Northern Ireland Assembly

Assembly and Executive Review Committee

OFFICIAL REPORT (Hansard)

Review of d'Hondt, Community Designation and Provisions for Opposition: Briefing from Professor Rick Wilford

26 February 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Stephen Moutray (Chairperson)
Mr Pat Sheehan (Deputy Chairperson)
Mr Roy Beggs
Mr Gregory Campbell
Mr Stewart Dickson
Mr Paul Givan
Mr Simon Hamilton
Mr John McCallister
Mr Raymond McCartney
Mr Conall McDevitt
Ms Caitríona Ruane

Witnesses:
Professor Rick Wilford Queen's University Belfast

The Chairperson: Today's evidence session is the first in a series. Professor Rick Wilford, who is the director of legislative studies and practice at Queen's University Belfast, will present to us this morning. Professor Wilford, you are very welcome again. You are no stranger to this Committee. It is good to have you back.

Professor Rick Wilford (Queen's University Belfast): Good morning. Thanks for inviting me back. You will see that I have produced the template and the summary paper. I will rattle through the summary paper with you to give you the heads up on where I am coming from on the agenda that you have got. I followed the order of the template, so I will start with d'Hondt, which, as you know, is one method of copper-fastening proportionality. It also has the purpose of ensuring inclusivity or inclusiveness in the Executive. It meets the tests of proportionality and inclusiveness, but there are alternative methods of doing the same thing, one of which is Sainte-Laguë, which I mentioned when I appeared before you some time last year.

The actual formula, whether it is d'Hondt or some other method, does matter because, technically, they are rather different. Sainte-Laguë uses a larger divisor — 1, 3, 5, 7, 9 — and that has the effect of advantaging smaller parties in the process of seat allocation around the Executive table. However, it seems to me that what matters as much as the actual formula, although they have differential effects, is the way in which the process of allocating seats around the Executive table is conducted. One thing that was evident in 2007 and 2011 but was not true of 1999 was the informal politics that went on. So, I think that it is a mix of informal politics and discussions among parties about who might get what, as well as the formula itself, which is quite mechanistic in its application.

I have floated the idea that you might want to consider changing the formula to Sainte-Laguë precisely because, if there is to be a reduction in the number of Departments and MLAs, the Committee and the Assembly may want to give consideration to ensuring, as far as possible, that the principle of inclusiveness is defended. If there is to be a reduction in the total number of Members in the Assembly, that could be a disadvantage for smaller parties, and there could be a compensating factor by altering the formula for allocation of seats around the Executive table and seats to chair and deputy chair the Committees. Any change is likely to be contingent on those reductions; that is to say, in the number of Ministers and the number of seats.

I will turn now to community designation. As I pointed out in the template paper, this has nothing to do with a sense of existential doubt. It is a means of ensuring that cross-community consent applies to key decisions, and, as you know, key decisions are listed in the Northern Ireland Act 1998. My only view on that is that it may be a way of entrenching difference within the Assembly and that there may be a case for moving towards a weighted majority provision instead of the test of power of consent or weighted majority as they currently exist. I am sympathetic to the argument that designation copper-fastens or underwrites difference, and some would argue that it entrenches sectarian thinking in the Assembly.

If you move to a weighted majority, provided it is pitched at a sufficiently high level, you can secure the end that community designation currently provides. It could be done another way, and that might, at least, loosen the perception that the Assembly is simply an assemblage of distinctively different communities. So, I would suggest that maybe 65% or two thirds of those present in voting take the place of community designation and the two tests that are currently applied.

The petition of concern has become an increasingly popular method. It offers a belt-and-braces approach for parties and a safeguard against some sort of majoritarian approach in the Assembly. I think that the weighted majority could achieve what petitions of concern are designed to serve, but the problem there is that, if you pitch it too high, particularly if you are going to go for formal provision of an Opposition, you might deny that opportunity to smaller parties in the Assembly.

I would like to see the Assembly move towards a weighted majority system, but I can understand fully why parties might want to retain a petition of concern. You cannot simply list all the issues that should be designated as key decisions. I think that the list would probably be too long and, in a sense, the petition of concern procedure is an economic way of designating an issue as a key decision.

It is about certainty and reducing uncertainty. If parties have that device available to them, they can ensure that they will have a safeguard if anything is likely to cause conflict or disruption among parties. I understand the reasoning behind that, but I think that the weighted majority system should, in itself, provide a sufficient assurance that no particular issue could be railroaded through the Assembly. So, whether you want a belt-and-braces approach or are simply prepared to go with the weighted majority approach is a matter for you. I think that the latter would help in suggesting that Northern Ireland politics is beginning to normalise as a consequence of dropping the petition of concern procedure. It would mean that you would operate on the basis of a politics of recognition rather than very sharply defined politics of identity, which is what the petition of concern procedure actually affords.

I will turn now to opposition. I know that some people will argue that the Committees perform an oppositional role. If they do, it is opposition with a lower-case "o", but they are not a surrogate for a formal Opposition, with a capital "O". Any self-respecting liberal democratic parliament would have provision for a formal Opposition and enable Committees to perform an oppositional role if they so choose. That is to say that they are not alternatives. The one advantage that a formal Opposition has is that, in theory at least, it can present itself as an alternative Government-in-waiting, ready to take over if the electorate decides to throw out the rascals who are currently in office.

Formal Opposition is complementary to a rigorous Committee system. In the Northern Ireland context, trying to present itself as an alternative Government in waiting is going to be difficult, not least because such an alternative would have to be based on a coalitional basis anyway. So, if there is to be an Opposition, one of the things that the Committee and the Assembly will have to grapple with is what entitles a party to select an oppositional role. If formal Opposition was enabled, I think that some sort of threshold or baseline would need to be established in order for a party to designate itself or to claim the role of being an opposition party. Currently, to become entitled to seats on a Committee or speaking rights, a minimum of three members form some sort of grouping or party in the Assembly. You might want to think about that in relation to what formally would constitute an Opposition. Should

it simply be a party that otherwise is eligible for a seat around the Executive table, and/or should there be some kind of baseline figure? That is something that you need to think about.

The issue here is how you institutionalise opposition, and that includes not only what constitutes, or what numeric criterion you would need form an Opposition, but things like speaking rights in the Chamber, for example, to respond to a ministerial statement, a Committee report or whatever it might be. You need to think about the full ramifications of institutionalising opposition. If you will the end — the provision of a formal Opposition — then you have to will the means to enable the formal Opposition to conduct itself properly. That would include, for example, the opportunity to move a censure motion in the Chamber, as is common to opposition parties in other parliamentary democracies.

I made two small points in relation to other accountability measures. One is to put the liaison group on a statutory footing, which is something that I have argued before, and, secondly, to enable it to cross-question the First Minister and deputy First Minister, at least annually, on policy co-ordination and legislative co-ordination to focus on the strategic role of the Office of the First Minister and deputy First Minister (OFMDFM).

You need to fund an Opposition, if there is going to be one, and that is a matter for the independent financial review panel. If an Opposition were to be provided, I do not think that special measures should be adopted to afford the opposition parties some sort of priority. Either the d'Hondt or the Sainte-Laguë mechanisms will afford that opportunity. I do not think that they should be given any special preference, particularly if speaking rights were to be accorded to opposition leaders or an opposition leader. You have to have supply days to enable the Opposition to do its role properly. There is a guide in the Scottish model where they have 16 half-days during the parliamentary year when they can structure the business of the day in the Scottish Parliament, and, on a scale-back basis, if there were to be a formal Opposition, something in the order of 10 or 12 half-days during an Assembly term would be appropriate.

If you are going to recommend that there should be provision for a formal Opposition, certain things follow in train once that strategic decision is taken. You need to fund an Opposition, and you need to give it the resources to enable it to conduct the role as a formal Opposition in the Chamber, and that means supply days, speaking rights and financial resources.

I think that I will stop there.

The Chairperson: Thank you, Professor Wilford. I will open the meeting up to questions. I will allow Conall McDevitt in first, as I am aware that he will leave us shortly.

Mr McDevitt: Thank you, Chair. I apologise, Rick, for having to leave early. As always, thank you for your thoughts. The area that I am most interested in exploring is community designation and weighted majority. I want to tease out the idea that you could keep community designation but begin to introduce weighted majority for particular types of decisions on, for example, another thing that you have introduced, the concept of censure. What are your thoughts on the next phase being that we would maintain community designation but that we would explore weighted majority decisions in certain aspects, and, in particular, how appropriate to the question of censure would the application of a weighted majority be?

Professor Wilford: In a sense, of course, you have both now —

Mr McDevitt: To some extent.

Professor Wilford: Yes. Certainly for key decisions. I am only suggesting that this would apply to key decisions. I do not think that you need to bother too much about extending the scope of the key decisions, except and in so far as that we should be back to where we were in 1999-2002, where the First Minister and deputy First Minister were subject to an endorsement, and that was a key decision. There are different ways of doing that, either on a joint ticket or for the whole ministerial slate, which was recommended in the comprehensive agreement of 2004.

You have it now. The issue here is that, if we were to have a weighted majority, where do you pitch the level? Obviously, the level matters, because it has to be sufficiently high to enable the Assembly to demonstrate that it does have cross-community support, but it must not be too high to frustrate opposition parties seeking to designate a particular issue as a key decision. As you know, most

decisions on the Floor of the Chamber are taken on a simple majority vote. For the relatively few that are subject to the key decision procedure, a petition of concern is there to so designate a matter if a party or parties deem that to be the case.

One option that has been floated is that, instead of each member having to designate as one thing or another, you designate a whole party as belonging to one designation or another, and I suspect that Brendan O'Leary will mention it when he appears before you next week. Therefore, instead of everyone having to sign in as a unionist or a nationalist or other, you simply have the parties designating all their members in a block. One of the problems that I have —

Mr McDevitt: Sorry, what practical difference would that make?

Professor Wilford: None, in effect. Although the perception might be that that cements even further the perception of the place as being more deeply embedded in a concept of either/or politics. Whereas, if you move to a simple — I say simple but it is not simple — majority voting system, it enables the perception that maybe Northern Ireland is moving on a bit and that one does not need the Linus's blanket of designation, whether as an individual or as a party block. As I said in my paper, this is not about existential doubt: everybody knows where they are coming from, and people know where they are coming from. One of the problems that I have with designation is the fact that it can conceal differences on policy issues within a party. The working assumption would be that everybody within a particular party block agrees on everything, but that is not necessarily the case. Parties, in themselves, are coalitions of interest, and members will disagree. It allows some flexibility, but it is a perceptual thing as much as anything. As I said earlier, it is about recognition rather than a hard and fast concern with identity. I do not think that anybody has issues with their identity; it is more, perhaps, shifting towards recognition and respect for difference.

If you designate, whether individually or in a block, you do not really have to think about it again. Whereas, if you move to a weighted majority system, some Members might think — perish the thought — that, on certain issues, they do not agree with their party leadership. Of course, that raises the whole issue of relationships between Members and Whips.

The Chairperson: Can I ask you about the petition of concern? You said that there may be a case for increasing the threshold or abandoning it altogether. Do you feel that a compromise could be reached, whereby a petition of concern could be used but its use could be restricted? Do you have any mechanism for that?

Professor Wilford: You have to grapple with the purpose of a petition of concern. What is it there for? It is there as a kind of belt-and-braces device, so that, if a party is particularly concerned about the implications of a proposal, whatever that may be — whether it is legislative, policy or procedural — it has the assurance, provided it has the numbers, that it can lodge a petition and thereby oblige the taking of a cross-community vote. My view is that if you move to a weighted majority, and you pitch it at a sufficiently high level, which is guaranteed to secure cross-community consent in the Chamber, you probably do not need the device. However, that is, I think, a matter of confidence within and among the parties. They need to have that backstop just in case something occurs that they find difficult to accept. Petitions of concern can be used constructively, but they can also be used obstructively. It is really a matter of judgement about the basis upon which, and the purposes for which, the petition is presented.

Mr Hamilton: Thanks for your presentation, Rick. I just wanted to delve a little deeper into your points about the provision for an Opposition and the threshold, which, I think, is interesting.

When we, as a Committee, discussed this before opening up the evidence session, the issue of small parties forming an Opposition came to the fore. In some respects, it could be the case that if you facilitate or institutionalise an Opposition, some individual — I am not thinking of anybody in particular; current events are just happening — could have a perverse incentive to set themselves up as a party in this institution in order to get the benefits of funding, speaking rights, and so forth. Is that where you are coming from? I can see how you could have a problem there.

I am supportive of the idea of facilitating an Opposition. However, I think that it would be a little preposterous if, as well as having large parties in the Executive by whatever arrangement — whether it is a weighted majority, d'Hondt or whatever you use, because we are still going to have those big parties in Government — you might have two or three individuals in a group who style themselves as an Opposition to get speaking rights. If we were to reconstruct what we do in the Assembly Chamber

following on from any changes to provide for an Opposition, that might enable them to ask questions of the First Minister or deputy First Minister or another smaller party in the Executive that does not hold that Department, so it starts to become a little preposterous. Is that where you are coming from?

Professor Wilford: Exactly, Simon. I think that you have encapsulated one of the anxieties that I have. If you provide for a formal Opposition, I do not anticipate or envisage that enabling any and all non-Executive parties to constitute the Opposition. I think that, rather like the fact that you need three Members to form a group in order to get speaking rights, Committee places in the Assembly, and so on, you have to set a minimum. This is a very tricky question. This is not a scientific issue. It is a matter of dark political arts rather than hard science.

Mr McDevitt: Do not encourage him.

Professor Wilford: No.

Mr Hamilton: Now I am salivating.

Professor Wilford: Go back to the first Assembly when three anti-agreement unionists were elected as independent unionists and came together as, I think, the united Assembly unionist group or something: there were three of them, so that could arguably be a precedent. You set the benchmark, as it were.

Given the premium on coalition formation for the Executive, I do not think that the Assembly should impede the possibility of non-Executive parties forming some kind of Opposition coalition in the Chamber, but the onus is on them to agree. I think that, provided they meet a threshold — I would suggest three, but it could be higher, because what one would not want is an archipelago of single-Member opposition groups — the onus would then be on them to seek agreement to form a coalition or Opposition in the Chamber, if they were so minded. In a sense, one could argue that that rather reflects the formation of the Executive in and of themselves. It is a voluntary act to go into the Executive. Equally, it would be a voluntary act to form an Opposition. I do, however, think that you would need to set a threshold.

Mr Hamilton: You have not said anything about timing and the moment at which you choose to do that. After an election, in the current system, if parties are over a certain threshold, they can choose to join the Executive. You can, in the current system, depart at any time you want. This point has come up in our discussion: would you be in favour of setting a rigid time in which you make that decision to avoid a cynical departure from an Executive that are maybe taking unpopular decisions prior to an election, for example? Do you fix it at a certain point, such as immediately after the election, so that you choose to join or not to join or do you allow it to be flexible?

Professor Wilford: I think that you have eight working days after the election to construct the Executive. The negotiations that would happen in the post-election context would probably provide sufficient time for parties to make a decision. However, I do not think that should be the only point at which a party makes a decision about whether to go into Opposition. It could take the decision within that sort of time frame and say that there is not enough for it to agree on; therefore, it could go into Opposition. If, during the lifetime of an Executive and an Assembly, a party that had gone into the Executive decides later to leave because of its opposition to whatever it may be, it should be able to do so. However, having left, it cannot go back in. So, that has to be a once-and-for-all decision. I would not say that, if you make the decision to join the Executive within the eight-day time frame, you have to stay in. There are different points at which a party could elect to take an oppositional role. I would not limit it to that initial period.

Mr Dickson: Thank you. This has all been very helpful. I want to ask about the whole area around opposition, a motion of censure and the interrelationship between those and petitions of concern. When is a motion of censure a petition of concern and when is a petition of concern a motion of censure?

Professor Wilford: During the chequered history of the Assembly, we have not debated a motion of censure because, of course, there is no provision for it.

Mr Dickson: Exactly.

Professor Wilford: Let me complicate the picture even further. There is one possible option, which is to go for what is called a constructive vote of no confidence, which is that you only move a vote of censure when you have an alternative Government-in-waiting and ready to take over. That is the German model.

A vote of censure would have to meet, clearly, a test and should meet the weighted majority. The difficulty with that is that it almost looks as if it is simply going through the motions, because one would expect the Executive members, unless some are disaffected, to vote against the motion of censure. This is the thing about willing the end and willing the means. If you are to will the end of a formal Opposition, you have to will the means, and one of the means is the ability to seek to move a motion of censure. That is the point. It may be just for the optics, but it is a procedural device that should be available if you are to move to the provision for a formal Opposition.

Mr Dickson: Should the will not also include the ability to complete that motion of censure and bring the institution down?

Professor Wilford: It could, yes. I would have thought that, before such a motion would trigger that, if inter-party relations were sufficiently sour that that were to be the outcome, you would probably not require a motion of censure.

Mr Dickson: I am more interested in the relationship between that and the petition of concern. I am concerned about what I see as the cynical use of the petition of concern for political reasons rather than for reasons of genuine concern and in the way in which the petition of concern is meant to be used. Therefore, should some other mechanism, whether it is a motion of censure or something like that, not put down a very strong marker as to why people are opposed to something?

Professor Wilford: There is provision, and there has been from the start, for the moving of a motion of no confidence in a Minister. In the first mandate, it was attempted in relation to both Martin McGuinness and David Trimble. On each occasion, it fell short of the required number. There was an attempt to move a motion of no confidence, which would have triggered a cross-community vote in the Chamber. That can happen now.

The issue of the petition of concern procedure is one that I mention in the paper. If one moves to weighted majority voting on key decisions, we should maybe increase the number of Members who are required to trigger a petition of concern. That would offset the possibility of that device being used vexatiously. You could build in a threshold that would frustrate that. However, you might then think that, if you pitch it too high, the opposition parties will be frustrated because they simply do not have access to that device. What they could do is move a motion of no confidence, a censure, in the Chamber, and it would then be up to Members to vote. It is as simple as that. It may not be successful, but, if that device were made available, it would at least give them the opportunity to use it. However, again, you would have to set some kind of threshold where that should be met. Maybe it is 30, or maybe you should bump it up a bit. Lowering it would be an even more radical proposition, but the likelihood is that you would run into misuse of the device.

Mr McCartney: Thank you very much for your presentation. I missed the beginning, but I have read your paper.

I want ask you for your views on systems that are designed in a particular way. The Good Friday Agreement was designed in a particular way. There can be a tendency to look at the building blocks and to try to reform those building blocks without looking at how each impacts on the other. The discussion on opposition has to happen alongside one on a petition of concern. In essence, if you were in Opposition and had the strength to bring a petition of concern, you could literally vote down everything in the Assembly. We should not try to separate all these things. We should not look at reform and having a formal Opposition without looking at the petition of concern. Likewise, we should not look at the size of the Assembly without looking at its impact on the representation thresholds. I would like your view on that.

Professor Wilford: I absolutely agree. This has to be done in a holistic way. I do not think that I have suggested anything that offends the principles of inclusivity or proportionality. They are cornerstones of the design that we have. I do not think that anything that I am suggesting erodes those cornerstones. However, I completely agree with you that, if you are going to move in this direction, you have to do it in a 360 degrees way. It must not be a case of picking on this particular area or that particular area without giving due regard to what the knock-on effects might be.

I am all for joined-up thinking. One of things that I find frustrating about the inquiry that you are all engaged in is that, whatever recommendations you may or may not agree, the efficiency review panel will ultimately have to look at those recommendations and buy into them. The risk is that the Committee might agree on something that the panel may not. Ultimately, it has the executive authority to make the decisions. However, if this process is to be at all meaningful, that panel and this Committee should really be working in a joined-up way to try to come to some agreement on what the reforms ought to be, if you believe that reforms are necessary.

It should not be regarded as an à la carte menu; it should be regarded as a much more integrated, holistic process. That has to be the primary motive here. It means that you have to address the potential implications of whatever the reform package may turn out to be.

The Select Committee on Northern Ireland Affairs was here yesterday and today. The draft Bill is very limited in its scope. I understand that the Secretary of State is minded that, if there is inter-party or all-party agreement on a reform package, the Bill will be amended. It is only at its pre-legislative scrutiny stage, but the clock is ticking.

I wonder whether, because of the complexities, and so on and so forth, members might be minded to say, "Well, what we have works up to a point. We do not really need to contemplate too significant a set of changes, and, therefore, we will rumble along." What I suggest, and what other witnesses will perhaps suggest, is that you have an opportunity to create a more effective and perhaps a more efficient system of joined-up scrutiny and to make the Assembly more like a parliamentary democracy than it already is by, for example, having provision for a formal Opposition. However, that does not mean that I am fixed on the Westminster or Dáil model of opposition.

The experience of consociations such as Northern Ireland is that it is extremely difficult to provide for a formal Opposition. Switzerland has tried and failed. It is probably the nearest parallel that we have in the way in which Executives are formed, and so on. It is, if you like, a democracy without a capital "O" opposition. That does not mean that there is no small "o" opposition or no oppositional politics. It functions, but the saving grace of the Swiss example is the provision for direct democracy, which we do not have. They initiate a system of referendums, and so on. We do not have that. There is not that kind of opportunity for our population to become involved in strategic decision-making.

You are focused, on the one hand, on having provisions that meet the tests of inclusivity and proportionality and, on the other hand, looking to see the extent to which you can make the Assembly more parliamentary, if you like, in the way in which it functions. That may mean providing for a formal Opposition. From what I read, the disposition of the parties is that there is a weight in favour of providing for a formal Opposition. If you make that basic decision, you have to think about what resources you should provide for those parties given that there is a threshold, as Simon said, and a point below which a party cannot legitimately describe or designate itself as the formal Opposition.

If you will that end, you have to will the means. It is about whether one operates as one does now. A lot of people are content, up to a point, with the oppositional role discharged by the Statutory Committees, in particular. However, the Committees are not an alternative to a formal Opposition. Look at the models in the South or over the water at Westminster: they have both. It is about the nitty-gritty procedural stuff. How do we provide for it in a way that does not offend the basic principles that underpin the agreement? That is the issue.

Mr Sheehan: Thanks for your presentation, Professor Wilford. I was wondering about the different formulae for guaranteeing proportionality in representation. You mentioned the Sainte-Laguë formula. Have you done any maths on that? If we were to change to the Sainte-Laguë formula tomorrow morning, what would be the practical changes?

Professor Wilford: No, I have not. I should have; shouldn't I? There are two versions of the Sainte-Laguë formula. One is the straightforward version, which is the divisor that goes up in the order of 1, 3, 5, 7, 9. With d'Hondt, the order is 1, 2, 3, 4. With d'Hondt, it is arithmetical. With Sainte-Laguë, it increases at a faster rate. The advantage of that is that it assists smaller parties because the bigger parties get hit earlier in the allocation process.

There is also a modified version of Sainte-Laguë where, in fact, the first divisor is 1·4. So the divisor increases from the start. I cannot do it in my head; I will, or maybe you could get the Committee Clerk or somebody from the research office to do it. I do not think that it would have a material effect.

Where it would make a difference, I think, is if the total number of MLAs was reduced. Let us assume we had an eight-Department Executive plus OFMDFM: if you took out those Ministers and the junior Ministers, you would be left with about 60-odd Members to discharge all the roles. If you were to reduce the number to 90, 80 or whatever at some point in the future, that would give the smaller parties something of an assurance that they would get a look-in when it came to ministerial allocation. The risk with smaller numbers being elected is that the smaller parties really do get marginalised. However, they do have to take their chances in the elections. I do not think that one should be too altruistic in relation to smaller parties. If you were prioritising inclusivity, you might be minded to move to a Sainte-Laguë formula, because that is more likely than d'Hondt to ensure the inclusiveness of smaller parties. I think that that is the issue for you.

Mr Sheehan: On the issue of community designation, you say:

> *"a change would supply a signal that NI is capable of moving from ascribed labels which may conceal as much as they reveal."*

You said that it would be a change in perception as much as anything else. Are you talking about the international perception of there being a divided community here? If that were the case, would it not, in actual fact, be better to have a model that shows the outside world that, even where there are divided communities, it is possible to develop a model that is capable of giving governance to wherever it is?

Professor Wilford: I suppose that what you are saying in a nutshell is, "If it ain't broke, don't fix it", because it is currently working. It is working, I suppose, imperfectly, but then all parliamentary systems work imperfectly, and I do not think that perfect should be the enemy of good. If you remove community designation, I do not think that that will change perceptions locally, nationally or internationally of the divided nature of Northern Ireland society at all.

The fact that one would, as an alternative, provide for weighted majority voting on key decisions, in itself, reflects that communal divisions persist on some matters. I think that you are right in the sense that you implied that it is as much a presentational issue as it is a substantive one.

The rider I added there about labels concealing as much as they disclose is that — I made this point earlier — you will have differences of opinion amongst Members in parties. To date, it has been very rare for Members of one party or another to rebel when it comes to Divisions. That is a rare occurrence. When you have one all-encompassing label, what you are doing, in effect, is challenging people even more to signal that they might not agree with the leadership, because so much emphasis is placed on the cohesion of the party block.

Back-Bench dissent is a norm of parliamentary practice and parliamentary life at Westminster. Here, Back-Bench dissent just does not exist. All I am suggesting is that, if you move to a weighted majority system, that might give people a little bit more leeway to say, "Actually, I don't agree with my party on this issue. I don't need the label. I am not concerned about my identity, because that is a given". It is a philosophical point, perhaps. Instead of being so focused or preoccupied with identity politics, one should be more concerned with the politics of recognition and respecting people's differences. Other than to provide a voting safeguard through the petition of concern device, for example, you do not need the label for the people outwith the Assembly, whether they are an international audience or whatever, to know that we are a divided society. The point that I am making is that it may be whimsical; nevertheless, if one moved away from this assuming necessity of a communal label, that might be regarded as some kind of progression here, which does not diminish the scale of the problems that there are over division in Northern Ireland.

Mr Beggs: Thanks for your presentation. It has been very useful. I will pick up on two issues. First, a petition of concern may be brought by 30 out of 108 MLAs, which is about 27% or 28%. There are, I think, nine non-aligned Members. In reality, 30% of the Assembly have to sign a petition of concern. It strikes me that this device is being exercised in an unhealthy number of debates. There is another vote today, and a petition of concern has been tabled. I am curious as to how you came across the figure of 35%. Why 35%?

Professor Wilford: That was lazy thinking on my part because of the suggestion that we were going to move away from that device and choose a weighted majority of 65% or two thirds, as some people suggested. The figure was more or less plucked out of the air when I was writing this paper. It was to ensure that it could not be used in a vexatious way. The frequency with which the petition of concern

device has been used has increased across a range of measures, whether they are procedural, legislative or policy. It is a way of limiting recourse to that device because you could have a weighted majority system instead. I just took 65 from 100 and ended up with 35. It was as simplistic as that.

Mr Beggs: There are positives and negatives of going to 65%. In theory, some legislation could go through on 55% and not be seen as being community sensitive. It is just that people accept the vote at 55%, and it goes through and allows change in governance to occur. Yet, there is a need to give protection for other areas that could be perceived as being adverse to one community or the other. Could you perceive a situation where some petitions of concern would still be required, and, having exercised that petition of concern, the issue would be voted on with the 65%? Would that be a way of limiting the blockage in the Assembly to legislation, yet showing community sensitivity on certain key issues?

Professor Wilford: Yes, it could. There are certain key decisions that ordinarily trigger the requirement for cross-community voting. The petition provides an additional safeguard. You are right that most decisions are taken on a simple majority basis, but if you move to a system of weighted majority on what are currently defined as key decisions, unless there were to be a massive seismic shift in voting patterns in Northern Ireland, that 65% is a safe figure to ensure that no issue could be progressed in the face of significant opposition from one or other party block in the Assembly. The alternative would be to ramp up the petition of concern device and begin to add to the list of what constitutes key decisions. For example, in the first Assembly, the Programme for Government was subject to a cross-community vote. That was then subsumed into the vote on the Budget, so that discrete, separate vote was then dispensed with. The only change that I would make in respect of what is subject to a key decision is the vote for First Minister and deputy First Minister. I would like to see that reintroduced either as a discrete vote or on an Executive slate vote subject to the 65% test.

The Chairperson: Thank you. No one else has indicated that they wish to speak. Therefore, I will just thank you for coming up and presenting to the Committee today.

Professor Wilford: Thank you very much.