not the people who are going to the tax accountant who are the problem. The problem is the culture in tax accountancy. I say that even though my son is a tax accountant in another jurisdiction. I return to the point that it is the culture that is the important issue to be addressed.

Ms Huston: I used to sit on the other side of the desk as well, and nobody ever wanted to come to see me when I was a tax inspector either. *[Laughter.]* Oddly enough.

Mr McHugh: I am sure. Thank you.

The Chairperson (Dr Aiken): Thanks, Maolíosa. Before we finish, you summed it up when you talked about tax. When we talk about the difference between tax avoidance and tax evasion, as somebody whose spouse worked for a very large member of the Big 5, I could never work out the difference between avoidance and evasion.

Ms Huston: The previous Chancellor could not either. *[Laughter.]*

The Chairperson (Dr Aiken): Exactly. It comes down to this: it is the avoidance bit when we are looking at the code and the evasion bit when we are looking at the legislation. We have reached the point at which we do that.

Felicity, thank you very much for your evidence and for coming in on such a warm day. If we have any follow-up questions, can we send them to you to get a response?

Ms Huston: Absolutely. You know where to find me.

The Chairperson (Dr Aiken): Thank you very much. It has been a pleasure to see you again.

Ms Huston: Thank you. I will be glad to get out of this rather warm room.