



Northern Ireland  
Assembly

Report by the Assembly Commissioner for Standards  
on a complaint against Paul Givan MLA,  
Gary Middleton MLA, Edwin Poots MLA,  
Gordon Lyons MLA and Michelle McIlveen MLA  
by Mr Conor Quinn

Assembly-Confidential

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## Summary

This is a report of my investigation following a complaint received on 10 September 2021 from Mr Conor Quinn alleging that the then First Minister Paul Givan MLA, Junior Minister Gary Middleton MLA and Ministers Gordon Lyons MLA, Michelle McIlveen MLA, and Edwin Poots MLA breached the Ministerial Code of Conduct paragraph 1.5 (v) when they failed to attend North South Ministerial Council ("NSCM") meetings, in line with the statement made by their party leader, Sir Jeffrey Donaldson MP, that they would withdraw from North South bodies.

I commenced my investigation on 20 October 2021. Interviews with all DUP Ministers and the former deputy First Minister were carried out between 31 January 2022 and 25 March 2022 and further documentary evidence was sought from all DUP Ministers, much through The Executive Office (TEO).

After considering all of the evidence, including interviews under oath and documentation requested, some under notice, it is clear that the unlawful withdrawal from Strand Two structures including non-attendance at NSMC meetings and failing to engage with the NSMC Secretariat in respectful and timely way in accordance with Section 52A(4) of the Northern Ireland Act 1998 was in breach of the Seven Principles of Public Life which Ministers *must* adhere to *at all times*, including promoting and supporting these principles by leadership and example. In choosing to act unlawfully, they set a bad example to their Assembly colleagues and the wider society that they are somehow above the law, which ultimately could serve to lower standards within and outside the Assembly and diminish public trust and confidence in the Assembly.

I am not convinced by the defence put forward by the majority of DUP Ministers that meetings were not of a scheduled nature, therefore there were no meetings to attend. The failure and unwillingness of the DUP Ministers to agree agendas, dates and/or to nominate ministers and replacement ministers shows a lack of individual ownership and a lack of leadership. It is my view that there was no intention by the DUP Ministers to agree agendas, dates or to nominate ministers because they were observing and adhering to the DUP leader's publicly-announced withdrawal from participation in North-South bodies on 9 September 2021 which superseded the 2 February 2021 five-point plan articulated by the former DUP leader and FM Arlene Foster.

The DUP Ministers subject to this complaint, through their actions and choices, breached paragraphs 1.5 (iv) and 1.6 of the Ministerial Code of Conduct by their lack of leadership, selflessness, openness and accountability.

## Timeline of Investigation

10 Sept 2021	Complaint received from Mr Conor Quinn
1 Nov 2021	Invitation to interview letter sent to all DUP Ministers
16 Nov 2021	Request to suspend due to JR received
23 Nov 2021	Request for information sent to TEO
18 Jan 2022	Interview reminder letters sent to all DUP Ministers
31 Jan 2022	Interview Gordon Lyons MLA
4 Feb 2022	Interview Paul Givan MLA
4 Feb 2022	Interview Gary Middleton MLA
4 Feb 2022	Requested information form NSMC Secretariat
10 Feb 2022	Interviewed Edwin Poots MLA
10 Feb 2022	Requested information form The Executive Office (TEO)
11 Feb 2022	Received response from NSMC Secretariat
17 Feb 2022	Interviewed Michelle McIlveen MLA
3 March 2022	Received response from TEO
7 March 2022	Requested under notice documents from all DUP Ministers Private Offices and TEO
25 March 2022	Interviewed Michelle O'Neill MLA
2 April 2022	Received requested evidence from Private Offices and TEO

## Background

1. I received a complaint from Mr Conor Quinn on 10 September 2021, alleging that Democratic Unionist Party ("DUP") Ministers which included then First Minister Paul Givan MLA and Junior Minister Gary Middleton MLA and Ministers Gordon Lyons MLA, Michelle McIlveen MLA, and Edwin Poots MLA, breached the Ministerial Code of Conduct paragraph 1.5 (v) when they failed to attend the North South Ministerial Council ("NSMC") meetings. This was in the context of an announcement by the DUP party leader, Sir Jeffrey Donaldson MP, on 9 September 2021 that the party would "immediately withdraw from the structures of Strand Two of the Belfast Agreement relating to North/South arrangements."

## Investigation

2. In the course of my investigation, I carried out the following:
  - Reviewed the complaint and evidence provided by Mr Conor Quinn<sup>1</sup>
  - Interviewed former First Minister Paul Givan MLA, former Junior Minister Gary Middleton MLA and Ministers Gordon Lyons MLA, Michelle McIlveen MLA, and Edwin Poots MLA

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<sup>1</sup> Document 1

- Interviewed former deputy First Minister Michelle O'Neill MLA
  - Requested and reviewed all documentation in relation to NSMC meetings from The Executive Office (TEO) and from Ministers' Private Offices
  - Reviewed Hansard of 14 September Assembly Plenary session
3. A copy of the complaint and other documents I have relied on in reaching my decision are at Annex A.

### **Allegations contained in complaint**

4. Mr Quinn alleges that the DUP Ministers are in breach of the Ministerial Code of Conduct paragraph (v) 'Ministers must at all times *comply with this Code* and with rules relating to the use of public funds' by their failure to attend NSMC meetings'.
5. Paragraph 1.5 (v) 'comply with this code' engages paragraph 1.5 (iv) which states the Ministers must at all times follow the Seven Principles of Public Life set out by the Committee on Standards in Public Life'; the seven principles are set out in paragraph 1.6.<sup>2</sup>

### **Issues arising**

#### **Interpretation of Paragraph 1.5(v)**

6. Mr Quinn contended that paragraph 1.5 (v) of the Ministerial Code of Conduct acts as something akin to a backdoor route to providing me with the vires to address compliance with the wider Ministerial Code, thereby bringing into play the provisions of the wider code that touch directly on the requirements vis a vis the operation of the NSMC. This is unlikely to be the correct interpretation, as it would fundamentally undermine the legislative intention to restrict my remit to the Ministerial Code of Conduct (paras 1.5 and 1.6). Therefore, 'this code' at paragraph 1.5 (v) is interpreted as meaning the Ministerial Code of Conduct and in respect of this complaint is confirmed to be paragraphs 1.5 and 1.6 only.

#### **Date of complaint**

7. The complaint itself has a crystallisation date of 7<sup>th</sup> November 2021—the last date of Mr Quinn's complaint correspondence.<sup>3</sup> This date is important, as external legal advice indicates that any events and matters arising after 7 November, while arguably relevant to the investigation and report to the extent that they have evidential relevance, cannot be considered in relation to a breach of the Ministerial Code of Conduct. Therefore, the window of this complaint relates to NSMC meetings from 9 September 2021 to 7 November 2021.

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<sup>2</sup> <https://standardscommissionerniassembly.org/wp-content/uploads/2021/06/Northern-Ireland-Ministerial-Code.pdf>

<sup>3</sup> Document 1c



## Findings of Fact

8. I found the following facts established to the required standard of proof:

- i. Mr Poots MLA did not attend the NSMC meetings on Agriculture on 29 September 2021, Environment on 15 October 2021, and Aquaculture and Marine on 15 October 2021 and asserts that he was not asked to attend. Mr Poots did not make attempts to nominate an alternative minister and did not submit the nomination forms.
- ii. Ms McIlveen MLA did not attend the NSMC Special EU Programmes Body meeting on 22 October 2021 and asserts that she hadn't been nominated by the First Minister to attend. Ms McIlveen did not make attempts to nominate an alternative minister and did not submit the nomination form.
- iii. Mr Middleton MLA did not attend the NSMC Language Body meeting on 1 October 2021 and asserts that he could not attend due to family commitments. Mr Middleton did not make attempts to nominate an alternative minister and did not submit the nomination form.
- iv. Mr Lyons MLA did not attend the Tourism NSMC meeting on 10 November 2021 and asserts that no meeting was agreed. Mr Lyons did not make attempts to nominate an alternative minister and did not submit the nomination form.
- v. Former FM Givan MLA did not nominate any replacement DUP Ministers for NSMC meetings on the following dates: Agriculture 29 September 2021, Language Body 1 October 2021, Environment 15 October 2021, Aquaculture and Marine 15 October 2021, and Tourism 10 November 2021.<sup>4</sup> Mr Givan's reason for not doing so was that the meetings were never scheduled.
- vi. The window of this complaint is from 9 September 2021 to 7 November 2021.
- vii. Former deputy First Minister O'Neill MLA wrote to former First Minister Givan on every occasion requesting he nominate a Unionist Minister to attend NSMC meetings.
- viii. Since the inaugural meeting of the NSMC, the custom and practice has been for Civil Service officials to make the practical arrangements for scheduling and arranging meetings.

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<sup>4</sup> The meeting of 10<sup>th</sup> November, while it postdates the complaint, is evidence of a pattern of behaviour which occurred throughout the period of September – November.

## Evidence

### Background and context

9. The establishment of the North-South Ministerial Council arose from the Good Friday/Belfast Agreement. The Northern Ireland Act 1998 (“the 1998 Act”) makes provision for NSMC meetings and arrangements. Paragraph 2 of Strand Two of the Belfast Agreement makes it clear that participation in NSMC meetings is to be “one of the essential responsibilities” attaching to a ministerial post, and that alternative arrangements are to be made in the event of a relevant minister not participating or not being able to participate.
10. On 9 September 2021, the leader of DUP, Sir Jeffrey Donaldson MP, made a public speech<sup>5</sup> where he set out a number of steps to be taken by the DUP in response to its opposition to the Northern Ireland Protocol, the agreement made between the United Kingdom and the European Union in relation to the UK’s withdrawal from the EU. One of the steps was to “immediately withdraw from the structures of Strand Two of the Belfast Agreement relating to North South arrangements”. This included the withdrawal from North South Ministerial Council meetings.
11. My investigation is not concerned with the political issues relating to the Northern Ireland Protocol, nor with the merits or otherwise of the DUP’s opposition to it. My investigation is focussed on Mr Quinn’s allegations that the DUP Ministers subject to this complaint breached the Ministerial Code of Conduct, namely the Seven Principles of Public Life, by observing and adhering to the “wider boycott” of the NSMC and failing to attend NSMC meetings.

### NSMC Secretariat: Administrative processes and scheduling of meetings

12. A full list of NSMC meetings including reasons for their cancellation can be found in the Appendix.<sup>6</sup>
13. A flow chart has been obtained from the NSMS Secretariat outlining the structures and processes relating to scheduling meetings of North-South bodies.<sup>7</sup>
14. Section 52A(4) of the 1998 Act states that each appropriate Minister must notify the First Minister and the deputy First Minister, as soon as reasonably practicable and in any event *no later than ten working days before the date of the meeting*, of what they intend to do<sup>8</sup>. The stipulation of a time frame signifies the importance of responding in a timely manner and the importance of the NSMC structures and processes. Section 52A(10) makes it clear that it is ten working days (or two weeks)

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<sup>5</sup> Document 2

<sup>6</sup> Document 3

<sup>7</sup> Document 4

<sup>8</sup> <https://www.legislation.gov.uk/ukpga/1998/47/section/52A>

in advance of any meeting.<sup>9</sup> This provides notification to the FM and dFM and allows them time to make alternative arrangements.

15. Section 52A(5) imposes a duty upon the First Minister and deputy First Minister to nominate someone to attend in place of the appropriate Minister<sup>10</sup>:

“If the appropriate Minister gives a notification under subsection (4) (c) (or if the First Minister and the deputy First Minister receive no notification from him, under subsection (4)), the First Minister and deputy First Minister acting jointly shall nominate a Minister or Junior Minister.

- (a) To attend the meeting in place of the appropriate Minister; and
- (b) To participate in the meeting so far as it relates to matters for which the appropriate Minister has responsibilities

### High Court Judicial Review

16. During the course of this investigation, a judicial review was taken by Mr Sean Napier against the same DUP Ministers subject to this complaint in relation to the stated withdrawal from the NSMC.
17. To be clear, this investigation is not concerned with the legal parameters of the boycott per se, but rather its relevance to the current investigation into a breach of the Ministerial Code of Conduct and in particular the Seven Principles of Public Life. The standard of proof for my investigation is the balance of probabilities—i.e. whether it is more likely than not that the acts or omissions of the DUP Ministers subject to this complaint were in breach of their duty under their Code of Conduct to “*at all times follow the Seven Principles of Public Life*”.
18. In relation to the judicial review, the same Ministers did not seek to defend the legality of their withdrawal from the NSMC, and in his 10 October 2021 judgement, Scofield J made a declaration that the DUP’s withdrawal from the NSMC was and is unlawful.

*“The respondents’ decision to withdraw from the North-South Ministerial Council was and is unlawful because it frustrates, is contrary to, and is in breach of the legal duties and responsibilities contained within Part V of the Northern Ireland Act 1998 and, specifically, sections 52A and 52B.”<sup>11</sup>*

19. Scofield J further stated:

*“The present situation where NSMC meetings are unable to proceed because of the circumstances described above is, in my view, plainly a result of an unlawful failure to comply*

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<sup>9</sup> <https://www.legislation.gov.uk/ukpga/1998/47/section/52A>

<sup>10</sup> <https://www.legislation.gov.uk/ukpga/1998/47/section/52A>

<sup>11</sup> <https://www.judiciaryni.uk/sites/judiciary/files/decisions/Napier%27s%20Sean%29%20Application%20for%20Judicial%20Review%20and%20in%20the%20matter%20of%20decisions%20of%20the%20First%20Minister%20of%20NI%20and%20Others.pdf> [at para 34]

*with obligations set out in the Northern Ireland Act 1998. Its provisions are designed to avert just such a situation. There is a legal obligation on an appropriate Minister to participate in a meeting of the Council in relation to a matter on the agenda for which they have responsibility; or, at the very least, to seek to nominate another Minister to take their place. Where they do not do so, the First Minister and deputy First Minister should be informed in a timely manner and should make an appropriate nomination, or nominations, to allow the meeting to go ahead. All of these powers and duties should be exercised consistently with the purpose and intention of the governing statutory regime, pursuant to the well-known Padfield principle.”<sup>12</sup>*

*“... it is unsurprising that the respondents in these proceedings have not sought to defend the legality of their approach when judged against the legal framework of Part V of the Northern Ireland Act.”<sup>13</sup>*

20. Twice the High Court expressed its view; the first time making a declaration that the boycott was/is unlawful and the second time, in December 2021, reiterating that:

*“Almost two months have passed since the court made the earlier declaration in these proceedings. The respondents have continued on the course which they conceded was unlawful. A variety of business on matters of cross-border interest has not been able to be progressed in the meantime. That is because Ministers are acting in plain breach of what they know to be their legal obligations to participate in the Strand Two structures.”<sup>14</sup>*

21. Scofield J further commented, “By their actions which are the subject of these proceedings the respondents, and principally the first respondent by his actions following the grant of the court’s declaration in October, are in abject breach of their solemn pledge.”<sup>15</sup>
22. Soon after the October High Court judgement, the Head of the Civil Service, Ms Jayne Brady, wrote to the respondent Ministers reminding them of the declaration the court made and the court’s expectation for “*the respondents to comply with their legal obligations*”.<sup>16</sup>

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<sup>12</sup><https://www.judiciaryni.uk/sites/judiciary/files/decisions/Napier%27s%20%28Sean%29%20Application%20for%20Judicial%20Review%20and%20in%20the%20matter%20of%20decisions%20of%20the%20First%20Minister%20of%20NI%20and%20others.pdf> [para 34]

<sup>13</sup> Ibid [para 35]

<sup>14</sup><https://www.judiciaryni.uk/sites/judiciary/files/decisions/Napier%20%28Sean%29%20Application%20for%20Judicial%20Review.pdf>

<sup>15</sup><https://www.judiciaryni.uk/sites/judiciary/files/decisions/Napier%20%28Sean%29%20Application%20for%20Judicial%20Review.pdf> [para 80]

<sup>16</sup> Document 8

## Ministerial Code of Conduct

23. The Seven Principles of Public Life, set out by Lord Nolan in 1995 in the first report of the Committee on Standards in Public Life, form part of the Ministerial Code of Conduct (para 1.6) which is of direct relevance to this complaint leading from para 1.5 (iv).<sup>17</sup>
24. The Committee of Standards in Public Life stated in their latest publication on leadership:
- “Adherence to the Seven Principles helps ensure that elected representatives make controversial and difficult policy decisions in the public interest and that they are accepted by the majority of citizens.”<sup>18</sup>
25. The definition of leadership used in this investigation (as per the Ministerial Code of Conduct at para 1.6) states that
- “Holders of public office should promote and support *these principles* by leadership and example”.
26. A refined and updated definition was recently published by the Committee on Standards in Public Life. While it is not the definition being used for this investigation, it offers readers of this report the most up-to-date definition of leadership in the context of public life:
- “Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs”.<sup>19</sup>
27. The main principles identified as being engaged in the context of this complaint are:

**Leadership:** Holders of public office should promote and support *these principles* by leadership and example.

**Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**Openness:** Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**Selflessness:** Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.

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<sup>17</sup> <https://standardscommissionerniassembly.org/wp-content/uploads/2021/06/Northern-Ireland-Ministerial-Code.pdf>

<sup>18</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1029944/Upholding\\_Standards\\_in\\_Public\\_Life\\_-\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1029944/Upholding_Standards_in_Public_Life_-_Web_Accessible.pdf)

<sup>19</sup> <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

## **Interviews with DUP Ministers<sup>20, 21, 22,23,24</sup>**

28. Interviews with all five DUP Ministers demonstrate that to varying degrees they contend that while there was a decision to withdraw from the NSMC meetings from the time of Sir Jeffrey Donaldson's speech on 9 September 2021, the reasons for difficulties in holding any NSMC meetings relatable to the DUP Ministers were unconnected with the boycott and instead could be characterised as being of administrative/bureaucratic or a not "actually scheduled" nature.
29. Repeatedly, the individual Ministers rejected any notion that they were under direction not to attend. Similarly, they suggested that notwithstanding the decision to withdraw from NSMC meetings having been announced by their party leader, for any particular NSMC meeting the DUP Minister involved did not refuse to, or even merely fail to, attend on the basis of the boycott. Instead, the answer suggested is that the meetings had not been agreed or formally scheduled (or perhaps that non-attendance was due to legitimate unavailability that was properly communicated *up the line* with responsibility for what should be done in response lying elsewhere).
30. All Ministers, with the exception of Mr Lyons<sup>25</sup>, accepted that the withdrawal from the NSMC was unlawful, as per the court's declaration.

### **Edwin Poots MLA**

**Agriculture Sectoral NSMC Meeting, 29 Sept 2021: Edwin Poots MLA Lead Minister**

**Environment Sectoral NSMC Meeting, 15 Oct 2021: Edwin Poots MLA Lead Minister**

**Aquaculture & Marine Sectoral NSMC Meeting, 15 Oct 2021: Edwin Poots MLA Lead Minister**

31. Mr Poots accepted that the withdrawal by the DUP from the NSMC is/was unlawful, as per the court's decision.
32. Mr Poots stated in his interview that the reason he did not attend the above meetings was because he wasn't asked to attend.

"Well, as far as I'm concerned, if I have to go to a North-South meeting in my responsibility as a Minister, the meeting has to be approved by the First and deputy First Minister, and an agenda has to be agreed, and then you attend the meetings on that basis."<sup>26</sup>
33. On 5 August Minister Poots' office confirmed to the NSMC Secretariat Minister Poots' availability for the 29 September Agriculture NSMC meeting and similarly on 31 August confirmed Minister

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<sup>20</sup> Document 9

<sup>21</sup> Document 10

<sup>22</sup> Document 11

<sup>23</sup> Document 12

<sup>24</sup> Document 13

<sup>25</sup> Document 10

<sup>26</sup> Document 9 pg 2

Poots' availability for the 15 October Environment and Aquaculture & Marine meetings.<sup>27,28</sup> Following on from the confirmation of these dates, the NSMC Secretariat sent formal nomination forms for both sets of meetings to Mr Poots' Private Office.<sup>29</sup> They were then forwarded directly to Mr Poots from his Private Secretary. On both occasions, ten days prior to the meeting date, reminder emails with nomination forms attached were sent by the NSMC Secretariat to the Private Office<sup>30</sup>; again, these were forwarded directly to Mr Poots via his Private Secretary.<sup>31</sup> Mr Poots did not reply to these nomination requests. However, he appears to clear a statement on 15 October in relation to the 15 October meetings, stating: "The Minister considers that no meeting is taking place and as a result no departmental support will be required"<sup>32</sup>.

34. Mr Poots was aware of the difficulties arising from the DUP's stated withdrawal from the NSMC and spoke to this point at the NI Assembly Plenary session on 14 September<sup>33</sup>:

**Mrs Barton:** Minister, your party leader has made it clear that you will not be participating in future North/South meetings. Will you clarify whether that includes the attendance of Junior Minister, Gary Middleton, at the Specialised Committee meeting on the implementation of the protocol as part of the Joint Committee?

**Mr Poots:** The party leader has made his statement, and the party leader will stand over his statement, as will the Ministers. That will cause problems, and we understand that. It will cause problems for other parties, because the basis of the agreement under which we are in here is that we engage in North/South meetings and in the North/South infrastructure. The decision has, however, been taken that we cannot have the normality of relationships North/South whilst we have that disturbance in the east-west relationships. The Belfast Agreement was built on relationships across these islands, not just one island. It is therefore incumbent on us to reflect that in what we do and to make sure that we can get to a situation in which we are again ensuring that relationships across these islands are maintained in a constructive way.

#### **Gordon Lyons MLA**

#### **Tourism Sectoral NSMC Meeting, 10 November 2021: Gordon Lyons MLA Lead Minister**

35. Mr Lyons did not accept that the withdrawal by the DUP from the NSMC is/was unlawful as per the court's declaration.

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<sup>27</sup> Document 14a, 14b

<sup>28</sup> Document 15

<sup>29</sup> Document 16

<sup>30</sup> Document 17a-c

<sup>31</sup> Document 18

<sup>32</sup> Document 19a, 19b

<sup>33</sup> <http://data.niassembly.gov.uk/HansardXml/plenary-14-09-2021.pdf> [pg 32]

36. Mr Lyons' non-attendance notification in relation to the Tourism NSMC pre-dates 10 November (and therefore falls within the timeframe of this complaint), as ministers must notify within 10 days of the meeting which requires notification well before the 7 November 2021 cut-off date for this complaint.
37. Mr Lyons did not attend the Tourism meeting scheduled for 10 November. His reason for non-attendance given at interview was that "those meetings had not been agreed"<sup>34</sup>. He further confirmed he was not taking his lead from anyone and that he 'makes his own decisions'.<sup>35</sup>
38. When asked if he would have attended had his diary been clear and had the agenda been agreed, Mr Lyons responded "No, I wouldn't have attended" and "No, because of the political situation that we found ourselves in and at this time, we would not have found agreement to meet."<sup>36</sup>
39. When asked if there was a strategy prior to 9 September in relation to non-attendance, Mr Lyons responded that there was no strategy prior to 9 September.<sup>37</sup>
40. Documentary evidence received shows that the NSMC Secretariat sent a nomination form to Minister Lyons' Private Office on 18 October and a reminder on 28 October regarding the nomination form which was required to be completed<sup>38</sup>. A response was sent on 28 October by Minister Lyons' Private Office to the NSMC Secretariat to say Minister Lyons was away on international business and would not be attending<sup>39</sup>. However, the response did not contain the nomination form as requested. Thereafter, on 3 November 2021, the NSMC Secretariat wrote to the FM and dFM to inform them that Minister Lyons had not formally notified them of his intentions to attend (or not attend) the 10 November meeting.<sup>40</sup>
41. There is correspondence relevant to this complaint generated after the date of complaint in this case. On 8 November, Ms O'Neill wrote to Mr Givan requesting that he nominate a Unionist Minister to attend the Tourism NSMC sectoral meeting.<sup>41</sup> Mr Givan responded on 9 November outlining his view that these meetings are not scheduled meetings in law.<sup>42</sup> Further correspondence took place between them on 10 and 11 November.<sup>43</sup>

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<sup>34</sup> Document 10, p. 7

<sup>35</sup> Document 10, p. 15

<sup>36</sup> Document 10, p. 14

<sup>37</sup> Document 10, p. 12

<sup>38</sup> Document 20

<sup>39</sup> Document 21

<sup>40</sup> Document 22

<sup>41</sup> Document 23

<sup>42</sup> Document 24

<sup>43</sup> Document 25a-c



42. On 9 November, the day before the meeting and still having no confirmation of Mr Lyons' attendance, the NSMC Secretariat informed the FM and dFM that the Irish government had stood down their ministers and freed their diaries and would not be attending.<sup>44</sup>

**Michelle McIlveen MLA**

**Special EU Programmes Body, 22 Oct 2021: Michelle McIlveen MLA Accompanying Minister  
Education Sectoral Meeting, proposed 3/10 Nov 2021: Michelle McIlveen MLA Lead Minister**

43. Ms McIlveen accepted that the withdrawal by the DUP from the NSMC is/was unlawful, as per the court's declaration.
44. Ms McIlveen did not attend the 22 October Special EU Programmes Body NSMC meeting. She stated at interview her reason for this was that she hadn't been nominated by the First Minister.<sup>45</sup>
45. Ms McIlveen said that she was aware that her name was "in the mix" for that meeting, but wasn't clear as to "what my position was with regards to the First Minister."<sup>46</sup> When asked if not knowing what the First Minister was going to do was due to the boycott, Ms McIlveen responded "Well, I guess that might be the case, but obviously there is an informal process around all of this in advance of meetings then being scheduled."<sup>47</sup>
46. Documentary evidence shows, having agreed availability for the meeting on 22 October, the NSMC Secretariat sent the nomination form for completion to Minister McIlveen's Private Office on 30 September.<sup>48,49</sup> On 3 October, Minister McIlveen's Private Secretary sent the nomination form directly to Ms McIlveen.<sup>50</sup> A reminder email from the NSMC Secretariat was sent on 8 October to Ms McIlveen's office.<sup>51</sup> When the nomination form was not completed and returned to the NSMC Secretariat, they sent notification to the FM and dFM that no nomination had been made.<sup>52</sup> On 21 October, the day before the meeting, the NSMC (South) informed the NSMC (North) that they had cleared the meeting from the Irish Minister's diaries and they would not be attending.<sup>53</sup>
47. In relation to the proposed dates of 3 and 10 November for the Educational Sectoral meeting, there were "Issues Meetings" held between Ms McIlveen and the Permanent Secretary (Education). Documentation relating to the issues meeting on 27 September shows it had been agreed that

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<sup>44</sup> Document 26

<sup>45</sup> Document 11, p. 2

<sup>46</sup> Document 11, p. 4

<sup>47</sup> Document 11, p. 4

<sup>48</sup> Document 28

<sup>49</sup> Document 27

<sup>50</sup> Document 29

<sup>51</sup> Document 30

<sup>52</sup> Document 31

<sup>53</sup> Document 32

“Officials would not respond to any invitation from NSMC Secretariat for NSMC Education Sectoral working group.”<sup>54</sup> The minutes from an ‘Issues Meeting’ on 11 October list as an action point “Minister to provide response to NSMC”.<sup>55</sup> I see no evidence of any response provided by Ms McIlveen, and the Education Sectoral meeting did not go ahead on either of the proposed dates as “arrangements did not advance to the point of agreeing a date for the meeting”.

**Gary Middleton MLA**

**Language Body NSMC Sectoral Meeting, 1 October 2021: Gary Middleton MLA Accompanying Junior Minister**

48. Mr Middleton accepted that the withdrawal by the DUP from the NSMC is/was unlawful, as per the court’s declaration.
49. Mr Middleton did not attend the Language Body NSMC meeting on 1 October 2021. He stated at interview the reason for his non-attendance was a family issue/possible diary clash.<sup>56</sup>
50. Mr Middleton stated at interview that his reasons for not attending were not party-political reasons<sup>57</sup> and confirmed that he was ‘nominated’ to attend the meeting but wasn’t available. When asked if he had been available to attend (hypothetically) would he have attended irrespective of the position announced by the party leader, he replied “Yes”.<sup>58</sup>
51. The documentary evidence obtained shows that the NSMC was advised on 16 September that Mr Middleton was not available to attend<sup>59</sup>; this was within the ten-day time frame. However, no nomination form was completed, nor was there any evidence that Mr Middleton himself attempted to find a replacement minister. While Mr Middleton stated at interview that he could not attend due to family reasons, no evidence was provided of this stated reason within the documentation received.
52. On 20 September, the NSMC Secretariat notified the FM and dFM of the failure to nominate<sup>60</sup> and emails show that the Private Secretary to the FM sought internal advice from the DUP requesting clarification on the FM’s response. A senior advisor replied to the Private Secretary saying “Best to say that you do not expect that the sub will be cleared today”<sup>61</sup>.

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<sup>54</sup> Document 33

<sup>55</sup> Document 34

<sup>56</sup> Document 12

<sup>57</sup> Document 12, p. 3

<sup>58</sup> Document 12, p. 7

<sup>59</sup> Document 35

<sup>60</sup> Document 36

<sup>61</sup> Document 37

### **Former First Minister Paul Givan MLA**

53. Mr Givan accepted that the withdrawal by the DUP from the NSMC is/was unlawful, as per the court's declaration.
54. Mr Givan asserted at interview that he gave no direction to any of the DUP ministers in relation to not attending NSMC meetings.<sup>62</sup> He stated "I don't regard the non-participation in the North South Ministerial Council as a boycott, because we didn't not attend meetings, because those meetings were never scheduled".<sup>63</sup> He asserted that there were no "legally scheduled meetings".
55. Mr Givan did not seek replacement ministers for any of the meetings. Ms O'Neill wrote to Mr Givan on every occasion requesting that he nominate a replacement Ministers<sup>64</sup>, but he did not make any alternative nominations.
56. Mr Givan agreed two meetings: Health/Food Safety Promotion on 14 October and Inland Waterways on 3 November; neither of those meetings included a DUP Minister as a named attendee.

### **Former deputy First Minister Michelle O'Neill MLA**

57. In my interview with Ms O'Neill, I asked her if processes to schedule meetings had changed in any way, to which she replied "No. nothing"<sup>65</sup> and that "...the custom, the practice, the procedure, all surrounding these meetings has remained the same since the Good Friday Agreement, and all the other 300-plus meetings that actually occurred have occurred as per the normal process. The only difference again is whenever the DUP decided to change the approach."<sup>66</sup> She further stated "...there's never been an issue of have we or have we not scheduled a meeting. That's never been in question"<sup>67</sup>.
58. Ms O'Neill stated that she corresponded with Mr Givan on every occasion of every sectoral meeting saying that 'we need to nominate', but he failed to do so. She added "I can certainly recall on one occasion that Paul Givan stated very clearly that they, to me personally, and there were a number of others in the room, that they will not be, Jeffrey's made their position clear, they will not be nominating, they'll not be attending North South Ministerial Council meetings."<sup>68</sup>

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<sup>62</sup> Document 13, p. 2

<sup>63</sup> Document 13, p. 3

<sup>64</sup> Document 5a-e

<sup>65</sup> Document 38, page 2

<sup>66</sup> Document 38, page 2

<sup>67</sup> Document 38, page 3

<sup>68</sup> Document 38, page 6

59. As this assertion by Ms O'Neill was inconsistent with representations made by Mr Givan, I wrote to Mr Givan in accordance with para 7.13 of the General Procedures Direction where it states that, 'If during an investigation the Commissioner uncovers material evidence which is inconsistent with any statement or other representation made by the person who is subject to this investigation, the Commissioner must invite that person to make representations on that inconsistency'.<sup>69</sup> In Mr Givan's reply, he neither denied or confirmed Ms O'Neill's assertion.<sup>70</sup>

### **Reasoned Decision**

60. Having reviewed the evidence, including documents received under notice and interviews carried out under oath, it appears that 1) there was a clear and publicly stated intention by the DUP to disengage with the NSMC including non-attendance at NSMC meetings, 2) DUP Ministers obstructed the normal custom and practice of scheduling of NSMC meetings in breach of section 54A of the 1998 Act, and 3) in obstructing the scheduling process and continuing to act unlawfully through non-attendance they failed to "at all times" adhere to the Seven Principles of Public Life. Taking each in turn:

### **Intention of DUP Ministers**

61. The intention of the DUP to withdraw from the NSMC was stated clearly on a number of occasions. Sir Jeffrey Donaldson stated in his 9 September 2021 speech that the DUP intended to withdraw from the NSMC<sup>71</sup> and shortly thereafter, Minister Poots acknowledged this in the Assembly Chamber on 14 September 2021 (para 34 above). Even before Sir Jeffrey Donaldson's 9 September speech, former First Minister Arlene Foster unveiled the DUP's five-point plan on 2 February 2021, which stated the DUP's opposition to the NI Protocol and included in it their intention to send "a strong signal to the Government of the Republic of Ireland that North-South relationships are also impacted by the implementation of a Protocol which they supported. Our members cannot and will not continue to act as though relationships are normal."<sup>72</sup> This also undermines Mr Lyons's assertion at interview that there was no strategy by the DUP in relation to NSMC attendance prior to 9 September.<sup>73</sup>

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<sup>69</sup> Document 40

<sup>70</sup> Document 41

<sup>71</sup> Document 2

<sup>72</sup> Document 39 and:

<https://www.bbc.co.uk/news/uk-northern-ireland-55932434>

<https://www.bbc.co.uk/news/uk-northern-ireland-55910506>

<https://www.belfasttelegraph.co.uk/news/northern-ireland/dup-refusal-to-engage-with-north-south-bodies-on-protocol-issues-will-continue-vows-lord-dodds-40327410.html>

<sup>73</sup> Document 10 p12

62. Ms O'Neill MLA confirmed under oath that then FM Mr Givan MLA stated to her, while others were in the room, that DUP Ministers would not be attending NSMC meetings in line with the publicly stated position by their party leader. I have no reason to doubt this occurred; Mr Givan did not refute this when given the opportunity to respond.

### **Scheduling of NSMC Meetings**

63. The NSMC Secretariat did their job in terms of process; there is clear evidence of a standard and uniform process being employed for every NSMC meeting to which this complaint relates.
64. The vast majority of correspondence from the NSMC Secretariat to Ministers' Private Offices attempting to gain confirmation of attendance at forthcoming scheduled NSMC meetings, including requesting the completion of nomination forms, were met with silence. I have seen no evidence of attempts to nominate a replacement minister by any of the DUP Ministers or any returns of completed nomination forms as requested on numerous occasions by the NSMC Secretariat. The evidence demonstrates a failure to comply with Section 52A(4) of the 1998 Act.
65. Three meetings were cancelled on the day of the meeting. This meant that people who were convened (North and South) were told it would not proceed only when the DUP Minister did not show up. This shows that all other participants were of the view there was, indeed, a scheduled meeting. It also shows that DUP Ministers were willing to waste precious time of colleagues in this way.
66. Two meetings were postponed at the request of the Irish Government the day before the meeting was scheduled to take place, as conditions for the meeting to go ahead could not be confirmed by the NSMC (North). Only two meetings proceeded during the time period covered by this complaint, and those were meetings without DUP Ministers scheduled to attend.
67. When Ms O'Neill wrote to Mr Givan on each occasion requesting that he nominate a Unionist Minister to attend the various NSMC meetings, he did not reply but for his letter of 9 November where he wrote to Ms O'Neill explaining why he did not believe the meetings were scheduled meetings in law.<sup>74</sup>
68. The evidence demonstrates that the DUP Ministers subject to this complaint, through their failure and unwillingness to return nomination forms or attempt to nominate replacement ministers, as well as failing to communicate with the NSMC Secretariat in a respectful and timely way in accordance with sections 52A and 52B of the 1998 Act, obstructed the normal custom and practice involved in the scheduling process.

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<sup>74</sup> Document 25

69. It is much more likely than not that this obstruction was because there was no intention to agree agendas or to nominate ministers in light of the publicly stated intention by the DUP leader on 9 September 2021 to boycott NSMC meetings (an intention that was also indicated by then FM and DUP leader Arlene Foster on 2 February 2021). Mr Lyons stated at interview that due to the political situation, “we would not have found agreement to meet” which seems to reflect the DUP’s strategy that was in place during the operative time of this complaint.
70. It is notable that each DUP Minister I interviewed under oath, including former FM Paul Givan, rejected any notion that they did not attend NSMC meetings because they were following their party leader’s publicly-stated position. Rather, the majority put forward a “scheduling defence” and said the reason they did not attend the NSMC meetings in question was administrative impediment, not political principle.
71. I find this disconcerting. In October 2021, when *Napier* was initially heard in the High Court, counsel for these same Ministers “confirmed that all of the respondents adhered to the approach and rationale set out in Sir Jeffrey Donaldson’s speech”.<sup>75</sup> The approach of the DUP Ministers in the course of this investigation was different; the same Ministers instead denied their non-attendance was politically motivated or that they were following their party leader’s publicly-stated position. If these Ministers were acting on grounds of political policy, which evidence suggests is the case, it is not clear why they did not just say so, particularly given they were under oath.
72. I am not persuaded by the scheduling defence provided by the majority of the DUP Ministers subject to this complaint-- that either dates or agendas were not agreed and therefore no meetings were “legally scheduled”. As the High Court noted, “scheduling” is not a term used in Part V of the Northern Ireland Act 1998.<sup>76</sup> The legal duties on Ministers, discussed above, are clear. In relation to my investigation, the many emails and documents from the NSMC Secretariat to DUP Ministers’ Private Offices highlight the normal process in action in terms of seeking to agree dates, nomination forms etc. Additionally, there is no evidence to suggest there were any material changes to the custom and practice in the process of the scheduling of meetings by the NSMC Secretariat.
73. I do not believe it is plausible, with so much evidence to the contrary, that their non-attendance was due to meetings not being scheduled and agendas not being agreed. The choices and decisions made by DUP Ministers to obstruct the scheduling of meetings cannot be expected to provide them a credible defence, especially in relation to a conduct investigation into adherence “at all times” to the Seven Principles of Public Life.

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<sup>75</sup><https://www.judiciaryni.uk/sites/judiciary/files/decisions/Napier%27s%20%28Sean%29%20Application%20for%20Judicial%20Review%20and%20in%20the%20matter%20of%20decisions%20of%20the%20First%20Minister%20of%20NI%20and%20Others.pdf> [at para 10]

<sup>76</sup><https://www.judiciaryni.uk/sites/judiciary/files/decisions/Napier%20%28Sean%29%20Application%20for%20Judicial%20Review.pdf> [at paragraph 35, 37]

## The Seven Principles of Public Life

74. This investigation does not aim to assess the legality of the DUP Ministers' actions; the High Court has already deemed their actions to be unlawful. Rather it is an investigation into whether, on balance, the DUP Ministers at all times promoted and supported the Seven Principles of Public Life by leadership and example, as is required by the Ministerial Code of Conduct.
75. Ministers within the Northern Ireland Executive bear personal responsibility for compliance with their Pledge of Office, the Ministerial Code including the Code of Conduct, and their legal obligations.
76. The Seven Principles of Public Life including accountability, selflessness and openness are part of the obligations of leadership in public life. Being accountable for decisions and actions as well as acting and taking decisions in an open and selfless manner are particularly relevant when considering the facts of this complaint.
77. Neither of the High Court judgments nor the letter to all DUP Ministers from the Head of the Civil Service, both of which made clear the expectation that they comply with their legal obligations, managed to persuade the DUP Ministers to change course. Instead, they continued their non-attendance at NSMC meetings knowing it was unlawful. To be clear, by ignoring their legal obligation to attend the NSMC meetings, they showed a lack of leadership and in particular a lack of accountability, selflessness and openness; senior political leaders choosing to ignore the rule of law is not in the public interest.
78. Selflessness requires taking decisions *solely in terms of the public interest*. The concept of the public interest has been defined broadly by academics as "that which is best for society as a whole"<sup>77</sup>. It is hard to imagine that it could be best for society as a whole for the DUP Ministers to ignore the rule of law.
79. The failure and unwillingness of the DUP Ministers to agree agendas, dates and/or to nominate ministers and replacement ministers, as well as failing to communicate with the NSMC Secretariat in a respectful and timely way, obstructed the normal custom and practice involved in the scheduling process. It is my view that there was no intention to agree agendas, dates or to nominate ministers because the DUP Ministers were observing and adhering to their DUP leader's publicly-announced withdrawal from participation in North/South bodies. The approach taken by the DUP Ministers which included obstructing the arrangement of NSMC meetings through silence, non-responsiveness and disengagement was disrespectful to their colleagues in the NI Executive, the NSMC Joint Secretariat and the Irish Government, and showed a lack of leadership and in particular a lack accountability, selflessness and openness.

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<sup>77 77</sup> Edwin Rekosh, *Who defines the public interest?*, International Journal on Human Rights, June 2004: <https://sur.conectas.org/en/defines-public-interest/>

80. The defence that NSMC meetings weren't "scheduled" is unconvincing. Through their acts and omissions, the DUP Ministers subject to this complaint were themselves responsible for trying to prevent the scheduling of NSMC meetings. To then assert that their failure to attend the proposed NSMC meetings had some external, unrelated cause is, in my view, implausible and disingenuous; it is an approach which further breaches the Ministerial Code of Conduct in relation to the Seven Principles of Public Life as it lacks the required leadership and in particular accountability, selflessness, and openness expected from Ministers of the Northern Ireland Assembly.

#### **Further Representations by DUP Ministers**

81. In accordance with paragraph 7.14 of the General Procedures Direction, DUP Ministers subject to this complaint were afforded an opportunity to challenge any of the above findings of fact (at para 8) before I finalised my report. Mr Givan MLA, Ms McIlveen MLA and Mr Lyons MLA made representations on 13 December 2022, 14 December 2022, and 19 December 2022 respectively<sup>78</sup>, and I have taken account of these representations in finalising this report. Mr Middleton MLA challenged the findings of fact on 28 December 2022<sup>79</sup>, which was outside the 14 days. However, his challenge was not at all dissimilar to the others received and I consider that it has been addressed.
82. The first of these related to the scheduling of the meetings. The additional representations do not add materially to the evidence on this matter given by Mr Givan, Ms McIlveen and Mr Lyons at interview. As I have indicated above, I consider that the relevant meetings were scheduled, and I do not consider that the additional representations provide any reason to alter the findings I have made in this regard.
83. The second representation relates to the fact that while it was "custom and practice" for officials to schedule meetings, those officials could not do so contrary to the wishes of the relevant Minister. As I have indicated, Ms McIlveen, Mr Middleton and Mr Lyons, as Ministers, had a legal obligation to attend NSMC meetings. What this representation seems to imply is that if they directed their officials not to arrange such attendance, their duty would not arise. I do not find this argument attractive, or convincing. Accordingly, I do not consider that the second representation provides any reason to alter my findings in respect of breach of the principle of leadership.

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<sup>78</sup> Documents 42, 43, 44

<sup>79</sup> Document 45



## **Conclusion**

84. The unlawful withdrawal from Strand Two structures including non-attendance at NSMC meetings was in breach of the Seven Principles of Public Life which Ministers *must* adhere to *at all times*.
85. Failing to engage with the NSMC Secretariat in a timely way was in breach of Section 52A(4) of the 1998 Act and breached of the Seven Principles of Public Life which Ministers *must* adhere to *at all times*.
86. In acting unlawfully, and continuing to act unlawfully even after the High Court judgement, it is my view that Ministers set a disturbing example to their Assembly colleagues and the wider society that they are somehow above the law, which ultimately could serve to lower standards within and outside the Assembly and diminish public trust and confidence in the Assembly. This is a further breach of the Seven Principles of Public Life which Ministers *must* adhere to *at all times*.
87. Providing the defence that meetings were not scheduled, while at the same time being responsible for obstructing the normal custom and practice involved in the scheduling process, is a further breach of the Seven Principles of Public Life which Ministers *must* adhere to *at all times*.
88. I am satisfied on the basis of my analysis of the facts and evidence that, on the balance of probabilities, the then First Minister Paul Givan MLA, Junior Minister Gary Middleton MLA and Ministers Gordon Lyons MLA, Michelle McIlveen MLA, and Edwin Poots MLA, breached the Ministerial Code of Conduct paragraphs 1.5 (iv) "Follow the seven Principles of Public Life at all times" (set out at paragraph 1.6 of the Code of Conduct) including leadership, accountability, selflessness and openness.

## **Recommendations**

89. Where a ruling has been made by a court of law that any Minister is in "abject breach of their solemn pledge", deeming the actions by those Ministers to be unlawful, there should be no doubt whatsoever that such unlawful behaviour breaches the Ministerial Code of Conduct and as such should be more explicitly stated in the rules at Paragraph 1.5 of the Ministerial Code of Conduct. This should be taken into account when and if the outdated Ministerial Code of Conduct is updated so that it is fit for purpose and reflective of publicly recorded court judgements.

## Annex A

Document	Description
1a-c	Conor Quinn Complaint
2	Sir Jeffrey Donaldson 9 <sup>th</sup> September speech
3	List of NSMC Meetings
4	NSMC Meetings Flow Chart
5 a-e	Letters from M O'Neill to P Givan requesting nominations
6	Request for cost associated with cancellation Naomi Long
7 a, b	Reply to Naomi Long MLA re costs
8	Letter to DUP Ministers from Jayne Brady Head of Civil Service
9	Edwin Poots MLA interview transcript
10	Gordon Lyons MLA interview transcript
11	Michelle McIlveen MLA interview transcript
12	Gary Middleton MLA interview transcript
13	Paul Givan MLA interview transcript
14 a, b	5 <sup>th</sup> Aug email
15	31 <sup>st</sup> August email
16	NSMC emails to E Poots Office requesting nomination form for 29 Sept meeting
17 a-c	15 <sup>th</sup> September email reminder from NSMC for nomination form
18 a-c	16 <sup>th</sup> September email forwarded to E Poots
19 a, b	E Poots clears statement
20	18 and 28 October email
21	28 October email response
22	4 November email NSMC
23	8 November letter from dFM to FM
24	9 November reply to dFM from FM
25 a-c	10 November letter from dFM to FM and FM response 11 November
26	NSMC confirming Irish govt cancelled 9 <sup>th</sup> Nov

27	Email 21 Sept
28	Email 30 Sept requesting nomination form
29	Email 3 October PS sends nom form directly to M McIlveen
30	Email 8 October NSMC reminder email for nomination form
31	8 October notification sent from TEO NSMC to FM and dFM that no nomination has been made
32	Email 21 October NSMC South notifies NSMC North
33	Issues Meeting Notes 27 Sept
34	Issues Meeting Notes 11 October
35	Email 16 September J Middleton notifies unable to attend
36	Email 20 September TEO NSMC notifies FM and dFM of no nomination
37	Email trail 20 September forward to SPAD for advice
38	Ms Michelle O'Neill MLA interview transcript
39	DUP Five Point Plan February 2021
40	Letter to Mr Paul Givan MLA 10.11.22
41	Mr Paul Givan MLA response 18.11.22
42	Letter from Paul Givan MLA in response to Findings of Fact
43	Letter from Michelle McIlveen MLA in response to Findings of Fact
44	Letter from Gordon Lyons MLA in response to Findings of Fact
45	Letter from Gary Middleton MLA in response to Findings of Fact

Document 1a: Complaint by Mr Conor Quinn

**Date of Complaint:** 10 September 2021  
**Type:** Online Submission  
**Name of Complainant:** Mr Conor Quinn  
**Complaint against:** All DUP Ministers

**Complaint:**

1. The Ministerial Code under section 3.11 and subsequent paragraphs makes it clear the duty of Ministers to participate in the North-South ministerial council. 2. On the 9th September 2021, at the La Mon Hotel Belfast, the leader of the Democratic Unionist Party gave a speech (<https://mydup.com/news/sir-jeffrey-donaldson-now-is-the-time-to-act>) announcing inter alia "the DUP will immediately withdraw from the structures of Strand Two of the Belfast Agreement relating to north south arrangement". 3. I contend that all DUP Ministers are now in breach of the Ministerial Code of Conduct.

**Document 1b: Complaint by Mr Conor Quinn**



**DR MELISSA MCCULLOUGH**  
*Commissioner for Standards*

work: 02890521220  
email: [melissa.mccullough@niassembly.gov.uk](mailto:melissa.mccullough@niassembly.gov.uk)

Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

**From:** [Redacted]  
**Sent:** 15 October 2021 11:33  
**To:** +StandardsCommissioner <[standardscommissioner@niassembly.gov.uk](mailto:standardscommissioner@niassembly.gov.uk)>  
**Subject:** RE: Case ID - 202100026

Dr McCullough,

Just following up the submission of the above complaint.

I note that there has been High Court legal action in respect of this matter in recent days.

Could I also cite the non-attendance by Minister Poots at an NSMC meeting on the 29<sup>th</sup> September at that of Minister Middleton at a meeting on the 1<sup>st</sup> October.

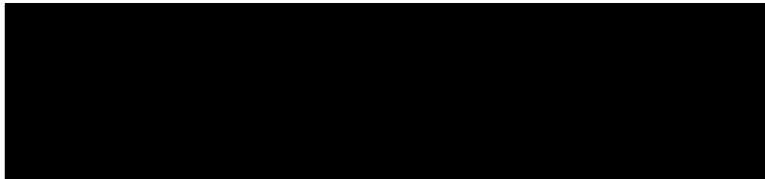
Both acts of omission occurred subsequent to the date of my original complaint but are clearly germane to it.

Apologies that I am only noticing now that I did not receive the additional advisory note mentioned in your letter of the 10<sup>th</sup> September and no doubt that would be of assistance to me in monitoring the progress of my complaint.

Regards

Conor.

## Document 1c: Complaint by Mr Conor Quinn



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**Sent:** 07 November 2021 19:28

**To:** +StandardsCommissioner <standardscommissioner@niassembly.gov.uk>

**Subject:** RE: Case ID - 202100026

Melissa,

My original complaint on 10<sup>th</sup> September cited all DUP ministers and in respect of the wider DUP boycott of NSMC meetings.

- First Minister Paul Givan MLA
- Junior Minister Gary Middleton MLA
- Minister Michelle McIlveen MLA
- Minister Edwin Poots MLA
- Minister Gordon Lyons MLA

Additional and subsequent information was provided in respect of Minister Poots and Middleton as the boycott crystallised into specific acts of omission.

So yes .. all DUP ministers.

Regards

Conor.

**Document 2: Sir Jeffrey Donaldson Speech, 9 September 2021**

Just two months ago I was honoured to be elected as the leader of the Democratic Unionist Party.

I took on the post knowing the challenges that lay ahead, but I did so to seek to make Northern Ireland a better place and the Union more secure. At that time I promised to bring forward a plan to navigate our way through the challenges, and, in particular, how the problems created by the protocol could be addressed.

Right at the outset I want to stress the problems of the protocol are not simply unionist issues, but affect the lives and livelihoods of everyone in Northern Ireland. Just as everyone is affected by the implementation of the protocol, we can all benefit from solutions to these problems as well. I wanted to take time over the last few months to meet with people from across Northern Ireland, to consider our options and to set out a plan that is in the long-term interests of our country.

There are those who say the Protocol is here to stay and advocate working it and there are some who limit their ambitions to addressing the worst aspects. However what flows from the protocol is so fundamental and the problems it creates so great that the consequences of adopting such a strategy would damage Northern Ireland.

It is not a path we will tread. Today I want to use this opportunity to set out our strategic blueprint for the months that lie ahead. I am sure it will not find favour with some who urge business as usual, but that approach is doomed to fail in both economic and political terms. It is far better that we grasp the nettle now and have the matter settled once and for all.

These are important times for unionism and for Northern Ireland. The next few months will determine the future direction of our Province and our country for decades to come. The stakes could not be higher and the responsibility upon us could not be greater. These are difficult times and the scale of our response must match the seriousness of the challenges we face.

In relation to the protocol, at issue is one simple question. Are we prepared to acquiesce in the undermining of our economic prosperity and the economic and constitutional integrity of the United Kingdom, including the very Act of Union itself? For me and for my party the unambiguous answer is, no!

As leader of the DUP, I am not prepared to lend my hand to a protocol which so fundamentally undermines the Union and the economic integrity of the United Kingdom and Northern Ireland's position in it. I say not as a threat, but as a matter of political reality that our political institutions will not survive a failure to resolve the problems that the protocol has created. Neither will they survive an indefinite 'stand still' period; urgent action is needed.

As someone who believes in devolution and who seeks to return to the Assembly, this is not something I want to see. While I welcome the announcement of further extensions to the grace periods, long term solutions are required and political stability secured.

This morning I want to set out our strategy to address the problems with the protocol and to offer a solution that is capable of delivering a better way forward and one that can bring unionism and Northern Ireland together. Since the start of July, the streets have been quieter in terms of violence, but I fear that unless we grapple with the issues, this will prove to be merely a pause, rather than an end to the disorder.

I want to thank those in my party and elsewhere who have helped work to calm the situation on the ground in recent times, but it would be an act of folly to believe that the anger has receded, or the danger has passed. Undoubtedly the Command Paper also helped calm the mood on the ground over the summer and afforded us all a window of opportunity.

There can be no doubt that the Northern Ireland Protocol is not just a threat to the economic integrity of the United Kingdom, it is having real world impacts on our economy. Senior economist at the University of Ulster Business School, Dr Esmond Birnie recently suggested that the cost of the Northern Ireland protocol could be in the region of £850 million per year. That is money we simply cannot afford to lose.

At the most practical level the protocol is having serious impacts on many aspects of life in Northern Ireland. And though I am alarmed by the constitutional implications of the protocol, it is assuredly not simply a unionist issue. Business leaders tell us that it is an existential threat to many businesses in Northern Ireland and the position in relation to medicine and food is particularly pressing and deeply concerning. The idea that the EU can prevent people in Northern Ireland having equal access to vital medicines as is available in the rest of our own country is utterly reprehensible and indefensible.

In recent days, Marks and Spencer chairman Archie Norman warned that customers in Northern Ireland could face a ‘substantial reduction in food supply’ and price increases later this year. It also means less choice on Amazon, an inability to get plants from Great Britain, a failure to benefit from cheaper goods from global trade deals in the same way that British citizens elsewhere in the UK will be able to do so.

Some of the issues result directly from the terms of the protocol whilst others are a result of just being too difficult for businesses in Great Britain trading with Northern Ireland. Those who seek to dismiss or diminish the impact of the protocol need to remember that because of grace periods, many of the most economically damaging aspects of the protocol have not yet come into force. The truth is that we cannot afford for them ever to do so.

It is tempting for some to indulge in a blame game as to how we find ourselves in this situation but what we must concentrate on now is how we get out of it. In this regard I welcomed the publication of the Government’s Command Paper over the summer as an important first step. And while we welcomed the Command Paper as a step in the right direction, in the absence of actual progress, we cannot remain in this political limbo.

The Command Paper gave the clearest evidence that the government recognises the protocol is unsustainable and that new arrangements must be found. It recognised the importance of the three key issues of movement, standards and governance. It is essential that all are addressed and for the absence of doubt, let me be clear this is not simply a question of limiting checks at the border or moving the checks from the border. It must mean that, save for the most limited circumstances, EU law would not apply in Northern Ireland. And it must mean that where there is a dispute, we are not being asked to argue our case in front of a judicial system created by one of the parties to that dispute.

The Command Paper states that the conditions already exist to trigger Article 16, both in terms of societal impacts and also due to the diversion of trade. This is undoubtedly right, but we share the Government’s preference that these matters are resolved by agreement and we would wish to see arrangements to supersede the protocol as provided for in Article 13.

Despite what some once claimed, the protocol does not give Northern Ireland ‘the best of both worlds’, but there are alternative arrangements that could and should provide political stability and genuine economic opportunity. It is neither our wish to undermine the EU Single Market nor is there any possibility of the hardening of the border on the island of Ireland. But it is wrong to suggest that it takes the rigorous implementation of this protocol to achieve that goal.



Some seem to have forgotten that the protocol is not an end in itself, rather it was intended as ‘a means to an end’. Regardless of whether others supported the protocol or did not the reality is clear: it is not working. It is undermining both business and politics in Northern Ireland. As a result everyone is impacted. And it is clearly undermining the fundamental tenets of successive agreements that had been reached.

We are often told that the key purpose of the protocol is protecting the Belfast (Good Friday) Agreement, but in practice it is doing the exact opposite. The agreement was supposedly designed to protect all communities in Northern Ireland, but to unionists it would appear that there are those in the EU who only seem to be alive to nationalist concerns. This is not good for the EU or Northern Ireland.

Through the actions of the EU to date, they are actually imperilling the very agreement they purport to defend. If history has taught us anything in Northern Ireland, it is that there must be a balance and an equilibrium in arrangements. When one side is out of balance the situation cannot be sustained. When not a single elected unionist supports the protocol it is clear that the balance has been lost.

The EU and the Irish Government tell us they do not wish to do anything to jeopardise peace in Northern Ireland but the fact is that is exactly what is happening with the present arrangements. If the solutions suggested in the Government’s Command Paper were delivered in full then that would go some way in satisfying our tests and restoring the economic integrity of the United Kingdom. Likewise, the Mutual Enforcement proposals from the Centre for Brexit policy offer a sensible and pragmatic way of approaching the issue. But what won’t work is mere tinkering or the introduction of a few flexibilities. A piecemeal solution is not going to work.

Instead, we need a significant and substantial changes that can meet the seven tests that we set out earlier in the summer. Let me repeat those tests.

Firstly, any new arrangements must fulfil the guarantee of the Sixth Article of the Act of the Union. Secondly, they must avoid any diversion of trade. Thirdly, they must not constitute a border in the Irish Sea. Fourthly, they must give the people of Northern Ireland a say in the making of laws which govern them. Fifthly, they must result in “no checks on goods from Northern Ireland to Great Britain or from Great Britain to Northern Ireland (and remaining in Northern Ireland). Sixthly, they must ensure no new regulatory borders develop between Northern Ireland and the rest of the United Kingdom. And seventhly, they must preserve the letter and spirit of Northern Ireland’s constitutional guarantee as set out in numerous documents, but most recently in the Belfast Agreement by requiring the consent of a majority of the people of Northern Ireland for, and in advance of, any diminution in its status as part of the United Kingdom.

These are not unreasonable or novel demands. They are all based on commitments that have been made to the people of Northern Ireland in one form or another and must be respected. We have deliberately not been prescriptive about the nature of the outcome we wish to see, rather we have sought to provide the space for creative solutions which respect not just our demands but the concerns of others as well. While we are flexible as to the precise nature of the solution, we are implacably opposed to the current arrangements.

We recognise the importance of the Single Market to the EU and because of this we are prepared to allow our facilities to be used to check goods that are going on into the EU. But we are not prepared to accept checks on goods that are travelling within our own country. We recognise the complexity of the issues that need to be addressed and do not pretend that there are easy solutions, but nor do we expect the EU to pretend that the present arrangements are working or that the solution is to implement more of the protocol. To any objective onlooker, it is simply absurd to treat goods moving within the United Kingdom in the same way as goods moving from the Far East to the EU might be treated.

I believe the resolution of these issues is no longer a question of time, it is a question of political will. I am quite sure that discussions on these issues could go on for months if not years without the prospect of a successful outcome. This is simply not acceptable, nor indeed is a continual rolling forward of grace periods without the underlying problem being solved.

The uncertainty of the present situation is damaging to Northern Ireland's economic prospects and is potentially ruinous to our political institutions. Indeed, delaying making progress makes the situation not easier but more difficult to ultimately resolve. That is why today I want to set out a timetable to see these issues resolved and to provide a window of opportunity for solutions to be found. I do this not to be unhelpful, but to focus on the solutions that need to be found and to prevent the situation in Northern Ireland spiralling out of control.

I hope that such a framework will allow a measure of political stability to be secured over the coming weeks, but make it very clear that time is short and consequences will follow. Some of these consequences we will have control of and some we will not.

At the beginning of the summer the Government announced it was planning this autumn to legislate at Westminster for the cultural package of measures agreed as part of the NDNA over the heads of the Assembly and contrary to the devolution settlement. The proper place for such legislation is the Northern Ireland Assembly where it can receive the proper scrutiny and a balance approach. Such a usurpation of the Assembly's powers, without the consent of the Assembly, would be difficult at any time. But undermining the operation of Strand One as well as Strand Three at the same time would further undermine confidence in devolution and the operation of the Assembly from an already low base.

The situation is further exacerbated when the New Decade New Approach Deal is implemented on a one-sided basis and in the absence of the Government delivering on the NDNA commitment to ensure that Northern Ireland remains an integral part of the UK internal market. For unionists, such a situation is both intolerable and unsustainable.

The protocol makes provision for a consent mechanism after four years of its operation, but we do not have four years to get matters resolved. Equally, kicking the can down the road will merely tighten the knot to a point that the political institutions could not be later recovered.

Today, I am therefore announcing four steps that I propose to take. Firstly, in relation to Strand Two of the Belfast Agreement, or formal north south relations. The Belfast Agreement makes it clear that each Strand of the agreement is 'interlocking and interdependent'. Since devolution was restored in 2007, we have faithfully worked and fulfilled our responsibilities regarding Strand Two matters. And let me be clear, as part of the proper functioning of all aspects of the political institutions I want the north south institutions to work. Post Brexit, north south and east west relationships are, if anything, more important than ever. But they cannot operate in isolation or while Strand Three has been fundamentally undermined by the protocol. In such circumstances unionists cannot be expected to operate Strand Two as though nothing had changed. As I have said before, while the present protocol arrangements remain in place, it cannot be business as usual for north south relations. That means we must respond not just in words but in actions as well.

We attended the NSMC plenary meeting in July as an act of good faith and to give some space for issues to be resolved. That has not happened. I believe now is the time to act. Therefore, as the protocol issues remains unresolved, the DUP will immediately withdraw from the structures of Strand Two of the Belfast Agreement relating to north south arrangements, while we will ensure important health related matters continue to be addressed on a cooperative basis. I do so in full knowledge of the knock on effects that such a move may have and the instability that may result. But we simply cannot go on like

this. The threat to the political institutions is not from our withdrawal from Strand Two, but from the protocol itself.

The second step I intend to take relates to the operation of the protocol. Bad as it has been, to date the full impact of the protocol has not yet been felt. This is partly because of grace periods and partly because the checks that are required by the protocol are not yet being implemented in full. We have not experienced the full impact of the protocol, merely the effects of 'protocol-light'. I do not pretend that there are easy answers when the law requires one thing and politics demands something else. Though some unionists would like to, we cannot wish away the fact that the Northern Ireland protocol is part of domestic UK law. However, I believe that we can use our position in Ministerial office to the benefit of the people of Northern Ireland. No one can be in any doubt that the ending of the grace periods would have a devastating impact on Northern Ireland. That is not something that I am prepared to countenance or be a party to. Nor should any elected politician in Northern Ireland who care for our people. Therefore, regardless of what the position of the UK Government or of the EU, in the future, DUP Ministers would seek to block additional checks at the ports. And I believe they would have a solid legal basis to do so. Any decision to intensify checks would have the most profound and significant impact on Northern Ireland.

Under the Northern Ireland Act, such a decision to intensify checks could only be implemented following a decision of the Northern Ireland Executive. In such circumstances neither the Agriculture Environment and Rural Affairs Minister nor his office have any power to intensify checks, in the absence of Executive agreement. On behalf of the DUP, I want to make it quite clear that DUP Ministers would use their votes at the Executive to frustrate any such additional checks, now or in the future.

Thirdly, we are also examining the legality of the current checks and whether they should have required Executive approval as well. We are also exploring whether there is any scope to limit or eradicate the existing checks at the ports which are in addition to those which were in force at the end of 2020. Legal advice has offered Ministers very little room for manoeuvre in this regard and flexibilities have been exploited to the maximum. However, we are seeking to revisit this issue to examine every available option. If in the final analysis those who are democratically elected by the people of Northern Ireland lack the power to prevent such checks, and the protocol issues remain, then the position in office of DUP Ministers would become untenable.

Let me be clear: if the choice is ultimately remaining in office or implementing the protocol in its present form, then the only option for any unionist minister would be to cease to hold such office. This is particularly the case in circumstances where the Government is proceeding to implement the NDNA in a partial and one-sided way by legislating for a culture package at Westminster at a time when the Government has not delivered on its NDNA pledges in relation to restoring Northern Ireland's place in the UK Single Market. This is not a sustainable position.

Within weeks it will be clear if there is the basis for the Assembly and Executive to continue in its current mandate or whether there is a need for an Assembly election to refresh our mandate.

And fourthly, in order to maintain the adherence of Northern Ireland to EU law as it evolves, there is a requirement for Northern Ireland departments and the Northern Ireland Assembly to pass regulations to reflect decisions at an EU level. It has been said before, but it will be the policy of the DUP to seek to frustrate and prevent such alignment. We cannot and will not accept a situation where we are required to endorse and implement EU laws, whilst having no say in how those laws are formulated. The Northern Ireland protocol requires certain aspects of EU law to apply in Northern Ireland but this can only happen if they are incorporated into Northern Ireland law. Over time a failure to incorporate such law will mean that Northern Ireland will increasingly diverge from EU law and would ultimately undermine the operation of the EU Single Market. We are pledged to make sure that this happens. While the UK

Government also has powers to introduce these regulations at Westminster, to do so in a blanket fashion would further undermine the credibility of the devolved settlement.

As I have said we are totally opposed to the protocol as it presently exists. We will neither accept it nor will we work with it. In my assessment the time frame for resolving issues can be measured in weeks and not months or years. As I have said doing nothing is not a sustainable or tenable position. There will be those who will be critical of these announcements today but let me be clear, I take these actions not to undermine our carefully balanced constitutional arrangements but to protect them. In July this Government took what might have been the first step out of the protocol with the Command Paper, but it will ultimately be judged by what it does next. It would be a tragedy if the gains of the last two decades were put at risk and if Northern Ireland was plunged back into economic difficulties and political crisis. This would not be good for unionism or good for Northern Ireland. For our part we will work to do all in our power to make sure that does not happen. In spite of all the difficulties that we face I remain hopeful that we can still emerge from this period with arrangements that can command widespread support within Northern Ireland, arrangements which will allow us to create the kind of stability that will be good for investment and economic prosperity. The prize of a successful outcome is not just for unionism but for all of Northern Ireland and it is not just for the UK but for the EU as well.

Just imagine how a deal which satisfies all sides could transform relationships within Northern Ireland and across Europe. Or what a deal that genuinely represented a better way forward would mean for our future potential. Think how a stable long-term deal could allow us to plan for the future and how it could allow the UK to rebuild its crucial relationship with the European Union in a changing and dangerous world. It surely cannot be beyond us all to reach an agreement that can allow progress to be made and our peace process secured. I will not be found wanting to do all in my power to ensure that we can reach solutions to the problems that we face, but nor should there be any doubt that I will not resile from the actions I have set out.

Document 3: List of NSMC Meetings (10<sup>th</sup> September to 10<sup>th</sup> November)

Sector	Proposed Date of Meeting	Lead Minister Northern Ireland Executive	Accompanying Minister Northern Ireland Executive	Meeting took place Yes/No
<b>Agriculture</b>	29 September	Edwin Poots MLA Minister for Agriculture, Environment and Rural Affairs	Nichola Mallon MLA Minister for Infrastructure	No
Meeting postponed on 23/09/21 as the necessary requirements of agreed ministerial attendance and notification to the Speaker for the meeting to proceed had not been met. Alternative arrangements were requested. There was not an agreed position with FM, dFM				
<b>Language Body</b>	1 October	Deirdre Hargey MLA Minister for Communities	Junior Minister Gary Middleton MLA MLA Executive Office	No
Meeting convened on 1/10/21 by zoom at 11am but was postponed as the necessary requirements of agreed ministerial attendance and notification to the Speaker for the meeting to proceed had not been met. Email received on 16/09/21 from Minister Middleton's office to advise Minister not available to attend. Alternative arrangements were requested. There was not an agreed position with FM, dFM				
<b>Health/Food Safety Promotion</b>	14 October	Robin Swann MLA Minister of Health	Junior Minister Declan Kearney MLA Executive Office	Yes
<b>Environment</b>	15 October	Edwin Poots MLA Minister for Agriculture, Environment and Rural Affairs	Junior Minister Declan Kearney MLA Executive Office	No
Meeting convened on 15/10/21 by zoom at 12.30pm but was postponed as the necessary requirements of agreed ministerial attendance and notification to the Speaker for the meeting to proceed had not been met. <b>DAERA PO e-mailed the NSMC Joint Secretariat (North) at 10.31am on 15 October 2021 to advise 'As Minister Poots considers that no meetings are taking place, neither he nor DAERA officials will be in attendance'.</b> Alternative arrangements were requested. There was not an agreed position with FM, dFM				
<b>Aquaculture and Marine (FCILC)</b>	15 October	Edwin Poots MLA Minister for Agriculture, Environment and Rural Affairs	Nichola Mallon MLA Minister for Infrastructure	No
Meeting convened on 15/10/21 by zoom at 11.00am but was postponed as the necessary requirements of agreed ministerial attendance and notification to the Speaker for the meeting to proceed had not been met. <b>DAERA PO e-mailed the NSMC Joint Secretariat (North) at 10.31am on 15 October 2021 to advise 'As Minister Poots considers that no meetings are taking place, neither he nor DAERA officials will be in attendance'.</b> Alternative arrangements were requested. There was not an agreed position with FM, dFM				
<b>Special EU Programmes Body</b>	22 October	Conor Murphy MLA Minister of Finance	Michelle McIlveen MLA Minister for Education	No

Meeting postponed 21/10/21 as the necessary requirements of agreed ministerial attendance and notification to the Speaker for the meeting to proceed had not been met. Alternative arrangements were requested. There was not an agreed position with FM, dFM. Meeting postponed at the request of the Irish government as conditions for the meeting to go ahead could not be confirmed.

<b>Inland Waterways</b>	3 November	Nichola Mallon MLA Minister for Infrastructure	Robin Swann MLA Minister of Health	Yes
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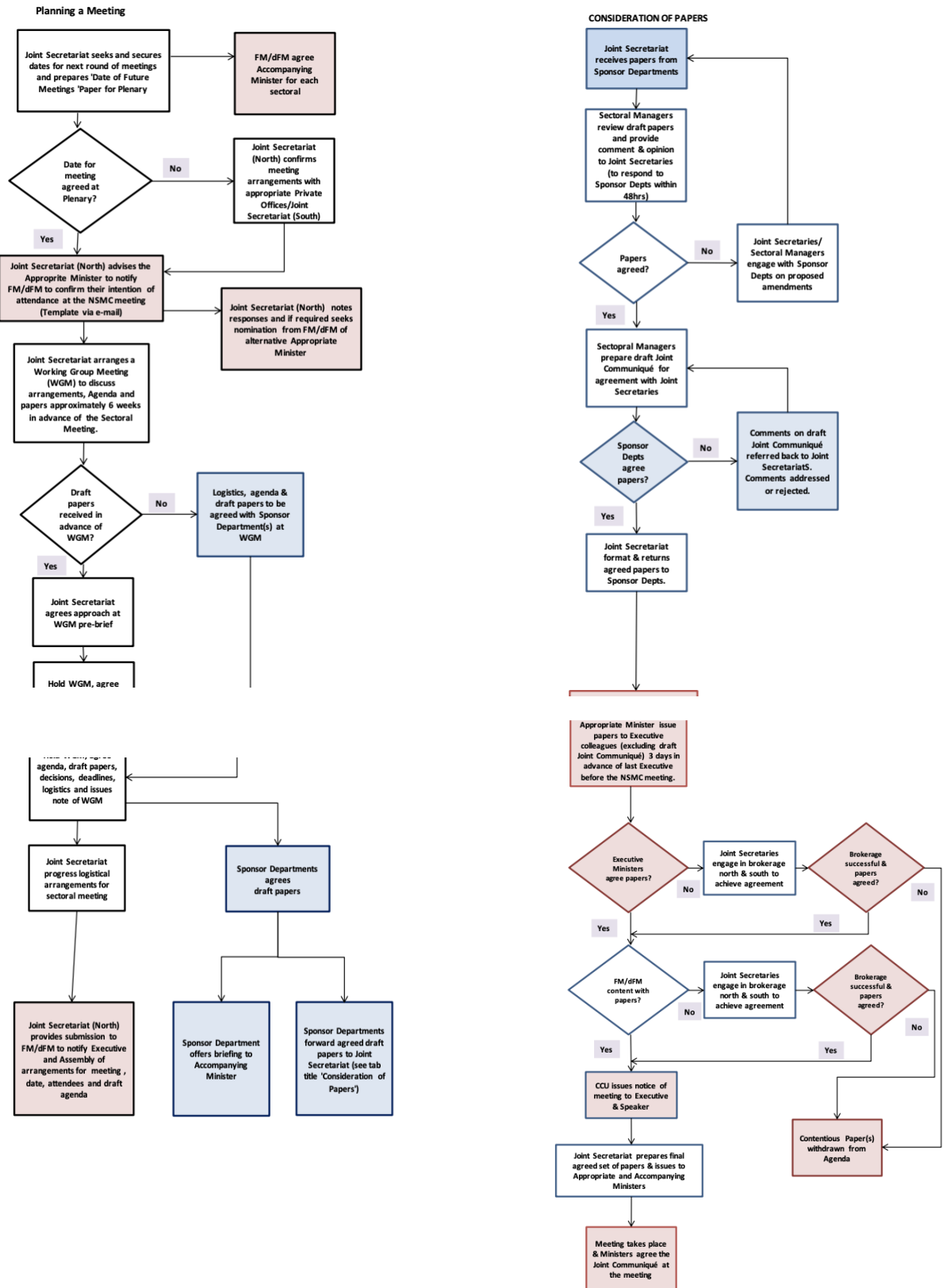
<b>Tourism</b>	10 November	Gordon Lyons MLA Minister for the Economy	Conor Murphy MLA Minister of Finance	No
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Meeting postponed 9/11/21 as the necessary requirements of agreed ministerial attendance and notification to the Speaker for the meeting to proceed had not been met. Alternative arrangements were requested. There was not an agreed position with FM, dFM. Meeting postponed at the request of the Irish government as conditions for the meeting to go ahead could not be confirmed.

<b>Education</b>	Potential dates: 3 or 10 November	Michelle McIlveen MLA Minister for Education	Deirdre Hargey MLA Minister for Communities	No
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Arrangements did not advance to point of agreeing a date for the meeting.

# Document 4: NSMC Meetings Flow Chart



**Document 5a: 28<sup>th</sup> September Letter: NSMC Agriculture**

**From:** Deputy First Minister

**Sent:** 28 September 2021 16:46

**To:** [REDACTED] [executiveoffice-ni.gov.uk](mailto:[REDACTED]@executiveoffice-ni.gov.uk); [REDACTED]  
<[REDACTED]@executiveoffice-ni.gov.uk>

**Cc:** [REDACTED] [@executiveoffice.info](mailto:[REDACTED]@executiveoffice.info)

**Subject:** NSMC agriculture sectoral meeting

Donal/Paula,

I understand that the NSMC secretariat had scheduled an agriculture sectoral meeting of the NSMC which was due to occur 29 September 2021, however the DAERA Minister has failed to notify the Executive Office of his participation, or not, as required to do so in accordance with the relevant legislation and the Ministerial Code.

Since no notification was received, and the the First Minister has not proposed a replacement from the unionist designation, we are unable to jointly nominate a replacement Minister to participate in the meeting.

On that basis the criteria for the meeting to proceed has not been satisfied and I understand that the NSMC secretariat, in consultation with colleagues in the Irish Government have postponed the meeting.

I consider this inaction to be a serious failure to comply with the legislative requirements as established in the NI Act 1998, and the Ministerial Code.

When the political institutions were restored in January 2020, it was on the basis that the North-South Ministerial Council and the cross-border bodies would be fully functional alongside those institutions within Strand One (Assembly/Executive) and Strand Three (East/West).

The institutions cannot be cherrypicked and it is entirely unacceptable for Ministers to act in breach of the law, and the Ministerial Code.

It also represents a serious breach of the New Decade, New Approach political agreement between the parties and Irish and British Governments.

Separately, I am aware that the DFC Minister Deirdre Hargey has confirmed her participation for the NSMC languages sectoral meeting to occur Friday 1 October. I would like to know whether the accompanying unionist Minister Gary Middleton has notified us of his attendance, or not.

Please share this this correspondence with FM office and bring to the attention of the Head of the Civil Service and Secretary to the Executive, Jayne Brady.



Many thanks,

Michelle O'Neill  
Deputy First Minister

**FROM: MICHELLE O'NEILL MLA  
DEPUTY FIRST MINISTER**

**TO: PAUL GIVAN MLA  
FIRST MINISTER**

**DATE: 13 OCTOBER 2021**

You are aware that meetings of the North South Ministerial Council on both Aquaculture and Marine & Environment are scheduled to take place on Friday 15<sup>th</sup> October 2021. Ministers Kearney and Mallon respectively have notified the Executive Office of their intention to participate.

However, I understand that DAERA Minister, Edwin Poots MLA has failed to notify this office of his intention to participate, or not.

The basis for this inaction from Minister Poots has not been presented.

The relevant legislation and the Ministerial Code requires the criteria to be satisfied in order for these meetings to occur.

I am therefore writing to request that you now identify a Minister from the Unionist designation to replace Minister Poots to attend and allow the meeting to proceed as planned.

I would be obliged if you can formally respond to my request today.

Regards



**Michelle O'Neill MLA  
Deputy First Minister**

**Document 5c: 21<sup>st</sup> October Letter: SEUPB**

**FROM: MICHELLE O'NEILL MLA  
DEPUTY FIRST MINISTER**

**TO: PAUL GIVAN MLA  
FIRST MINISTER**

**DATE: 21 OCTOBER 2021**

You are aware that a meeting of the North South Ministerial Council in SEUPB format is scheduled to take place on Friday 22 October 2021.

Minister Conor Murphy has notified the Executive Office of his intention to participate.

However, I understand that Education Minister, Michelle McIvreen MLA has failed to notify this office of her intention to participate, or not.

The basis for this inaction from Minister McIvreen has not been presented.

The relevant legislation and the Ministerial Code requires the criteria to be satisfied in order for these meetings to occur.

I am therefore writing to request that you now identify a Minister from the Unionist designation to replace Minister McIvreen to attend and allow the meeting to proceed as planned.

I would be obliged if you can formally respond to my request by close of play today.

Regards



**Michelle O'Neill MLA  
Deputy First Minister**

Document 5d: 8<sup>th</sup> November Letter: Tourism NSMC Meeting

**FROM:** MICHELLE O'NEILL MLA  
DEPUTY FIRST MINISTER

**TO:** PAUL GIVAN MLA  
FIRST MINISTER

**DATE:** 8 NOVEMBER 2021

You are aware that a meeting of the North South Ministerial Council in Tourism format is scheduled to take place on Wednesday 10 November 2021.

Minister Conor Murphy has notified the Executive Office of his intention to participate as Accompanying Minister.

However, I understand that Economy Minister, Gordon Lyons MLA has failed to notify this office of his intention to participate, or not.

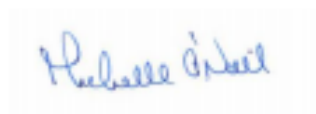
The basis for this inaction from Minister Lyons has not been presented.

The relevant legislation and the Ministerial Code requires the criteria to be satisfied in order for these meetings to occur.

I am therefore writing to request that you now identify a Minister from the Unionist designation to replace Minister Lyons to attend and allow the meeting to proceed as planned.

I would be obliged if you can formally respond to my request by close of play today.

Regards



**Michelle O'Neill MLA**  
Deputy First Minister

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**Document 5e: 30<sup>th</sup> September Letter: Languages NSMC Meeting**

**FROM: MICHELLE O'NEILL MLA  
DEPUTY FIRST MINISTER**

**TO: PAUL GIVAN MLA  
FIRST MINISTER**

**DATE: 30 SEPTEMBER 2021**

You are aware that a meeting of the North South Ministerial Council Languages sectoral is scheduled to take place tomorrow 1st October at 10am.

Communities Minister Deirdre Hargey MLA has notified the Executive Office of her intention to participate. However, I understand that Junior Minister Gary Middleton MLA has notified that he does not intend participating.

The basis for his decision has not been presented.


The relevant legislation, NI Act 1998 and the Ministerial Code both establish a criteria which must be satisfied in order for the meeting to proceed.

This includes you and I acting jointly as First Minister and Deputy First Minister appointing a replacement Minister.

I am writing to request that you identify a Minister from the unionist designation to replace Junior Minister Middleton to accompany Minister Hargey so tomorrow's meeting can proceed as planned.

I would be obliged if you could respond formally to this correspondence today.

Regards



**Michelle O'Neill MLA  
Deputy First minister**

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**Document 6: Letter from Minister Naomi Long MLA seeking clarification on costs of cancelled NSMC Meetings**

FROM THE OFFICE OF THE JUSTICE MINISTER



Minister's Office  
Castle Buildings Block B  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
[DOJ.AssemblySection@justice-ni.gov.uk](mailto:DOJ.AssemblySection@justice-ni.gov.uk)

**FROM: NAOMI LONG MLA  
MINISTER OF JUSTICE**

**DATE: 8 September 2021**

**TO: PAUL GIVAN MLA                      MICHELLE O'NEILL MLA  
FIRST MINISTER                      DEPUTY FIRST MINISTER**

**NORTH SOUTH MINISTERIAL COUNCIL (NSMC) PLENARY – 18 JUNE 2021**

Thank you for your memo dated 18 August in response to my request for details of the costs associated with the NSMC meeting planned for 18 June not proceeding.

I am keen to understand what the financial implication was of cancelling the meeting and would therefore ask to be provided with a more detailed breakdown of which costs have been recouped to enable the next meeting to proceed.

This is copied to Ministerial Colleagues, the Attorney General, Departmental Solicitor, First Legislative Counsel and the Executive Secretariat.

A handwritten signature in black ink that reads 'Naomi Long'.

**NAOMI LONG MLA  
MINISTER OF JUSTICE**

## Document 7a: Reply to Minister Naomi Long



[DOJMinistersOffice@justice-ni.gov.uk](mailto:DOJMinistersOffice@justice-ni.gov.uk)

Our Ref: CORR: 0816:2021  
22 September 2021

Dear Naomi

### **NORTH SOUTH MINISTERIAL COUNCIL (NSMC) PLENARY – 18 JUNE 2021**

Thank you for your letter of 8 September 2021 asking for an understanding of the financial implication of cancelling the Plenary meeting of 18 June and to be provided with a more detailed breakdown of which costs have been recouped to enable the next meeting to proceed.

As indicated previously officials had renegotiated the original quotes to achieve value for money for costs incurred. The cost of the meeting was £18,201. As well as rental costs for the venue, this amount included design costs for staging which was to be used at the joint press conference which was to take place following the meeting. We anticipate re-using the design work and some of the ancillary materials (branding material etc.) at a future Plenary press conference.

You will be aware that a NSMC Plenary meeting was then held virtually from the NSMC JS offices in Armagh at no additional cost to the Executive on 30 July.

A copy of this letter has been forwarded to Executive Colleagues, the Attorney General, the Departmental Solicitor, the First Legislative Council and the Executive Secretariat.

Yours sincerely

**PAUL GIVAN MLA  
FIRST MINISTER**

**MICHELLE O'NEILL MLA  
DEPUTY FIRST MINISTER**

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FROM: [REDACTED]

DATE: 15 SEPTEMBER 2021

TO: FIRST MINISTER  
DEPUTY FIRST MINISTER

Copy Distribution List Below

**COR/0816/2021 –NSMC PLENARY MEETING 18 JUNE 2021 - COSTS ASSOCIATED WITH THE MEETING NOT PROCEEDING**

**Issue:** Naomi Long, Minister of Justice, had written to you on 8 September to request further details of the costs associated with the proposed in person Plenary not proceeding.

You had previously responded to a request from her on 18 August 2021, CORR 0612-2021 refers

**Timescale:** Routine

**Press Office Advice:** Costs of cancelled NSMC meeting are likely to generate negative media coverage if put into public domain

**FOI Implications:** May be disclosable

**Recommendation:** That you:

- (i) note the correspondence from the Minister of Justice at Annex A; and
- (ii) respond to the Minister of Justice along the lines of the draft letter at Annex B.

## **BACKGROUND**

1. A North South Ministerial Council meeting was arranged for 18 June 2021. The meeting was postponed on the evening of 17 June as it became clear the criteria for holding the meeting would not be met.



2. The meeting was to be 'in person' at the Armagh City Hotel. This venue was chosen rather than hosting the meeting at the NSMC offices, which would be the normal venue, to enable compliance with social distancing public health advice due to the Covid-19 pandemic.
3. The setting up of the hotel for the meeting and lunch preparation for Ministers and senior officials were at an advanced stage at the time the meeting was postponed and as a result costs had been incurred. Some reduction in the original price was negotiated with the hotel following postponement. The final cost is £4,000.
4. Morrow Communications had been engaged to provide sound engineering for the meeting and to facilitate a press conference after the meeting. Some reduction has been applied to the original price though much of the costs were upfront costs in setting up the meeting room and the press conference. The final cost is £14,042.45.
5. In addition costs were incurred for an overnight stay at the hotel and for translation costs. The total costs incurred were £18,201. While there is no possibility of recovery of costs incurred with the venue, some costs associated with the press conference have not been lost as some design and build processes will be used at a future Plenary meeting.
6. A further NSMC Plenary Meeting did proceed virtually (due to health protection concerns) on 30 July 2021. The meeting was hosted by the Irish Government and there were no costs to the Executive.
7. Minister Long in her recent correspondence indicates she is keen to understand what the financial implication was of cancelling the meeting and asks to be provided with a more detailed breakdown of which costs have been recouped to enable the next meeting to proceed.
8. Minister Long copied this correspondence to Ministerial Colleagues, the Attorney General, Departmental Solicitor, First Legislative Counsel and the Executive Secretariat.
9. A draft letter of response is attached at Annex B.

## **RECOMMENDATION**

10. That you:

- (i) note the correspondence from the Minister of Justice at Annex A; and

## Document 8: Letter to DUP Ministers from Head of Civil Service



**Jayne Brady**  
**Head of the Civil Service**  
Room FD.34, Stormont Castle  
Stormont Estate, Belfast  
BT4 3TT, Northern Ireland  
Tel: 028 9037 8133  
E-mail: [hocs@executiveoffice-ni.gov.uk](mailto:hocs@executiveoffice-ni.gov.uk)

11 October 2021

**From: Jayne Brady**  
**Secretary to the Executive**

**To: First Minister**  
**Minister for Agriculture, Environment and Rural Affairs**  
**Minister for the Economy**  
**Minister for Education**  
**Junior Minister Middleton**

**Re: Judicial Review regarding non-participation in NSMC**

1. As you are aware you have been named as a respondent in a Judicial Review regarding non-participation in the North South Ministerial Council.
2. I am writing to advise that earlier today Mr Justice Scofield granted a declaration that "*the decision to withdraw from the NSMC was and is unlawful*". I understand that, with the exception of First Minister and Junior Minister Middleton, you have confirmed agreement to the wording of this declaration via Counsel.

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The personal information (e.g., name, personal email/home postal address) included in your correspondence, which the Executive Office now holds, will be handled in accordance with data protection legislation. It will be kept secure and only shared with relevant officials for the purpose of providing a response. This information will be retained for no longer than is necessary, and in line with the Department's retention and disposal schedule.

3. Further to this declaration, I would draw to your attention that Mr Justice Scofield has also indicated that:

*"the court expects the respondents to comply with their legal obligations".*

Yours sincerely



**Jayne Brady**  
**Head of the Northern Ireland Civil Service**

## Document 9: Edwin Poots MLA Interview transcript

Commissioner Interview with Minister Edwin Poots MLA

10 February 2022

Commissioner: [MM]

John Devitt: [JD]

Edwin Poots MLA: [EP]

Jonathan McFerran: [JM]

[Other comments: A few signal break-ups meant that some speech was lost as a result]

MM: I'm Melissa McCullough, Assembly Standards Commissioner. The other person present is John Devitt, as second interviewer. We're interviewing via Zoom. The date is 10th February, and the time is 13.58. I'm interviewing Minister Edwin Poots MLA, the Minister for Agriculture, Environment and Rural Affairs. I'm right in saying nobody else is present. Correct?

EP: Correct.

MM: Okay, would you like to be referred to as Minister Poots, or would you prefer Edwin?

EP: Edwin is fine.

MM: Okay, Edwin, I'm just going to ask you to take this oath. I'm going to share the screen, if you don't mind. Okay, if you wouldn't mind saying that out loud. Hopefully, you can see it okay.

EP: I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth.

MM: Great, thanks so much. Okay, so if for any reason the technology fails, we'll all try to get back on, should that happen. So the matters I'm investigating relate to a complaint made by Mr Conor Quinn against you. The substance is that, following a speech given by the leader of the DUP, Sir Jeffrey Donaldson, on the 9th September 2021, that the DUP will immediately withdraw from NSMC meetings, essentially, and Mr Quinn alleges that in your capacity as Minister, you breached the Ministerial Code of Conduct in observing the boycott, which resulted in failing to attend NSMC meetings. He quotes number five, 'comply with this code and with the rules relating to use of public funds'. So that's his complaint in a nutshell, but for the record, and I know we've discussed this through correspondence, I'm interested only in the Ministerial Code of Conduct, paragraphs 1.5 and 1.6 of the Ministerial Code. The Pledge of Office, at paragraph 1.4 in the Ministerial Code, does not form part of what's under my remit.

Okay, so I realise that there is a list of meetings that have not happened, that didn't go ahead, and you're listed as the lead minister for the proposed NSMC meetings in question on 29th September, which was the Agriculture meeting, and two on 15th October, as it looks, for Environment and Aquaculture and Marine respectively. So I'm just going to ask a few questions in relation to that. Was your non-attendance at those meetings due to the DUP boycott of NSMC?

EP: I don't recall that those meetings were ever actually called.

MM: They're on a proposed list, and they have a lead and a - they have various things associated to them. Whether or not - I know that's one of the defences. I've read the High Court judgements, so I understand that there's a question of them being scheduled or not scheduled.

EP: I've been a Minister in the Executive from 2007 at different points in time, so my attendance at those meetings have always been under the authority and the auspices of the First and deputy First Minister's office, and therefore, they have to ask me to attend the meeting before I can attend it. I can't attend the meeting without authority.

MM: So they didn't ask you to attend?

EP: No, they didn't.

MM: So you weren't asked to attend them, so therefore you didn't agree to attend them, because you weren't asked.

EP: Well, as far as I'm concerned, if I have to go to a North South meeting in my responsibility as a Minister, the meeting has to be approved by the First and deputy First Minister, and an agenda has to be agreed, and then you attend the meetings on that basis. None of that happened, so I had no meeting to attend.

MM: There is a Jonathan McFerran in the waiting room. Are you waiting on him coming?

EP: He's my private secretary, but I'm not sure he needs to be in it, to be perfectly honest, unless you want him in it.

MM: What about we admit him, and we'll ask if he wants to be in it? Will I admit him?

EP: That's fine, yes.

MM: Jonathan, hi. We've started already. Are you here as a representative of Mr Poots?

JM: I'm Minister's private secretary, but maybe I don't need to attend. Minister, are you happy I don't attend?

EP: I'm not sure. It's the commissioner's meeting, so it's up to the commissioner, actually.

MM: Ministers are allowed to have somebody present if he so desires, so it's really your call, Edwin.

EP: Yes, well, Jon is not an advocate for me.

MM: Okay, well then you don't need to be here.

JM: No problem. That's okay, I'll head on. Thanks very much. That's okay.

MM: Okay, thank you.

JM: Bye.

MM: Bye. Okay, so just back to that, I take your point, what you're saying. So at no time did you - you didn't have to say you weren't going to attend, because you never believed...

EP: That's very true. I didn't refuse to attend any meetings.

MM: Okay, yes, but not only did you not refuse, what you're saying is you didn't see there was a scheduled meeting that you were to attend, so there was no communication about that meeting.

EP: I didn't get any invitation to attend these meetings in the formal manner that has always come to me over my period as a minister.

MM: Okay, so just for clarity, how would they have normally come to you?

EP: There's normally a letter signed by FM/dFM, authorising me to attend a meeting on a particular date, and that didn't happen.

MM: I know you were a respondent in two High Court judgements - well, there were two times. The applicant went back on the second time. So the judgements that came out were 11th October 2021 and 20th December 2021, and you were one of five respondents. In the first judgement on the 11th, a declaration was made by the court that the boycott, the DUP boycott, was and is unlawful. I think you're familiar with it, but I could read it out if you prefer.

EP: Go ahead.

MM: It says, 'The respondent's decision to withdraw from the NSMC was and is unlawful because it frustrates, is contrary to and in breach of the legal duties and responsibilities contained within part five of the Northern Ireland Act 1998, and specifically sections 52A, 52B and 52C.' I just have a question on that. Can you confirm whether you accept that this boycott is unlawful as is documented in that court judgement?

EP: I accept the court judgement, in as far as it applies to me. So if I boycotted meetings, and didn't attend meetings I was supposed to, I accept the court's ruling, yes, but it doesn't apply to me because I haven't.

MM: You haven't boycotted?

EP: No.

MM: You haven't not attended under the boycott?

EP: I haven't not attended, no.

MM: Okay, the other thing then that leads me to it, though, is that there were three meetings that were scheduled with your name on it, but because you said they weren't something you saw as scheduled meetings, this question might not actually be applicable to you in some ways. Would you have thought that, based on the fact that the judge and that judgement found it illegal to boycott, that the boycott itself, and observing any boycott, would be in breach of the Ministerial Code of Conduct in relation to the Seven Principles of Public Life?

EP: Yes, that becomes hypothetical in that I haven't the formalised authority to participate in such meetings because that authority doesn't rest with me. That authority rests elsewhere. That authority wasn't granted to me, therefore I couldn't decide whether to go or not to go to a meeting, so that is entirely hypothetical and not something that I can give a judgement on.

MM: If a boycott came down, do you follow the boycott or don't you follow the boycott, as a... In your position. I'm not saying you did it on this occasion, because you're saying the meeting wasn't scheduled.

EP: That's a hypothetical situation, which I don't want to get into. I'm a fairly independent-minded character and so that is purely hypothetical to a situation. I wasn't asked to attend a meeting, and therefore didn't boycott a meeting.

MM: So there were no meetings at all relating to this boycott that you did not attend, based on the boycott?

EP: No.



MM: I've nothing further. John, have you anything?

JD: Yes, good afternoon, Edwin.

EP: Good afternoon.

JD: I just want to clarify a couple of points. You have said clearly that you have been a Minister since 2007.

EP: Yes.

JD: That would indicate that you're well aware of how the system works for attending the Ministerial meetings. Would that be a fair comment?

EP: Yes, it would.

JD: So can you tell me then, or can you enlighten us, as to why, in 2021, a similar system didn't work from September onwards?

EP: I can't, because that relates to the role of the First and deputy First Minister's office.

JD: Well, accepting that that does relate to the First and deputy First Minister's office, that doesn't negate you from making some efforts to fulfil your obligation as Minister to attend the meetings that were proposed. What is your response to that?

EP: That's utter nonsense. Dates that are set for, or potential dates that are set for meetings are potential dates. A meeting isn't called until it's formalised, until an agenda is actually set for that meeting and agreed, and the people who have the authority to sign off on that meeting taking place have signed off on it. None of those things had happened, therefore what you're suggesting doesn't apply.

JD: What I'm suggesting is that there had to have been some efforts, an audit trail from your office to various other offices to say that your diary was full, you couldn't attend, you were willing to nominate someone else, and that's why the meeting didn't take place. You're not saying that, are you?

EP: No. Listen, the audit trail is there, so if you want to look at it, anything that happened, you're entitled to look at it.

JD: Well, I certainly think that the Commissioner would be receptive if you forwarded to her any email audit trail that you had with the First and deputy First Minister's office, in relation to the meetings that you were responsible for attending on 20th September 2021 and 15th October 2021.

EP: Yes, well, there won't be any personal emails from me. It will all have been carried out through the private office, so if it's requested through the private office, that is something that can be accommodated.

JD: Can I just go back to the court judgement, which I think, if I'm right, that you are accepting of the court ruling, in that this was a recognised boycott? Is that correct?

EP: I've nothing to challenge, in terms of the court ruling.

JD: Well, it's a matter of court record that the barrister on your behalf conceded that you were in breach of the rules and regulations at that time, and that the boycott was unlawful.

EP: Yes. The boycott is unlawful, yes, but I didn't participate in the boycott, so it didn't apply to me.

JD: Well, you've also said in this interview that you are a person of independent mind. You're an independent-minded character.

EP: Yes.

JD: So I'm trying to establish whether, given that fact that you - why you stood by the boycott, and not exercised your independent mindset.

EP: You would need to go and look at how North South meetings are established. A minister, in his own portfolio, or her own portfolio, cannot set up North South meetings of their own volition, and it's not done by the departments. It is done under the construct of the First and deputy First Minister's office, and therefore, if I had desired to hold a meeting with Charlie McConalogue - and I do hold meetings with Charlie on a regular basis in any event and have conversations with him on a regular basis around issues of common concern - had I desired to do it, I didn't have the legal capacity to do it.

JD: Right, well then, can you assist us in this regard? It's also a matter of record that other meetings that were proposed did go ahead, albeit that you weren't an appointed minister, so there clearly wasn't an obstruction for those meetings by the First and deputy First Minister. So I'm trying to understand, in the meetings that you were scheduled to attend, what the internal obstacle was.

EP: That would be a question for the First and deputy First Minister.

JD: Okay, but in conclusion, you accept that the court judgement places you in boycott and that the judgement - that your actions were unlawful, and technically, therefore, in breach of the Ministerial Code of Conduct.

EP: No, I don't, and you shouldn't try and put words in my mouth in that respect. I accept that the judge made a ruling. I accept that if the First and deputy First Minister's office, OFMDFM, had agreed an agenda and had agreed my attendance at a meeting, and I had indicated that I wouldn't attend because I was

boycotting it, I would be in defiance of the law, yes, but not in the context that you said. You're absolutely wrong on that.

JD: Well, the context of which this interview is taking place is only in respect of the perceived breach of the Ministerial Code of Conduct that the complainant alludes to.

EP: Yes, which I haven't breached because I haven't broken the law. I haven't boycotted any meetings, I haven't been asked to attend meetings, therefore, I've nothing to answer for.

JD: Do you recall, at any stage, making any statement within the Assembly regarding the boycott?

EP: I can't. Everything is answered in the Assembly, so if I have, it will be there, but off the cuff, I can't.

JD: Okay, well, I have no further questions, Edwin. I'm going to hand you back to the Commissioner.

EP: No problem.

MM: Okay, thanks, Edwin. There's one thing I wanted to find out, because you said something very interesting to me. You've been around a long time, so you find that whatever way these were operating, it was different from all the years that you've operated as a Minister. There was something different that did not happen or didn't take place. You never got the letter.

EP: Yes.

MM: Take me through it. I'm looking at the flowchart, which, as a scientist, I find this... It's a very good flowchart, but it's very complex. Now that flowchart, Edwin, says a lot, but it gets to the point where the planning of the meeting seems to be... it happens at a plenary. Did that happen in the instances of these meetings that we're querying?

EP: At the plenary?

MM: That the dates are thought of at plenary, and then by the end of August - say, if they happen in July, by the end of August, they're contacting the private offices and getting dates in diaries. That's my understanding. So dates were in diaries, but you're saying that... Who controls the minister's diary, is the question then, because if those dates went in the diary really early, then I'm just wondering how that works, if that worked differently this time.

EP: Right, first of all, I don't get involved in the mechanics of that. Organising diaries is not my best skill, I have to confess, and it's great that I have people who are very skilled at doing that, because that means that I turn up at places that I'm supposed to turn up at, somewhere close to the time I'm supposed to turn up at, so all of that is left to the private office. So I know a little about it, but I would make the assumption that NSMC have a series of meetings to establish, they contact private offices to check out availability of ministers, to try to correlate to have all three sets of ministers, or four if that happens to be the case, available at the one time. That's the course of work that they'll do. They'll be talking to each other about dates, which I'm not aware of, so that's something that they do as a matter of form. Ultimately, whenever it actually gets to the point of the North South meeting being called, they'll put it in your diary. On occasions in the past, there may have been other things, which they hadn't been aware of, that you were tied up with, which has precluded the meeting going ahead, but that's been very, very seldom in the past, I have to say, but that is a possibility. On the other side of it, they have that course of work to do, to correlate the times where ministers can actually attend. That's put forward then, I assume, to the First and deputy First Minister's office to agree the agenda and then sign off the attendance of the ministers.

MM: Right, so I'm reading this, and it seems to say that the Executive Ministers read papers before the FM and dFM are content with papers, in the flowchart. As a practical issue here - I'm just trying to figure it out - do you normally get papers that then get - it says, 'Executive ministers agree papers.'

EP: Yes, you would see the agenda days in advance. Not weeks in advance, but a number of days, up to a week, probably.

MM: Okay, and then when you say, 'Okay,' as the executive ministers, then it goes...

EP: Yes, if you're happy with the agenda, then that will go back to FM/dFM to see if they're happy with the agenda and sign it off. They may have issues which I haven't raised, which were previous.

MM: Yes, so what I'm saying then is, on this journey of the organisation, at what point - you never received anything to do with these meetings, yet your name is listed.

EP: Well, listen, my name will be listed to attend meetings which I haven't agreed to, and that happens all the time. So my name is listed to attend meetings which I will ultimately not. I'm talking outside of North South. This morning, for example, I have signed off my agreement to attend roughly half a dozen days of various events. Now they may organise those for a particular day and I have constituency business. They organise it for a particular day and I have personal business to attend to, so some of those will get adjusted as things go forward, and the same applies to the North South stuff. So that's how it is. They will list things, but that isn't a firm date until it's agreed and signed off.

MM: So did none of those points happen? You never got papers for any of those meetings, to agree?

EP: I'm trying to recall if I did. I can't give you an absolute answer on that. I don't think I did, but I can't be absolute, but there will be a paper trail. If it exists, there will be a paper trail of it.

MM: Okay, so you didn't sign it off, is what I'm asking.

EP: I can't remember signing it off because I don't think I had anything to sign off.

MM: Okay, if you could get us the paper trail, it just would make my response...

EP: Again, perhaps you'll contact the private office, and they'll assist you.

MM: Okay, I'll ask the private office. John, sorry?

JD: [Signal breaks up 0:23:49.9] just refer to the question I asked you previously about statements that you made in the Northern Ireland Assembly. I'm looking at page three, paragraph of the judgement of 11th October 2021. It says, 'Statements made in the Northern Ireland Assembly by the fifth respondent on the [signal breaks up 0:24:13.5] Jeffrey's speech. [Signal breaks up 0:24:19.5] the DUP's proposed withdrawal from the NSMC indicated that ministers (plainly the DUP ministers, when read in context) would stand over the statement made by their party leader, and that they understood this will cause problems.'

EP: So who made that statement?

JD: This is the statement that's contained within the judgement dated 11th October 2021. Let me finish it, and then we'll put it in context.

EP: Yes, you were breaking up a wee bit there, John.

JD: Okay, shall I try again? Can you hear me?

EP: Okay, yes.

JD: 'Statements made in the Northern Ireland Assembly by the fifth respondent on 14 September 2021 confirmed the position as set out in Sir Jeffrey's speech. Minister Poots, when asked about the DUP's proposed withdrawal from the NSMC [signal breaks up 0:25:21.2] (plainly the DUP ministers, when read in context) would stand over the statement made by their party leader, and that they understood that this will cause problems.' The judge then goes on to say, 'More directly, further to the grant of leave in these proceedings, when indicating that his clients did not intend to file any evidence in the proceedings, Mr McGleenan, and that's the QC representing you, confirmed that all the respondents adhered to the approach and rationale set out in Sir Jeffrey's speech.' So my question to you is this. There's a clear indication there, from your leading barrister to the judge, that you knew you were in breach of the non-attendance at these meetings. [Signal breaks up 0:26:11.1] with what you just told [signal breaks up 0:26:13.8]. Can you hear me?

EP: No.

MM: What was the last question, John? Just repeat the last question you asked.

JD: The last question was, how does that paragraph - paragraph ten of the judgement, how does that fit with your assertion that you didn't obstruct or boycott any of these meetings?

EP: I'm just stating facts. I wasn't asked to attend a meeting, and therefore, I didn't attend a meeting because I wasn't asked to attend, so that's what we're dealing with here. Anything else is hypothetical. Beyond that, it's not something that you can make a determination on, because you're making a determination on what you think somebody might think. That's not, of course, [unclear phrase 0:27:24.3].

JD: Well, you genuinely think that you have fully adhered to the Ministerial Code of Conduct.

EP: Well, if there's evidence that I haven't, then that's for yourselves to produce, and if there isn't evidence to support that... I've seen, in the last week, a police ombudsman making assertions which wouldn't stand up in a court of law, and therefore, it's up to yourselves to produce evidence of wrongdoing on my part. I don't believe that there is any.

MM: So can I just jump in here, John? Just to say, Edwin, this is an internal code of conduct issue. It's not a legal...

EP: Yes.

MM: It is balance of probabilities type of standard of proof. What I am saying, though, just to clarify for sure, to tell you that it's not just the meetings, or attendance or non-attendance. I'm picking up from what you're saying, you may think that, but actually, the umbrella item in Mr Quinn's complaint is the boycott itself. So the out workings [sic] of it, yes, not attending, if you didn't attend, but the boycott itself is what he believes Ministers are in breach of the Code of Conduct in relation to. So some may have failed to attend, some may not have failed to attend or whatever, but I think, in general, there's also the overarching - and I think that's where John's coming from with that question, which is, you accepted the illegality of it, but also you accepted it could cause - I think your words were, 'This will cause problems.' So I just wanted to clarify that to you, in case that was misunderstood.

EP: No, that's fine. Mr Quinn's complaint is about my participation in the boycott, and as I wasn't asked to boycott anything, or asked to attend anything, then I don't think that anything that Mr Quinn is complaining



about is applicable to me. If we're going to start to get into assumptions on hypothetical situations, I don't have any comment to add to that because I don't think that has any standing.

MM: Do you have anything else, John?

JD: No. The purpose of this interview, as the Commissioner said, is to allow you to give your side of the events, for us to understand more fully what you're saying as to why you didn't attend, and I have to be honest that I am slightly confused. On one hand, you're accepting the judgement in its totality, and yet, on the other hand, you're saying that you didn't breach the Ministerial Code of Conduct by non-attendance because the meetings weren't properly set up. So unless you can enlighten me further, it's a confusing picture.

EP: I can, John. I'll enlighten you again, because I thought I had enlightened you. The judgement would be referencing the boycotting of meetings, and if I had actually done it, then I'd be acting illegally, but I didn't actually do it, so I didn't act illegally. It's pretty straightforward. So from that, we have then moved into you trying to tease out what might happen in a hypothetical situation and make assumptions from that, and if that's how the Commissioner's office would wish to do things, then I think that damages the role of the Commissioner's Office. You deal in facts, and the facts are there before you. I have indicated a willingness to provide any background information to enable you to participate in your investigation, and that's where it lies. I would hope that if there is a report carried out on it, that it will deal with facts, and nothing more and nothing less, because I think that any Commissioner's Office that gets into this situation where it is making assertions based on assumptions actually denigrates the office that is held in that circumstance.

MM: Well, thank you for pointing that out, especially - it's important for me to answer that.

EP: I'm not saying your office, by the way, and [over speaking 0:32:14.6] ever having done it, but other Commissioners' Offices have, and I think that denigrates the role of the Commissioner's Office.

MM: Well, look, I think, sometimes - you do have a point, in terms of being very careful to deal with the facts. However, I'm trying to establish the facts.

EP: Oh, I appreciate that.

MM: I really am, and I have to say, it's a very - this is very hard to reconcile, as you can also probably appreciate, in terms of the scheduling defence. The High Court judgements deal with that as well, and the judgement itself, which... I'm looking at that, and I'm trying to understand it, which is why I'm interviewing all the DUP ministers, to make sure I fully understand where they're coming from. I'll be interviewing other people as well, but I'm just trying to make sure that I base my decision on facts, and as good facts as I...

EP: I appreciate that.

MM: Yes, and obviously, you have to remember, balance of probabilities, you sometimes have to gather as much evidence as you have, and you might think there's lots of facts, but maybe things are still woolly, even after investigation. You just don't know, so I'm leaving my mind open to everything, so I know exactly - afterwards, I can look and see, what are the facts of this? What do I think is, on balance, happening here? That's all I can do. I can just do my job.

EP: Just for your balance of probabilities, I had no role whatsoever in devising Jeffrey Donaldson's speech or any policies in relation to that.

MM: You make your own decisions. This is hypothetical, but I'm going to ask it. I know it's nuts to ask hypotheticals, but in this situation, I feel like I'm compelled. If there was a meeting that was considered scheduled, and you knew and agreed that it was considered scheduled, would you have abided by the boycott announced by Jeffrey Donaldson?

EP: If that circumstance had arisen, I'd have had to make a decision on the basis of what was before me. One of those issues would have been, would I have knowingly defied the law, and that would be my call to make.

MM: Yes, so you would have made a consideration of that at the time, had that ever...

EP: I'd have considered everything at the time, so I would not have had a preconceived position.

MM: Okay. Well, look, I want to thank you, because I know you're a busy man, for coming along. I'll be sending you a copy of the transcript, so you can approve it, etc., as we go here, okay.

EP: Okay, cheers. Bye then.

MM: Take care. Bye.

JD: Thanks everyone. Thank you.

MM: The time is 14.32 and I'm ending the recording.

[END OF TRANSCRIPT]

## Document 10: Gordon Lyons MLA Interview Transcript

Commissioner Interview with Minister Gordon Lyons MLA

31 January 2022

Commissioner [MM]  
John Devitt [JD]  
Gordon Lyons MLA [GL]

MM: This interview is being tape recorded. I'm Melissa McCullough, Assembly Standards Commissioner. The other person present is John Devitt as second interviewer. We're interviewing in Room 222 in Parliament Buildings. The date is 31st January 2022 and the time is 8:55. I'm interviewing Minister Gordon Lyons and there is no one else present with Minister Lyons. I'm going to formally ask you now to take the oath if you would say that out loud.

GL: I swear by almighty God that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth.

MM: Thank you very much. Thank you for coming in today.

GL: You're welcome.

MM: Would you prefer Minister Lyons or Gordon?

GL: Gordon is fine.

MM: Gordon, as you're aware, this is a complaint made by Mr Conor Quinn against you and the matters I'm investigating relate to that complaint. The substance of that complaint is that - I won't read it out loud, you have it there, but is that following a speech on 9th September 2021 given by the leader of the DUP, Sir Jeffrey Donaldson, that the DUP will immediately withdraw from NSMC meetings. Mr Quinn alleges that you breached the Ministerial Code of Conduct, and he's citing rule five, which is to comply with the Code and with the rules relating to the use of public funds. I know we have talked about this via correspondence, but for the record I'm interested in your nonattendance in so far as it relates to the Ministerial Code of Conduct paragraphs 1.5 and 1.6. I think I told you on 10th December in a letter, that the Pledge of Office at paragraph 1.4 in the Ministerial Code does not form part of the Ministerial Code of Conduct. Therefore, that's not under my remit, that's not what I'm here to talk about. What I am talking about today is 1.5, 1.6. Now, I received a list of the meetings for the NSMC. I'm sure you have these.

GL: I don't, no.

MM: There are two in particular from the date of Mr Quinn's complaint, 10th November and 24th November 2021. These meetings did not go ahead. I think it was Tourism, and what is the other one there?

GL: Trade and Business Development.

MM: I have to ask now, what was your rationale in not attending?

GL: Well, sorry, can I just first of all ask, surely, if the complaint was lodged on, I think it was September time?

MM: Yes, well, okay, I can tell you when it was exactly, 10th September, right after the 9th. You can see here, there's a lot of questions that were asked. These are email correspondence. I think you'd asked a couple of questions and I've then confirmed with him that he had [over speaking 0:03:08.3] and he goes on to list them as I ask him questions for clarification. He seems to add any sort of meetings due to the boycott, so that means that anything post-September 9th or what he's considering the boycott.

GL: But surely, a complaint has to be about something that has happened, rather than something that may happen in the future, because he doesn't mention on that list any - he doesn't mention me at all.

MM: Here we are. My original complaint on 10th September cited all DUP ministers and in respect of the wider DUP boycott of NSMC meetings. It's the wider boycott, which would encompass all of the meetings to date. If I had interviewed you back when I had asked - you guys have had lots of questions, but it might not have covered the 10th, because 10th of November might not have happened at that stage. Now, we're almost in February, the last day of January, so conceivably, a boycott that has covered this complaint will have followed from...

GL: I understand that, but just because I think this could have consequences for further investigations. If someone has made a complaint about a specific date, I get that everything before that should be

investigated. If he then comes back and updates you with further information, I can see how that would be part of that complaint, but that letter was received on 7th November.

MM: That's right.

GL: Has he come back again subsequent to that?

MM: No, he hasn't. I'm reading this, in common sense terms it's saying that additional and subsequent information was provided in respect of Minister [unclear words 0:04:48.9]. He basically lists you as his original complaint in respect of the wider DUP boycott. Now, he doesn't say, 'My complaint stops on 7th November.' He seems to say there's a boycott. The boycott means that these meetings aren't happening, and therefore, I'm now here with you, not on 7th November. If I had interviewed you on 7th November, I'd have said, 'Have you any...?'

GL: I think this is an important point. If we get to the stage in the future where, say, a complaint comes in about a Minister or a Member of the Assembly, and you look back from the date of the complaint and you look backwards, you can investigate and that's fine, but how can you look forward beyond what he has asked you about and dates that he has asked you about in specific complaints that he has asked you about?

MM: I understand what you're saying. I think it's because it refers to a general boycott, which has continued. If for example, you're aware of the High Court judgement, so the October one. Let's just say the October one perhaps, I saw you before that even. Everything would be different. Things influence investigations as you go on, time reveals different things. I see this as it's a continuation and it continues to be occurring, the boycott, correct?

GL: But it continues until - when is your investigation going to end?

MM: As soon as I can see everybody. That's really it, I've been waiting, so I've now seen you. I could have seen you back in November, but there's been delays. They have nothing to do with my delays. What I'm saying is time has marched on and I can't simply say, okay, so because I didn't ask Mr Quinn, do you want now from 7th - I can't keep going back to the complainant and asking him to update.

GL: No, that's fine.

MM: I was satisfied though. I will say this, having asked him two or three different times to confirm because there were questions from members or from ministers, I was satisfied that when he said the wider DUP boycott, that this is a continuing thing. It has continued. I see from this that it's - what is the last one on that list? Oh, here it is. The last one I have on this list is 26th November. I take your point; I just see it differently.

GL: That's okay. I just think it's very poor form.

MM: Of?

GL: To investigate something and to continue investigation beyond what the complainant has actually asked about.

MM: I don't see it as beyond the complaint, because when he then says following - then he actually states at an earlier time...

GL: Can I just confirm that the last email that you've received from him is 7th November?

MM: Yes. He has one also...

GL: And from 20th October?

MM: Yes. This 20th October might have been in regard to one that you had requested, because I think he didn't mention your name. I remember at first, he had to clarify that.

GL: Yes, so you prompted - the complaint should have been inadmissible in my opinion because it didn't name me as an individual, which is what's required. You came back to me, you took a different view, which you're perfectly entitled to do, and then you went back, you prompted him, that's fine. He came back with that, that's okay. I don't even accept that attendance at North South meetings falls under the Ministerial Code 1.5 because the breach of 3.11 of the Ministerial Code is very different from the Ministerial Code of Conduct.

MM: Yes, and I'm not using that. He quotes five, as I just said. He quotes five, which is again, this code is very interesting, complex.

GL: Yes

MM: Needlessly, I think. If it was updated, we might be in a better position.

GL: That's the issue. What you're dealing with is something that was originally drafted in 1998. The change took place at St Andrews and then what Mr Allister put in his bill takes it back to the 1998 position rather than the Ministerial Code.

MM: Yes, and this is what we have to deal with.

GL: Yes.

MM: I will say this for the record because it's a very important matter, that I have not been shirking in my responsibility to highlight this to many people. This situation has to be the way it is at the moment.

However, I have contacted, including - I've told the First Minister about this, I've told Secretary of State about this through the Committee. I have contacted the Head of the Civil Service. I've seen and heard nothing, so we are left with the Ministerial Code of Conduct, the Ministerial Code that is more than 25 years old.

GL: It may well have been a mistake in the drafting of the Functioning of Government Act that they meant the Ministerial Code of 2007, but who knows? That's not for us to - we have to go with what the law says.

MM: Yes, okay. I suppose I have on record now, and I understand your position, what you're saying. I obviously take a different view.

GL: Yes.

MM: Being as that is, I want just to ask you then your rationale for not attending 10th November and 24th November.

GL: Sorry, to go back to this, but it is important. Just for the record, you're saying that under the direction by the Committee on Standards and Privileges and general procedures, complaints 3.3(8), where the complainant has to state the act or omission of the person complained of, which are alleged to have been breached. You're saying that's what?

MM: He is stating that the general boycott, which was announced on 9th September, is against the Ministerial Code of Conduct number five. He is stating that whilst he has to say the general boycott, because a boycott is general, it's boycotting meetings, he is stating that that did not, in the words of number five, comply with this Code, which includes the Code of Conduct. I'm not saying that includes the Pledge of Office.

GL: Of the Ministerial Code, yes.

MM: Yes, that is how I'm interpreting that.

GL: The omission is...

MM: The act is not attending. The omission, it can be an act or an omission. I'm assuming, when I read his complaint, the act is the boycott and assuming all DUPs are boycotting the NSMC meetings.

GL: Okay, so that's based on - because again, very important here for the future, if a political leader states something rather than the action of a Minister, are you looking specifically at my actions today?

MM: It's only you, this is your personal conduct.

GL: Okay.

MM: This is all this is about.

GL: Yes, okay, so it has to be...

MM: But you need context to understand.

GL: That's okay, because it's not appropriate in my opinion to look at what somebody else has said. It has to be my actions.

MM: No, that was his - Conor Quinn's complaint mentions 9th September as a starting point, and I was just simply telling you that that's what he mentions, that there was an announcement on 9<sup>th</sup> September. This follows from that. Your personal conduct in relation to the Code of Conduct, I am very clear on that. This is not legal, this is an internal, Ministerial Code of Conduct issue.

GL: Okay, good.

MM: Are we clear?

GL: Yes.

MM: Can you just tell me what your rationale was in not attending those two meetings?

GL: Because those meetings hadn't been agreed.

MM: As you will be aware, this has been subject to legal considerations and High Court proceedings. You were a respondent in those High Court proceedings, and those are a matter of public record, essentially. I suppose in a way, I just wanted to confirm whether or not you accept - again, this is about your personal conduct, but I need to know whether you accept that the boycott by the DUP of North South Ministerial Council meetings is unlawful.

GL: Well, the High Court has its opinion on that. My view is that it's up to Ministers to decide when these meetings take place.

MM: Okay, and whether they don't?

GL: Yes, because they can't go unless we have approval.

MM: I suppose I need to just delve into this because this is very important too. Do you accept that when the High Court made a ruling that they declared that it was unlawful, this practice of not attending was unlawful, did you accept that that was a finding?

GL: I think they did that on the basis that we had a duty to agree, but I think it's up to Ministers to decide when those meetings take place.

MM: The statement didn't say that it was on the basis of failing to agree. Basically, they said it was against Strand Five of the Northern Ireland Act 1998, sections 52A, B, and C. The judgement as I read it said it was illegal, and it actually seemed to say to me that - I suppose the way I want to say this is the respondents, you were one of them, did not seek to defend the legality of the boycott. Counsel made the concession in the proceedings on your behalf, and so, you weren't saying you were fighting the fact that it was legal. It seems to me you didn't seek to defend the legality of the boycott in those proceedings. That's why I'm asking you, as a respondent to those proceedings, did you agree that these were illegal? It means that you didn't seek to defend the boycott.

GL: By not attending on 10th November and 24th November, do I believe that was illegal by not going to those meetings? No, because those meetings were not agreed. Those meetings were not arranged. The dates were not agreed, so how could I be wrong by...

MM: Okay, so say...

GL: Because we have to speak of the specific [?dates here - over speaking 0:16:01.0].

MM: Moving on from the two exact ones, you've given me your answer to that.

GL: To hypotheticals?

MM: Well, no, these aren't hypotheticals now. I'm asking you in relation to the October and December High Court rulings from the court, Mr Justice Scofield actually said - I want to read out his declaration because he says, 'The respondent's decision to withdraw from the NSMC was and is unlawful, because it frustrates, is contrary to and in breach of the legal duties and responsibilities contained within part five of the Northern Ireland Act 1998, and specifically sections 52A, B, and C.' What I'm saying is, can I confirm that you accept that the boycott of the NSMC is unlawful?

GL: But from my own position...

MM: You were a respondent, so yes.

GL: We're looking at these two specific dates and, in my view, it's at my discretion whether I accept what's on the agenda or whether the date suits for the meetings to go ahead.

MM: I'm talking wider. I'm asking you about the wider boycott, because the complainant is also asking about the wider boycott, so I'm moving away from dates... He says more generally to the wider boycott of the NSMC meetings by all DUP ministers, that was in his 20th October email. I'm moving away from 10th and 24th, you've given me your answer to that. You said you did not attend because they weren't scheduled. That's what you said, correct?

GL: Yes, that's right.

MM: The second question is, moving on to the judgements that have happened in October and December, which are public record, and I've read you out the declaration, I'm just asking whether or not you accept the court's declaration that the boycott is unlawful.

GL: I would need to take time to consider that and to look at that in detail.

MM: I guess the following question I have is the declaration comes out, and I'm sure you're aware of the declaration and those High Court proceedings, because you were a respondent, right?

GL: Yes.

MM: Even after the declaration where it said it's unlawful, the boycott continues. You said just there a minute ago that you have a personal decision that you make, so it's your personal responsibility whether you go to these or whether you don't go to these.

GL: Yes.

MM: I then have to ask, because I'm only concerned with the Ministerial Code of Conduct, how does this behaviour align with your obligations under the Ministerial Code of Conduct?

GL: I had two meetings that I suppose you could say were proposed. I have not been contacted or further dates suggested for those.

MM: But were you contacted about those dates?

GL: I do remember the first one because I was in Amsterdam on 10th for a trade issue in the Netherlands. I don't know what my diary was like on 24th. However, I remember receiving no further notification, no further requests, no further correspondence from the North South secretary, as far as I'm aware.

MM: From those dates?

GL: Yes.

MM: Okay, so why do you think that is? It appears on the list, but you haven't even heard anything about them.

GL: About...

MM: About those two meetings.

GL: Oh, no, I'm saying that one I remember that I was in Amsterdam. The other one, I'm saying I can't remember about that. I'm saying subsequent to that, I haven't received any further correspondence or any requests to rearrange.

MM: I know you want to go back and read the declaration again and have a think about that, but my reading is that it's unlawful to boycott.

GL: Okay.

MM: I think a reasonable person would agree with that. What I'm saying to you is that do you think the Ministerial Code of Conduct, in relation to continuing on a path that is publicly stated to be illegal, do you think that aligns to the Ministerial Code of Conduct in terms of the - to be honest, the main thing is the Ministerial Code of Conduct requires you at all times to follow the Seven Principles of Public Life. They are, as you know, selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. If we even just focus on leadership. If, and you're not saying you do, you want to take time and reflect on the declaration, but if in fact this is correct when the High Court judgement says it's illegal and unlawful, this boycott, if that is correct, do you believe that disregarding the law is in keeping with the Seven Principles of Public Life which you're obliged to follow? Do you understand what I'm saying?

GL: Do I think that disregarding the law - yes, I think it's fair to say that if a Minister disregards the law, now, I don't think that's appropriate. I think that would bring us into conflict with the Ministerial Code.

MM: The code of conduct, to be clear.

GL: Code of conduct, yes.

MM: Especially leadership, because I think the judge in that case made an interesting observation when he said that it would be hard - I'll paraphrase because I don't want to spend time trying to find it here, but it's about if you're not respecting a law or if something is illegal and you are going ahead anyway with the illegality, which appears to have been what he's saying in December, I'm wondering personally how that looks to the public in terms of leadership. In terms of well, if they're not following the law or he's not following the law, why should I have to follow the law? I'm thinking along that angle, more on a personal conduct level. Do you understand what I'm saying?

GL: I understand the point you're trying to make.

MM: I have one more thing. You mentioned you could see me looking prior to 9th September and I actually see that different. I see that as well, no, his complaint was 9th September, and 9th September was when there was a specific declaration by...

GL: On my part?

MM: No, there was a party decision to boycott, and they mentioned it, and they'd said it out loud. What I'm asking you is are you aware of any strategy that was in place? As you know, you and I spoke at another time, was there an informal strategy to not attend in any way?

GL: Of course, I did attend subsequent to our last meeting.

MM: You attended, what date was that?

GL: Can I check?

MM: Sure.

GL: 30th July 2021.

MM: What one was that?

GL: The Twenty Sixth Plenary meeting. You can see my name there at the bottom of the list of attendees.

MM: Okay, would you send me that? Are you able to?

GL: It's a publicly available document, so I could. It's on the website.

MM: I didn't find the list, like I showed you there, on the website, so I wasn't sure it would be there. You attended an NSMC meeting on 30th July 2021.

GL: It was by video conference.

MM: In your view, there was no strategy prior to 9th September in relation to non-attendance.

GL: No strategy, no.

MM: I'm going to hand over, do you have any questions?

JD: I just have a couple of questions, Gordon, if I can just clarify my understanding of what you've said. In relation to the High Court judgement dated 11th October 2021 and 20th December 2021, which have obviously declared the boycott unlawful, you said, I think if I understood you correctly, that you took a different view to that. Did I understand that correctly?

GL: My view would be that ultimately, meetings take place whenever ministers agree an agenda, and agree the date. My issue is that those are ultimately political matters. For example, the agreement of an agenda is a political matter. We obviously have political differences with some of the issues that are taking place right now. It's up to ministers to agree that time and that agenda. I don't think it is appropriate for the courts or

Mr Quinn or anybody else to say this is when this must happen by, or these are the dates by which this must happen, or this is what should be on the agenda, but I will have to consider that judgement further as well, just to get greater clarity.

JD: That's respectful, thank you. I suppose my follow-up question is in relation to what you've just said. You were legally represented at those court proceedings and your legal representative at those court proceedings fully conceded that you as a respondent accepted the judgement of the court.

GL: In terms of the...?

JD: In terms of he conceded that you had no defence, so therefore, in the judgement, which clearly articulates that it was unlawful in the judge's opinion, I'm just trying to understand how you balance the unlawfulness with what you're saying now.

GL: I think they were looking at the wider issues around the dates, times, and the agenda, etc., on that.

JD: Yes, and in fairness to you they were, because the scheduling of those meetings is all included within these judgements, so yes, it is a complex issue as the Commissioner has outlined, but I just need clarity for understanding your mindset.

GL: In terms of...?

JD: In terms of the outcome of this judgement against your Ministerial responsibilities in respect of the Ministerial Code of Conduct.

GL: I'm sorry, can you explain what you're looking for?

JD: What I'm looking for, I suppose, I'll rephrase it another way, we've alluded to the two meetings in November, which you've said you were abroad at some of them, I suppose the question is, had your diary been clear for both those meetings, would you have attended irrespective of this court judgement?

GL: It's subject to the agenda. It would be subject to the agenda and it's for Ministers to decide whether those go ahead.

JD: If you were free and available to attend on those two November dates, provided you agreed the agenda, you would have attended, is that my understanding?

GL: I don't think the agendas would have been - sorry, just let me get clarity on this. You're wanting to know if we would have attended regardless of what was on.

JD: No, I'm trying to establish that if your diary was clear and the only obstacle to you attending those meetings was the disagreement of the agenda, you would have attended, had the agenda been agreed.

GL: No, I wouldn't have attended.

JD: So, even if the agenda had been agreed, you still wouldn't have attended.

GL: No, because of the political situation that we found ourselves in and at this time, we would not have found agreement to meet.

JD: I suppose that's what I was trying to understand.

GL: Okay. Sorry, I wasn't quite sure what you were getting at.

JD: Maybe it's how I phrased the question, so apologies. Your position, irrespective, was based on a political decision and not a ministerial decision, led decision, in respect of your duty to the wider public.

GL: Oh, no, I think my duty to the wider public falls into it, absolutely.

JD: By acting unlawfully?

GL: By the difficulties that we are facing right now as a result of the Protocol. That's why we took the decision to do what we're doing.

JD: That's in direct contradiction, if you like, to the High Court judgement's assessment and decision-making in relation to that activity.

GL: In so far as?

JD: In so far as the judge has adjudicated that the non-attendance was unlawful.

GL: Yes.

JD: That's fine, I'm just trying to understand. It is complex, and this isn't - I'm just trying to understand the rationale for you in your own role as a Minister who is entitled to make your own decisions, as to why you didn't make your own decisions on this. Am I clear that you were taking your lead from other people?

GL: Taking my lead from other - no, I make my own decisions. I think it's very clear as Ministers that we have to make our own decisions in this office. This is why I think it's inappropriate for any complaint to be based on what somebody else has said I may or may not do, because ultimately, those decisions, we have to take those.

JD: I'm grateful to you.

MM: Okay. Yes, I'm happy with that. I wondered do you have any other questions for us.

GL: No, I just want to put on record again that I think it's very unusual that when a complaint has come in asking about a specific - on a specific date, that it should be what happened before that date, not what happens in the future. I think it is very odd. I would love to see if there are any examples of where that has taken place. Are you aware of any examples of where that's taken place before?

MM: I take your point. I will look into that. I suppose my view is this is very unusual circumstances too, what's going on. Is it unusual to have announced a boycott? Is it unusual circumstances that we're in? I would argue yes. I suppose finding the exact circumstances where this has happened before might not be very clear. It's on record, so I will give it some thought.

GL: I think as well, I don't want to just keep coming back to this, but obviously, I came in here today for an interview on the basis of the letters that came to me. I wasn't aware, because maybe I could have brought the High Court judgements with me, maybe I could...

MM: I have them here.

GL: I think the interview is nearly over now, isn't it, so that's...

MM: You see them here; I could have handed you them.

GL: That's fine.

MM: I assumed as the respondent in the case you knew about these.

GL: No, sure, but...

MM: He does say, 'I note there has been High Court legal action.' He says it in his 15th October email, which it means to me that forms part of it. I think you have to understand as a Commissioner, investigating something isn't - you look at everything that's available at the time, that you're permitted to look at.

GL: Yes. I thought it was at the time of a complaint being made.

MM: No, time marches on. For example, my investigation into previous complaints that happened in 2017, 2018, 2019, when I took up my role, when I investigated those, I didn't say, 'Okay, I can only investigate from the date that that came in, three years ago. I can't look at anything that happened beyond that.' That would make no sense. I have to investigate on the day I'm investigating as to what I see when I investigate and what I can, within my remit, look at. I do not believe that looking at the High Court judgement, which is crucial to this case, would have... Are you trying to say that the High Court judgement, these judgements, they don't make up part of this complaint?

GL: I think that a complaint takes place at a certain period in time.

MM: Well, the complaint lodgement.

GL: Yes.

MM: The investigation can take place two years down the line. Are you saying ignore what happens [over speaking 0:34:04.9]?

GL: When do you cut it off? When do you decide the investigation is now over?

MM: Well, you have to stop somewhere, or you could go on forever. You can't say, 'Let me wait another ten months and see if anything else happens.' It just so happens I asked and requested for interviews in November, December, I have.

GL: You have, and I had queries, and to be fair...

MM: Exactly, and I'm happy to have answered them.

GL: ...I wasn't sent the original complaint.

MM: I saw that in your letter, and I remember saying to you that I sent it to you on 20th October. I do know we had email problems; do you remember?

GL: There's the email but nothing else is attached to it. The complaint wasn't attached on the original date.

MM: That's very strange. I don't think - 20th October, when I sent you it, it was dated 15th, and the reason this might have occurred, I can't say for sure...

GL: That's okay, I'm just saying there have been reasons why this interview hasn't taken place.

MM: I'm not questioning that. I think when you need clarity and you sought clarity, I am very happy to provide it, but then at the same time, I don't believe you can say that it's my fault that we're now at this timeframe.

GL: No, I'm not saying that. It's just you raised the issue [unclear words 0:35:13.4] a while. I'm saying that there was an error there and there was clarification to be had.

MM: I have to say I am very grateful for you for coming along today and I'm very grateful for your engagement with me, and it's always been very respectful and pleasant. I'm happy to answer any questions you have further to that, even if you think of something further on. I do have more interviews to do, so this will probably be a little bit longer. If there's anything in the meantime that you have questions about, feel free to get in touch.



GL: Okay.  
I'm going to stop this thing. The time is now 9:32.  
[END OF TRANSCRIPT]

## Document 11: Michelle McIlveen MLA Interview Transcript

Commissioner Interview with Minister Michelle McIlveen MLA

17 February 2022

Standards Commissioner: [SC]

John Devitt: [J2]

Michelle McIlveen: [MM]

Richard Bullick: [RB]

SC: Good morning, everyone. I'm Melissa McCullough, Assembly Standards Commissioner. The other person present is John Devitt as the second interviewer. We're interviewing via Zoom and the date is the 17th February. The time is 8:30 am. I'm interviewing Minister Michelle McIlveen MLA, the Minister for Education. The other person present is Richard Bullick. Could I ask are you happy to be referred to as Minister McIlveen, or would you prefer Michelle?

MM: Michelle is fine, thank you.

SC: No problem. I wish to remind you that your representative, Richard, is not permitted to answer any questions. He's been here before so I think he understands that he's here as an observer. I'm going to ask you to now formally take the oath which - because the virtual platform is an affirmation, which is the same effect as being a pledge on the Bible. I'm just going to share a screen so you can see it. Michelle, can you see that okay?

MM: I can.

SC: Could you please take that oath out loud?

MM: I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

SC: Thank you. If, for any reason, our technology should fail us we'll just all wait for each other to reconnect. The matters that I am investigating relate to a complaint made by Mr Conor Quinn against you. The substance of that complaint is that: following a speech given by the leader of the DUP on the 9th September 2021 that the DUP will immediately withdraw from NSMC meetings, Mr Quinn alleges that in your capacity as Minister you breached the Ministerial Code of Conduct in observing the boycott, which resulted in your failure to attend NSMC meetings. He cites Rule V of the Ministerial Code of Conduct, which is that 'ministers must comply with this code and with rules relating to the use of public funds'. Just for the record, I'm interested in the Ministerial Code of Conduct at paragraphs 1.5 and 1.6 of the Ministerial Code. The Pledge of Office at paragraph 1.4 in the Ministerial Code does not form part of the Code of Conduct; therefore it's not under my remit. I'm just going to ask a few questions now and then when I'm finished, I'll hand over to John in case he has any. I've obtained a list of meetings from the Executive Office which show a number of meetings that did not go ahead. You're listed as the accompanying minister for the proposed Special EU Programmes Body on the 22nd October 2021, and another meeting - where there was no date agreed - for the NSMC Education meeting. But they were proposed dates of the 3rd or the 10th November 2021. Is that correct, Michelle?

MM: Yes, I understand that to be the case. However, I suppose at that stage I hadn't been nominated to participate in any of those meetings. I understand that officials were exploring dates for both the SEUPB and obviously then the Education meeting as well.

SC: So you hadn't been nominated officially, is that what you're saying?

MM: Yes, that's correct. I understand that I needed to be nominated by the First Minister - and that wasn't carried out.

SC: The list I have - I don't know if you've seen this list; I think this is a list also given to the court which is basically just the list that tells me the proposed dates, the sector, the lead, the accompanying and whether the meeting took place. I have all that information and those were the two meetings that you were listed for. Well, obviously the Education one is a bit in doubt because there was no date agreed to begin with, but there was a date on the 22nd October for the EU Programmes Body. I understand what you're saying; you're saying that you hadn't been nominated by the First Minister. I don't know how then - how would your name have appeared on that if you weren't nominated?

MM: I'm not sure actually the process and how that's done. That may be done at official level, but I'm not clear as to how that's done.

SC: But at no time did you know that your name was on this list?

MM: Well, I understood that my name may've been on the list but I didn't - I wasn't sure as to how that happened or what my requirement was to attend, because I understand that the First Minister would sign off - as does the deputy First Minister - a nomination paper.

SC: At no stage did you seek to provide a replacement minister then or anything like that, or notify that you weren't attending - because you didn't even know you were nominated, is that correct?

MM: Well, I wasn't involved in the process as such of nomination, so I don't recall how that happened. Obviously, I came into office in June and I understand that some of these things may've already been discussed at official level and others. Certainly, my understanding from attending meetings in the past was that you would be nominated by the First Minister.

SC: So clearly the nomination was made before you took office, then?

MM: No, I understand [over speaking 0:05:29.3]... No, it wouldn't have been because the nomination then doesn't take place until I think after things have been agreed. So I'm not really sure what the process is with NSMC. Obviously, they work quite closely with the Executive Office.

SC: They do, so they nominate - my understanding is that there's a plenary in the summer time and there are dates that are agreed, and then those dates... In the early autumn, the NSMC Secretariat go out to get dates from the private offices and agree those dates in diaries. That's my understanding of the process. Therefore, sometime in early August when you were already in post, your name somehow was agreed as the person - accompanying minister on the 22nd October. As the Education Minister, the proposed dates of the 3rd or 10th November, you were put on this list as the lead minister. I think that is the process that happened, but at some stage - you're saying at no stage were you notified of the nomination?

MM: Well, I suppose really with regards to the dates: I can understand that they aren't specific and then they have to be then agreed.

SC: But at no time were you asked to agree them?

MM: No, because my understanding is that the First Minister would sign that off - and obviously that didn't happen.

SC: But that's different from me saying you didn't know you were nominated.

MM: Well, I was aware that my name was in the mix for that but I wasn't... Obviously I wasn't clear as to what my position was with regards to the First Minister.

SC: Is your understanding that - not knowing what the First Minister was going to do, was that due to the boycott?

MM: Well, I guess that might be the case, but obviously there is an informal process around all of this in advance of meetings then being scheduled. Obviously then once you're nominated and the meeting is scheduled then an agenda is agreed. My understanding is then at that point, obviously people attend - but there were a number of stages between that that obviously didn't take place.

SC: Also I'm aware, Michelle - thank you for those answers - that many of these meetings... I'm just awaiting collated information on this from the Executive Office. But I'm aware that a number - and I just don't know the number yet - but there are nine meetings that were scheduled to happen that didn't take place. A number of those meetings actually went to the point where attendees were convened, and that only when the DUP minister did not arrive at the meeting, that the meeting had to be cancelled. So I suppose in a way, that leads me to believe that all the other people who actually attended North and South believed the meeting to be scheduled. I'm just questioning that idea that it wasn't scheduled. I wonder if you have an idea of why everybody else thought it was scheduled, but yourself and other DUP Ministers did not think it was scheduled.

MM: Well, my understanding would be that: unless it was agreed by all attendees, then I suppose it really shouldn't have been convened.

SC: So the notification that you were coming - or a DUP Minister was coming - should've been notified to the NSMC is my understanding, and that wasn't notified until... It wasn't notified, is that correct?

MM: Well, I suppose again it's just a point... My understanding is that meetings shouldn't have been convened unless they had been agreed by all attendees.

SC: Thank you for that. Now, obviously as a respondent I'm making an assumption that you know about the High Court judgements in this case, yes?

MM: Yes.

SC: There are two of them; the 11th October 2021 and the 20th December 2021. You were obviously, I've already stated, one of the respondents. There was a declaration made by the court that the boycott was, and is, unlawful. When the court made that declaration, it was with the full concession of the respondents because there was no... You conceded basically and didn't put forward a defence. What the court ruled on that was that "the respondents' decision to withdraw from the NSMC was, and is, unlawful because it frustrates, is contrary to, and in breach of the legal duties and responsibilities contained within Part V of the Northern Ireland Act 1998 and specifically Sections 52a, 52b and 52c." Just for this, in terms of this interview, can I confirm on record that you accept that this boycott is unlawful, as in the High Court judgement?

MM: Yes, obviously after I received legal advice I became aware that it was unlawful, because it couldn't be defended in court, so I accept that.

SC: My job here is to investigate this. What Mr Quinn is alleging really falls under number 5. Number 5 to me relates, for the purposes of this case and for the facts in this case, to the Seven Principles of Public Life. They're outlined in 1.6 and I'm concerned about - and the judge has mentioned the same concern - about how non-attendance, which has been declared by the court to be illegal, fits with the requirement that at all times you should follow the Seven Principles of Public Life. So what we see, or I see, is that even after the court's declaration of illegality on the 11th October judgement, that the applicant's - sorry, that the respondents, the 5 DUP ministers - didn't take any of that on board in terms of conscientiously trying to go forward and agree and engage with the NSMC meetings. I just wondered do you believe that, or what is your view on that in terms of the Seven Principles of Public Life such as leadership, selflessness, integrity? There's a list of them, as you know - honesty - and I just wanted to find out your view on that.

MM: Well, I take those Principles very seriously as a Minister, and I have on any of the rules that I've undertaken. I suppose with regards to what you're saying prior to the judgement, I didn't believe the policy to be unlawful. However, I did accept - once we received legal advice - that it was unlawful but obviously it didn't... I wasn't involved in any meetings after the 11th October. There wasn't a meeting scheduled and I certainly hadn't been nominated to take part in a meeting after that point.

SC: Prior to that point, had you gone to any meetings?

MM: Well, no, because I wasn't involved in any meetings - and I certainly wasn't the lead in any meetings before that.

SC: From June, though, there were no meetings that you've attended for the NSMC from when you took up the ministerial post?

MM: In June I think there was a Zoom call for a broader meeting.

SC: Did you attend that?

MM: All DUP ministers attended that meeting.

SC: Thank you.

MM: That was the plenary meeting.

SC: That plenary meeting, did they talk about dates for meetings?

MM: I don't recall.

SC: There's one thing that they said in the judgement and I just wanted to get your view on. He stated that, 'I'm satisfied, on the basis of the above and the approach adopted by the respondents in these proceedings, that there is a policy of DUP ministers not attending at NSMC meetings, and that this is calculated to thwart the operation of that Council.' What is your view on that?

MM: I suppose the judge made that view, had that view?

SC: That's right.

MM: Well, I suppose I'm not a legal expert so I'm not really sure what he thought he was - what his intention was in saying that, but obviously the policy was something which my party leader made a call on and the decision was for him.

SC: Then following from that: would you agree that the decisions then for the individual ministers would be your own decision to make as to whether or not you engage with the NSMC?

MM: Well, I suppose at that stage, yes, it would be - but I wasn't put in that position because obviously I hadn't been nominated to take part in meetings.

SC: There was one other thing that he said that I just want to put on record. He said, 'The evidence for...' This is at paragraph 33 of the 11th October and he just goes on to say, 'The evidence clearly suggests that individual DUP ministers have neither been attending NSMC meetings nor nominating another designated Unionist minister to attend in their place.' He also goes on in that same paragraph to say, 'The evidence further suggests, as does the respondents' response to these proceedings, that the position which has been

adopted is a calculated and collective one participated in by each of the respondent ministers.' So that was his view taken regardless of a scheduling defence or a nomination defence or all the defences that have come up in the next judgement of the 20<sup>th</sup> December. That was his view. I don't know if you want to add anything to that, but I just thought I'd point that out to you.

MM: Okay, thank you.

SC: Thank you, Michelle, for your time and your answers; I appreciate that. John, I'm going to hand over to you if you have anything further.

I2: Yes, good morning, Michelle.

MM: Hello.

I2: I only have a couple of questions. Michelle, can you tell me who keeps your diary for any events or any meetings?

MM: The private office.

I2: How closely do you work with that private office to be ahead of what your obligations and commitments are regarding diary appointments?

MM: Well, I suppose I work with them on a daily basis but obviously there will be... I would tend to – I have, I suppose, a greater detail of knowledge of what's happening within two weeks. Then beyond that obviously the diary secretary is very much involved in populating the diary.

I2: In respect of where your name appears for attendance at these North South Ministerial meetings, you would've been aware of that through your private secretary, is that correct?

MM: I don't recall at that particular time, because obviously we're talking several months ago now.

I2: Yes, I appreciate that, but what I'm trying to establish is that your private secretary would know that your name was on the schedule and he, at some point of time, would've communicated with you, 'Are you available to attend?'

MM: Well, I suppose because a date wasn't agreed, it wouldn't have been with my diary.

I2: Well, the date can't be agreed until your private secretary communicates with you to say, 'Are you free on' whatever date that is. I'm just trying to establish what the audit trail is.

MM: It may be on hold in my diary but certainly I wouldn't have had... I don't recall a conversation in relation to a particular date.

I2: I don't know if my line has dropped; can you hear me?

MM: Yes, I can hear you. Sorry, yes.

I2: Presumably your private secretary can provide the Commissioner with the audit trail associated to these proposed meetings?

MM: Yes.

I2: Can I just ask this question: had you been nominated, would you have attended?

MM: Well, obviously that's something that I would have discussed at the time, but again that would've been on the basis of what was in my diary at that particular time.

I2: One of your answers to the Commissioner's questions was that you accepted that the Judgement, you accept [signal breaks up 0:18:46.2] understood you correctly?

SC: Can you repeat that part...

I2: I'm referring to...

SC: You broke up, John. Just repeat that question again.

I2: The question was: you accepted, if I understood your answer to the Commissioner correctly, that the Judgement in its totality proved that the boycotting was unlawful. Have I correctly understood that?

MM: Yes, that's correct.

I2: You said then that following legal advice that further endorsed your understanding that it was unlawful, so I'm trying to understand: when did you receive that legal advice? Was that prior to the court judgement or after the court judgement?

MM: Prior to the court judgement.

I2: In relation to your accepting that you are bound by the Seven Principles and you take them very seriously: in that respect - and it's a hypothetical question - had you been nominated and, irrespective of the boycott, would you have stood by your Seven Principles?

MM: Of course, at that time had the First Minister nominated then... Of course, we're talking hypotheticals here, but had I been nominated, that would've been a different situation - but I wasn't, and the meeting wasn't agreed to take place. In normal times, of course that would've been the case - but again this is very much hypothetical.

I2: Commissioner, I have no further questions.

SC: Do you have any questions, Michelle, for us?

MM: No, I don't.

SC: I want to thank you for attending and hope you have a good day.

MM: Thank you very much.

SC: Thank you.

MM: Bye.

SC: Bye Richard.

I2: The time is 8:50 and the recording is switched off.

[END OF TRANSCRIPT]

## Document 12: Gary Middleton MLA Interview Transcript

Commissioner Interview with Junior Minister Gary Middleton MLA

4th February 2022

Commissioner [MM]

John Devitt [JD]

Gary Middleton MLA [GM]

MM: This interview is being tape recorded. I'm Melissa McCullough, assembly standards commissioner, the other person present is John Devitt, a second interviewer. We're interviewing by Zoom. The date is 4th of February and the time is three o'clock. I am interviewing former Junior Minister Gary Middleton MLA, and the other person present is Richard Bullick. I just want to remind you that Richard, as your representative, is not permitted to answer any questions on your behalf, he's here as an observer, but I've let him know and I'll let you know that if for some reason you want to discuss with him, we can pause and re-join again, just let me know. I'm going to ask you to take this oath, and I'll pull it up here now. [Aside comments/technical issues 00:00:51 -00:01:42].

GM: Okay, it's starting to appear now, do you want me just to say this?

MM: Please.

GM: I do solemnly, sincerely, and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth.

MM: Right, thank you very much, okay. By the way, if anything happens to our technology, we'll reconnect, don't panic or anything.

GM: No, of course, no problem.

MM: I'm investigating the complaint made by Connor Quinn against you, and the substance is that following the speech given on the 9th of September by the leader of the DUP was that it would immediately withdraw from the North South Ministerial Council meetings. Mr Quinn alleges in his complaint that in your capacity as the then-junior minister you breached the Ministerial Code of Conduct in observing the boycott, which then resulted in failure to attend North South meetings. He couches it in number five, which is, "Comply with this code, and with rules relating to the use of public funds". Just for the record, and I know you and I might have - I'm sure we have communicated in correspondence about the Pledge of Office. Just to confirm, it's not my remit to be looking at the Pledge of Office. It is only the Code of Conduct, the Ministerial Code of Conduct, 1.5, 1.6, just to be clear of that on the record. I'm just going to take you through some questions regarding this complaint. Once I finish, I'll hand over to John to see if he has any questions.

MM: The first question is, I have received a list of meetings that did not go ahead, North South Ministerial Council meetings. The two in question that I'm wondering about that you happened to not attend that were proposed were the 1st of October, that was a Language Body meeting, and then there's also one on the 26th of November, a Transport meeting. The question is, could you tell me why you didn't attend?

GM: Yes, so in terms of the process that I would follow and the process in the Executive Office is that, obviously the First Minister would nominate myself to attend the various meetings. Usually it's the secondary or the lower Minister in terms of, the main minister would be one of the departments that I would attend as the accompanying Minister. My understanding is that those meetings which I was nominated to attend, I did attend. I think there was an occasion, it may have been those two, where I was unavailable to attend, but in the main, those which I was nominated to attend, I did attend. I am mindful of course of the party itself having taken a policy in relation to not attending North South Ministerial meetings. I'm aware of that policy. I was also aware that I myself had sought legal advice in terms of that position, and I'm mindful that that legal advice was that it would be difficult to defend that in relation to the courts, so I accept that. In terms of my particular remit within my office, my understanding was that any nomination that I received, I attended, bar those two which would have been for reasons that I just wasn't available at that time.

MM: My understanding, and you can correct me, but is that if you're nominated and you can't attend, then is it the First Minister who has to find another replacement, or you have to find, someone has to find a replacement [over speaking 00:05:27]?

GM: Yes, normally it will go back to the First Minister, and that will be a decision for him, I wouldn't have any authority to nominate somebody else, or I myself can put myself forward for example. There may have been occasions where meetings haven't happened, but they weren't meetings that I would've been nominated for, they may have been other people. I don't even know that, to be honest, but if I wasn't able to attend a meeting... I know, for example, there was one occasion I couldn't attend it for family reasons. That would be passed back then to the First Minister, it would be up to him to decide who should attend.

MM: Were there any meetings that you did not attend due to the boycott?

GM: No. Any meeting that I was nominated for, I attended. Those that I couldn't attend, I gave an apology, I was unavailable at that time, but again I was mindful as well of the fact that the party did have a policy, but that was a party political decision, as opposed to a Ministerial one.

GM: The reason for not being able to attend on the 1st of October, 26th of November, were...?

GM: Not party political reasons at all, no.

MM: They were just, you couldn't make it?

GM: That's correct.

MM: Did you follow, there was a time limit, you know you have to give time limits on these things, it seemed there was a timeframe in which you can let people know that, in this process that you guys follow, was there a timeframe?

GM: Certainly my understanding is that timeframes would have been followed, certainly I wouldn't have been deliberate to try and stretch it out. If that hasn't been done, then I'd apologise, but I don't actually have the exact paperwork to hand in terms of what the private office would've went back to the First Minister with. As I say, I just don't have that to hand, but if it was outside of the time limit, then that would be wrong. As far as I know, I would've given notice within the time limit that I wouldn't be able to attend.

MM: Can I just ask what your reasons were for not being able to attend, if you don't mind?

GM: I just can't exactly recall. One of the times I know that I wasn't able to attend because of a family reason. The other occasion may just have been a clash in the diary, another commitment. I just can't exactly remember that time, to be honest.

MM: Can I just clarify, did you have direction from the First Minister at all to follow the boycott, or to not follow the boycott?

GM: No, I had no direction from the First Minister. In terms of the direction from the First Minister would have been that I would receive a nomination from him to attend a meeting. I wouldn't have had a direction from him not to attend a meeting, that wouldn't be... No.

MM: Were you yourself following the advice of your party leader to boycott the North South Ministerial Council?

GM: No, because I have attended the meetings that I was able to attend. I was mindful of the party position as well, on the fact that that decision was taken.

JD: Gary, can I just clarify, for my purposes, that you said that you were unavailable to attend, so am I right in saying then that there's an audit trail to that effect?

GM: Yes.

JD: Between you and the First Minister, and other correspondence that you were unable to attend, and can you provide those to the commissioner?

GM: Yes, I don't see why that shouldn't be an issue. I'm certain that there's a trail of correspondence that I was unable to attend.

JD: That would be very helpful, thank you. The other thing I was going to say is, you mentioned earlier that you were aware of the court ruling, etc., so in terms of that court ruling, it basically declared that the boycott of the NSMC is unlawful, and I wondered if you accept that that is the case?

GM: Well, I accept the court's position, and of course our legal advice was that it would be difficult to defend, so that was the position that the party had at that time. As I say, that wasn't a factor in terms of meetings that I've been... I ultimately am not a decision maker, I'm nominated to attend meetings by the First Minister, and that's how I would conduct the meetings that I would attend.

MM: You say you did attend some meetings. I just don't have any other meetings on my list that happened. The only ones that happened, you weren't involved in...

GM: No.

MM: Was there any that, you say you attended some?

GM: No, I have attended North South meetings, I just said I've attended meetings...

MM: Not in that timeframe, not since the boycott?



GM: Not particularly in that timeframe, but that probably is the likelihood because I wasn't nominated to attend meetings at that time. Other Ministers, it'd be a matter for them as to what they did. Certainly I'm not aware of any.

MM: I'm asking you this for an honest answer, do you think that had you abided by the policy of the boycott and not attended due to that, do you think that would be in line with the Ministerial Code of Conduct to do such a thing? Since the court has said it's unlawful, that in light of that, and someone still decides to boycott, what's your view on that?

GM: First of all I will say that everything I'm saying is honest...

MM: Of course.

GM: Not that you're saying that it's not, I want to be clear that I am being honest with you. In terms of the - we can get into speculation in terms of whether or not, if a meeting had have happened - if I attended, would I believe that that was unlawful - I don't want to be breaking the law in any shape, form, or fashion, and certainly not something that I would involve myself in. I know the judgement that the court made. It's a matter for others whether or not that they wanted to go to a meeting or not go to a meeting. I can only speak for myself. If a meeting was nominated, I always - if I was asked to go to a meeting, I take a decision whether or not I should go to that meeting, based on the fact whether or not I can in terms of availability as opposed to anything else. Others may have different reasons why they don't attend meetings. That's not my position.

MM: You're very clear that any reason for not attending was not because you were observing a boycott?

GM: No, that's correct.

MM: Okay, thank you very much, thank you. John, do you have any questions?

JD: I think you've clarified that for me, Gary, because that was my question, just to clarify, that had you been available and had there been space in your diary, you would have attended, irrespective of the boycott, is that correct? Is my understanding correct?

GM: I'll answer it in terms of what I have, so those meetings that I was asked or nominated to attend I had genuine reasons for not attending. It was not on the basis of an instruction from the First Minister not to attend, or any other member or person not to attend. It was of my own accord, and so to go back now and speculate on meetings that didn't happen, I don't want to do that. I can only speak to the meetings that I've been asked to attend, or nominated to attend, and that's the only ones that I can be accountable for. Obviously politics is a changing position each and every day, and things go up and down, but I can only speak for those meetings that I was nominated to attend.

JD: I suppose what I'm trying to clarify, which is the sequence of events. The meeting on the 1st of October and the meeting on the 26th of November, you say you were not available to attend those because you had a clash in the diary, is that correct?

GM: That's correct. The clash in the diary, if you also include, one of those was a family reason. I can go back and just confirm, but I suppose it's still a clash in the diary, I wasn't able to do it for that reason, yes.

JD: I respect that, but what I'm trying to establish is that, because those dates were set, and you were the nominated person, and you quite rightly have said you couldn't attend because of other commitments in your diary, family or otherwise, that gives me the impression, and I want you to correct me if I've got this wrong, that other Ministers including the First Minister approved those meetings?

GM: Yes, I was nominated to attend those meetings, absolutely. When I was nominated to attend the meeting, and I wasn't able to attend that meeting, there was no effort in terms of the rescheduling of that meeting, that meeting just didn't happen then, as opposed to... It's a real hypothetical situation, because if you're asking me in terms of whether or not - if I was available to attend, would I have attended, is that what you're...?

JD: Yes, well, you've already said that, you've said that had you been available to attend you would have attended, and you have additionally confirmed that had you been available you would've attended irrespective of the boycott. I just want to be clear in my mind that that's exactly what you're saying?

GM: Yes.

JD: Okay, then I'm going to pass you back to the Commissioner to see if she has any further questions.

MM: No, I would just ask that the trail, if you could get that to me as soon as you can, the email correspondence, if that could be made available, just so I understand what you're saying in terms of - and just to check the evidence of that, it would help in my investigation.

GM: Of course, absolutely. I do recall and I do know that that is on email, because I had asked the private office to put that in writing, and that's the appropriate thing to do.

MM: Okay, so I have no other questions at this point. Have you any questions for us before we

close?

GM: No, I don't think I do, I think that's well covered.

[Thank you and we'll wrap up]

[END OF TRANSCRIPT]

## Document 13: Paul Givan MLA Interview Transcript

Commissioner Interview with Paul Givan MLA

4 February 2022

Commissioner [MM]

John Devitt [JD]

Paul Givan MLA [PG]

MM: Okay, this meeting is being recorded. I'm Melissa McCullough, Assembly Standards Commissioner. The other person present is John Devitt, as second interviewer. We are interviewing via Zoom. The date is the 4th of February 2022. The time is 11:02 am. I'm interviewing the former First Minister Paul Givan, MLA, and the other person present is Richard Bullock. Mr Givan, or Paul, is Paul okay? Would you prefer Paul?

PG: Yes, Paul's fine.

MM: Okay, Paul. I want to remind you that your representative isn't permitted to ask any questions on your behalf. He's here only as an observer. However, if at any point during the interview you wish to stop the interview to ask him any questions, I'm happy to facilitate that. We can figure it out and go offline; however, that works out. Just say the word. Also, if for any reason the technology should fail us can I just ask that we wait for each other to reconnect and we'll resume it; but, not to panic. These things happen. I'm going to share a screen just to ask you to take an oath. It's the affirmation due to the Zoom format. Let me just see if I can screen. I haven't screen-shared in a while, so let me see how I do that. Could I ask you just to read that out loud, please?

PG: I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth.

MM: Thank you so much. I'll stop that share now. Is that okay? If everybody can see normally...

PG: Yes.

MM: This complaint is by Mr Conor Quinn. He alleges that in your capacity as the, then, First Minister you breached the Ministerial Code of Conduct. He says, and we've established it's the Code of Conduct, "In failing to attend the North South Ministerial Council meetings due to the boycott." He cites Number 5 of the Ministerial Code of Conduct which is, 'Comply with this code and with rules relating to the use of public funds.' I just want to state, for the record, because I know we had some correspondence back and forth regarding what is the Ministerial Code of Conduct exactly and that it does not include The Pledge of Office and I have confirmed that to you by letter. I'm interested only in paragraphs 1.5 and 1.6 of the Ministerial Code of Conduct because that is the only part that comes under my remit as Standards Commissioner.

MM: What I would like to say is that his complaint relates to the statement made on September 9<sup>th</sup> by Sir Jeffrey Donaldson that there would be a boycott of the North South Ministerial Council meetings and the Council, and that would include not attending meetings. The umbrella item is, in my view, the boycott-- is what he's saying. He states that in his papers, 'I contend...' He says that, 'The leader of the DUP gave a speech announcing inter alia the DUP will immediately withdraw from the structures of Strand 2 of the Belfast Agreement relating to North South arrangement'. I contend that all DUP ministers are now in breach of the Ministerial Code of Conduct.' It is the boycott which he's made a complaint regarding. He has sent, obviously, a few different things in saying about the High Court judgement. He's introducing things to the complaint as we go. I think I shared those with you. I just need to ask some questions because, now, what we have is we have this boycott that he believes breaches the Ministerial Code of Conduct which incorporates, in my view, mainly in my view, the Principles of Public Life, the Standards of Public Life outlined at 1.6 especially. Can I just ask, for the record, Paul, what directions did you give to your ministers in respect of their need to attend the meetings that would have fallen under that boycott?

PG: I didn't give many directions to the Ministers in terms of the way in which this was being handled. There were no directions given from me to boycott anything.

MM: Did you adhere to the boycott?

PG: Well, I suppose in the first instance, just to go back to the genesis of this, obviously, it cited Jeffrey's statement and Jeffrey made that statement in terms of the policy that he wanted to take. I wasn't part of that, so in terms of the construct of the policy and the development of that, I wasn't part of that at any stage. I wasn't privy to it. I didn't give a view. I wasn't asked for a view. I didn't formulate the policy. I became aware of that whenever the public became aware of it. Obviously, when it comes to the issues around the

boycott, or otherwise, I'm not sure that I would use that language about there being a boycott, because the court case obviously teased this all out. Again, I wasn't able to have legal representation in that court case; that was denied to me, so I wasn't part of the proceedings in the case at any stage and that played out in terms of the arguments around, were there meetings scheduled? Were they not scheduled? Were they organised according to the statute and all of that? There was a debate that was had throughout the court case. Lawyers and legal people would need to give a view on that and the generality of it. Then it came to the issue of there being meetings, or otherwise, to boycott, there had been no meetings scheduled at any stage to boycott. I think I made this point in the Assembly in response to a question. I said, 'There can't be a no-show without a show.' None of these meetings had ever been formally-scheduled according to the way in which the regulations would require them to be. I don't regard the non-participation in the North South Ministerial Council as a boycott, because we didn't not attend meetings, because those meetings were never scheduled.

MM: Then, were you not responsible for signing off on the scheduling of those meetings?

PG: Whenever they become schedule... Again, I'm not involved. When it comes to me for a final sign-off to set these meetings up, there's a process that has to go through to do that. You would need to have an agreement as to, first of all, what date you're going to have a meeting and probably even before that you'd need to agree what would be the agenda for these meetings, what items would be on it? If those agenda items had papers which they do have, you need to get agreement on the content of those papers. Then, you would have a date set up. You would, then, schedule a meeting. I think there had been a pattern, I suppose; whether you want to call it a custom and practice had seemed to have been developed before I came into post where officials and others were presumptively organising or trying to set up meetings provisionally in people's diaries. That doesn't constitute then a legally-scheduled meeting as per the way in which the law around this interface with North South meetings. You would need to have agreed a whole series of things before you would formally schedule a meeting and, at that point, sign off on Ministers that would go to it. I'll give you one example. I did schedule for Robin Swann and the Minister for Health during this period. We agreed those items in terms of the agenda, the substance of the meeting. At that point, we were able to do that. I think you only create that obligation to attend a scheduled meeting once you have agreed all of the different parts of what a meeting would include.

MM: Was that because it was the health meeting that there seemed to be a...? Correct me if I'm wrong but I remember reading that you wouldn't block health; something like that.

PG: Yes. That was part of what Jeffrey made it, in terms of the aspects of health.

MM: I did get a list of meetings here from the NSMC Secretariat office, provided me this list of meetings. It clearly got to the point, like you say, of dates. It actually lists the lead minister, the accompanying minister, and whether they happened or not. The health meeting went ahead and one other went ahead which was - sorry, maybe not. Yes, again, Minister Swann and Minister Mallon, Minister for Infrastructure, Inland Waterways, that went ahead. Did you approve that one? That was on the 3rd of November. It has a yes next to it.

PG: I would need to check that detail, Melissa. I suppose in terms of these issues around if you have a list from officials around dates. That was part of, from what I could see, some of the evidence that was being provided, but dates, whether provisionally or otherwise that officials have suggested, have no legal basis for a scheduled meeting, as per the legislation.

MM: In fairness, they say, 'Proposed date of meeting,' on this sheet. This sheet has a list of - and it says, 'Proposed.'

PG: Yes.

MM: For what it's worth.

PG: All of this, whenever I was looking through some of the findings from the courts and so on, you could see that this process, now, has a very strong basis in law if you were to organise it as per the regulations. It's only if you go strictly through what the statute book says and the process for that, that's whenever you get a legally-scheduled meeting. Officials cannot almost by provisionally organising somebody's diary somehow infer a legal obligation upon a minister. It's only by the statute book can you create legal obligations on ministers.

MM: Just for clarity for my own head, I do realise there's an awful lot of detail around the scheduling; I've seen all of that and I've looked at that in detail. Can you just tell me, at this point, there's all this information available of at least proposed dates, who the ministers would be, who would be the accompanying minister, the sector was going to be in...? At what point did these not get to you? Why did these not get to you to say, 'Yes,' or, 'No'? Where the health one got to you to say, 'Yes.' In other words, is it the case that they got to you and you did just not agree it so that means, now, that they weren't scheduled meetings?

PG: Yes, they become scheduled whenever we've went through that process and you then schedule it.

MM: What I'm saying is, sorry Paul, got to this point where they actually have the... There's a lot of information already established. Now, I'm assuming at this point it gets to you, but I could be wrong. At this stage, what I'm saying is do you then say, 'Okay, I'm not going to approve that,' or like the health meeting you say, 'I'm going to approve that'? It seems to me we were at the last stages of this where you then said, 'I'm not approving those'.

PG: Sorry, you just, your signal just touched slightly there. Apologies for that.

MM: Does this mean that having had...? It had gotten to this stage that we have all the details. Did it get to you and then you just say, 'I'm not scheduling that'? Or, did it get to you like the health one and you say, 'Yes,' I will schedule that? That's what I'm trying to figure out here.

PG: Again, from memory, I think the health one - whenever you go to schedule a meeting you, then, look in detail at what are the papers that a department is wanting to bring? What are the recommendations? What are the out workings [sic] at? It's not a case that something comes and is presented to me that says...It's probably the case that when something comes to me, do I sign off or not? There will be multiple reasons that you will say, 'Well, that item we need to look at. Is that something that we would agree with?' I don't think there was ever a case where papers were presented to me that I said, 'I can schedule that one,' on the basis that I agreed with everything which was part of the agenda. If another department was wanting to schedule something or have a meeting and they were including different issues within their papers that I didn't agree with, that would be a normal process. You could, then, say, well that would need to go potentially to the full executive. We would need to get executive approval for that. There would have been multiple reasons why you may or may not have wanted to schedule a meeting in terms of other departments wanting to do it. Health was one where we were able to agree all of the content that was contained within that meeting and, at that point, you follow through on the process and sign off on scheduling a meeting.

MM: I noticed in the judgement, at least I'm taking this from I think the first and second, the Judge doesn't appear to accept the scheduling reasoning and the scheduling defence. I'm not going to rehearse that, but I just wanted to ask you myself about that scheduling issue. I do think I want to now focus just on the general - which you say it was not a boycott, although the party leader claimed it was a boycott. I'm not sure how to reconcile that. In the court case, in the October 11 High Court judgement, it basically claims that - and let me just get the wording because I think the wording is very important here, obviously... I think you were a respondent in the first one, but not a respondent in the second one. I want to get that right because I believe that you were not considered a respondent in the second, which was the 20th of December judgement. On the 11th of October judgement which was the first one that came out, you were a respondent. Am I correct?

PG: No, no. I wasn't. Just on the scheduling, I think from the Judgement and my reading of it, the Judge didn't conclude on the matter of the scheduling issue. I know there was a big debating point around that but I don't ultimately think that Judge Schofield reached a conclusion.

MM: No, he didn't.

PG: In terms of being represented in either case, I wasn't represented in either case. Yes, in terms of being a respondent, the judicial review was against five ministers. I was one of those five ministers that the judicial review came in against. That goes to the issue, then, about being able to make legal representation. I have requested, on two occasions, to have legal representation but because of the joint nature of the office, Michelle O'Neil denied that to me. There's a paper trail to that fact where I've asked to be represented in the first instance and, then, whenever Judge Schofield, again, made further commentary around wanting me to be able to have representation, I made another request to have legal representation. That was, again, denied to me. I wasn't part of the court case in that respect. I wasn't allowed to be represented despite my desire to be represented and nor was Gary Middleton; he was denied that representation too. Therefore, there were only three DUP respondent Ministers who were able to have legal representation. Obviously, whenever they're part of that, the Counsel takes the instruction from those three Ministers as the respondents. I wasn't part of that. That was because I was denied the ability to have representation in the case.

MM: Would you have had an issue with the way they were represented or would you have asked for something different to have been done? In other words, I noticed in the cases the Judge actually mentions that he takes it that you were represented by... I don't know the way he said it, exactly, I don't have it to hand. He gave the impression that whilst you weren't officially being represented by Tony McGleenan QC, you made up the DUP ministers who would have had a similar defence, I'm assuming, or a similar...

PG: Again, hypothetically, I could have taken a different view on this.

MM: Yes, which [over speaking 0:18:14.5].

PG: I wasn't able to meet with Counsel. I wasn't able to give a view in that respect around what was going to be put forward because I wasn't legally allowed to have representation. All of this court case was taking place, the legal representation around it, I wasn't privy to what was being put forward in that respect. I wasn't able to direct Counsel on that. There's no point speculating on this. I'm just speaking from a purely technical point. I wasn't part of the court case. I didn't instruct Counsel on this. There were three respondent Ministers who did. It wasn't me and I tried to have legal representation and that was denied to me on two occasions.

MM: Do you agree with the statement, the concession, necessarily, I would have thought it would be stated that...? Where he says... Let me get my judgement out. I've moved things all around here. Where the proceedings declared in 11th of October say, 'The respondents' decision to withdraw...' Now, that judgement he's talking about the 11th October where you are a respondent. He says, 'The respondents' decision to withdraw from the North South Ministerial Council was, and is, unlawful because it frustrates, is contrary to, and is in breach of the legal duties and responsibilities contained within Part 5 of the Northern Ireland Act 1998 and specifically sections 52A and B.' This is the declaration made in the 11th of October judgement. You are a respondent on that. In the statement, it says, 'The respondents' decision...' Just the question I'm asking is do you accept the Judge's declaration that the decision to withdraw from the North South Ministerial Council was, and is, unlawful.

PG: In terms of what the Judgement was around that, he's made the Judgement so...

MM: Do you agree it's unlawful?

PG: He's made the Judgement and that. He's the Judge. I'm not a lawyer in that respect, so being able to say... There were arguments around all of this and, ultimately, he made a judgement on it. I wasn't part of this court case. I know I was part of the court case, but I wasn't able to... When all of this was taking place, I was having to get on with all of the other functions of the Office; the Government. I wasn't being part of the legal counsel, the legal action, the response to it and the judgement was made in respect of that.

MM: You don't necessarily have to then... I guess I'm asking you do you accept it? Do you accept it? Whether you agree with it, then, I shouldn't... Do you accept that it's unlawful?

PG: Well, yes. The judgement has made that finding so, of course, you have to accept that.

MM: I guess the following question, then, and I will be asking the same to the respondents that have been complained about. If you accepted on the 11th that it was unlawful, the actual boycott seems to have continued - whether by scheduling, whether by agendas, whether by whatever - it seems that these didn't take place. Let's just say the meetings didn't take place. I believe, it seems to me it's because there was a general boycott of NSMC meetings. Being that there was a judgement that said, 'It was unlawful,' I wondered how you felt about these meetings not... Why did nothing change after that judgement? In other words, in terms of your duties under the Ministerial Code of Conduct, in particular - I'm looking at the Code of Conduct which looks at leadership and things. If something is unlawful, you think to yourself, well, I should follow the Law, right? Even if you... You're saying you accept the judgement because the judge made it. Yet, nothing changed after. I am being very respectful with asking you this. I am literally trying to get my head around how that continued, then, the practice to go on and to have a second judgement on the 20th December.

PG: First of all, of course, I accept that the Court came to its view in terms of that. This goes back, then, to this issue around the whole scheduling argument. The judge didn't come to a view on that around the scheduling issue. It was in the general around the full participation in North South and the role that you have to do in that. That still doesn't, then, eradicate the process of how do you go about scheduling a meeting, what the process is for that; how do you agree an agenda? That could be, well... The DUP could have agreed an agenda item but Sinn Fein, then, wouldn't. Then Sinn Fein wouldn't have scheduled a meeting or the Irish Government may not have agreed a particular date and, therefore... There are multiple reasons here as to why meetings, then, can't take place. That goes back into this scheduling debate. I can only go to the broader point as to Jeffrey introduced this policy. Why did he do that? He outlines the reasons why because of the broader community tension that was taking place. We had disruption on our streets. Jeffrey was indicating that there had to be a political way to address all of the issues that have been created through the Protocol and the tensions, and the balance between East-West, North-South relationships. Looking at this in solely an isolated perspective misses the broader community tensions that exist. How do you try and keep that wider community calm in terms of the way in which government goes about its business? I think what Jeffrey would say is that this was an attempt by him to try and calm tensions and to, then, get a resolution for the broader issues that... That's a question you should ask Jeffrey as to what the basis was for the policy. That's what I believe that he would be trying to say to you on that.

MM: Explain to me this, though. He's the party leader... I have a cold eye, obviously, as you know. I'm not a politician. He is the party leader. He's an MP. Are you not in charge of the Northern Ireland situation in terms of what happens? What is his relationship to those decisions that you should - what I believe that is your responsibility, right? He wouldn't have the jurisdiction over here. Is that correct? Am I correct?

PG: He's the party leader.

MM: In terms of your decision-making. Are you not an independent decision maker of him? Just because he's the party leader in terms of your position in the Assembly as, then, First Minister, what was the relationship that you had with Sir Jeffrey Donaldson in terms of decision-making? I would have thought that as the First Minister, your decisions were yours to make.

PG: Again, you could say, then, parties take decisions on things. There's a wider party context and he's the leader for that. Similarly, it was the party decision for me to resign as First Minister. You could make that argument to say, 'Ultimately, Paul, that was your decision. Only you could resign,' and you could have taken a different decision. I think that's to ignore the way in which the parties take decisions on things.

[Over speaking 0:26:48.0]

PG: That's...

MM: There's a bit of context within there where you did... You said, though, at the beginning, you didn't take your... He boycotted it but you didn't take direction from him on that.

PG: No, this is... Again, I'm trying to... This is going round to the start again around what would you legally define as not attending a meeting? There is a detailed process and statute that requires scheduling to take place. Officials cannot confer a legal obligation on ministers because of provisional arrangements and so on. There is a legal process that goes through and you don't boycott a meeting. If a meeting had been legally scheduled and I had not turned up, or a minister had not turned up, that would have been a legal boycott. That would have been a non-attendance of a legally-scheduled meeting. There were no such meetings that had taken place. That...

MM: It's what's in those papers, as well. I do understand the argument. I do understand the argument. I don't agree - when you said that there was no decision made, I'm not saying that there was a definitive decision made, but the Judge does say at... If I draw your attention to paragraph 39 in the December 20th judgement, he goes on to say that there are three reasons. He says, 'I don't consider it's necessary to determine these issues fully.' He doesn't determine them, as you say, but he says why. He says, there are three reasons. It's the third reason where he makes the statement that, 'Even assuming that the respondents are correct in law, that it's necessary as a first step before any other legal obligation comes into play as the agreement between the First and Deputy, as to the date and meeting and its agenda. It's nonetheless clear in my view that the first respondent has been acting unlawfully and declining to do so for the reasons set out above, below.' I guess what I'm saying is the Judge takes a different view. He might not have legally found... This is a judicial review. He's making a finding based on that. I think that's quite clear. He's saying it was unlawful to not schedule them. I'm saying to you, could I just get your view on that? This goes to the Code of Conduct in relation to the Seven Principles, including leadership. That's why I'm asking you this, not on a legal point.

PG: I don't believe that I broke the Law in terms of this process. I've outlined... You would need to rehearse all of the arguments that the legal people...

MM: Yes, I know and I don't necessarily want to do that and I don't know that it's necessary to do that. I'm simply looking at the Code of Conduct which expects that leaders follow the Seven Principles of Public Life. I'm trying to ask you, in light of this...

PG: Where specifically in that do you think that I haven't done that?

MM: I don't know...[Over speaking 0:30:00.4]...yet. That's what I'm asking you. Let's look at that. I think that's a good idea. If we say, as the Judge is saying, that it's unlawful to have boycotted - regardless of what the argument and the defence of scheduling is - which he seems to think even if you didn't schedule them that's unlawful, from my reading... Let's just say based on my reading of the judgement that it is unlawful.

PG: There are multiple reasons why a meeting may not be scheduled which I already went through; multiple reasons as to why that may not have happened. That was put out in the court cases.

MM: That's on record, Paul. Definitely on record. I hear you. If you look at public interest concerns, in terms of selflessness, leadership, holders of public office should promote and support these principles. I think, for me, leadership is the one which says, if something is in a court document, and second time round in a court document, that something is unlawful and politicians in their role should follow the law, then, to me, that's part of leadership.' It means, how can people...?

PG: I understand in terms of the subjective you, you might want to give on that, but I've always tried to keep the Executive working. I've always tried to act with integrity at every stage. I've always, in my view,

followed all of those principles and tried to balance all of the pressures that have been out there in the wider community; the tensions that exist. If you want to look at this through a very narrow lens and ignore all of the wider community context and political context to this, I think you're missing what we have been trying to navigate. Leadership is something that - you may have a particular view on that. I have done everything that I can to try and lead our community through what has been an incredibly turbulent and difficult time with buses being burned on our streets and the tensions. Protests. The internal tensions that that creates in the Executive to try and get legislation through in the mix of all of the external forces that have been brought to bear through the Protocol. I couldn't have stretched myself any further to try and keep the Executive going. Now, I'm not able to do that. Leadership, if you wanted to ask the question about, 'Have I followed leadership?' I don't know if I could have given any more leadership and stretched myself personally, emotionally, the wider society, to try and navigate through all of this. I think in all of the Pledge of Office, the Principles of Public Life - selflessness, integrity, objectivity, accountability, openness, honesty, leadership - I'm not sure what more I can do in terms of trying to get us through what has been an incredibly difficult period. The Assembly and the Executive could have collapsed six months ago in terms of what we have tried to do. Jeffrey, in his speech, again, it's not for me to speak for Jeffrey Donaldson, but he outlined the resolution that he wanted to see. He wanted the institutions to be able to properly function. That hasn't been possible because of what has happened with the Protocol. The East-West relationships have been fundamentally damaged as a result of it. We've been trying to navigate a political way through all of these difficulties. If you want to compare where we are today, to where we were at the time of this, there was a lot more community tension on the streets. We were saying to people, 'Don't engage in violence. That's not the way to do things. There has to be a political pathway that people engage in.' I think our streets are much calmer. The community tensions are much calmer to where they were at the time of this speech, and six months ago and what has been happening. Leadership has to encapsulate the totality of what's going on in our society. I have done everything that I possibly can do to try and keep these institutions working.

MM: Look, for the record, I'm not disputing that. This is for this complaint, in particular. Also, I should say for the record this relates to the Ministerial Code of Conduct and doesn't... It's not that it ignores politics, but the politics is aside from it and it's not really the biggest - it's not the concern of the Commissioner, the politics. It's not that the context doesn't necessarily matter at all. I understand the context. It's that my role is not really about the politics at this moment. This is about this complaint and this particular issue. I do accept all that you've said and I understand the leadership that it would have required to do your role; to carry out the job that you did. I wouldn't dispute that bit of it at all.

PG: The leadership point that you are making takes in many facets. If you're going down a particular route that leadership must only be viewed through this particular complaint, that is to miss the totality of what leadership involves.

MM: No, no, no. In relation to this complaint, what I'm saying to you is when I talk about the Principles of Public Life, and I'm using as an example, leadership, because you said which ones, right? As an example, it would be a general view that if something is deemed unlawful that you refrain from doing that. In this instance, the boycott was deemed unlawful. Yet, meetings were still essentially boycotted. I know the scheduling.

PG: They weren't boycotted because they weren't scheduled, Melissa. There was no...

MM: I would have to consider just that argument. I think I wonder sometimes how is it that some go ahead, some don't, the scheduling issue. I'm not so sure. I'll be honest, I haven't made a determination before talking to you. I'm literally learning as I go here. Although I've read the judgements, I understand what's going on. I'm simply saying that if a judge, a court, has ruled something unlawful and it appears to have continued - which they say, 'It appears to have continued' in the 20th of December - it's quite clear that they believe there's a boycott and that the law/the judge believes there's a boycott. The Commissioner is supposed to say, 'I don't believe there's a boycott.' I mean, that's unusual. I'm saying to you that under those circumstances, leadership comes in because how can a community that you want to follow laws that you make...? Actually, how could that benefit them to see somebody who just ignores the law that says, 'This is unlawful.' Not the law, sorry, but a Judge that says, 'This is unlawful'? I'm giving you that example. It's just an example. It's also mentioned as an example by the Judge as a matter of fact. That is why I sort of wanted to get your view on that. Now, I take your point, and it's on record, all of the things you've done and, in my view, I understand exactly what you're saying about the leadership you've shown in terms of your job as First Minister. I'm sure it had great challenges that you've met. I'm just not talking about in general what you've done. I'm talking about this specific complaint and I am bringing it back to the Code of Conduct.



PG: Given all that you've said there, Melissa, again, where does that interface in terms of the Code of Conduct?

MM: Leadership is 1.6 of the Code of Conduct. It's part of the Seven Principles of Public Life.

PG: Elaborate on that. Obviously, that's something that you need to come to a view to.

MM: Right.

PG: Elaborate on how does that breach specifically this Code of Conduct in terms of leadership?

MM: In terms of leadership and even the courts have mentioned this, if you're continuing an unlawful act, which the Court has deemed unlawful, and regardless of the defence as I know you've put forward and they've been rehearsed in the judgements, of course.

PG: I wasn't able to give a defence in the Court, because I wasn't legally represented. I didn't have representation in the courts.

MM: I understand that and that's on record too, so that's unfortunate. I do think that the respondents conceded in the first case, they didn't put forward a defence. They basically did not - and I wrote this down because this is important - they didn't seek to defend the legality of the boycott. Counsel made this concession in the proceedings on behalf of the respondents. You see what I mean, there was almost an acceptance this was a boycott. I find it very difficult to reconcile and I think it's because politics are intertwining here. I'm finding it hard to reconcile what I see on paper. If I say to you that's what invoked here is... is the Ministerial Code of Conduct 1.5/1.6 and that it is not good leadership, by anybody's standard, to know something is unlawful but to continue doing it. That's just generally. I'm not talking about you. I'm talking about in general, in my view, when I look at what leadership is, it would definitely not include continuing on an illegal path...[Over speaking 0:40:12.1]

MM: Or, an unlawful path. An unlawful path. It is found to have been unlawful, not by me!

PG: Yes, but at no stage did I act illegally. At no stage did I act illegally.

MM: The boycott itself was deemed to be unlawful.

PG: In terms of the policy of the party around the general boycott. Then, that takes you back to the whole scheduling issue. I did not break the law at any stage. There was no scheduling of a meeting for the law to be broken.

MM: The boycott was the unlawful bit.

PG: In terms of that...

MM: Am I reading that wrong?

PG: Surely, you have to take a view on me as to was there an instance where I failed in terms of a meeting that was legally scheduled and constituted as opposed to your view on the DUP's policy around a boycott or the issue around the North-South. You have a view on the policy that Jeffrey articulated. I, as First Minister, at no stage was under a legal obligation to attend a meeting that had been scheduled under the statutory regulations...

[Over speaking 0:41:31.6]

PG: ...that constitute scheduling.

MM: Yes.

PG: You would be making a view on the party's policy. That's fine. You can take the view on that.

MM: No, I would not be making a view on the party's policy. This is only on the Ministerial Code of Conduct. My point is...

PG: I haven't...

MM: ...at any time.

PG: I haven't broken the Ministerial Code of Conduct.

MM: I don't understand, Paul, at any time that you knew... Say, from the 11th of October, right? Say you never knew it was unlawful that these meetings were not being- that the boycott was announced, that meetings didn't take place. You now know that the Court decided it is unlawful, the boycott is unlawful. At that stage did you never think to yourself, maybe it's important that some of these meetings, if not all, go ahead and that we make it a point?

PG: It's not in my gift, Melissa.

MM: You have to sign off on it. You have to sign off on it.

PG: This is, again, you're getting into the intricacies of how you go about constituting a legally-scheduled meeting. There are multiple constituent parts in that. That includes me, but it also includes other ministers. It also includes the Irish Government.

MM: Is the impression I have that you were the last call that didn't sign it off incorrect? Am I wrong in saying that you stopped these meetings going ahead? Am I wrong?

PG: Again, we're going round and round around this particular debate. I'm not at all clear as to where I have not acted with integrity and followed all of those seven points and those principles. You want to focus on this particular narrow point.

MM: No, it's not narrow. It's the only point because I'm only in charge of the Ministerial Code of Conduct, so I'm very narrow in what I can look at. This is what...

PG: In looking at that, though, you're drawing in all of the wider issues around Jeffrey's speech. You introduced that.

MM: No, the complainant introduced that in their complaint.

PG: Yes.

MM: That's [over speaking 0:43:31.5].

PG: I'm not responsible for Jeffrey's speech. I'm responsible for how I discharged my duties in this role as First Minister.

MM: You didn't answer the question. Why, then, did you not, once you knew as a respondent in that case, whether you were afforded legal counsel or not, as a respondent on that case...?

PG: I wasn't.

MM: You weren't. As a [over speaking 0:43:52.5].

PG: Whenever you say, 'Whether or not,' I wasn't.

MM: Yes, sorry. You were not. As a respondent, regardless of that you weren't represented, you were a respondent and you would have seen, I assume - am I right to say you saw the judgement of the 11th of October? You would have seen that at the time, right?

PG: Yes, yes.

MM: Therefore, as a First Minister, am I right in saying that these meetings came to you...? Yes, there might have been a lot of things that happen before they come to you but that you were the reason, your lack of approval of these, stopped the meeting going ahead. Am I wrong?

PG: There were multiple, multiple hurdles that need to be crossed before you get to the point of signing off to schedule a meeting. I have said that before. That includes substantive issues around what is on the agenda, what would be included in that, what could be the recommendations.

MM: If that's the case, then you don't lack - if your defence is correct, then you don't lack leadership, if you weren't the one who'd stopped these meetings from happening but it seems to me there's the argument...

PG: Melissa...

MM: ...that you were.

PG: The nature of the way our government works, you can't... That is to say that any minister can just bring forward anything they want and I'm under a legal obligation just to sign off and schedule a meeting.

MM: No, I'm not saying that.

PG: That's [over speaking 0:45:13.4].

MM: Did it get to the point where you were the only one who was the obstacle to the meetings going ahead?

PG: No.

MM: Did it get to that point in the process?

PG: No, absolutely not. I've made the point before that the substantive issues in a meeting has multiple stages to go through.

MM: Okay, well, I...

PG: I have outlined all of the issues that you need to get through before you can have a meeting. That includes agreement around what forms an agenda, the substantive material, trying, then, to navigate through agreements and all of that to see if you can sign off on a final agenda because of the substance to it. Like, leadership is about trying to get consensus. It's about trying to pull people together. It's about trying to find... How do you get a middle ground where there are polar opinions, on any issue? It's trying to provide stability to our community. Leadership covers so many different things. Whenever it comes to specifically around North-South meetings, leadership requires trying to find a collective view that's representative of the Northern Ireland Executive. That look through this singular lens that, somehow, leadership here has to be viewed that, 'Did Paul Givan schedule or not schedule a meeting?', ignores all the other component parts that come into the forming what a scheduled meeting looks like and would contain.

MM: I feel like there's this - I don't know. Look, here's the thing. If you obstructed the scheduling of meetings that would be very wrong in terms of leadership after somebody tells you, 'This is unlawful.' If you actually didn't obstruct it, is what you're telling me you did not do? You did not obstruct it?

PG: I didn't say that. I didn't say that.

MM: What did you say?

PG: What I'm saying is that whenever it comes to formulating agenda items, you need to be able to agree.

MM: Yes.

PG: You need to be able to agree what is contained in that.

MM: Yes.

PG: That doesn't sit in my gift exclusively. I can't, as the First Minister, just say, 'There's going to be a North-South meeting on waterways.' Whenever it comes to the substance of that if a minister wants to put a proposal that other ministers don't agree with, or my party doesn't agree with, it's perfectly legitimate to say, 'We don't agree with that,' because that isn't going to be representative of the Northern Ireland Executive, because we haven't agreed to that. You know, there are multiple occasions where we disagree. Then, therefore, decisions aren't able to be taken.

MM: In terms of the boycott, only in terms of the meetings that did not go ahead, that did not go ahead, that were proposed to go ahead, you were not the person who obstructed those meetings going ahead; is that correct?

PG: No, again, that would be the frame that this decision would exclusively rest with me.

MM: Yes.

PG: That is not the way this works. That is not the way it works. The system of how these meetings is done - and we'd need to go through that process, but it's ministers...

MM: I saw the process. I see the flowchart. The legislation is like... I see the Code and everything it entails. The way you have to oblige by it and there's a lot of steps; that's the importance...

PG: Yes, so...

MM: ...that it places on these meetings, the importance that it places... All that legislation, I couldn't believe it when I read it. There's so much of it. The importance is very stark in terms of the legislation. I'm trying to get to the bottom of why did they not go ahead. Why? If there's some other reason than you not signing off on them or your party not agreeing them, whatever, if it's you or the wider party if it's not the boycott, then why?

PG: Obviously, Jeffrey has his speech.

MM: Okay.

PG: He has crafted all of the arguments that he had. I wasn't privy to it. I wasn't part of the discussions that formulated it. Then, that goes to whenever we look at the scheduling of meetings, the process that goes through - ministers, normally, you would circulate papers around executive colleagues. You would need to get an agreement. Is this paper something that can then be formally signed off in an international body as the North-South institution is? There are multiple reasons why you may not get to a position where you're able to have a North-South meeting take place. At no stage, did I act illegally in denying a meeting taking place, or not; at no stage did that happen. There would be multiple reasons why you may not be able to formally schedule a meeting. Civil servants cannot infer a legal obligation upon me to, then, break because the Statute doesn't empower civil servants to put into a minister's diary, 'Provisionally there's a meeting taking place on this date,' as such, you are now under a legal obligation. That was outlined in the court case in terms of the legal representations that were made. Leadership, if you look at it purely through the lens that you seem to want to look at it, I think...

MM: I haven't said.....does not.

MM:...in any way...

PG: I think it is not looking at the totality of the leadership that I, as First Minister, had to provide to Northern Ireland. That goes way beyond, I think, the very narrow definition that you wish to apply. In this particular case, it is much bigger than that in terms of trying to provide leadership to our society and to navigate through the difficulties that we are facing. I didn't have legal representation in this court case. I wasn't able to be part of the court case. I was a bystander in all of these proceedings that were taking place. Meanwhile, having to provide leadership to our society and community at an incredibly tense period where our political institutions were under so much pressure. You can see, now, the manifestation of that with what ultimately happened yesterday. I fear for where we're going in the future, as well, in terms of these political institutions. The leadership question is one that I think has to be broadened way beyond this specific narrow way that you wish to take it on this particular issue. I've sought to apply all of those Seven Principles of Public Life, all of the Ministerial Code of Conduct, to the totality of the responsibilities that have been placed on me to provide leadership to our community.

MM: I want to say thank you, because you've given me a lot of information and you've answered a lot of questions and, sometimes, uncomfortable ones, I guess. I find this complaint and even just all of this, I have to say, hard to reconcile at times here, but I'm working through it and I'll continue to work through it. John, I'll hand over to you if you have any questions that you wanted to clarify.

JD: Yes, I just want to clarify a couple of things, Paul, if I may. You quite clearly articulated that the party policy was outlined by your leader and that you weren't party to that. I suppose the follow on question that I have is did you agree with that policy?

PG: I don't think it's appropriate for me to get into the speculation of what, ultimately, was his decision around this. He took the decision to do with the policies so that ultimately is the position that was taken by the party.

JD: I respect that answer and your status on that. Can I just clarify, because I am confused, I'm looking at the judgement of the 11th of October 2021 where you are a respondent and Tony McGleenan QC and Philip McAteer instructed by the departmental solicitor's office for the respondents; which includes you. I'm confused that you say that you weren't legally represented because the judgement reads that, 'All of the respondents were legally represented.'

PG: No, I was not legally represented. On two occasions, I asked Deputy First Minister to allow me to have legal representation. I think Judge Schofield expressed some frustration that I wasn't being afforded direct legal representation and there is correspondence, exchanges, that if you want to have them, I'm sure I can get them which shows the requests that were made by me to get correspondence; or to have direct legal representation. I made that point earlier. I was not responsible for the legal arguments that were being forward. That came directly from the respondent ministers whose departments were directly engaging legal counsel.

JD: Just my final clarification question, really, is that I think you had said earlier to the Commissioner that you are accepting of the judgement, but that doesn't necessarily you agree with it. Is that a fair comment?

PG: Yes. I accept that was the view that the court reach in terms of the decision that was taken. Listen, I understand this issue and you can probably sense from me, I'm trying to outline the very strenuous position that the post holds to provide leadership. You may take the view that that leadership hasn't been positive. That might be your view. There are times I think Boris Johnson's leadership hasn't been positive, but it's leadership. It's how you define that leadership. Some people may think that it's not the best form of leadership that's being given, but I have to look at all of the other pressures and factors that are going on in our society, within our Executive. You're trying to take incredibly difficult decisions to balance out what I believe has been the best way to try and get through an incredibly tense period. I understand that leadership is ultimately going to be subjective in the eyes of people and the views taken on this particular complaint - ignoring all of those broader issues - I don't think would give justice to the leadership test that has to be applied to me and the role that I've had to carry out over the last eight months.

JD: Thank you very much. I have no further questions and I think that you've been very open and explicit in your analysis of where we are at. I will hand back to the Commissioner.

MM: Thanks, John. Yes, Paul. Thank you for being open and explaining everything the way you see it. It's now on record. It's forming part of this investigation. I want to make clear that I've made no judgement at the moment. I'm simply gathering evidence and trying to understand everyone's view who are the respondents in this complaint. I don't want you to be under any... I gave that example about leadership based on the fact that it is part of the Code but is also something that was mentioned in the judgement as well. You asked for an example. I gave you an example, but I do take - everything's on record as to what you've said about your wider context of leadership and I just want to ask if you have any questions of us before we stop the recording.

PG: Maybe even more out of interest, what's the process? Obviously, you're in... If we have this discussion...I'm happy to have that offline because it's probably subsequent to the specific detail of the stuff that you've went through with me. Yes, there are probably more procedural questions I'll be curious to find out.

MM: Okay, well I'm going to close down the interview if you just want to hold it online. I want to just say, 'The time is 12 o'clock. The interview is ending,' and thank you both for attending. I will stop the recording.  
[END OF TRANSCRIPT]

## Document 14a

[REDACTED]

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**From:** Private Office DAERA  
**Sent:** 05 August 2021 13:24  
**To:** TEO NSMC Admin  
**Cc:** [REDACTED]  
**Subject:** RE: NSMC agriculture Sector meeting - proposed date

Ruth

Minister Poots would currently be available on Wednesday 29<sup>th</sup> September. I will note the diary, pending confirmation.

Many Thanks

[REDACTED]  
 DAERA Private Office  
 x20824



**From:** TEO NSMC Admin  
**Sent:** 04 August 2021 15:28  
**To:** Private Office DAERA  
**Cc:** [REDACTED]  
**Subject:** NSMC agriculture Sector meeting - proposed date

Lauri

The schedule of meetings for the autumn was agreed at the Plenary meeting last Friday. The Agriculture meeting is proposed for late September. We are planning for an in person meeting in Armagh.

In this round Minister McConalogue will be the host.

Our southern colleagues have offered a couple of dates to check if Minister Poots is available. They are Wednesday and Thursday 30 September. We have already advised that Thursday would not be suitable as the Executive might meet on that date.

Can you please let me know if Minister Poots is available on Wednesday 29 September or suggest some alternatives around that time if not.

Many thanks



North/South Ministerial Council  
 Joint Secretariat  
 58 Upper English Street  
 Armagh  
 BT61 7LG



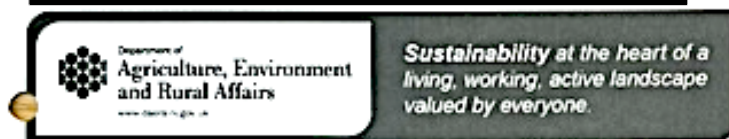
*The personal information (e.g., name, personal email, home postal address) included in your correspondence, which the Executive Office now holds, will be handled in accordance with data protection legislation. It will be kept secure and only shared with relevant*

## Document 14b

**From:** [REDACTED]  
**Sent:** 05 August 2021 12:29  
**To:** Private Office DAERA  
**Subject:** RE: NSMC agriculture Sector meeting - proposed date

Yes Lauri – go for it

Private Secretary / Head of Private Office  
Department of Agriculture, Environment and Rural Affairs  
Room 435, 1 Dundonald House, Belfast, BT4 3DB



**From:** Private Office DAERA  
**Sent:** 05 August 2021 12:28  
**To:** [REDACTED]  
**Subject:** RE: NSMC agriculture Sector meeting - proposed date

Jonathan

Are you content that I advised NSMC Secretariat that Minister would be available on Wednesday 29<sup>th</sup> September for this meeting?

Many Thanks  
Lauri

**From:** TEO NSMC Admin  
**Sent:** 04 August 2021 15:28  
**To:** Private Office DAERA  
**Cc:** [REDACTED]  
**Subject:** NSMC agriculture Sector meeting - proposed date

Lauri

The schedule of meetings for the autumn was agreed at the Plenary meeting last Friday. The Agriculture meeting is proposed for late September. We are planning for an in person meeting in Armagh.

In this round Minister McConalogue will be the host.

Our southern colleagues have offered a couple of dates to check if Minister Poots is available. They are Wednesday 29 and Thursday 30 September. We have already advised that Thursday would not be suitable as the Executive might meet on that date.

## Document 15

[REDACTED]

---

**From:** Private Office DAERA  
**Sent:** 31 August 2021 14:42  
**To:** TEO NSMC Admin  
**Cc:** [REDACTED]  
**Subject:** 1 - FOR YOUR INFO - I HAVEN'T PUT ON KN YET - CS - RE: NSMC meetings - Aquaculture & Marine and Environment proposed dates

Hi Ruth,

I can confirm that Minister Poots is also available on 15 October and I will hold this in his diary.

Kind regards

[REDACTED]  
Assistant Private Secretary  
Office of the Minister of Agriculture, Environment and Rural Affairs  
Room 438  
Dundonald House  
Upper Newtownards Road  
Belfast  
BT4 3SB  
[REDACTED]

All e-mails and attachments issued by the Private Office must be filed appropriately by the responsible business area. The Private Office does not keep official records of such correspondence.



**From:** TEO NSMC Admin  
**Sent:** 31 August 2021 11:30  
**To:** Private Office DAERA  
**Cc:** [REDACTED]  
**Subject:** NSMC meetings - Aquaculture & Marine and Environment proposed dates

Lauri

Ministers agreed at the NSMC Plenary in July that the Aquaculture & Marine and Environment meetings should be scheduled for mid-October.

Minister Poots is the host for the Aquaculture & Marine meeting and Minister Ryan is the host for the Environment meeting.

Minister Ryan's office have indicated he is available in 15 October for these meetings.

## Document 16

[REDACTED]

---

**From:** TEO NSMC Admin  
**Sent:** 02 September 2021 11:59  
**To:** Private Office DAERA  
**Cc:** [REDACTED]  
**Subject:** NSMC agriculture Sector meeting - 29 September 2021 at 11am - attendance nomination form  
**Attachments:** Agriculture Nomination Form for Appropriate Minister attend NSMC Sectors.docx  
**Categories:** Jonathan to advise

Lauri

I can confirm this meeting has been scheduled for 11am on 29 September and should last for around 1½ hours. The meeting will take place at the NSMC, Armagh.

Please find enclosed the nomination form for completion by Minister Poots. This form is required in accordance with Section 3.4 of the Ministerial Code which states that the appropriate Minister should notify the First Minister and deputy First Minister no later than 10 days before the meeting of his intention to attend.

I would be grateful if you would arrange for completion of the form, issue to the First Minister and deputy First Minister, [PS.Ministers@executiveoffice-ni.gov.uk](mailto:PS.Ministers@executiveoffice-ni.gov.uk) and copy to NSMC Joint Secretariat, [nsmc.admin@executiveoffice-ni.gov.uk](mailto:nsmc.admin@executiveoffice-ni.gov.uk) by Friday 17 September.

Many thanks  
[REDACTED]

---

**From:** Private Office DAERA  
**Sent:** 05 August 2021 13:24  
**To:** TEO NSMC Admin  
**Subject:** RE: NSMC agriculture Sector meeting - proposed date

Ruth

Minister Poots would currently be available on Wednesday 29<sup>th</sup> September. I will note the diary, pending confirmation.

Many Thanks  
[REDACTED]

DAERA Private Office  
x20824

---

**From:** TEO NSMC Admin  
**Sent:** 04 August 2021 15:28  
**To:** Private Office DAERA <[Private.Office@daera-ni.gov.uk](mailto:Private.Office@daera-ni.gov.uk)>  
**Cc:** [REDACTED]  
**Subject:** [REDACTED]



## Document 17a: Emails relating to Nomination forms for Agriculture NSMC Meetings

**From:** TEO NSMC Admin  
**Sent:** 15 September 2021 17:04  
**To:** Private Office DAERA  
**Cc:** [REDACTED]  
**Subject:** FW: NSMC agriculture Sector meeting - 29 September 2021 at 11am - attendance nomination form  
**Attachments:** Agriculture Nomination Form for Appropriate Minister attend NSMC Sectors.docx  
**Categories:** Jonathan to advise

Lauri

Further to my email below can you please advise if the attached form has been completed and returned to PS Ministers. While I have given a deadline of Friday the date the form is due is actually today to meet the 10 days in advance criteria as per the extract from the NI Act 1998 below.

52A part 4:

Each appropriate Minister shall notify the First Minister and the deputy First Minister, as soon as reasonably practicable and in any event no later than 10 days before the date of the meeting, that—

(a)he intends to attend the meeting;

(b)he does not intend to attend the meeting but has nominated another person under subsection (3) to attend in his place; or

(c)he does not intend to attend the meeting and he does not intend, or has not been able, to make such a nomination,

and a notification under paragraph (b) shall include the name of the person nominated.

And

A part 10:

In this section "day" does not include a Saturday, a Sunday, Christmas Day, Good Friday and any day which is a bank holiday in Northern Ireland

If the form has not yet been completed I would be grateful if you could arrange its completion as soon as possible.

Many thanks

**From:** TEO NSMC Admin  
**Sent:** 02 September 2021 11:58  
**To:** Private Office DAERA <Private.Office@daera-ni.gov.uk>  
**Cc:** [REDACTED]

**Subject:** NSMC agriculture Sector meeting - 29 September 2021 at 11am - attendance nomination form

## Document 17b

**From:** TEO NSMC Admin  
**Sent:** 23 September 2021 10:39  
**To:** Private Office DAERA  
**Cc:**  
**Subject:** NSMC Aquaculture & Marine and Environment meetings - 15 October 2021  
attendance nomination forms  
**Attachments:** Aquaculture and Marine Nomination Form for Appropriate Minister attend  
N\_.docx; Environment Nomination Form for Appropriate Minister attend NSMC  
Sectora\_.docx

**Categories:** Jonathan to advise

Lauri

As you know the NSMC Aquaculture & Marine and Environment meetings are scheduled for 15 October in Armagh. The Aquaculture & Marine meeting will take place at 11am followed by the Environment meeting at 12.30. There will be a short break between the meetings and lunch will be provided.

Please find enclosed the nomination forms for completion by Minister Poots. These forms are required in accordance with Section 3.4 of the Ministerial Code which states that the appropriate Minister should notify the First Minister and deputy First Minister no later than 10 days before the meeting of his intention to attend.

I would be grateful if you would arrange for completion of the forms, issue to the First Minister and deputy First Minister, [PS.Ministers@executiveoffice-ni.gov.uk](mailto:PS.Ministers@executiveoffice-ni.gov.uk) and copy to NSMC Joint Secretariat, [nsmc.admin@executiveoffice-ni.gov.uk](mailto:nsmc.admin@executiveoffice-ni.gov.uk) by Friday 1 October.

Many thanks

North/South Ministerial Council  
Joint Secretariat  
68 Upper English Street  
Armagh  
BT61 7LG

*The personal information (e.g., name, personal email, home postal address) included in your correspondence, which the Executive Office now holds, will be handled in accordance with data protection legislation. It will be kept secure and only shared with relevant officials for the purpose of providing a response. This information will be retained for no longer than is necessary, and in line with the Department's retention and disposal schedule.*

Document 17c

[REDACTED]

---

**From:** Private Office DAERA  
**Sent:** 02 September 2021 14:25  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** FW: NSMC agriculture Sector meeting - 29 September 2021 at 11am - attendance nomination form  
**Attachments:** Agriculture Nomination Form for Appropriate Minister attend NSMC Sectors...docx  
**Categories:** Jonathan to advise

Jonathan

You had previously confirmed that the Minister would be available to attend the NSMC Agriculture meeting on Wednesday 29<sup>th</sup> September.

Grateful if you would now confirm that Minister is content that I complete the attached nomination form and issue to FM&dFM, to confirm that he will attend this meeting. Completed nomination form needs to issue by Friday 17<sup>th</sup> September.

Many Thanks  
Lauri

---

**From:** TEO NSMC Admin  
**Sent:** 02 September 2021 11:59  
**To:** Private Office DAERA  
**Cc:** [REDACTED]  
**Subject:** NSMC agriculture Sector meeting - 29 September 2021 at 11am - attendance nomination form

Lauri

I can confirm this meeting has been scheduled for 11am on 29 September and should last for around 1½ hours. The meeting will take place at the NSMC, Armagh.

Please find enclosed the nomination form for completion by Minister Poots. This form is required in accordance with Section 3.4 of the Ministerial Code which states that the appropriate Minister should notify the First Minister and deputy First Minister no later than 10 days before the meeting of his intention to attend.

I would be grateful if you would arrange for completion of the form, issue to the First Minister and deputy First Minister, [PS.Ministers@executiveoffice-ni.gov.uk](mailto:PS.Ministers@executiveoffice-ni.gov.uk) and copy to NSMC Joint Secretariat, [nsmc.admin@executiveoffice-ni.gov.uk](mailto:nsmc.admin@executiveoffice-ni.gov.uk) by Friday 17 September.

Many thanks  
[REDACTED]

---

**From:** Private Office DAERA  
**Sent:** 05 August 2021 13:24  
**To:** TEO NSMC Admin <[NSMC.Admin@executiveoffice-ni.gov.uk](mailto:NSMC.Admin@executiveoffice-ni.gov.uk)>  
**Cc:** [REDACTED]  
**Subject:** [REDACTED]

Document 18a Emails sent directly to Minister Poots re Agriculture NSMC Meetings

Private Office DAERA

From: [REDACTED]  
Sent: 24 September 2021 09:50  
To: DAERA Minister  
Cc: Private Office DAERA  
Subject: FW: NSMC Aquaculture & Marine and Environment meetings - 15 October 2021 - attendance nomination forms  
Aquaculture and Marine Nomination Form for Appropriate Minister attend N...docx; Environment Nomination Form for Appropriate Minister attend NSMC Sectora...docx

Minister

Are you content that the attached nomination form is completed and issued to FM & dFM?

Regards  
Jonathan

Jonathan  
Private Secretary | Head of Private Office  
Department of Agriculture, Environment and Rural Affairs  
Room 438 | Dundonald House | Upper Newtownards Road | Belfast | BT4 3SB  
Tel: (028) 9052 0808 (ext 20808) | Email: jonathan.mcferran@daera-ni.gov.uk | Web: www.daera-ni.gov.uk



Department of  
Agriculture, Environment  
and Rural Affairs  
www.daera-ni.gov.uk

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From: Private Office DAERA  
Sent: 23 September 2021 10:49  
To: [REDACTED]  
Subject: FW: NSMC Aquaculture & Marine and Environment meetings - 15 October 2021 - attendance nomination forms

Jonathan

Grateful if you would advise if Minister is content that the attached nomination form is completed and issued to FM&dFM, to confirm that he will attend these meetings. Completed nomination forms need to issue no later than 10 days before the meeting.

Many Thanks  
Lauri

From: TEO NSMC Admin  
Sent: 23 September 2021 10:39  
To: Private Office DAERA [REDACTED]  
Cc: [REDACTED]  
Subject: NSMC Aquaculture & Marine and Environment meetings - 15 October 2021 - attendance nomination forms

## Document 18b Emails sent directly to Minister Poots re Agriculture NSMC Meetings

**From:** [REDACTED]  
**Sent:** 05 October 2021 17:12  
**To:** DAERA Minister  
**Cc:** Private Office DAERA  
**Subject:** FW: NSMC Aquaculture & Marine and Environment meetings - 15 October 2021 - attendance nomination forms  
**Attachments:** Aquaculture and Marine Nomination Form for Appropriate Minister attend N...docx; Environment Nomination Form for Appropriate Minister attend NSMC Sectora...docx

Minister

Please see below and attached for your consideration.

Regards

Jonathan

[REDACTED]  
Private Secretary / Head of Private Office  
Department of Agriculture, Environment and Rural Affairs  
Room 438 / Dundonald House / 11 Upper Maudslayi Road / Belfast / BT4 3DB



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**From:** Private Office DAERA  
**Sent:** 05 October 2021 16:20  
**To:** [REDACTED]  
**Subject:** FW: NSMC Aquaculture & Marine and Environment meetings - 15 October 2021 - attendance nomination forms

Jonathan

See request below from NSMC Secretariat – grateful if you would advise.

Many Thanks  
Lauri

**From:** TEO NSMC Admin  
**Sent:** 05 October 2021 16:01  
**To:** DAERA Assembly Support [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** FW: NSMC Aquaculture & Marine and Environment meetings - 15 October 2021 - attendance nomination forms

Lauri

## Document 18c Emails sent directly to Minister Poots re Agriculture NSMC Meetings

**From:** Private Office DAERA  
**Sent:** 16 September 2021 16:53  
**To:** DAERA Minister  
**Cc:** [REDACTED]  
**Subject:** URGENT: NSMC agriculture Sector meeting - 29 September 2021 at 11am - attendance nomination form  
**Attachments:** Agriculture Nomination Form for Appropriate Minister attend NSMC Sectora...docx  
**Importance:** High  
**Categories:** Hold

Minister

Please see request below from NSMC Secretariat. I would be grateful if you would advise if you wish to respond to the request to complete the nomination form, and if so, which of the 3 options you wish to respond with.

Many Thanks  
Lauri

**From:** TEO NSMC Admin  
**Sent:** 15 September 2021 17:04  
**To:** Private Office DAERA [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** FW: NSMC agriculture Sector meeting - 29 September 2021 at 11am - attendance nomination form

Lauri

Further to my email below can you please advise if the attached form has been completed and returned to PS Ministers. While I have given a deadline of Friday the date the form is due is actually today to meet the 10 days in advance criteria as per the extract from the NI Act 1998 below.

52A part 4:

*Each appropriate Minister shall notify the First Minister and the deputy First Minister, as soon as reasonably practicable and in any event no later than 10 days before the date of the meeting, that—*

*(a)he intends to attend the meeting;*

*(b)he does not intend to attend the meeting but has nominated another person under subsection (3) to attend in his place; or*

*(c)he does not intend to attend the meeting and he does not intend, or has not been able, to make such a nomination,*

*and a notification under paragraph (b) shall include the name of the person nominated.*

And

52A part 10:



[REDACTED]

---

**From:** McFerran, Jonathan  
**Sent:** 17 September 2021 09:01  
**To:** Private Office DAERA  
**Subject:** RE: NSMC agriculture Sector meeting - 29 September 2021 at 11am - attendance nomination form

Lauri  
As per conversation please send on directly to the Minister  
Regards  
Jonathan

[REDACTED]  
Private Secretary | Head of Private Office  
Department of Agriculture, Environment and Rural Affairs  
Room 438 | Dundonald House | Upper Newtownards Road | Belfast | BT4 3SD



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---

**From:** Private Office DAERA  
**Sent:** 16 September 2021 10:03  
**To:** McFerran, Jonathan [REDACTED]  
**Subject:** FW: NSMC agriculture Sector meeting - 29 September 2021 at 11am - attendance nomination form  
**Importance:** High

Jonathan

Please see email below. NSMC Secretariat have detailed the response options available to the Minister – grateful if you would advise ASAP if Minister wishes to respond with any of the options listed.

Many Thanks  
Lauri

---

**From:** TEO NSMC Admin  
**Sent:** 15 September 2021 17:04  
**To:** Private Office DAERA <[Private.Office@daera-ni.gov.uk](mailto:Private.Office@daera-ni.gov.uk)>  
**Cc:** [REDACTED]

**Subject:** FW: NSMC agriculture Sector meeting - 29 September 2021 at 11am - attendance nomination form

Lauri

Further to my email below can you please advise if the attached form has been completed and returned to PS Ministers. While I have given a deadline of Friday the date the form is due is actually today to meet the 10 days in advance criteria as per the extract from the NI Act 1998 below.

52A part 4:

## Document 19a

**From:** [REDACTED]  
**Sent:** 15 October 2021 10:26  
**To:** Private Office DAERA  
**Cc:** [REDACTED]  
**Subject:** FW: Suggested NSMC

Private Office

I have received the email below from the Minister. Please can you inform NSMC Secretariat that as the Minister considers that no meeting is taking place, neither he nor DAERA officials will be in attendance.

Regards  
Jonathan

[REDACTED]  
Private Secretary | Head of Private Office  
Department of Agriculture, Environment and Rural Affairs  
Room 438 | Dundonald House | Upper Newtownards Road | Belfast | BT4 3SB



**From:** [REDACTED]  
**Sent:** 15 October 2021 10:18  
**To:** [REDACTED] <[REDACTED]@daera-ni.gov.uk>  
**Subject:** Suggested NSMC

Jonathan

The Minister has cleared below:-

In relation to today's suggested NSMC meeting, the Minister considers that no meeting is taking place and as a result no departmental support will be required. That being the case staff should focus on departmental business.

Kind regards

Mark

Sent with BlackBerry Work  
([www.blackberry.com](http://www.blackberry.com))



Document 19b

[REDACTED]

---

**From:** Private Office DAERA  
**Sent:** 15 October 2021 10:31  
**To:** TEO NSMC Admin  
**Cc:** [REDACTED]  
**Subject:** Friday 15 October

Ruth

As Minister Poots considers that no meetings are taking place, neither he nor DAERA officials will be in attendance.

Many Thanks

[REDACTED]  
DAERA Private Office  
X20824



**Document 20: 18<sup>th</sup> October Email from NSMC Secretariat requesting completion of nomination form and 28<sup>th</sup> October reminder email**

Thu 28/10/2021 09:41

DfE Private Office [REDACTED] > [REDACTED]  
[REDACTED]

Siobhan

Just a reminder that the nomination form was due to be returned yesterday. Can you advise if this has been completed and if not can you arrange to have the form completed and returned as soon as possible.

Thanks

Ruth

**From:** TEO NSMC Admin

**Sent:** 18 October 2021 11:58

**To:** DfE Private Office [REDACTED]  
[REDACTED]

**Cc:** [REDACTED]  
[REDACTED] >

**Subject:** NSMC Tourism meeting - 10 November 2021 at 2pm - attendance nomination form

Siobhan

As you know the next NSMC Tourism meeting has been scheduled for 10 November at 2pm. This meeting has been arranged as in person in NSMC Armagh. Lunch will be provided in advance.

Please find enclosed the nomination form for completion by Minister Lyons. This form is required in accordance with Section 3.4 of the Ministerial Code which states that the appropriate Minister should notify the First Minister and deputy First Minister no later than 10 days before the meeting of her intention to attend.

I would be grateful if you would arrange for completion of the form, issue to the First Minister and deputy First Minister, [PS.Ministers@executiveoffice-ni.gov.uk](mailto:PS.Ministers@executiveoffice-ni.gov.uk) and copy to NSMC Joint Secretariat, [nsmc.admin@executiveoffice-ni.gov.uk](mailto:nsmc.admin@executiveoffice-ni.gov.uk) by 27 October.

Many thanks

Ruth

[REDACTED]  
**North/South Ministerial Council**  
**Joint Secretariat**  
58 Upper English Street  
Armagh  
BT61 7LG  
[REDACTED]

[REDACTED]

Document 21: 28<sup>th</sup> October email response

From: [REDACTED]  
Sent: 28 October 2021 10:00  
To: TEO NSMC Admin <[NSMC.Admin@executiveoffice-ni.gov.uk](mailto:NSMC.Admin@executiveoffice-ni.gov.uk)>  
Subject: RE: NSMC Tourism meeting - 10 November 2021 at 2pm - attendance nomination form

Hi,

The minister is on international business with the dept on the 10<sup>th</sup> November

How would we proceed with his form as there doesn't seem to be an option to say that?

Kind regards,

Ben

From: [REDACTED]  
Sent: 28 October 2021 09:57  
To: [REDACTED] <[@economy-ni.gov.uk](mailto:@economy-ni.gov.uk)>  
Subject: FW: NSMC Tourism meeting - 10 November 2021 at 2pm - attendance nomination form

Sent with BlackBerry Work  
([www.blackberry.com](http://www.blackberry.com))

From: TEO NSMC Admin <[NSMC.Admin@executiveoffice-ni.gov.uk](mailto:NSMC.Admin@executiveoffice-ni.gov.uk)>  
Date: Thursday, 28 Oct 2021, 9:40 am  
To: DfE Private Office [REDACTED]

[REDACTED]  
Subject: FW: NSMC Tourism meeting - 10 November 2021 at 2pm - attendance nomination form

Siobhan

Just a reminder that the nomination form was due to be returned yesterday. Can you advise if this has been completed and if not can you arrange to have the form completed and returned as soon as possible.

Thanks  
Ruth

From: TEO NSMC Admin  
Sent: 18 October 2021 11:58  
To: DfE Private Office <[Private.Office@economy-ni.gov.uk](mailto:Private.Office@economy-ni.gov.uk)>; [REDACTED]  
ni.gov.uk>  
[REDACTED] <[@executiveoffice-ni.gov.uk](mailto:@executiveoffice-ni.gov.uk)>; [REDACTED] <[@economy-ni.gov.uk](mailto:@economy-ni.gov.uk)>

**From:** [REDACTED]  
**Sent:** 01 November 2021 13:46  
**To:** [REDACTED] DfE Private Office  
**Cc:** [REDACTED]  
**Subject:** Q3E Tourism 10.11.21 email trail with notification from DfE PO that Minister Lyons not available and advice on next steps

Ben,

Further to Ruth's email below, I'd be grateful if you could advise of how you'd like to proceed by close of play tomorrow.

As we're within the 10 working day deadline quoted in the legislation we will ask FM and dFM to consider nominating an alternative minister on Wednesday morning unless we hear back from you.

Regards,

Richard

[REDACTED] North/South Ministerial Council | Joint Secretariat / Sponsorship Unit  
58 Upper English St, Armagh, BT61 7LG  
[REDACTED]

*The personal information (e.g., name, personal email, home postal address) included in your correspondence, which the Executive Office now holds, will be handled in accordance with data protection legislation. It will be kept secure and only shared with relevant officials for the purpose of providing a response. This information will be retained for no longer than is necessary, and in line with the Department's retention and disposal schedule.*

---

**From:** TEO NSMC Admin  
**Sent:** 28 October 2021 10:58  
**To:** [REDACTED]@economy-ni.gov.uk>; DfE Private Office [REDACTED]  
**Cc:** [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@economy-ni.gov.uk>  
**Subject:** RE: NSMC Tourism meeting - 10 November 2021 at 2pm - attendance nomination form

Ben

The options for your minister are as follows:

- he can postpone the meeting and suggest alternative dates which we can offer to the south,
- as per the NI Act section 52(4)(b) (see attached) he can notify FM and dFM that he is not available to attend and nominate another appropriate minister to attend on his behalf (the other minister must already be in agreement), or
- as per the NI Act section 52(4)(c) he can notify FM and dFM that he is not available to attend and does not intend to nominate another appropriate minister to attend on his behalf.

I hope this is helpful. Should he chose the 2<sup>nd</sup> or 3<sup>rd</sup> option please cc [nsmc.admin@executiveoffice-ni.gov.uk](mailto:nsmc.admin@executiveoffice-ni.gov.uk) into his response to PS Ministers.

Thanks  
Ruth

Document 22: 4<sup>th</sup> November email from NSMC

From: [REDACTED]  
 Sent: 04 November 2021 16:13  
 To: Deputy First Minister  
 Cc: Junior Minister dFM [REDACTED]  
 Subject: FW: dFM to clear Submission Received SUB-0746-2021 : **\*\*URGENT\*\* NOMINATION OF REPLACEMENT APPROPRIATE MINISTER TO ATTEND NSMC TOURISM MEETING ON 10 NOVEMBER 2021**  
 Attachments: Sub - Nomination of Replacement Appropriate Minister to attend NSMC Tourism Meeting.docx  
 Categories: Ministerial Decision Required

Minister,  
 See attached SUB 0746 - **NOMINATION OF REPLACEMENT APPROPRIATE MINISTER TO ATTEND NSMC TOURISM MEETING ON 10 NOVEMBER 2021.**

Ministers Lyons, Appropriate Minister for the NSMC Tourism Sector, **has not yet formally notified his intention to attend** the Tourism Sectoral meeting arranged for 10 November 2021 in Armagh

Ministers are being asked to:

- i. **Note that Minister Lyons has not yet formally notified his intention to attend the NSMC Tourism Meeting arranged for 10 November 2021;**
- ii. **Nominate a replacement Appropriate Minister to attend the meeting in place of Ministers Lyons; and**
- iii. **Note that, if it is not possible to nominate a replacement Appropriate Minister by 5 November, TEO officials from within the NSMC Joint Secretariat will engage with Irish Government counterparts on next steps.**

Stephen has reviewed and is content to recommend approval.

To clear please.

Thanks  
 Donal

From: [REDACTED] <[REDACTED]@executiveoffice.info>  
 Sent: 03 November 2021 13:23  
 To: [REDACTED] <[REDACTED]@executiveoffice-ni.gov.uk>  
 Subject: RE: dFM SpAd to clear Submission Received SUB-0746-2021 : **\*\*URGENT\*\* NOMINATION OF REPLACEMENT APPROPRIATE MINISTER TO ATTEND NSMC TOURISM MEETING ON 10 NOVEMBER 2021**

Document 23: 8 November letter from dFM to FM

**FROM:** MICHELLE O'NEILL MLA  
DEPUTY FIRST MINISTER

**TO:** PAUL GIVAN MLA  
FIRST MINISTER

**DATE:** 8 NOVEMBER 2021

You are aware that a meeting of the North South Ministerial Council in Tourism format is scheduled to take place on Wednesday 10 November 2021.

Minister Conor Murphy has notified the Executive Office of his intention to participate as Accompanying Minister.

However, I understand that Economy Minister, Gordon Lyons MLA has failed to notify this office of his intention to participate, or not.

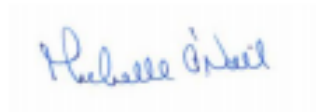
The basis for this inaction from Minister Lyons has not been presented.

The relevant legislation and the Ministerial Code requires the criteria to be satisfied in order for these meetings to occur.

I am therefore writing to request that you now identify a Minister from the Unionist designation to replace Minister Lyons to attend and allow the meeting to proceed as planned.

I would be obliged if you can formally respond to my request by close of play today.

Regards



**Michelle O'Neill MLA**  
Deputy First Minister

09 November 2021

Dear Michelle

Thank you for your latest note, dated 8 November.

I fear your request may be based on a fundamental misapprehension as to whether a meeting has been scheduled or not. For the absence of any doubt it is my clear and genuinely held view that no such meeting has been scheduled (or a date set in the terms of the legislation). In these circumstances the responsibility on me to nominate another minister does not therefore arise.

Even if such a responsibility were to arise (which I say it does not), it would not permit a meeting to proceed as no agenda would have been agreed, much less would any decisions have been agreed pursuant to the arrangements set out in the Memorandum of Understanding and Procedure agreed by the NSMC on 13 December 1999. That would require further political negotiation (which may or may not secure political agreement) and potentially Executive approval also.

In resolving the issue of whether I am under the duty you describe, the crucial question is when, legally, a date is set. It seems to me that there are four possible answers to this question.

Firstly, it could be argued that dates are set at NSMC plenaries – though in practice specific dates are not agreed at plenaries.

Secondly, it could be argued that dates are set by officials in the NSMC in conjunction with officials in relevant departments – though that analysis would be to empower decision-making roles to officials over the heads of ministers and would offend the constitutional order set out in the Departments (Northern Ireland) Order 1999. While officials clearly have an important role



in seeking to arrange meetings, it would seem wrong for this to be elevated to be able to create legal duties which are binding upon ministers.

Thirdly, it could be argued that dates are set when the relevant ministers agree - arguably a more plausible contention - though one that does not sit happily with the legislation or the broader arrangements for agreeing an agenda. It would also reduce the role of the First Minister and deputy First Minister set out in section 52A(1) to one of mere notification.

Such an analysis does not sit comfortably with the primacy role given to the First Minister and deputy First Minister either in the broader statutory provisions (who the relevant Ministers are is ultimately a matter for the FM and dFM see section 52C(1) or as how the arrangements have operated in practice, whereby the agendas and decisions (as set out in para 5 and 4 respectively of the Memorandum of Understanding and Procedure agreed by the NSMC on 13 December 1999 and referred to in the Northern Ireland Ministerial Code) are settled by the First Minister and deputy First Minister. (It should also be noted that even this interpretation of when a date is agreed is of no material assistance where, as in this case, there has been no such agreement as between the relevant ministers.)

Fourthly, it could be argued that dates are only agreed when the First Minister and deputy First Minister actually agree the dates. This would appear to be most consistent with the statutory scheme and the primacy role afforded to the FM and dFM. Indeed as in practice the agenda and decisions for all NSMC meetings are signed off by the First Minister and deputy First Minister a “date” which did not have the approval of these ministers could never be regarded that anything other than provisional.

In addition and for the sake of completeness, it is worth analysing the basis on which it may be claimed that a specific meeting had been scheduled for 10 November.

It may be suggested that the suggested scheduling of this meeting took place at the last NSMC plenary. However, setting aside all of the other reasons why this could not be considered to constitute the scheduling of a meeting, the minutes of the NSMC plenary do not identify a particular date for this meeting.

Indeed, more generally, whatever value is based on reliance on a provisional date range at a NSMC plenary could of course in future be negated in its entirety by a failure even to agree to indicative targets at subsequent NSMC plenary meetings and leave the individual scheduling of meetings to a case by case basis. I think it would be unfortunate if this was the outworking of an interpretation which suggested meetings were scheduled at the NSMC plenary.

Additionally, it may be suggested that the fact the NSMC secretariat in conjunction with ministerial private offices identified a potential suitable date constitutes the scheduling of a meeting. However, such administrative preparation, particularly in the absence of any ministerial approval (as in this case) could not possibly rise to the level of a meeting being scheduled – or a date agreed - for any legal purpose.

More generally whatever value is placed on the identification by ministerial private offices of possible dates could again be negated in its entirety by the refusal of ministers to permit any such advanced planning in advance of a possible agenda being agreed.

In summary, it could not in this case be argued that the relevant ministers agreed the date or that the First Minister and deputy First Minister acting jointly had agreed a date.

It is apparent that a working practice has evolved whereby where out of administrative expediency preparatory actions have been taken which are outside the arrangements set out in the governing statute. It would be an undesirable development if this useful work had to be abandoned in the future to avoid creating unintended legal duties on ministers.

Section 52A(1) requires the First Minister and deputy First Minister acting jointly, as far in advance of each meeting of the [North-South Ministerial Council] as is reasonably practicable to give to the Executive Committee and to the Assembly the date, the agenda and the names of the ministers or junior ministers who are to attend the meeting.

To be clear, I have not agreed a date for the meeting, the minister who has the relevant responsibility has not agreed a date for the meeting, no agenda has been agreed for the meeting

and obviously no communication has been provided to the Executive Committee or the Assembly in the terms required. On this basis it is hard to see how the meeting can be considered “scheduled.”

It is also worth pausing to note that the concept of a “scheduled” meeting finds no basis in the legislation rather reference to the date of the meeting. It is also worth noting that even if a date for a meeting had been agreed, in the absence of an agenda being agreed, no meeting, or certainly no meeting of any purpose could take place.

It is not appropriate to speculate whether such an agenda could have been agreed in circumstances where a date had been agreed, but clearly this would have been a matter of subject to negotiation and political agreement as set out in of the Memorandum of Understanding and Procedure agreed by the NSMC on 13 December 1999.

You will be aware that section 28A(1) of the Northern Ireland Act 1998 requires ministers to act in accordance with the provisions of the Ministerial Code. You will further be aware that para 2.13 of the Ministerial Code requires that all NSMC decision making papers shall be circulated to all members of the Executive Committee and that any member of the Executive Committee may seek a discussion on such a paper at a meeting of the Executive Committee. That paragraph further states that where a decision paper ought by virtue of section 20(3) or (4) of the Northern Ireland Act 1998 to be considered by the Executive Committee it shall be brought to the attention of the Executive Committee by the responsible minister(s).

Finally, it should also be noted that where decisions engaged matters set out in section 20(3) or 20(4) of the Northern Ireland Act 1998 (or the terms of the Ministerial Code) Executive agreement would also be required.

In conclusion I hope it is obvious that none of the necessary preconditions were in place to allow a meeting of the nature you describe to proceed.

Finally, let me register my disappointment at your refusal to allow DSO to represent myself and Gary Middleton, the Junior Minister as requested on 6 October and again on 21 October and

thereby the court to be in a position to assess the representations that have been made on my behalf.

I am copying this note to the Education Minister, the Economy Minister and the Minister for the Department of Agriculture, Environment and Rural Affairs.

Yours sincerely

A handwritten signature in black ink, reading "Paul Givan". The signature is written in a cursive style, with the first name "Paul" and the last name "Givan" clearly legible.

**Paul Givan, MLA**

**First Minister of Northern Ireland**

## Document 25a



Stormont Castle  
BELFAST  
BT4 3TT  
Tel: 028 9037 8228  
Email: ps.ministers@executiveoffice-  
ni.gov.uk

Paul Givan MLA  
First Minister  
The Executive Office  
Stormont Castle  
Stormont Estate  
Belfast

10 November 2021

Dear Paul,

Thank you for your correspondence dated 9 November in response to my note sent the previous day, requesting that you nominate a replacement unionist Minister to attend the meeting of the NSMC in Tourism sectoral format, in the absence of Minister Gordon Lyons attending.

While your correspondence centres on legal and technical detail, I wish to provide a practical response.

Put simply, your party has declared publicly that you are engaged in a political boycott of North-South Ministerial Council meetings in protest at the Brexit Protocol. This is the sole reason that NSMC meetings involving DUP Ministers have not taken place since your party declared this boycott.

The High Court has ruled for Executive Ministers to do so is to act unlawfully.

Since 1999 when the inaugural meeting of the North-South Ministerial Council was held, there has been in excess of 300 meetings of the Council in plenary, sectoral and institutional formats.

The custom and practice throughout that lengthy period has been consistent in its application by the NI Civil Service in scheduling and arranging meetings.

Officials did attempt to provide this factual account to the court in the Sean Napier case, however you sought to amend it, which I could not agree to.

The legislative and statutory framework within which this operates is established in the NI Act 1998 and the NI Ministerial Code.

You are focusing on practical arrangements and scheduling of meetings as cover for a publicly declared and unlawful boycott and with the intention, by deploying secondary, technical matters of avoiding contempt of court while persisting with an unlawful boycott, in breach of the Ministerial code, NI Act 1998.

At the last NSMC plenary meeting held on 30 July 2021 - which you and I co-chaired - the Council approved an indicative schedule of future NSMC meetings.

We also agreed that the next NSMC plenary meeting will be held in December 2021.

The Joint Communiqué from both administrations at that meeting, and subsequently published, details this agreement.


The forthcoming plenary meeting next month where all Irish Cabinet, and NI Executive Ministers are expected to attend is of critical importance. Failure to attend this by you as First Minister and your Executive ministers would be in clear breach of your legal obligations and would be contrary to the public interest since it would impede the vital work of the Council and both administrations.

Your correspondence, rather than addressing the central question of your party's publicly declared boycott of the NSMC, is an exercise in political and technical obfuscation. You refuse in your letter to acknowledge the political and unlawful boycott.

To conclude, I firmly believe that you should immediately end this unlawful boycott by accepting and complying with your statutory duties under the Ministerial Code and Pledge of Office to *"participate fully in the Executive Committee, the North-South Ministerial Council and the British-Irish Council"*.

I am copying this correspondence to the Head of the Civil Service, Departmental Solicitor, Attorney General, and NSMC Joint Secretariat.

Yours,

A handwritten signature in blue ink, reading "Michelle O'Neill".

**Michelle O'Neill MLA**  
**Deputy First Minister**

**Document 25b**

Stormont Castle  
BELFAST  
BT4 3TT  
Tel: 028 9037 8228  
Email: [ps.ministers@executiveoffice-ni.gov.uk](mailto:ps.ministers@executiveoffice-ni.gov.uk)

11 November 2021

Dear Michelle,

Your communication of 9 November does not appear to take direct issue with any of the points raised in my previous note.

However notwithstanding this I will take the opportunity to make a number of points.

In an area which is governed by statute and in the context of a Judicial Review application I was somewhat surprised by your objection to ‘legal or technical arguments’. I would have thought that it is obvious there are significant and important questions of law and fact which need to be addressed by the court before it can reach a conclusion on a way forward.

You also refer to “custom and practice” to justify the approach taken. You may recall that this was also the purported justification for your failure, as “agriculture” minister to bring certain matters to the Executive for decision. I trust you will recall that such an argument did not find favour with the court which was somewhat more reliant upon the wording of the actual legislation.

I welcome your acceptance that what was agreed at the NSMC plenary in July 2021 was an ‘indicative’ schedule. However given no actual dates were even included as part of this indicative schedule, is arguably not much of a concession.



I should say that I welcome the belated recognition that Ministers should “participate fully in the Executive Committee, the North South Ministerial Council, and the British Irish Council.”

You will of course recall the Sinn Fein boycott of the Executive for many months in 2008 or the absence of Executive or NSMC meetings at all between January 2017 and January 2020.

You make reference in your letter to the fact that officials sought to provide a factual account to the Court but that I sought to amend it. By now you will have seen the note from the Permanent Secretary of the Department in which he declined to stand over the draft provided by officials in the NSMC.

You suggest the next meeting of the NSMC plenary is due to take place in December though in the absence of a date, this will be of no material assistance to anyone wishing to make plans for the event.

A handwritten signature in black ink, appearing to read 'Paul Givan', with a stylized flourish at the end.

**PAUL GIVAN MLA  
FIRST MINISTER**

Document 25c: M O'Neill response 11<sup>th</sup> November

From: [REDACTED]  
Sent: 11 November 2021 13:41  
To: [REDACTED]  
Cc: [REDACTED]  
Subject: RE: FM Letter to dFM

Deirdre,  
Thank you for the First Minister's letter in your email of 14:18 today.

dFM has considered and responds as follows:

- *DFM does not accept the forced assertion that there are important questions of law to be clarified, since the court has in fact already declared the inaction of DUP Ministers to attend meetings of the NSMC to be unlawful and a breach of statutory duty.*
- *DFM does not believe there is any value in formally responding to this correspondence since there is no mutual agreement on the position taken.*
- *DFM feels that her correspondence sent yesterday, 10 November, sets out a well-reasoned response on the matter.*

For FM's attention please.

Thanks

 Donal

From: [REDACTED]  
Sent: 11 November 2021 14:18  
To: [REDACTED]@executiveoffice-ni.gov.uk>  
Cc: [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@finance-ni.gov.uk>; [REDACTED]@finance-ni.gov.uk>  
Subject: RE: FM Letter to dFM

Donal  
Please see attached response for consideration by the deputy First Minister.  
Deirdre

Document 26: Confirmation from NSMC of cancellation by Irish Government

OFFICIAL - NSMC



FROM: [REDACTED]  
JOINT SECRETARY

Copy distribution below

DATE: 9 NOVEMBER 2021

TO: PS/FIRST MINISTER AND PS/DEPUTY FIRST MINISTER

ARRANGEMENTS FOR POSTPONEMENT OF THE NORTH SOUTH MINISTERIAL COUNCIL TOURISM MEETING ON 10 NOVEMBER 2021

Issue:	The Irish Government has advised that, as the Executive has been unable to confirm that the conditions have been met to enable the Tourism meeting planned for 10 November to proceed, they have advised their Minister that the meeting will not now proceed and arrangements for their Minister to travel to Armagh are being stood down.
Timing:	The meeting was scheduled for 10 November 2021.
Press Office Advice:	There is ongoing political and media interest around ministerial participation in NSMC meetings.
FOI implications:	May be disclosable.
Legislation implications:	Ministers will be aware of the Judicial Review regarding participation in the North South Ministerial Council.
Financial Implications:	None
Executive referral:	N/A
Recommendation:	That the First Minister and deputy First Minister note that, in the absence of confirmation that the requirements have been met for the Tourism meeting to proceed on 10 November, the Irish Government has advised its Minister that the meeting will not proceed and has stood down travel arrangements.

### Background

1. My earlier submission (SUB-0746-2021) on arrangements for an NSMC Tourism Meeting planned for 10 November refers. Since that submission, the NSMC Joint Secretary (South) requested confirmation *'by close of business on Monday 8 November*

OFFICIAL - NSMC

**OFFICIAL - NSMC**

*that the conditions on the Northern Ireland Executive side to allow the Tourism meeting on 10 November to proceed have been met. In the absence of such confirmation, we will advise our Minister that the meeting is not expected to proceed, and arrangements for Ministers to travel to Armagh for the meeting will be stood down.'*

2. In the absence of an agreed position in relation to my earlier submission (SUB-0746-2021), I advised my Irish Government counterpart that I was unable to provide such confirmation at this time.
3. In follow up, the NSMC Joint Secretary (South) has confirmed that the Tourism Minister (Minister Martin) has been advised that the meeting will not proceed and that the time set aside for the NSMC meeting can be released in her diary.
4. In line with the normal rotation of meetings, the Executive was due to host this meeting, with Minister Lyons as lead Minister/chair, Minister Murphy as Accompanying Minister, and the chair and chief executive of Tourism Ireland also in attendance. Following this latest development, the Secretariat will proceed to inform DfE and DoF Private Offices, as well as Tourism Ireland, that the meeting will not now proceed.

**Recommendation**

5. That the First Minister and deputy First Minister note that, in the absence of confirmation that the requirements have been met for the Tourism meeting to proceed on 10 November, the Irish Government has advised its Minister that the meeting will not proceed and has stood down travel arrangements.



  
**Joint Secretary, NSMC**  


Document 27:

[REDACTED]

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**From:**  
**Sent:** Browne, Mark (Permanent Secretary)  
**To:** 21 September 2021 17:11  
**Cc:** [REDACTED]  
**Subject:** [REDACTED] DE Perm Sec Support; [REDACTED]  
RE: TO ACTION NSMC Education Sector Meeting

Peter,  
At present the N/S arrangements remain in place although the DUP are not engaging fully in them. There has been no instruction not to continue with normal arrangements so I would be inclined to proceed as you suggest.

I'd be interested in views from Lianne and John.

Mark

Sent with BlackBerry Work  
(www.blackberry.com)

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**From:** [REDACTED]  
**Date:** Tuesday, 21 Sep 2021, 4:54 pm  
**To:** Browne, Mark (Permanent Secretary) [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** TO ACTION NSMC Education Sector Meeting

Good afternoon Mark/Andrew  
I have received a call from Ruth Galwey, our contact in the NSMC Secretariat. They have offered an NSMC Education Sector Meeting on 3 November 2021 which the Minister has not responded to and Ruth has commented that they are aware of the politics. She has however, suggested that they have been asked to prepare for a meeting as if it will take place. She has suggested that if we were to offer a short agenda (I would suggest COVID-19 response and perhaps future co-operation between Departments) that they would like to proceed with an Officials Working Group. I would suggest that I could attend this meeting and represent the Department. Normally Officials who are responsible for each item on the agenda would be expected to attend this meeting. I would be most grateful for your views on this approach and whether or not you believe that it would be appropriate to get Ministerial clearance (or not) to attend.

Happy to discuss

Peter

[REDACTED]  
Departmental Assembly Liaison Officer  
Department of Education  
Tel: 07521 201175  
Landline: 028 9127 7697  
Ext: 69097

**Document 28: NSMC Reminder for nomination form completion**

**From:** [REDACTED]  
**Sent:** 30 September 2021 16:28  
**To:** Private Office DE <[REDACTED]>  
**Cc:** [REDACTED]@education-ni.gov.uk>; [REDACTED]  
[REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>;  
[REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@education-ni.gov.uk>  
**Subject:** RE: NSMC SEUPB Sector meeting - proposed date

Paula

Further to our email below I can now confirm that both Minister McGrath and Minister Murphy have agreed that the NSMC SEUPB sector meeting should take place on 22 October 2021 at 11am. The meeting will take place at the NSMC, Armagh and lunch will be provided.

Minister McGrath will host the meeting.

I would be grateful if you would confirm Minister McIlveen's availability for this meeting.

I attach the attendance nomination form for completion by Minister McIlveen. This form is required in accordance with Section 3.4 of the Ministerial Code which states that the accompanying Minister should notify the First Minister and deputy First Minister of her intention to attend.

I would be grateful if you would arrange for completion of the form, issue to the First Minister and deputy First Minister, [REDACTED] and copy to NSMC Joint Secretariat [REDACTED] by Friday 8 October.

Many thanks  
Ruth

[REDACTED]  
**North/South Ministerial Council**  
**Joint Secretariat**  
58 Upper English Street  
Armagh  
BT61 7LG

[REDACTED]

*The personal information (e.g., name, personal email, home postal address) included in your correspondence, which the Executive Office now holds, will be handled in accordance with data protection legislation. It will be kept secure and only shared with relevant officials for the purpose of providing a response. This information will be retained for no longer than is necessary, and in line with the Department's retention and disposal schedule.*



[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 03 October 2021 16:38  
**To:** DE Minister; DE SpAd  
**Cc:** [REDACTED]  
**Subject:** FW: NSMC SEUPB Sector meeting - proposed date  
**Attachments:** SEUPB Nomination Form for Accompanying Minister to attend NSMC Sectoral....docx

Good evening Minister

Please see attached a nomination form that you should complete should you wish to be the attending Minister at the NSMC SEUPB meeting.

Regards

Peter

[REDACTED]  
Private Secretary to Minister McIlveen  
Department of Education  
[REDACTED]

**Document 30**

**From:** [REDACTED]@executiveoffice-ni.gov.uk>  
**Sent:** 08 October 2021 15:24  
**To:** Private Office DE <[REDACTED]@education-ni.gov.uk>  
**Cc:** [REDACTED]@education-ni.gov.uk>; [REDACTED]  
<[REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>;  
[REDACTED]@education-ni.gov.uk>  
**Subject:** Q1D SEUPB 22.10.21 Minister McIlveen availability and nomination form email trail

Paula

Just a reminder that this form is still outstanding. Grateful if it can be completed and returned as soon as possible.

Thanks  
Ruth



## Document 31

Stephen  
For clearance pl.

SUB 0697

---

**From:** [REDACTED]  
**Sent:** 11 October 2021 09:37  
**To:** [REDACTED]  
**Subject:** FW: dFM SpAd to clear Submission Received SUB-0697-2021 : \*\*URGENT\*\*  
NOMINATION OF ACCOMPANYING MINISTER TO ATTEND THE NSMC SPECIAL EU  
PROGRAMMES BODY MEETING ON 22 OCTOBER 2021  
**Attachments:** Nomination of Accompanying Minister to attend NSMC Special EU Programmes Body  
meeting on 22 october.docx

Stephen

Please see attached URGENT SUB 0697, from Tim Losty: \*\*URGENT\*\* NOMINATION OF ACCOMPANYING MINISTER TO  
ATTEND THE NSMC SPECIAL EU PROGRAMMES BODY MEETING ON 22 OCTOBER 2021.

To clear.

**Issue:**  
An Accompanying Minister is required to attend the NSMC Special EU Programmes Body meeting on 22 October 2021.

**Recommendation:**  
That you:

- note that the Accompanying Minister has not confirmed her availability to attend the NSMC Special EU  
Programmes Body meeting on 22 October 2021;
- nominate a Minister to attend the NSMC Special EU Programmes Body meeting as 'Accompanying Minister';  
and
- note that, if it is not possible to nominate a replacement Appropriate Minister by 11 October, TEO officials from  
within the NSMC Joint Secretariat will engage with Irish Government counterparts on next steps.

Thank you

[REDACTED]  
Assistant Private Secretary  
Office of the deputy First Minister  
Room FD17  
Stormont Castle  
Stormont  
Belfast  
BT4 3ST

[REDACTED]

All e-mails and attachments sent by a Private Secretary, or member of the Private Office, to an official must be saved  
appropriately by the main recipient/Business Area. The Private Office do not keep official records of such e-mails or  
attachments.



**FROM:** [REDACTED] **cc:** Distribution list attached  
**DATE:** 8 OCTOBER 2021  
**TO:** FIRST MINISTER AND DEPUTY FIRST MINISTER

**NOMINATION OF ACCOMPANYING MINISTER TO ATTEND THE NSMC  
SPECIAL EU PROGRAMMES BODY MEETING ON 22 OCTOBER 2021**

**Issue:** An Accompanying Minister is required to attend the NSMC Special EU Programmes Body meeting on 22 October 2021.

**Timescale:** URGENT – the meeting is on 22 October and various statutory processes have to be completed in advance.

**Press Office Advice:** Arrangements for NSMC meetings, particularly issues around Ministers' participation, are of ongoing political and media interest.

**FOI Implications:** May be disclosable.

**Financial Implications:** Likely to be some travel and catering costs associated with the meeting.

**Equality Implications:** None

**Legislative Implications:** There is a requirement for Ministers to participate in NSMC meetings under the NI Act 1998 (as amended) and the Ministerial Code

**Executive Referral:** N/A.

**Recommendation:** That you:

- i. note that the Accompanying Minister has not confirmed her availability to attend the NSMC Special EU Programmes Body meeting on 22 October 2021;

- ii. nominate a Minister to attend the NSMC Special EU Programmes Body meeting as 'Accompanying Minister'; and
- iii. note that, if it is not possible to nominate a replacement Appropriate Minister by 11 October, TEO officials from within the NSMC Joint Secretariat will engage with Irish Government counterparts on next steps.

## BACKGROUND

1. A NSMC Special EU Programmes Body meeting is scheduled to take place in person in the NSMC Offices, Armagh on Friday 22 October 2021.
2. Minister McIlveen has not confirmed her availability to attend the Special EU Programmes Body meeting in the capacity as Accompanying Minister. She has not identified another Minister to deputise. The NSMC Joint Secretariat remains in contact with DE Private Office and will update you if the position changes.
3. Section 52A (7) of the Act, provides that:

*The First Minister and the deputy First Minister acting jointly shall make such nominations (or further nominations) of Ministers and junior Ministers (including where appropriate alternative nominations) as they consider necessary to ensure such cross-community participation in either Council as is required by the Belfast Agreement.*

4. Under Section 52B (2) of the NI Act 1998, it is a Ministerial responsibility of a Minister or Junior Minister, so nominated to attend a meeting of the Council and to participate in the meeting.
5. The legislative requirements of the NI Act 1998 (as amended), are also replicated in the Ministerial Code.
6. Therefore, to fulfil the requirement of cross-community participation at NSMC meetings, nomination of an alternative Accompanying Minister to attend the

**Document 32**

**From:** TEO NSMC Admin [REDACTED]@executiveoffice-ni.gov.uk>

**Sent:** 21 October 2021 15:27

**To:** DoF Private Office [REDACTED]@finance-ni.gov.uk>; [REDACTED]

<[REDACTED]@finance-ni.gov.uk>; [REDACTED]@finance-ni.gov.uk>; [REDACTED]

[REDACTED]@finance-ni.gov.uk>

**Cc:** [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>

**Subject:** Q10 SEUPB 22.10.21 email to DoF Private Office to advise meeting not taking place

Suzanne, Paula, Gillian

As it is not possible to confirm that the SEUPB meeting will be able to go ahead tomorrow, we have been advised by the Irish Government that they will assume the meeting will not be proceeding and have advised that the time in their Minister's diary has been released for other engagements. They look forward to resuming preparations for a meeting in this sector when circumstances allow.

Minister McGrath has stood down his travel arrangements and will not join a call tomorrow.

The First Minister and deputy First Minister are aware.

I would be grateful if you would bring this to Minister Murphy's attention.

Many thanks

Ruth

[REDACTED]  
**North/South Ministerial Council**  
**Joint Secretariat**  
58 Upper English Street  
Armagh  
BT61 7LG



**MINISTER'S PRE-BRIEF AND MEETING NOTE**☐ PRE-BRIEF☒ MEETING

<b>DATE AND TIME OF MEETING:</b>		27 September 2021 12:15pm	
<b>TITLE/ORGANISATION:</b> [Include INV number where possible and ensure title on re-brief an meeting notes are the same]		Issues meeting with Permanent Secretary	
<b>VENUE:</b>	<input checked="" type="checkbox"/> PB	<input type="checkbox"/> Rathgael	<input type="checkbox"/> OTHER:
<b>LIST OF ATTENDEES:</b> (As follows)			
<input checked="" type="checkbox"/> Minister	<input checked="" type="checkbox"/> SpAd:	<input checked="" type="checkbox"/> Minister PS	<input type="checkbox"/> Minister APS
<b>OFFICIALS:</b>	Dr Mark Browne Permanent Secretary		
<b>OTHERS:</b> [include PDF copies of any presentations delivered]			
<b>KEY POINTS DISCUSSED:</b> The Independent Review of Education; Staffing; Flexible School Starting Age; NSMC; Shared Island Meeting; Letter from the CMO in relation to Influenza Season; and the Queen's Jubilee Book for Schools			
<b>ISSUES AGREED:</b> Officials did not need to attend the Shared Island Education Meeting; The Permanent Secretary could add his support to the CMO's letter on Vaccination for the Influenza season; in response to the Permanent Secretary highlighting concerns about how the book would be received in some school sectors and the potential impact on relationships,			

the Minister indicated that she was minded to send the Queen's Jubilee book to all schools but that she would consider the submission; It was agreed that, at this juncture, officials would not respond to any invitation from NSMC Secretariat for an NSMC Education Sector Working Group.

ACTION POINTS / OFFICIAL RESPONSIBLE:

NOTE WRITTEN BY:

DATE: 27 September 2021

Signed and dated by Private Secretary: \_

27 September 2021

*Michelle McQueen*

27 September 2021

Ministers clearance : \_\_\_\_\_



**MINISTER'S PRE-BRIEF AND MEETING NOTE**☐ PRE-BRIEF☒ MEETING

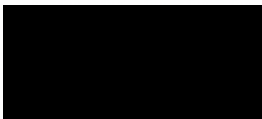
<b>DATE AND TIME OF MEETING:</b>		Noon Monday 11 October 2021	
<b>TITLE/ORGANISATION:</b> <small>[Include INV number where possible and ensure title on re-brief an meeting notes are the same]</small>		Issues Meeting with the Perm Sec	
<b>VENUE:</b>	<input checked="" type="checkbox"/> PB	<input type="checkbox"/> Rathgael	<input type="checkbox"/> OTHER:
<b>LIST OF ATTENDEES:</b> <i>(As follows)</i>			
<input checked="" type="checkbox"/> Minister	<input checked="" type="checkbox"/> SpAd:	<input checked="" type="checkbox"/> Minister PS	<input type="checkbox"/> Minister APS
<b>OFFICIALS:</b>	Mark Browne		
<b>OTHERS:</b> <small>[include PDF copies of any presentations delivered]</small>			
<b>KEY POINTS DISCUSSED:</b> The PAC Hearing; GTC(NI); NSMC; DE Webinar; issues with the EA regarding the answering of phone calls; Visit to Ballyclare Secondary School; Malone College HPV vaccine issue; The Independent Review of Education Panel; NI100; The forthcoming motion on school "catch up" from the SDLP.			
<b>ISSUES AGREED:</b> 1.The Minister noted the Perm Sec's readout of the PAC hearing; 2.The Minister noted the update on the current position with the GTC(NI); 3. the Permanent Secretary informed the Minister that the proposed NSMC Education Sector working group meeting (between Officials in both jurisdictions) to draw up agenda etc would be scheduled unless the Minister			

directed that it not take place; 4. the Minister agreed to provide opening remarks at the forthcoming DE webinar; 5. the Permanent Secretary agreed to raise the issue of unanswered phone calls with the Chief Executive and the Chair of the EA; 6. The Minister raised the issues regarding comment by an EA official at a meeting the Minister had recently attended at Ballyclare Secondary school and the Permanent Secretary agreed to consider this further; 7. the Minister noted the Permanent Secretary's explanation of the issues regarding the HPV vaccination without consent of a pupil at Malone College; 8. the Minister noted the proposed programme of the Independent Review of Education Panel and agreed to provide names of the DUP delegation to provide evidence to the panel; 9. the Minister noted the current position on the NI100 programme; and 10. the Minister outlined her requirements for the briefing for the forthcoming SDLP motion on "education catch-up"

**ACTION POINTS / OFFICIAL RESPONSIBLE:** 3. The Minister to provide a response to NSMC issues raised; 4. The Minister to attend the DE Webinar; 5&6 the Permanent Secretary and the EA; 8. The Minister to provide names of the DUP Delegation to provide evidence at the Independent Review of Education Panel meeting.

**NOTE WRITTEN BY:**   
Private Secretary

**DATE:** 14 October 2021

Signed and dated by Private Secretary:  14 October 2021.

Ministers clearance : Michelle M'Ueen 14 October 2021.



**Document 35**

**From:** [REDACTED]

**Sent:** 16 September 2021 09:13

**To:** TEO NSMC Admin <[NSMC.Admin@executiveoffice-ni.gov.uk](mailto:NSMC.Admin@executiveoffice-ni.gov.uk)>; TEO PS Ministers <[\[REDACTED\]@executiveoffice-ni.gov.uk](mailto:[REDACTED]@executiveoffice-ni.gov.uk)>; [\[REDACTED\]@executiveoffice-ni.gov.uk](mailto:[REDACTED]@executiveoffice-ni.gov.uk)>

**Cc:** R [\[REDACTED\]@executiveoffice-ni.gov.uk](mailto:[REDACTED]@executiveoffice-ni.gov.uk); [\[REDACTED\]@executiveoffice-ni.gov.uk](mailto:[REDACTED]@executiveoffice-ni.gov.uk)>; [\[REDACTED\]@executiveoffice-ni.gov.uk](mailto:[REDACTED]@executiveoffice-ni.gov.uk)>; [\[REDACTED\]@executiveoffice-ni.gov.uk](mailto:[REDACTED]@executiveoffice-ni.gov.uk)>

**Subject:** RE: NSMC Language Body and Transport meetings

Ruth

Unfortunately, Junior Minister Middleton is not available on 1 October.

Thanks

Kevin

**From:** TEO NSMC Admin

**Sent:** 08 September 2021 14:30

**To:** TEO PS Ministers <[\[REDACTED\]@executiveoffice-ni.gov.uk](mailto:[REDACTED]@executiveoffice-ni.gov.uk)>; [\[REDACTED\]@executiveoffice-ni.gov.uk](mailto:[REDACTED]@executiveoffice-ni.gov.uk)>; [\[REDACTED\]@executiveoffice-ni.gov.uk](mailto:[REDACTED]@executiveoffice-ni.gov.uk)>

**Cc:** [\[REDACTED\]@executiveoffice-ni.gov.uk](mailto:[REDACTED]@executiveoffice-ni.gov.uk); [\[REDACTED\]@executiveoffice-ni.gov.uk](mailto:[REDACTED]@executiveoffice-ni.gov.uk)>; [\[REDACTED\]@executiveoffice-ni.gov.uk](mailto:[REDACTED]@executiveoffice-ni.gov.uk)>

**Subject:** NSMC Language Body and Transport meetings

Kevin, Karen

JM Middleton is the accompanying minister for the NSMC Language Body and Transport sectors.

We have tentative dates for 1 October for Language Body and 26 November for Transport.

Can you please let me know if JM Middleton is available on these dates? We are planning for the meetings to be in person in Armagh.

Thanks

Ruth

[REDACTED]  
**North/South Ministerial Council**  
**Joint Secretariat**  
58 Upper English Street  
Armagh  
BT61 7LG

**[REDACTED]** [@executiveoffice-ni.gov.uk](mailto:[REDACTED]@executiveoffice-ni.gov.uk)



**FROM:** **[REDACTED]** **cc: Distribution list attached**

**DATE:** **20<sup>th</sup> SEPTEMBER 2021**

**TO: FIRST MINISTER AND DEPUTY FIRST MINISTER**

**NOMINATION OF ACCOMPANYING MINISTER TO ATTEND THE NSMC  
LANGUAGE BODY MEETING 1 OCTOBER 2021**

**Issue:** An Accompanying Minister is required to attend the NSMC Language Body meeting on 1 October 2021

**Timescale:** URGENT – the meeting is on 1 October and various statutory processes have to be completed in advance.

**Press Office Advice:** Arrangements for NSMC meetings, particularly issues around Ministers' participation, are of ongoing political and media interest.

**FOI Implications:** May be disclosable.

**Financial Implications:** Likely to be some travel and catering costs associated with the meeting.

**Equality Implications:** None

**Legislative Implications:** There is a requirement for Ministers to participate in NSMC meetings under the NI Act 1998 (as amended) and the Ministerial Code

**Executive Referral:** N/A.

**Recommendation:** That you:

- i. note that the nominated Accompanying Minister has confirmed his unavailability to attend the NSMC Language Body meeting on 1 October 2021;
- ii. nominate a Minister to attend the NSMC Language Body meeting as 'Accompanying Minister', and
- iii. note that, if it is not possible to nominate a replacement Accompanying Minister by 27 September, TEO officials from within the NSMC Joint Secretariat will advise their Irish Government counterparts that the legislative requirements for the meeting have not been met and that the meeting will be postponed.

## BACKGROUND

1. A NSMC North South Language Body meeting is scheduled to take place in person in the NSMC Offices, Armagh on Friday 1 October 2021.
2. Junior Minister Middleton has indicated he is unavailable to attend the North South Language Body meeting in the capacity as Accompanying Minister. He has not identified another Minister to deputise.
3. Section 52A (7) of the Act, provides that:

*The First Minister and the deputy First Minister acting jointly shall make such nominations (or further nominations) of Ministers and junior Ministers (including where appropriate alternative nominations) as they consider necessary to ensure such cross-community participation in either Council as is required by the Belfast Agreement.*

4. Under Section 52B (2) of the NI Act 1998, it is a Ministerial responsibility of a Minister or Junior Minister, so nominated to attend a meeting of the Council and to participate in the meeting.

5. The legislative requirements of the NI Act 1998 (as amended), are also replicated in the Ministerial Code.
6. Therefore, to fulfil the requirement of cross-community participation at NSMC meetings, nomination of an alternative Accompanying Minister to attend the NSMC Language Body meeting is required. Any alternative Minister identified must be designated as 'Unionist' under the arrangements regarding community designation in the Assembly.
7. If it is not possible for Ministers to nominate a replacement Accompanying Minister by 27 September, TEO officials from within the NSMC Joint Secretariat will advise their Irish Government counterparts that the legislative requirements for the meeting have not been met and that the meeting will be postponed.
8. This will facilitate sufficient time to stand down meeting arrangements and avoid wasting Ministerial time and incurring costs such as catering. It will also avoid the scenario whereby two Ministers (Minister Hargey the Appropriate Executive Minister and Irish Government Minister Jack Chambers) travel to attend the in person meeting in Armagh, but the meeting is unable to proceed.

## **RECOMMENDATION**

9. That you
  - i. note that the accompanying Minister confirmed his unavailability to attend the NSMC Language Body meeting;
  - ii. nominate a Minister to attend the NSMC Language Body meeting on 1 October 2021 as 'Accompanying Minister', and
  - iii. note that, if it is not possible to nominate a replacement Accompanying Minister by 27 September, TEO officials from within the NSMC Joint Secretariat will advise their Irish Government counterparts that the legislative requirements for the meeting have not been met and that the

meeting will be postponed.

[REDACTED]

[REDACTED]

**Copy distribution**

HoCS

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**Document 37: Email trail seeking advice**

**From:** [REDACTED]  
**Sent:** 28 September 2021 16:01  
**To:** [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]  
<[REDACTED]@executiveoffice-ni.gov.uk>  
**Cc:** [REDACTED]@executiveoffice-ni.gov.uk>  
**Subject:** RE: Submission Received SUB-0634-2021 : \*\*URGENT\*\* NOMINATION OF ACCOMPANYING MINISTER TO ATTEND THE NSMCin LANGUAGE BODY MEETING 1 OCTOBER 2021

In answer to the question below perhaps best to say that you do not expect that the sub will be cleared today

Sent with BlackBerry Work  
([www.blackberry.com](http://www.blackberry.com))

**From:** [REDACTED]@executiveoffice-ni.gov.uk>  
**Date:** Tuesday, 28 Sep 2021, 3:59 pm  
**To:** [REDACTED]@executiveoffice-ni.gov.uk>, [REDACTED]  
[REDACTED]@executiveoffice-ni.gov.uk>  
**Cc:** [REDACTED]@executiveoffice-ni.gov.uk>  
**Subject:** FW: Submission Received SUB-0634-2021 : \*\*URGENT\*\* NOMINATION OF ACCOMPANYING MINISTER TO ATTEND THE NSMC LANGUAGE BODY MEETING 1 OCTOBER 2021

Both  
Are you content that I advise the submission has not been cleared.  
Deirdre

[REDACTED] | Principal Private Secretary to the First Minister  
Paul Givan, MLA The Executive Office  
[REDACTED]  
[REDACTED]

All e-mails and attachments sent by a Private Secretary, or member of the Private Office, to an official must be saved appropriately by the main recipient/Business Area. The Private Office do not keep official records of such e-mails or attachments.

-----Original Message-----

**From:** [REDACTED]  
**Sent:** 28 September 2021 15:14  
**To:** [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]  
[REDACTED]@executiveoffice-ni.gov.uk>  
**Cc:** [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]  
[REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>  
**Subject:** FW: Submission Received SUB-0634-2021 : \*\*URGENT\*\* NOMINATION OF ACCOMPANYING MINISTER TO ATTEND THE NSMC LANGUAGE BODY MEETING 1 OCTOBER 2021

Deirdre/Donal

Is there likely to be a response on this sub today? We are being pressed for confirmation on the meeting status.

Happy to discuss.

Colm

-----Original Message-----

From: TEO PS Ministers

Sent: 20 September 2021 14:48

To: [REDACTED]l@executiveoffice-ni.gov.uk>

Cc: [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>; [REDACTED]@executiveoffice-ni.gov.uk>;

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Classification: Official

Timing: Urgent

Date: 20/09/2021

Reference: SUB-0634-2021

Subject: SUB-0634-2021 : \*\*URGENT\*\* NOMINATION OF ACCOMPANYING MINISTER TO ATTEND THE NSMC LANGUAGE BODY MEETING 1 OCTOBER 2021

To: [REDACTED]

The following submission has been received.

**\*\*URGENT\*\* NOMINATION OF ACCOMPANYING MINISTER TO ATTEND THE NSMC LANGUAGE BODY MEETING 1 OCTOBER 2021**

Regards,

[REDACTED]

Central Correspondence Unit

88253

## **Document 38: Interview transcript M O'Neill MLA**

Commissioner interview with Michelle O'Neill MLA  
Date: 25th March 2022

[Other comments: Over speaking obscured some speech]

CfS: I'm Melissa McCullough, Assembly Standards Commissioner, the other person present is John Devitt, second interviewer. We're interviewing via Zoom today. The date is 25<sup>th</sup> March 2022, and the time is 1:31. I'm interviewing the former Deputy First Minister Michelle O'Neill, MLA. I'll now formally ask you to take the oath, which in this case due to the virtual platform, will be an affirmation. Let me just get this slide for you. There you go. Okay, can you see that okay, Michelle?

MO: I can indeed. Okay, so I do solemnly, sincerely and truly declare and affirm the evidence I shall give, shall be the truth, the whole truth and nothing but the truth.

CfS: Thank you. Okay, we're back. Thank you for that. Okay, so the matters that I'm investigating relate to a complaint of a breach of the Ministerial Code of Conduct and the person has complained about observing the DUP boycott, which the complainant believes resulted in failing to attend NSMC meetings. I have a few questions here. I mean, I actually am happy for you to share once we get through the questions. Maybe if you think it would be helpful if there's anything else, but some of the questions, and I know that we only knew about this meeting last night. We might just be a little bit back and forth with things just as I remember them.

MO: Okay.

CfS: Firstly, just to ask you, the scheduling defence was highlighted in the High Court case and the scheduling defence is clearly a defence being used. As former Deputy First Minister, I think you might be able to tell me whether there have been any changes in the past year or so compared with previous years in relation to the customs and practices of scheduling meetings. Has there been any material change to the way things have been done now as to in the past? I believe you say in your letter there was 300 meetings so far since 1999. Have there been any changes?

MO: No. Those meetings were always scheduled in the same way on every occasion as per what's set out in the legislation, so with agreement of all concerned. The only change to that process or that scheduling plan has been from taking effect from Jeffrey Donaldson, who made a statement back in September last year. That's when everything was changed.

CfS: If anyone was saying that they didn't, that things had changed, it would be your view that nothing has changed.

MO: No, nothing has changed. The custom, the practice, the procedure, all surrounding these meetings has remained the same since the Good Friday Agreement, and all the other 300-plus meetings that actually have occurred, have occurred as per the normal process. The only difference again is whenever the DUP decided to change the approach.

CfS: Would there have been many cancellations of these meetings or many ministers not attending once it's in their diary, as a rule?

MO: No, not really. Generally, people would have made an effort to ensure that even if they couldn't go that they would find an alternative minister to go in their part. That's happened



probably on a few occasions, but by-and-large, I couldn't, I don't know what that number is actually in terms of cancellations, but they wouldn't be numerous.

CfS: I want to refer to the 10th November letter that you wrote, and you wrote to Paul Givan, then the First Minister. The first part, I just wanted to, for the record, state what it says, which is: 'Put simply, your party has declared publicly that you are engaged in a political boycott of North South Ministerial Council meetings in protest at the Brexit protocol. This is the sole reason that NSMC meetings involving DUP ministers have not taken place since your party declared this boycott.' That's still your position?

MO: It is.

CfS: Secondly, you mentioned it says here on the second page, 'At the last NSMC plenary meeting held on 30th June 2021, which you and I co-chaired, the council approved an indicative schedule of future NSMC meetings. We also agreed that the next NSMC plenary meeting will be held in December 2021.' On that idea that you've approved an indicative schedule, I understand your view. I'm assuming you believed - not at that very point, I guess - am I right in saying? You didn't believe at that very point that it was scheduled, but, and I don't want to go too far into this scheduling defence, because I understand your view on it, but I wanted to find out when you have an indicative schedule. Has there ever been a time when that indicative schedule has ever been queried as to whether it's scheduled or not scheduled?

MO: No. No, it's never been an issue. Indicatively, it would have been suggested that this next meeting will be in December or June or whatever the month may be, and then officials would have went off and made that happen. Arranged, arrived at a date because of an official engagement among all the parties, but there's never been an issue of, had we or have we not scheduled a meeting that's never been in question.

CfS: Okay, that's great. Let me see what else I have here. I was curious...

MO: Sorry, and even just further to that, there always would have been a communique at the end of the meetings, which would have referenced the fact that we intend to meet again in December.

CfS: Yes. I mean, I do have, actually, a list. I've requested from the executive a list of all meetings, why they did and did not happen. There was, if we're looking at the time frame that I'm looking at, there were a few that did occur and they would have been, let me just give you those dates. The ones that occurred between September 9th and November 7th, I believe. There was the health, food safety promotion with Robin Swann and Junior Minister Kearney, and then the 3rd of November, Minister Swann as the accompanying and Nichola Mallon, and that was in [signal breaks up 0:06:41]? I just wanted to know, so how is it that those went ahead? You know...?

MO: It didn't involve DUP ministers.

CfS: Yes, okay. I noticed that it didn't, and I believe though that there was one that involved the DUP Minister, although it's not my time frame, I think it's Diane Dodds went, I believe. It was before the time period, it was on 26th May, oh no, I'm totally wrong. It didn't happen.

MO: No. No DUP Minister has attended a North/South Ministerial Council meeting of any format since Jeffrey Donaldson statement in September of last year. The only meetings that have occurred have been either because they were the sectoral format that was relevant to Nichola Mallon or the sectoral format that was relevant to Robin Swann because health was allowed to go ahead because of the pandemic, etc.

CfS: When you say allowed, was that allowed in terms of the First Minister?

MO: I'm trying to work out, do they - yes, so they didn't block it, I think is the best way to put it. They didn't try to put any barrier in the way, because it would have been, obviously, publicly criticised given, for different reasons because of the pandemic as opposed to political reasoning.

CfS: Just in your view, the meetings, the many meetings that didn't go ahead, who blocked those?

MO: The DUP and the First Minister, yes.

CfS: Really the First Minister, you think, or is it all ministers? I mean, I have some ministers that will say I make my own decisions and then some ministers that say they were never nominated, and then some - you understand? It's like I'm trying to get to the bottom of, I'm sure they may be multifaceted. I don't know.

MO: Jeffrey Donaldson made his public speech on 9th September, where he said that as part of their intended action that the DUP's executive ministers, so he was saying publicly what has executive ministers who he nominated, the party leader nominates the minister, to immediately withdraw from the structures of Strand Two of the Belfast Agreement relating to North/South arrangements. He made that instruction public for all to see.

CfS: If they weren't nominated by the First Minister to go, could they still have gone?

MO: If they weren't nominated? No, so you needed the First, and Deputy First Minister to sign off on the papers for any of the meetings. Therefore, there again, was the blockage point.

CfS: If a minister were to say, I didn't get a nomination, so that's why I didn't go, is that a fair point?

MO: No, given that there was a political approach adopted, which Jeffrey Donaldson has stated publicly, so therefore they were following direction from the political leader.

CfS: Okay, thank you for that, for the record. Just one more question I have is, are you able to tell me - and you might not be able to, but are you able to tell me any conversations you might have had with Mr Givan relating to this that wouldn't be in any emails or anything?

MO: There's all the email exchange, just so in terms of what's on the record officially from my...

CfS: Yes, sorry, I don't, aside from that, I mean, I'm only today, and apologies because I was supposed to receive yesterday your emails that I had asked for through Neill Jackson. They only came in there today just before you came online. I haven't had a chance to see what is there, but I'm interested if there is anything that possibly could, might be there that would give me any greater insight into this?

MO: I know you'll get back to looking at what Neil sent, so basically, as dFM, I corresponded with the FM on every occasion of every sectoral meeting, and said that we now need to nominate ministers to attend. He failed to do so, obviously, on every occasion and also no valid reason was given in terms of the official correspondence. I can say that on every political meeting that I had with the DUP, in particular, with the First Minister of the time I made the case that you need to now nominate for the North South Ministerial Council meetings, sectoral and plenary, that these meetings need to go ahead. They're an official part of the GFA - the three-legged approach - and I can certainly recall on one occasion that Paul Givan stated very clearly that they, to me personally, and there were a number of others in the room, that they will not be - Jeffery's made their position clear - they will not be nominating, they'll not be attending North South Ministerial Council meetings.

CfS: Thank you for that. That's really important. Thank you. John, do you have any questions?

JD: Michelle, I only have one question and that question is in relation to the sign-off issue. You said that there were signatures required for yourself and the First Minister. I suppose I'm trying to establish, irrespective of which, whether the First Minister wanted to sign or not, is your signature, does your signature appear in any documentation to say that, irrespective of the First Minister's view, you nevertheless have signed the piece of paper and you're just waiting for his signature, if you understand the question?

MO: Yes, so it's not. Technically it's not a signature as such. I think it's just an official clearance. On my end, I would have cleared the papers, and said yes, and here's who I would nominate, and then it takes the other side of the office to respond. Likewise, in order for that to be an official agreed way forward. They never did that from their end. Certainly on my end, yes, there is signature of clearance, whatever way it's presented, but yes, on my end, I would have signed off.

JD: No, that's great, I'm grateful to you for the clarity, thank you.

MO: Sure.

CfS: I mean, essentially, I might have had more questions had I had time to look at emails and I might send you...

MO: No, I'm available because I thought you needed to do it before Sunday, before purdah kicks in or whatever. I didn't know what you're, that's why I [over speaking 0:13:02]

CfS: That's exactly why I jumped on it when you offered it last night, I was like, yes, because she might not be able to do it after it, but yes, if I can look through these and if I have anything, I really...

MO: If there's no problem with purdah, me speaking to you after Monday then I'm more than happy to do that.

CfS: There is no problem. I don't know if it's a problem with you because the reason, I found out the reason why I shouldn't be interviewing at that time is because it they could say it takes them away from their election activities.

MO: No. Don't worry about that. I'll make myself available to get a look, on Monday or whatever.

CfS: Thank you so much, and you know what, thank Donna for letting me know because I was so busy reading these things, I didn't realise it [the interview] was moved forward, so she got on that. Anyway, is there anything you wanted to add to this that we haven't covered or that you feel is important for us to know?

MO: I mean, you know this anyway, but there's a statute of duty on the FM and the dFM to make these arrangements and there's an implied duty, also in terms of making sure that it happens. It's a joint office. These things do not happen unless you work in a joined-up manner. On every occasion you'll find from the records that I signed off and everything I agreed to everything, I would have nominated ministers, did all of that. Just, obviously, I think it's an unlawful breach of the ministerial code is my own view of what the DUP are at in terms of not fulfilling their responsibilities.

CfS: Okay, and thank you for that. If you just hold on, I'm going to stop the recording. The time is 13:45.

[END OF TRANSCRIPT]

2/2/21

#### Statement

#### Democratic Unionist Party

The decision by the European Union on Friday evening to announce its intention to trigger Article 16, and then its subsequent announcement that while not deploying this mechanism, that it reserved the right to use all instruments at its disposal for the future, was both revealing and a very significant game-changer for those who have opposed the Protocol from its inception.

By announcing its intention to override elements of the Protocol the EU has demonstrated a number of things for all to see, and particularly for people in Northern Ireland.

1. That the Protocol can be changed and either party to it can make immediate changes without prior consultation with the other. Such behaviour without regard to the very rules it had signed up to further undermined the EU's previous vacuous arguments.
2. Confirmed the notion that the EU Commission will, without hesitation, act to suit its own interests.
3. Lowered the threshold of how the mechanism can be used, particularly as in our view it is designed to alleviate Northern Ireland consequences defined as "serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade, the Union or the United Kingdom may unilaterally take appropriate safeguard measures".
4. Revealed that the Northern Ireland arguments advanced by the EU were not borne out of principle but rather political opportunism.

The revealing actions on Friday by the EU have caused very significant anger and harm within Northern Ireland and has compounded the notion that the EU is playing fast and loose with Northern Ireland, attempting on the one hand to require the UK Government to enforce its obligations whilst being prepared to waive elements of the Protocol when it suits the needs of the EU. This is unsustainable. It is evident that the EU's priority is not protecting the Belfast Agreement but is entirely about protecting its own single market.

Northern Ireland is already suffering real economic and societal difficulties as a consequence of the first month of the Protocol.

The Democratic Unionist Party opposed the Protocol in Parliament and when its votes mattered on the floor of the House of Commons prevented the passage of the Withdrawal Agreement, containing the Protocol. As Unionists we find the

imposition of this Protocol and its outworkings offensive and running contrary to everything we stand for. No sovereign country should have barriers to trade and customs arrangements placed within it. When others were campaigning for a backstop we strongly warned of the dangers.

From the Protocol came into force on 1<sup>st</sup> January 2021 our Ministers, MLAs and Members of the Commons and Lords have worked to highlight the problems and barriers imposed by the Protocol.

Since Friday evening's EU threats we have been in contact with the UK Government from the Prime Minister, to the Secretary of State for Northern Ireland and the Chancellor of the Duchy of Lancaster Michael Gove. At a meeting with the NI Secretary of State and senior officials from Downing Street yesterday afternoon we made it clear that the UK Government has an *obligation* to defend Northern Ireland's place within the UK internal market which is being severely undermined by the growing barriers and impediments to trade in the Irish Sea.

We have indicated to the Government that both the actions of the EU on Friday and the damage being inflicted on our East-West links within the United Kingdom cannot be sustained if Northern Ireland's political and economic links to the rest of the United Kingdom are to be maintained and respected in all their parts. The Protocol has upset the balance of relationships flowing from the Belfast Agreement that many others claimed were unalterable.

The Government needs to be bold and be prepared to act to bring about outcomes that underpin Northern Ireland's full place in the most important internal market for us – that of the United Kingdom. **The Prime Minister must now directly address the people of Northern Ireland on the growing crisis arising from the Protocol.**

For our part, the Democratic Unionist Party has been working to minimise disruption caused by something we opposed while pressing for more radical steps to be taken to negate it completely.

**In response** to the approach adopted by the EU and welcoming the total opposition by all NI Unionist representatives in both the Assembly and Westminster to the Protocol **the DUP will pursue the following:** -

- We will work with other Unionists to send a united message to our Government, to the European Commission and the Dublin Government that Northern Ireland must be freed from the Protocol and its problems.
- The Protocol was passed by the Westminster Parliament and not at Stormont. Our elected representatives in the Northern Ireland Assembly, while careful

not to act in a way that would harm the people of Northern Ireland at this time of public health and economic crisis, will actively oppose at every opportunity any negative measures, laws or bills that continue to flow from the Protocol and which undermine Northern Ireland's place in the UK internal market. We will work in common purpose with all those other MLAs who are prepared to support us. Collectively unionism can make a difference.

- Our Ministers, Members of the Commons and the Lords will actively work to press the Government and hold it to account in support of Northern Ireland's place in the internal UK market as well as building support to free us from the Protocol and its problems.
- We have launched an online petition calling on the UK Government to use all powers at its disposal to immediately remove any barriers to unfettered trade within the United Kingdom. We are asking all citizens concerned about these issues to show the Government the strength of feeling by signing the Trigger Article 16 – We want unfettered GB-NI Trade online petition at [petition.parliament.uk](https://petition.parliament.uk)
- We have indicated to our own Government that they now need to act but as the largest unionist party at Stormont we also intend to send a strong signal to the Government of the Republic of Ireland that North-South relationships are also impacted by the implementation of a Protocol which they supported. Our members cannot and will not continue to act as though relationships are normal.

Progress in Northern Ireland was hard won and in recent times it was a well-established principle that in order to respect the delicate community balance within Northern Ireland no governance arrangements could advance unless they had the support of **both** unionists and nationalists as to do otherwise would result in failure and greater division.

It is now the solemn responsibility of all those in leadership but, particularly the UK Government, to move quickly to bring about solutions caused by a Protocol that is without any unionist support whatsoever.

**Document 40: Letter to Paul Givan MLA re material difference**



**Commissioner for Standards**

222 Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

Tel: 028 9052 1220  
Email: standardscommissioner  
@niassembly.gov.uk

Mr Paul Givan MLA  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast BT4 3XX

10 November 2022

**Case ID: 202100026**

Dear Mr Givan

**Complaint against you by Conor Quinn**

I am writing in relation to your interview a number of months ago in relation to the complaint against you by Mr Conor Quinn.

In the 2021 Direction to the Commissioner by the Committee on Standards and Privileges on General Procedures, at para 7.13 it is provided that, 'If during an investigation the Commissioner uncovers material evidence which is inconsistent with any statement or other representation made by the person who is the subject of the investigation, the Commissioner must invite that person to make representations on that inconsistency'. Therefore, in accordance with para 7.13 and the principles of natural justice and fairness, I am inviting you to consider the attached partial transcript which highlights the inconsistency in question and any response you may wish to make.

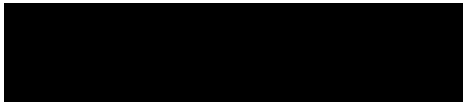
The transcript excerpt relates to my interview with Ms Michelle O'Neill MLA which was held on 25 March 2022, subsequent to your interview on 4 February 2022. During your interview, you asserted that DUP non-attendance at NSMC meetings was due to meetings not being 'scheduled' (essentially administrative impediment) rather than due to the DUP's publicly stated withdrawal from the NSMC meetings. I have highlighted in the excerpt the text which is inconsistent with this assertion.

Should you wish to make representations on this inconsistency, please do so within 14 days of the date of this letter. If by the expiry of that period I have not heard from you, I shall proceed on the basis that you do not wish to make any such representations.

To avoid any risk of prejudicing my investigation you should not discuss this with anyone who might be involved.

Should you wish to discuss this with me, please do not hesitate to be in touch.

Yours sincerely

A solid black rectangular box used to redact the signature of Dr. Melissa McCullough.

**Dr Melissa McCullough**  
**Northern Ireland Assembly Commissioner for Standards**

**Encs**



## Excerpt from Commissioner for Standards Interview with Michelle O'Neill

25<sup>th</sup> March 2022

CfS: Melissa McCullough, Commissioner for Standards

MO: Michelle O'Neill MLA

CfS: Okay, thank you for that, for the record. Just one more question I have is, are you able to tell me - and you might not be able to, but are you able to tell me any conversations you might have had with Mr Givan relating to this that wouldn't be in any emails or anything?

MO: There's all the email exchange, just so in terms of what's on the record officially from my...

CfS: Yes, sorry, I don't, aside from that, I mean, I'm only today, and apologies because I was supposed to receive yesterday your emails that I had asked for through Neill Jackson. They only came in there today just before you came online. I haven't had a chance to see what is there, but I'm interested if there is anything that possibly could, might be there that would give me any greater insight into this?

MO: I know you'll get back to looking at what Neil sent, so basically, as dFM, I corresponded with the FM on every occasion of every sectoral meeting, and said that we now need to nominate ministers to attend. He failed to do so, obviously, on every occasion and also no valid reason was given in terms of the official correspondence. I can say that on every political meeting that I had with the DUP, in particular, with the First Minister of the time I made the case that you need to now nominate for the North South Ministerial Council meetings, sectoral and plenary, that these meetings need to go ahead. They're an official part of the GFA - the three-legged approach - **and I can certainly recall on one occasion that Paul Givan stated very clearly that they, to me personally, and there were a number of others in the room, that they will not be - Jeffery's made their position clear - they will not be nominating, they'll not be attending North South Ministerial Council meetings.**

CfS: Thank you for that. That's really important. Thank you. John, do you have any questions?

**Document 41: Paul Givan MLA Response 18.11.22**

REPLY TO:  
DUP CONSTITUENCY OFFICE  
THE OLD TOWN HALL  
29 CASTLE STREET  
LISBURN  
CO ANTRIM BT27 4DH



Northern Ireland  
Assembly

**PAUL GIVAN MLA**  
MEMBER OF THE LEGISLATIVE ASSEMBLY FOR LAGAN VALLEY

TEL: 028 9266 1100  
FAX: 028 9267 1845  
EMAIL: paul@laganvalley.net

18 November 2022

Dear Commissioner

Thank you for letter dated 10th November including an attached partial transcript of an interview with the then deputy First Minister Michelle O'Neill. Without commenting on the veracity of her comments it is not in dispute that Sir Jeffrey Donaldson set out the position of the DUP in relation to the NSMC in a speech on 9 September 2021. A full copy of the speech is available at: <https://www.newsletter.co.uk/news/politics/in-full-dup-leader-sir-jeffrey-donaldsons-keynote-speech-on-the-ni-protocol-3376466?amp>.

However neither can it be disputed that the NSMC plenary did not schedule specific dates in July 2021 for future meetings.

My position throughout this period was that in the absence of formally scheduled meetings the issue of my attendance did not crystallise.

Yours sincerely



**PAUL GIVAN MLA**  
Lagan Valley

## Document 42: Paul Givan MLA Response to Findings of Fact

REPLY TO:  
DUP CONSTITUENCY OFFICE  
THE OLD TOWN HALL  
29 CASTLE STREET  
LISBURN  
CO ANTRIM BT27 4DH



Northern Ireland  
Assembly

**PAUL GIVAN MLA**  
MEMBER OF THE LEGISLATIVE ASSEMBLY FOR LAGAN VALLEY

TEL: 028 9266 1100  
FAX: 028 9267 1845  
EMAIL: paul@laganvalley.net

13 December 2022

Dear Commissioner

I am grateful for the opportunity to respond to your findings of fact and would make several contextual points.

Firstly, (as is alluded to in your paragraph (v)) it is disputed that the various "meetings" were meetings in any meaningful sense at all given the "scheduling" defence that has been maintained throughout this period.

Secondly, understandably the custom and practice was for officials to make practical arrangements in relation to meetings, it was obviously not to schedule meetings contrary to the wishes of Ministers (who legally are responsible for the direction and control of the department).

I trust you will reflect on these as you consider your final report.

Yours sincerely

**PAUL GIVAN MLA**  
Lagan Valley

*Please quote our reference on all correspondence.*

**Document 43: Michelle McIlveen MLA Response to Findings of Fact**

**From:** McIlveen, Michelle [<mailto:michelle.mcilveen@mla.niassembly.gov.uk>]

**Sent:** 14 December 2022 14:14

**To:** +StandardsCommissioner <[standardscommissioner@niassembly.gov.uk](mailto:standardscommissioner@niassembly.gov.uk)>

**Subject:** Re: Case ID - 202100026

Dear Commissioner

I write to you in response to your recent letter dated 5th December and I wish to challenge elements of your finding of fact.

Using your paragraph numbers I make the below points.

In (ii) you state 'Ms McIlveen did not make attempts to nominate an alternative Minister and did not submit the nomination form.' This statement should be expanded to indicate that I would not have been in a position to nominate an alternative Minister as I have consistently maintained that I was not nominated nor indeed do I accept that any such meetings had been scheduled and so I could not have made any nomination.

In paragraph (v) you indicate that the then First Minister indicated that he did not nominate any replacement DUP Ministers for NSMC "meetings". as they were never scheduled. It is indeed factually and politically disputed that the various "meetings" were meetings in any meaningful sense at all given the "scheduling" defence that has been advanced and explained.

Finally in paragraph (viii) it is important to fully take account of the fact that whilst understandably the custom and practice has been for civil service officials to make the *practical arrangements* in relation to logistics of meetings, **it was not the custom and practice for civil servants to schedule meetings contrary to the wishes of Ministers (who legally are responsible for the direction and control of the department). This could never have been the case**

I would ask that you further reflect on the above at this time.

Yours sincerely,  
Michelle

Michelle McIlveen MLA

**Document 44: Gordon Lyons MLA Response to Findings of Fact**

**From:** Lyons, Gordon [mailto:gordon.lyons@mla.niassembly.gov.uk]

**Sent:** 19 December 2022 08:35

**To:** +StandardsCommissioner <standardscommissioner@niassembly.gov.uk> **Subject:** RE: Case ID - 202100026

Dear Commissioner

Case ID: 202100026

I write to you in response to your recent letter dated 5th December relating to the above case number and I wish to challenge elements of your finding of fact.

Using your paragraph numbers I make the below points.

In (iv) you state 'Mr Lyons did not make attempts to nominate an alternative Minister and did not submit the nomination form.' This statement should be expanded to indicate that I would not have been in a position to nominate an alternative Minister as I was not nominated nor indeed do I accept that any such meetings had been scheduled and so I could not have made any nomination.

In paragraph (v) you indicate that the then First Minister Paul Givan indicated that he did not nominate any replacement DUP Ministers for NSMC "meetings" as they were never scheduled.

It is indeed factually disputed that the various "meetings" were meetings in any meaningful sense at all given the "scheduling" defence that has been explained.

Finally in paragraph (viii) it is important to fully take account of the fact that whilst understandably the custom and practice has been for civil service officials to make the **practical arrangements** in relation to logistics of meetings, it was not the custom and practice for civil servants to **schedule meetings** contrary to the wishes of Ministers (who legally are responsible for the direction and control of the department). This could never have been the case.

I would ask that you take account of the above matters in your report.

Gordon Lyons MLA

**Document 45: Gary Middleton MLA Response to Findings of Fact**

**From:** Middleton, Gary <gary.middleton@mla.niassembly.gov.uk>  
**Sent:** 28 December 2022 13:52  
**To:** +StandardsCommissioner <standardscommissioner@niassembly.gov.uk>  
**Subject:** Re: Case ID - 202100026

Dear Commissioner

Thank you for your recent correspondence dated 5th December. Apologies for the delay in responding however I had been unwell.

I make the following challenges as set out below in response to your "findings of fact".

In your paragraph five you indicate that the then First Minister did not nominate any replacement Ministers for NSMC "meetings". I do not accept this in that it is disputed that the various "meetings" were meetings in any meaningful sense at all given the "scheduling" defence that has been outlined and explained throughout this period.

With reference to your paragraph eight whilst understandably the custom and practice was for officials to make **practical arrangements** in relation to meetings, it was obviously not to **schedule meetings** contrary to the wishes of Ministers (who legally are responsible for the direction and control of the department).

I trust you will reflect on these significant and central matters at this time.

Gary Middleton MLA

Gary Middleton MLA

Foyle Constituency