



Northern Ireland
Assembly

Committee for Finance

OFFICIAL REPORT (Hansard)

Functioning of Government
(Miscellaneous Provisions) Bill:
Mr David Sterling, Head of the Civil Service;
Department of Finance

6 May 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

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

Witnesses:

| | |
|-------------------|-----------------------|
| Mr David Hughes | Department of Finance |
| Mr David Sterling | The Executive Office |

The Chairperson (Dr Aiken): I welcome Mr David Sterling, head of the Northern Ireland Civil Service (NICS), and Mr David Hughes, head of the renewable heat incentive (RHI) inquiry sponsorship team in the Department of Finance. Thank you very much for coming in to speak to the Committee today. I remind Committee members that the meeting will be recorded by Hansard. David Sterling, I invite you to make an opening statement.

Mr David Sterling (The Executive Office): Thank you, Chair. Is it OK if I take about five minutes for this?

The Chairperson (Dr Aiken): Certainly. Please do.

Mr Sterling: I will start by saying that how Ministers' special advisers and the Civil Service work together in government has been a priority for the returning Executive; indeed, the way in which we interact was clearly a focus of the RHI inquiry, which made recommendations on the role of Ministers, special advisers and the Civil Service. Those issues were also addressed by the parties as part of the talks that led to the New Decade, New Approach (NDNA) agreement in January. As you will know, a work stream on transparency, accountability and the functioning of the Executive was established as part of those talks. It was chaired by Sue Gray, the permanent secretary in the Department of Finance. The work of that group informed annex A to 'New Decade, New Approach'.

The returning Executive had sought to address the issue through a revised ministerial code of conduct, a new code of conduct for special advisers and newly promoted guidance for Ministers. Alongside that, a new NICS code of ethics has been agreed. It is currently with trade union side and

the Civil Service Commissioners for consultation. The Executive worked quickly to put those documents in place once the institutions were restored, and, in particular, the agreement of the special adviser codes was one of the first decisions to be taken by Ministers in January. I assure the Committee that there is a clear desire to ensure that the standards to which Ministers, special advisers and civil servants are held are as high here as anywhere.

A key question is whether those matters should be addressed through legislation or through codes and guidance. The view of the First Minister and the deputy First Minister is that it is more appropriate to address standards of behaviour for Ministers through codes of conduct and guidance. That is generally how such matters are handled in our neighbouring jurisdictions, and it is common across equivalent jurisdictions around the world. It is also worth noting that, when it covered similar ground in its recommendations 40 to 43, the RHI inquiry panel recommended that the necessary changes be made by amending the codes and guidance rather than by legislating. It is, of course, right that there be standards to which Ministers are held accountable and guidance on how those standards should be applied in practice. The disadvantage, in the view of my Ministers, of legislating in this area is that some discretion is needed. Standards must be open to interpretation, recognising that there is a difference between deliberate wrongdoing and carelessness or accidental breaches.

The ministerial code of conduct is itself a statutory code and, as such, carries the kind of authority that, I think, Mr Allister seeks. It is drafted in high-level terms, setting out principles, and that is why it needs to be expanded on in guidance. The advantage of that guidance is that it can be updated or revised simply and quickly.

The First Minister and the deputy First Minister recognise that the credibility of the codes and guidance depends on their implementation. The endorsement by the parties of the New Decade, New Approach agreement should be viewed alongside the strengthened codes and the new guidance as evidence of their commitment in that regard. The new enforcement arrangements will also be crucial. Those arrangements have been set out by the Executive and will be put into practice as soon as possible, and they will ensure that all complaints are considered and, where relevant, investigated by an independent panel member.

There may be specific issues in the Bill relating to the work of the Executive Office that I am happy to address in response to the Committee's questions. However, I believe that the Committee has asked the Committee for the Executive Office for input and that that Committee will be briefed on that in due course. I will pause there.

Mr Allister: Mr Sterling, you tell us that we should rely on codes. What the RHI inquiry threw up, however, was that, although we had codes that required confidentiality, that required integrity and that required honesty, flagrant breaches of those codes were demonstrated. Is that not correct?

Mr Sterling: The RHI inquiry report certainly identified a number of issues that, I know, Ministers and I, speaking as head of the Civil Service, are keen to ensure do not occur again.

Mr Allister: So, codes did not serve us well in the past, hence my belief — I remind you that the principles of the Bill have been approved by the Assembly — that we need more than codes. Indeed, on the subject of the code of appointment, the RHI report was very clear that codes should be adhered to vigorously, yet the first thing that the Executive did, before they saw the RHI report, was to strip out of the code of appointment all the basic elements about the selection of a special adviser. That was hardly a confidence-building measure, was it, Mr Sterling?

Mr Sterling: Those are matters for Ministers. I repeat what I said in my introductory remarks: I am quite clear that there is a strong desire among Ministers to ensure that there is adherence to the highest standards of behaviour and accountability, going forward.

Mr Allister: Through codes that have previously been breached.

It is not all duck or no dinner. You can have legislation and statutory codes. The two are perfectly compatible. You would expect the code to say a lot more than the legislation, and, indeed, we would not have any codes but for my Civil Service (Special Advisers) Act (Northern Ireland) 2013. Is that not correct?

Mr Sterling: Indeed.

Mr Allister: Yes. May I take you specifically to clause 1(6)? Have you got a copy of the Bill?

Mr Sterling: I do, yes.

Mr Allister: Clause 1(6) states:

"A minister must ensure that only the duly appointed special adviser in the department will exercise the functions, enjoy the access and receive the privileges of the post; and a permanent secretary must ensure that no person other than a duly appointed special adviser is afforded by the department the cooperation, recognition and facilitation due to a special adviser."

You are, no doubt, aware of why that clause is in there, given what happened in your Department.

Mr Sterling: Yes, indeed. I understand the intention behind the clause.

Mr Allister: I remind you of what Lord Justice Coghlin had to say in volume 3, paragraphs 54.33 and 54.34, when talking about the fact that the 2013 Act prohibited certain people from being special advisers:

"As a result, Sinn Féin set up a centralised system under which Aidan McAteer, who did have a proscribed conviction and who was now to be neither appointed nor paid as a civil servant, was engaged to 'manage and co-ordinate' on a day-to-day basis the work of all Sinn Féin Special Advisers."

Paragraph 54.34:

"It seems that all of the Sinn Féin SpAds were aware that Aidan McAteer was acting as the senior Sinn Féin adviser with the direct authority of the deputy First Minister, the late Martin McGuinness. In his evidence to the Inquiry Sir Malcom McKibbin" —

your predecessor —

"accepted that when he was first introduced to Aidan McAteer, he was told by the then deputy First Minister that he would be working underneath his (Mr McGuinness's) direction and authority. As such, according to Mr Ó Muilleoir, he was seen as occupying an elevated position with more authority than any of the other SpAds."

This is what Lord Justice Coghlin said:

"In effect, an individual who could not legally have been appointed as a SpAd and who was not subject to the mandatory code, or other relevant codes, managed and co-ordinated those who were employed and paid from public funds as temporary civil servants and who were subject to the relevant legal structure and codes."

Clause 1(6) seeks to avoid anyone circumventing the requirements of the law. Is that a bad thing?

Mr Sterling: I do not think that it is for me to comment on whether it is a good or bad thing. It will be for the Assembly to decide whether it wishes to support the legislation. All that I want to say is that the First Minister and the deputy First Minister have appointed three special advisers each, and I am not detecting that there is any hierarchy.

Mr Allister: I am not talking about hierarchy; I am talking about the circumvention, through someone occupying de facto the position of a spad without being appointed. Is Mr McAteer still on the scene?

Mr Sterling: I am not aware of —.

Mr Allister: Is there anyone in Stormont Castle who has the use of the facilities and can act as if he is a special adviser, even though he is not a special adviser?

Mr Sterling: The only people who have access to Stormont Castle are people who are authorised to be there.

Mr Allister: Does that include someone who is not a civil servant, be he a special adviser or otherwise?

Mr Sterling: I am not aware of anybody —.

Mr Allister: Are there party appointees?

Mr Sterling: I am not aware of anybody who is not a civil servant, a special adviser or a Minister having —.

Mr Allister: It has changed from what it was, has it?

Mr Sterling: I was not there in the days that the RHI inquiry report refers to.

Mr Allister: What would be the problem with you, as the permanent secretary, ensuring that no person other than the duly appointed special adviser is afforded the "cooperation, recognition and facilitation" of someone holding that post? What would be the problem with that?

Mr Sterling: As I say, that is not a matter for me to express a view on. It will be for the Assembly to decide.

Mr Allister: I am asking you whether there is a problem with it. If you do not want to express a view, that is fine, but is there a problem with a permanent secretary ensuring that?

Mr Sterling: Sorry, ensuring that —?

Mr Allister: Ensuring that only a special adviser receives the:

"cooperation, recognition and facilitation due to a special adviser."

Is there a problem with that?

Mr Sterling: Sorry. No, I do not see a problem with that.

Mr Allister: Do you agree that the clause would deal conclusively with the issue of the abuse that Lord Justice Coghlin identified?

Mr Sterling: Again, it will be for the Assembly to decide whether it feels that the provision is necessary in legislation.

Mr Allister: Past events certainly demonstrate that it is necessary, do they not?

Mr Sterling: That is a judgement for others to make.

Mr Allister: Your predecessor indicated to the inquiry that he just turned a blind eye.

The Chairperson (Dr Aiken): I think that that is enough.

Mr O'Toole: Thank you both for coming to give evidence. I have a couple of slightly broader questions about the context of the Bill. One of the comments you made, in correspondence and today in verbal evidence, is that your belief or preference is that many of these matters are better handled through guidance than legislation. Can you give a couple of examples, if possible from the last few months, of how the updated guidance has affected behaviours and say whether it has changed or improved them?

Mr Sterling: The first thing I should say is that I was expressing the views of my Ministers and their preference that this should be done through guidance rather than through legislation. The second thing is that it is only really since January that I, as head of the Civil Service, have seen the Executive in operation, so I cannot compare how things are today with how they were before the institutions collapsed in 2017. I would say, however, that, since the Executive came back they have had to deal

with the implementation of the 'New Decade, New Approach' document, some difficult budgetary challenges, the challenge of Brexit and, of course, as we all know now, the worst global pandemic in 100 years. I have seen Ministers, special advisers and the Civil Service working well together to tackle those huge challenges. I certainly would not have any concerns about the behaviour of any of that group that I described.

Mr O'Toole: You mentioned comparisons with other jurisdictions. I presume that you meant the jurisdictions in these islands, but then you talked about others across the world. Given that we have very particular circumstances here because of the nature of devolution, power-sharing and a divided joint office, does that present specific challenges for civil servants, including you and others, in managing relationships with Ministers and special advisers?

Mr Sterling: I have nothing to compare it with, but I would say that, yes, obviously, our Administration here is unique. We have five parties in a coalition, and it is challenging to work in a coalition. That would be fair comment anywhere. It requires unique levels of cooperation, and, by and large, given that we have five parties that, in many ways, have different ideological and political views on a range of issues, I have been quite impressed by the way that people have been prepared to set those views aside to deal with the major issues that we face.

The Administration is often portrayed as being inherently difficult to manage. Yes, there are challenges, but, by and large, we are getting on with it. To take one example, in dealing with the pandemic — we were just looking at this — Ministers have taken probably going on nearly 200 actions in the space of not quite seven weeks. That is a remarkable achievement for an Administration that is still relatively young.

Mr O'Toole: Would you say that the role of special advisers is more or less important in the context of managing the unique arrangements that Northern Ireland has?

Mr Sterling: Special advisers have an important role to play in the Administration. They can help to address some of the issues between parties. It is useful to have special advisers with whom officials can discuss issues and float ideas. Special advisers, then, obviously, have an opportunity to discuss those in their parties and at a political level with other parties. Without that, it would be a lot harder to get things done.

Mr O'Toole: An impression might have been created since the re-establishment of the institutions, notwithstanding the fact that you are right that Ministers have had to take lots of quick decisions on COVID-19, that some of the old behaviours remain, with decisions being cooked up between, perhaps, two parties in a certain way and that there may be a tendency to fall back into some of those habits. That is an observation that some have made; I would not know. Is that something that you recognise — they may have the odd public row, as it were, but then a private means of resolving things — or do you reject it?

Mr Sterling: What I will say is that the First Minister and deputy First Minister from day one — from the Saturday that the agreement was reached and the institutions re-established — said to me that they wanted this to be a well-functioning Executive and wanted the three smaller parties to be given their place and to play a full part in a partnership Executive. Obviously, there will always be tensions in a five-party coalition. There are two parties that are clearly larger than the other three, but, within that dynamic, I think, there is a genuine desire that we work as a collective partnership, particularly in dealing with the issues around the pandemic. That is what I see daily.

Mr O'Toole: I have one or two further questions.

The Chairperson (Dr Aiken): One.

Mr O'Toole: One. Thank you. This may be a moot question, Mr Sterling, but I believe that you were a relatively senior civil servant in the previous incarnation of the Executive, as in, pre-2002-03. Am I right in saying that you had significant dealings at ministerial and Executive level?

Mr Sterling: In the first Executive?

Mr O'Toole: In the first Executive, so 1998 to 2002.

Mr Sterling: Yes. I joined the Department of Finance in March 2000. I worked for Mark Durkan and then Seán Farren before the institutions collapsed in 2002.

Mr O'Toole: This is another broad question. You worked with Ministers in the period 1998-2002 in the Department of Finance and Personnel, so you would have had policy oversight of Civil Service and spad governance. What comparison can you make between the function of special advisers then, what happened between 2007 and 2017 and then since January? What were the specific differences?

Mr Sterling: That is quite a question. You are asking me about events that go back 20 years.

Mr O'Toole: On that, I will narrow it down, just because the Chair is indulging me.

The Chairperson (Dr Aiken): Yes, I am indulging you a lot at the moment.

Mr O'Toole: Do spads now play a greater role than they did in that first Executive?

Mr Sterling: All I would say is that each Executive has been different. That simply reflects the different personalities in ministerial roles at the time. It also reflects the different personalities of special advisers. In the same way, I am sure that, if you look at any other jurisdiction, you will see that the way in which government functions probably differs as time evolves and personalities change. I do not want to be drawn on whether one period was better than the other; I am just saying that they were different. When I write my memoirs, I will —.

Mr O'Toole: I look forward to that. I am sure that Sue Gray would have something to say about that.

Mr Lynch: I have a quick question, David. Has the publication of the RHI recommendations meant revisiting the revised guidelines and codes?

Mr Sterling: Yes. They have been looked at again. Ministers, in agreeing the codes and guidance, were clear that that is not something that they do or did as a one-off. They recognise that guidance — again, this is one of the advantages of guidance — can be amended quickly and will need to be amended in light of behavioural changes and contextual changes over time. There is a clear desire to make sure that guidance remains very much alive and relevant to the particular circumstances that we face, going forward. Speaking on behalf of the Civil Service, I know that that is something that we will want to do as well with our code of ethics etc.

Mr Frew: Thank you, David, for coming here today to give evidence. We can see that you are in a difficult position, yet you are still trying to answer the questions as thoroughly as you can. I appreciate that. We want to hear from, you, David Sterling, the head of the Civil Service, with all your vast experiences through all those years, which Matthew alluded to. Can I take you through the differences between legislation, codes of conduct and standard operating procedures? Surely, it is better to have in law the protections required to protect your staff in the Civil Service from unscrupulous politicians and spads who may want to influence something out of vested interest.

Mr Sterling: If you want to have a well-functioning Administration, the most important thing is that you have Ministers, civil servants and advisers who have mutual trust and respect and a clear desire to work together to deliver the best possible outcomes for the people we serve. My experience is that, if those relationships are not good, it does not particularly matter whether you have legislation or guidance; you will struggle to have a healthy, well-functioning Administration. Yes, legislation gives you stronger protections, but, if you are in a position where you are relying on that, that suggests to me that you have a pretty fundamental problem.

Mr Frew: Do you not think that we have had a fundamental problem over the last number of years?

Mr Sterling: If I look back over the last 10 years or so, I see that, yes, it is clear that the Administration have faced significant challenges.

Mr Frew: I spoke in the Chamber at the Bill's Second Stage, and a Member said, "Members really should not bring legislation. This should be a decision for the Executive". I totally and utterly disagree with that. Do you think that, with codes of conduct that may well be decided on by an Executive, it would be much broader to allow the Assembly to produce something, by way of legislation, of course,

that resolves the issues and gets us to a better place? Not only individual MLAs but the Executive could bring forward their own legislation. It could be called a "reform Bill". I spoke on this at Second Stage. Do you, as head of the Civil Service, think that the Northern Ireland Executive should produce a reform Bill?

Mr Sterling: Dealing with?

Mr Frew: All aspects of the RHI inquiry and everything that was born out of it.

Mr Sterling: Obviously, the Executive have agreed to set up a subcommittee to look at the RHI recommendations. I do not think that it would be right for me, as a civil servant, to pre-empt the conclusions that that committee might reach.

The Chairperson (Dr Aiken): David, just as an update, can you inform the Committee where we are with that subcommittee? That was one of the big strands that we were discussing before the reformation of the Executive. Where are we on that?

Mr Sterling: I will look to David on that. I think that it has been set up, but I am not sure that it has met.

Mr David Hughes (Department of Finance): The terms of reference have been agreed, but it has not met. They were agreed at the very point at which more attention was going to be passed onto the pandemic.

Mr Sterling: That is just a reflection of the circumstances that we are in at the minute. To be honest, there is little work going on at the moment that is not related to dealing with the pandemic.

The Chairperson (Dr Aiken): I am sure that it might be useful for the Committee if we managed to see a copy of the terms of reference. That might be useful for informing us of the validity of the Bill, going forward.

Mr Sterling: I see no difficulty with that.

Mr Frew: With regard to spads and the different spads for the different Departments, are you confident now that there are clear demarcation lines, that each spad is accountable for their own actions, that the Minister is responsible for that spad, that there are no crossovers between individual parties and that there is not a rank structure for spads? If there is a rank structure, has that manifested itself in any cases since RHI?

Mr Sterling: It is not an issue that has been raised with me as a problem. Obviously, Ministers have one special adviser each. There are three on each side in the Executive Office. As I said, nobody has come to me and said that there is a problem of that nature.

Mr Frew: That is not really saying that it has not happened.

Mr Sterling: No, well —.

Mr Frew: It is just saying that you have not had sight of it.

Mr Sterling: I am not aware that what you describe has happened or is happening.

Mr Frew: I refer to the clause on the use of official systems — I cannot remember off the top of my head; is it clause 9? —

Mr Sterling: Yes.

Mr Frew: — and civil servants using personal equipment. Do you think that we need something like this, either in legislation or in codes of conduct, to make sure that there are no slippages, leakages or any other means whereby civil servants could do something underhand or unscrupulous for their own

interests or the interests of their family members and so on? Is it not right and proper that you have standard operating procedures that lay out what is acceptable and what is not?

I get that you could be in a fast-moving area or in crisis mode and that something has to be sent quickly. Reasonableness has to be injected into that as a defence. Do you see the need for something like this? This is global, given that there are personal email accounts and everything else. Have you been frustrated at any time in your career or experience by things that suggest that we badly need standard operating procedures to make sure that people — your staff — know what is acceptable and what is not when they communicate using devices and phones?

Mr Sterling: There are already strong guidelines in the Civil Service about the use of official devices and systems. Indeed, it is made very clear in the Civil Service handbook that breaching those can be misconduct or even gross misconduct, so you could lose your job if you breach them. That is a pretty strong sanction already.

Mr Frew: How many Civil Service personnel have lost their job over this?

Mr Sterling: I cannot answer that offhand, but I am fairly sure that people have been dismissed for breach of —.

Mr Frew: Communications?

Mr Sterling: Yes, that sort of thing. Accessing inappropriate material — a range of things like that.

Mr Frew: Could the answer to that question in terms of the numbers be got without too much bother?

Mr Sterling: Yes. We will find that out for you.

Mr Frew: OK. Thank you.

Mr Sterling: As far as Ministers are concerned, it is in the guidance to the ministerial code that the use of official systems etc needs to be properly managed.

Mr Frew: OK. Thank you.

Mr Wells: Do you accept, Mr Sterling, that, despite your much-vaunted codes of conduct, the behaviour of spads from all parties in the last Administration was utterly appalling?

Mr Sterling: The RHI inquiry has reported, and the report is there. I prefer to look forward.

Mr Wells: You have seen the overwhelming support for Mr Allister's Bill in the Assembly. You have seen the truly awful performance of spads under your much-vaunted codes of conduct. On what basis did you walk into this room and say that there should be a continuation of a failed system, rather than legislation? What authority had you to say that?

Mr Sterling: I was expressing the view of my Ministers, which is that the preference —.

Mr Wells: Which Ministers?

Mr Sterling: The First Minister and the deputy First Minister.

Mr Wells: The First Minister and the deputy First Minister have said that they do not want a Bill and that they want codes of conduct.

Mr Sterling: Their preference is that there would be codes of conduct, rather than legislation.

Mr Wells: Even though the overwhelming majority of the Assembly supported the Second Reading of the Bill, which demands statutory powers, rather than codes of conduct.

Mr Sterling: I am expressing the views that I have got, yes.

Mr Wells: Even though representatives of the First Minister spoke enthusiastically in favour of Mr Allister's Bill. Did you take your soundings before or after the Second Reading of the Bill?

Mr Sterling: I am simply repeating what I have said.

Mr Wells: When did you take your soundings on the First Minister's approach to the Bill? Was it before or after the Second Reading?

Mr Sterling: It was recently.

Mr Wells: How recent is "recently"?

Mr Sterling: In preparation for this. I will double-check that point in case there is any confusion.

Mr Wells: Secondly, pursuant to Mr Allister's question, you know what was going on. You were permanent secretary for part of the time, and you know that there was de facto a second tier of special advisers operating from an office in west Belfast. Will you give the Committee a categorical assurance on the record that that is not continuing in Stormont Castle?

Mr Sterling: All I can say is that I work for the First Minister and the deputy First Minister. They are supported by three special advisers on each side, and I have seen nothing of the nature that you described to me.

Mr Wells: Did you see it when it was going on?

Mr Sterling: I did not work in the old Office of the First Minister and deputy First Minister (OFMDFM).

Mr Wells: Were you aware that it was going on?

Mr Sterling: I did not work in that Department.

Mr Wells: Were you aware that it was going on?

The Chairperson (Dr Aiken): That is it. I think that we have had the answer.

Mr Wells: He does not want to answer.

The Chairperson (Dr Aiken): That is not the question. He has given the answer.

Mr Wells: He is hiding.

Mr McHugh: Tá fáilte romhaibh anseo inniu. You are very welcome here today. Gabhaim buíochas le bhur ráiteas fosta. Thank you for your statement as well. I know about the issues with spads not only where their appointments are concerned but with what the "disciplinary process" for them is inasmuch as they are temporary civil servants. Will you maybe expand on that as far as special advisers are concerned and tell me what one should recommend?

I noticed too, just in saying that, that words have been used here like "reasonableness" and "flexibility", in particular when it comes to the appointment of spads and so on. Does the Minister expect that they will have confidence in the person that they have as their spad? It is probably in that context as well that reasonableness and flexibility are required. Will you expand on what your thinking is on the way that one ensures that spads adhere to the expectations of the role that they have been appointed to?

Mr Sterling: OK. As I said in my introduction, one of the first things that the Executive did when they came in in January was to introduce a new special adviser code of conduct. One of the significant changes in that is that it is made clear that special advisers are accountable and responsible to their Minister. Again, special advisers are required to adhere to the Civil Service code of conduct. If there is any breach of that, it would be the responsibility of the Minister to ensure that there is accountability

for any such breach. Certainly, the guidance makes it clear that special advisers should adhere to the standards set out in the Civil Service code.

Mr McHugh: I know that you mentioned this, but is there an expectation that they will develop a code for special advisers on the part of the Civil Service?

Mr Sterling: As I say, there is the revised code for special advisers. That will be kept under review. If there is any need to improve it, it will, I think, be improved, but, at the moment, I do not think that there are any plans for further amendments to it.

Mr Hughes: The special advisers would need to abide by the Civil Service code of ethics, which is yet to be finalised, and to the code of conduct that is specific to special advisers. The standards expected of civil servants in all areas apply to special advisers, with the exception of the impartiality and objectivity requirements. As was said, the Executive will look at the codes in light of the RHI inquiry recommendations — I am not saying that they have finished the revision, if further revision is needed — but that was the point: the codes can be reviewed, revised and updated as appropriate.

The Chairperson (Dr Aiken): On a point of clarification, special advisers now have to adhere to the Civil Service code of conduct. Do they sign anywhere to that effect, to say that they have read and understood the Civil Service code of conduct?

Mr Hughes: It is part of their letter of appointment and their contractual relationship.

The Chairperson (Dr Aiken): So they physically sign on the line saying that they have read and understand the rules and regulations as laid down in the Civil Service code of conduct.

Mr Hughes: Yes, "I have accepted the appointment, on the basis of the terms of the appointment", and that includes the Civil Service code.

The Chairperson (Dr Aiken): That is clearly laid out in the contract.

Mr Hughes: Yes. That is a part of the appointment process.

Mr McHugh: To imply that it needs to be legislated for, in a sense, if anything, also implies a lack of trust or confidence in the Minister, in the first instance, to take responsibility for the special adviser by ensuring that they adhere to the code of practice.

Mr Hughes: Sorry, can you repeat the question just to make sure that I am clear?

Mr McHugh: It would imply a lack of confidence or trust in the Minister if one had to legislate for the special adviser to adhere to the code of practice.

Mr Allister: It has already happened.

Mr Hughes: The onus is on the Minister. Responsibility for the management and discipline of the special adviser is placed on the Minister through the ministerial code of conduct.

The Chairperson (Dr Aiken): We have not seen the ministerial code yet, have we?

Mr Hughes: It was published.

Mr Sterling: It has been published.

The Chairperson (Dr Aiken): But revised by what we were expecting through New Decade, New Approach.

Mr Sterling: Obviously, the ministerial code needs to be legislated for. There will need to be an amendment to schedule 4 to the Northern Ireland Act 1998. The First Minister and deputy First Minister have asked the Secretary of State to do that. That is one of the things that have been held up by the current pandemic crisis, but it will probably happen some time later this year.

Mr Allister: Chair, can I make a quick point?

The Chairperson (Dr Aiken): Just a quick one.

Mr Allister: You tell us that there are these codes and that, if you breach them, the Minister is responsible for that. Of course, experience tells us that, in the Department of Finance, when a departmental official recommended that special adviser Mr Brimstone should be disciplined, the Minister stepped in and quashed it. Maybe you were permanent secretary at that stage; I do not recall.

Mr Sterling: No, I was not.

Mr Allister: Right. It is all very fine to have lots of nice codes, but, on the discipline side, if the special adviser, as a civil servant who breaches it, is not subject to the disciplinary procedures of the Civil Service but has the protection of only the Minister who appointed him being able to discipline him, it is a joke, is it not?

Mr Sterling: I think that it just reflects the unique relationship that there is between a Minister and a special adviser.

Mr Catney: Thank you for coming today. I know that the Executive Office has the right to employ up to eight spads. Having listened to what you said about the Civil Service code of conduct, I wonder whether you find that there is a need for eight. How can you justify that?

Mr Sterling: At the moment, only three on each side have been appointed. Each has a specific range of responsibilities. There is a wide range of issues to be dealt with, so I do not have any particular issue with that.

Mr Catney: I go back to this: are you aware of the arrangements in other jurisdictions for the appointment of special advisers?

Mr Sterling: I am not an expert in them, but the special advisers' code that we have now is almost identical to that of the Whitehall special advisers. There are not many departures from it that I am aware of.

Mr Hughes: No. In the first instance, special advisers are civil servants, so the requirement is then very similar to the standards required of civil servants. The code of conduct that is specific to special advisers is very similar here and in the other UK jurisdictions.

Mr Catney: I am no expert on it either, but I believe — I stand to be corrected — that there are more special advisers in Northern Ireland than in any of the other jurisdictions in the home countries. I am looking at the code of conduct. This is not an attack; it is looking at it from a business point of view. If I were you, I would make sure that, where the job could be done by one, it would be done by one. I understand that there have to be rules, but how can you defend it? How can we defend needing eight when I know that there are not eight anywhere else?

Mr Sterling: There are only six in the Executive Office.

Mr Catney: They have the right to have eight.

Mr Sterling: Indeed, and they have chosen not to exercise that right at the moment.

The Chairperson (Dr Aiken): Just on a point of clarity, special advisers have different pay bands: is there a hierarchy among the three special advisers in the First Minister's office and in the deputy First Minister's office? It seems strange that one would be at a higher pay band, one at a middle pay band and one at a lower pay band.

Mr Sterling: The three special advisers on each side of the Executive Office each have their own set of responsibilities and areas that they look after.

The Chairperson (Dr Aiken): They are all in different pay bands, are they not?

Mr Sterling: Yes. I was not involved in setting the pay. The pay is set in the Department of Finance, and a range of issues is taken into account in setting that.

Mr Hughes: Before coming to the Committee, I checked the pay that was published: in the First Minister's office, two are on the same pay, and one is on lower pay; in the deputy First Minister's office, two are on the same pay, and one is on slighter lower pay. There is not a clear hierarchy, and each special adviser is accountable to the Minister who appoints.

Mr Catney: David, the Northern Ireland Civil Service response states that no appointments have been made under this provision by this Administration. Do you believe that that response addresses any issues in TEO or in the DOF?

Mr Sterling: Sorry, in respect of what?

Mr Catney: In respect of clause 3.

Mr Allister: The prerogative power appointments.

Mr Catney: I mean, in line with the capability to employ eight. You tell me that there are six, but what I am trying to get to is this: does the response not raise any objections to the clause? You support clause 3.

Mr Sterling: It is not for me to support or not support it. It is there. It is kept under review. As far as I am aware — in fact, I am pretty sure — it has not been used since 2016.

The Chairperson (Dr Aiken): Jemma?

Ms Dolan: I am OK. I have no questions.

The Chairperson (Dr Aiken): Are you sure?

Ms Dolan: Yes, everything has been covered.

The Chairperson (Dr Aiken): I will get Paul and Matthew to ask very short questions.

Mr Frew: I want to progress the points made by Maolíosa and Jim on ministerial protection for spads should they break the code. What happens when the spad is the line manager of the Minister? What happens if, in the organisation or the political party, the spad is senior to the Minister? The code of conduct and the ministerial protection are a nonsense.

Mr Sterling: I am not aware of such a scenario.

Mr Frew: You said that we live in a unique place. We have a party that is wedded to a paramilitary force, with a functioning army council. It could happen.

Mr McHugh: Chair, may I challenge that in every respect?

The Chairperson (Dr Aiken): Yes, you can come straight back on that when he has finished.

Mr Frew: Given the uniqueness of Northern Ireland, which we have already agreed on, surely, you need protection for a scenario such as that.

Mr Sterling: As I said, I am not aware of such a scenario at all, and I do not really think that it would be appropriate for me to comment on such a thing.

Mr McHugh: It is despicable that a member should make that allegation. I know exactly what he is doing: he is implying that our party is wedded to a paramilitary force.

Mr Wells: You are.

Mr McHugh: We are not. Sinn Féin is totally and absolutely a political party committed to the peace process in every respect. The member never misses any opportunity that he can find to make this type of slanderous allegation. It is despicable that it has been raised on this occasion and that it was addressed to the head of our Civil Service.

Mr Allister: Have you not read the Government's security assessment of this?

The Chairperson (Dr Aiken): Thank you, gentlemen.

Mr O'Toole: I have a brief question. Mr Sterling, you mentioned the volume that the machinery of the Northern Ireland Civil Service is working with. I want to check how often, since January, the subcommittee on Brexit has met and when is it next due to meet.

Mr Sterling: I cannot tell you how many times it has met, but it has been a few weeks since it has met, simply because of the pressure of other business. The intention is that the Executive will meet to discuss Brexit issues next week.

Mr O'Toole: If it is less than five, it will have met less than a handful of times.

Mr Sterling: It is probably in the region of five or six. I honestly cannot answer.

The Chairperson (Dr Aiken): Matthew, that is more a question for the Executive Committee.

Before we finish, I have a question for both Davids. You mentioned quite a few times the unique circumstances in Northern Ireland. We have to be clear that the only reason why we are looking for a legislative process rather than relying on a code of ethics or guidance is that, frankly, the previous code of ethics and guidance completely failed. We would not have had in Northern Ireland the collapse of government for three years and a major public inquiry, had the codes and guidance actually been followed. Matthew will probably back me up on this: it is best custom and practice of UK plc not to go for legislation, because we are expected to follow codes and guidance, but one of the things that have become clear through the RHI report and from the flavour of most of the questioning here is the concern that the normal processes of codes and guidance were not followed. That is why we have reached this situation. From your position as the professional head of the Civil Service, can you outline how, by just using codes and guidance without a legislative process, Northern Ireland could not revisit the problems that we had with RHI? The word that you kept using was "unique". We are not dealing with the same circumstances as in the rest of these islands. I would like your response to that, please.

Mr Sterling: Within the structure — the framework that the guidance is designed to provide — there are mechanisms to ensure accountability, including sanctions for Ministers, special advisers and civil servants. However, if the Assembly decides that it wants something stronger, so be it. I simply reflect the preferences that were expressed at the Executive when they considered these matters. It is a matter for the Assembly to decide.

The Chairperson (Dr Aiken): Thank you, Davids. Have you any further comments?

Mr Sterling: No.

The Chairperson (Dr Aiken): A series of other questions was written into the brief, which we would like to forward to you for reflection and to enable you to give us more advice and guidance while we consider the Bill. If you are content, we will forward those through the Clerk.

Mr Sterling: Yes.

The Chairperson (Dr Aiken): Thank you both very much for coming in.

Mr Sterling: Thank you.

Mr Hughes: Thank you.