



Northern Ireland  
Assembly

Committee for Finance

# OFFICIAL REPORT (Hansard)

Functioning of Government  
(Miscellaneous Provisions) Bill:  
Mr Conor Murphy MLA, Minister of Finance;  
and Ms Sue Gray, Department of Finance

13 May 2020

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**Members present for all or part of the proceedings:**

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

**Witnesses:**

Mr Murphy	Minister of Finance
Ms Sue Gray	Department of Finance

**The Chairperson (Dr Aiken):** For the record, the proceedings are being reported by Hansard. I welcome Mr Conor Murphy, Minister of Finance, and Ms Sue Gray, the permanent secretary from the Department of Finance.

I draw members' attention to the Clerk's briefing paper at page 13, the Department of Finance response to the Functioning of Government (Miscellaneous Provisions) Bill at page 19, the list of documents referenced at the Committee Stage at page 33, a memo from the Committee on Standards and Privileges on the Functioning of Government (Miscellaneous Provisions) Bill at page 35, and a letter from the Committee on Standards and Privileges to the Executive Office on the Functioning of Government (Miscellaneous Provisions) Bill at page 36.

Minister, will you make your opening statement?

**Mr Murphy (The Minister of Finance):** Thanks for the opportunity to discuss this issue with the Committee. Special advisers are an important part of a Minister's support team, as I am sure that you are aware. The renewable heat incentive (RHI) inquiry highlighted the unacceptable behaviour of some advisers in passing confidential information to family members, failing to declare glaring conflicts of interests and, apparently, acting out without ministerial knowledge or oversight. That is why the conduct of advisers was the focus of the five-party talks that led to the New Decade, New Approach (NDNA) agreement, and that is why, following the restoration of the institutions in January, I moved quickly to implement the new codes for special advisers.

These codes make clear that Ministers are responsible and accountable for the management, conduct and discipline of their advisers. They require advisers to keep good records, to use their official email accounts, and to publish their meetings with external organisations and any gifts and hospitality received. They make the Department of Finance, rather than the Ministers, responsible for setting the advisers' pay, and they cap pay level at £85,000 per year to ensure that no special adviser will be paid more than a departmental Minister.

I also introduced a new code of conduct and guidance for Ministers and new enforcement arrangements in March. A revised Northern Ireland Civil Service code of ethics has been shared with the Civil Service commissioners and the Civil Service unions and will be finalised as soon as possible.

These changes reflect the agreement reached by the five parties, and, as I set out in my clause-by-clause response, they address many of the issues that the Bill touches on. The remaining issue is whether breaches of the code should be a criminal offence: a matter for the police, carrying the penalty of imprisonment. That would be inconsistent with the standard practice in the public and private sectors, where workplace codes of conduct are a civil issue for employers, not a criminal issue for the judiciary. Importantly, it would undermine the democratic principle that Ministers are responsible and accountable for the conduct of their special advisers. That responsibility would be transferred to the police and the judiciary.

The Executive intend to review the codes in the light of the RHI inquiry report and to make changes where the RHI inquiry has recommended improvements. That is a primary role of the Executive subcommittee described in the New Decade, New Approach agreement. Revising rules made in legislation, as this Bill proposes, would be much harder and slower. Clearly, that committee has been impacted by the COVID-19 pandemic, but it will get back to its work very quickly as soon as more normal Executive business —

**The Chairperson (Dr Aiken):** Conor, has the subcommittee been formed yet?

**Mr Murphy:** There has been agreement to establish a subcommittee. The make-up of that committee will be from the five parties that are represented in the Executive, and I will chair it. While we can assume four out of the five members who will be on the committee, obviously, we have to have someone from the DUP. That was accepted by the Executive, but it had not actually met and had members appointed to it.

**The Chairperson (Dr Aiken):** In our discussions, last week, with the head of the Civil Service, he said that he was going to send us a copy of the terms of reference.

**Ms Sue Gray (Department of Finance):** Yes. He is going to do that.

**Mr Murphy:** I was talking about the revising of rules being more manageable. To do that through legislation would make the process much harder and slower. Legislation was not recommended by the RHI inquiry and is not supported by the five parties that make up the Executive. In my view, legislation is, therefore, at best, premature. The new arrangements should be put into practice, when we complete them, as a consequence of the review of the RHI inquiry recommendations, and should be tested before further changes are made.

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

I will open up. This is more a question of the philosophy of the issue. Last week, we heard from the head of the Northern Ireland Civil Service. We would need to check the Hansard report, but I think that he used the word "unique" about the circumstances of Northern Ireland at least three or four times. The Bill seeks to put into primary legislation matters that are being addressed through codes of conduct and guidance, so there is a presupposition that there is a body of evidence and precedence to support the idea that, through normal practice and ethics, that should be part of the normal administration and routine process of the Northern Ireland Civil Service. One thing that the RHI inquiry has shown is that Northern Ireland's unique circumstances meant that normal rules did not apply, particularly around the role of special advisers. Indeed, if normal procedures and codes of ethics had actually been followed all the way through the process, there would never have been an RHI inquiry and the Northern Ireland Administration would have been up and running. Northern Ireland is not like any other region, because of its unique circumstances and the role of special advisers in particular. Indeed, it is not like anywhere else in these islands.

Bearing in mind the situation that was caused by breaches of both the intent and the actuality of the rules around special advisers and what they were supposed to be doing, and the relationships of special advisers with people outside government, how can you say that we should go back to what is basically a voluntary code of practice and ethics, rather than putting that into legislation because Northern Ireland is unique? In some respects, we have probably not grown up enough to have the standard procedures that exist elsewhere. The people of Northern Ireland need that degree of certainty that it will not go back to the way that it was before.

**Mr Murphy:** I do not accept the argument that we are not grown up enough. That is a bit demeaning. I remember that, when we talked about the transfer of policing and justice powers, people used the argument that we were not grown up enough to accept those powers. I think that they were members of your party, actually. It was one of the most non-contentious issues that were ever transferred to the Assembly's arrangements, and it has worked without any great degree of contention since.

You have to separate out whether, in fact, the previous rules around special advisers were deficient or, indeed, whether special advisers broke, bent or disregarded those rules. I would not share the head of the Civil Service's view that we are unique. I will ask Sue to pick up on that. This set of arrangements for Ministers' special advisers, with regard to how matters can be reported on and investigated, is probably unique to this institution as opposed to any other on these islands. I would argue strongly that it was the behaviour of individuals that brought the whole system into disrepute. Having rules in legislation may not have altered the fact that individuals behaved disreputably. The fact is that we have a much stronger set of enforcement codes and practices here — now, even more so — than exist elsewhere. Perhaps, Sue could make some comments on that.

**Ms Gray:** Before the formation of the Executive, we worked with all five parties to develop a strong code of conduct for special advisers. We looked at other codes. We took the best of those codes, but we actually went further. The current code of conduct is written in a way that is much clearer and easier to understand. In it, there is a responsibility on all special advisers to serve the Executive as a whole. We have made it clear that the responsibility for discipline and conduct rests with the appointing Minister. All special advisers must sign a form to say that they have accepted the terms and conditions, and they have all done that. Where we have gone further is to actually say that they must keep accurate official records. They must use official email accounts for handling information. They must complete a declaration of interest. Relevant interests will be published. Information is published on who special advisers meet externally, along with their hospitality and gifts. We have published details of their salaries, which goes a lot further than was done here previously and a lot further than the other jurisdictions, where we have looked at their codes. There is an awful lot in the code. It was great work to do with the parties beforehand. It is a very strong code.

**The Chairperson (Dr Aiken):** This question is for you, Minister. You can see that the reason for us getting to that situation in the first place is that the behaviour of special advisers, in particular, undermined fundamentally the process of government. That was the main recommendation that came out of what happened with regard to the whole RHI process. It has become very clear that, in many of these instances, the real power behind the throne was the special advisers rather than the Ministers themselves. There is nothing in the revised code of conduct or the revised code of ethics that addresses that specific issue, whereas the legislation that we are being invited to look at does. Again, bearing in mind that we are here in the first place because of what happened in the RHI inquiry and what happened in RHI, how do we get to the point where we prevent ourselves, by using a code of conduct and a code of ethics, getting into a situation where, again, we have special advisers managing Ministers?

**Mr Murphy:** You have to be careful to make sure that that is not a sweeping statement. That, clearly, was indicated to have been the example in a small number of cases. There were only a small number of special advisers who had operated here over the previous 20 years whose behaviour was called into question and with whom the inquiry found fault because of their individual behaviour. The sweeping generalisation about special advisers running the place does not flow from that. Clearly, there were issues in relation to the matters that the inquiry investigated and found on. As I said, part of the job that we have done is to take the work that all the parties agreed in the five-party working group, which Sue chaired, and put that into a code for advisers and Ministers, with the potential for adding to that as required by the inquiry's recommendations.

It is quite clear that the behaviour of most special advisers has not been brought into question. It is questionable, then, whether a code or legislation in relation to RHI — or, indeed, some matters before RHI where special advisers were found to have been brought into disrepute because of their

behaviour — would have addressed that or not. Clearly, people have to abide by the codes, but what this makes clear, as Sue said, is that special advisers have a responsibility to the entire Executive. The Ministers are now accountable and responsible for the advisers, which was not clearly the case in earlier instances before RHI. *[Interruption.]*

**The Chairperson (Dr Aiken):** I am sorry, Minister. I am trying to work out where that interference is coming from.

**Mr Catney:** My phone is off, Chair. *[Laughter.]*

**The Chairperson (Dr Aiken):** *[Inaudible]* trying to see what is on our screens. *[Laughter.]*

**Mr Murphy:** The Ministers are accountable and responsible and are obliged to be accountable, not only for the conduct but for the discipline of their special advisers. As Sue said, that is a much firmer arrangement.

Where a complaint is made about the conduct of a Minister or about things that are going on in a Minister's office, the process is much more robust than what pertains in other jurisdictions, where there is a very strong political filter before a complaint is accepted and brought forward.

There are a range of measures that have been substantially improved on. That was the agreement of the five parties when they looked at the issue. It has to be borne in mind that they did so over the course of the work that Sue chaired in the full light of the RHI inquiry's public hearings. They may have been blind to what the inquiry would recommend, but they certainly were not blind to the inquiry's revelations or its discussions about the behaviour of special advisers. The recommendations were made accordingly, and, as I said, they built in the potential to expand on or add to those in the event that the inquiry recommended it.

**The Chairperson (Dr Aiken):** For the sake of the record, I need to declare an interest because I was very much involved in the five-party talks and with Sue's group.

**Ms Gray:** You certainly were, yes.

**The Chairperson (Dr Aiken):** My recollection of the discussions is such that I can say categorically, now, that I am disappointed by the degree to which we are looking to hold special advisers to account. That is one of the reasons why I believe that the legislative approach probably gives us more scope to be able to deal with problems, such as RHI, as they come. I just needed to make sure that that was put on the record.

**Ms Gray:** The other important changes are those that we have made in the private offices. We have increased the grading of the private secretary to Ministers so that it is a more senior person. We have also put in some training and all of that. A number of very important changes have been made.

**The Chairperson (Dr Aiken):** Can you explain the grading?

**Ms Gray:** When I arrived, we did not have Ministers. The private secretary would have been at staff officer grade but is now at grade 7.

**Mr Wells:** Minister, will you agree with me that the conduct of many spads in the whole RHI era was disgraceful and was single-handedly responsible for bringing down the Executive for three years?

**Mr Murphy:** Do I believe that?

**Mr Wells:** Yes.

**Mr Murphy:** I believe that a range of issues brought down the Executive and that RHI was the tipping point, but it was not on its own. We have talked about special advisers previously having been found by an Assembly Committee to be behaving in a manner that was not conducive to their appointment and the Minister responsible refusing to take any action. We had other scandals attached to Executive Ministers. We had the general level of disrespect being shown for identities in the Executive. Bear in mind that the full extent of each special adviser's role and all the issues that emerged during the

inquiry were not known when the Executive collapsed. RHI was undoubtedly a factor, but it was not the only one.

**Mr Wells:** I am interested in the fact that, in your introduction, you mentioned various misdemeanours of spads but that you did not mention that one particular party had two spads appointed outside the system whose job was to supervise those who were appointed within the system.

**Mr Murphy:** You are making an assumption as to what their job was. We are dealing here with legislation that is specifically about the role, function and conduct of special advisers. The RHI inquiry's findings on the role, conduct and behaviour of individuals were around issues that have been mentioned.

**Mr Wells:** You do accept, however, that one party had de facto appointed "super spads", whose job was to sit between this Building and another building to supervise and control those spads who had been properly appointed under the system.

**Mr Murphy:** That is your interpretation of it. I am not sure what interpretation the inquiry report had.

**Mr Wells:** The inquiry report is very clear that there were spads who were directly answerable to spads who had been appointed by a political party rather than through the normal vetting system, and those spads had ultimate control of the activities of the spads in this Building.

**Mr Murphy:** The spads who were appointed by your party operated in exactly the same fashion.

**Mr Wells:** Two wrongs do not make a right. Do you accept that two spads were appointed outside the system who had total control over the spads in this Building?

**Mr Murphy:** No.

**Mr Wells:** You do not? The RHI report has therefore got it wrong.

**Mr Murphy:** No. The RHI report came to a view on that. As far as I am aware, there were no findings in the RHI report on the conduct of any of those people. The findings on the conduct of people who leaked emails, who took a "fill your boots" approach and who, as I said in my opening remarks, were responsible for some of the behaviour that was highly criticised, such as passing confidential information to family members, failing to declare conflicts of interest and, apparently, acting without ministerial knowledge or oversight, related to people in your former party.

**Mr Wells:** Of course, there were misdemeanours on the Sinn Féin side as well.

**Mr Murphy:** The criticisms of the behaviour of individual spads related to people attached to your party.

**Mr Wells:** I am intrigued by what you said earlier. When the Bill had its Second Stage, it was enthusiastically supported by all the parties apart from your own. Mr O'Dowd made it very clear that he is opposed to the Bill. In your introductory remarks today, however, you seemed to indicate that the Executive have discussed this private Member's Bill and unanimously indicated that they do not wish to go down the legislative route but instead wish to have just the codes of conduct. Is that not at odds with the vote of the Assembly?

Mr Frew spoke enthusiastically on behalf of his party. We had the Alliance Party, the SDLP and others all saying that there is a lot of merit in the Bill. How does that square with what you are telling us, which is that the Executive have met, discussed the Bill and rejected it?

**Mr Murphy:** It squares with the fact that my party is at least consistent in its approach. We do oppose the idea of the Bill, and we said so. It was discussed at the Executive, and, without breaching the confidentiality of Executive discussions, my clear take on that is that all the parties on the Executive did not agree with legislating for this. That is why the Chair's opening remarks had me somewhat bemused. The parties on the Executive did not agree that legislation is required. You have been about here long enough, so you know that accepting that a Bill should get a proper hearing and be agreed at

Second Stage to allow then for detailed scrutiny does not in any way indicate support for that Bill or any final intention to vote for it. It is merely an attempt to allow a Bill to get a sufficient hearing.

**Mr Wells:** I took from what you said, and from what Sue said, that it was more than that: that the Executive had discussed Mr Allister's Bill and decided, unanimously, to oppose it.

**Mr Murphy:** I said in my opening remarks that all five parties on the Executive are opposed to the Bill.

**Mr Wells:** They are opposed to the Bill. The nine Ministers, or whatever the number is, have unanimously said, "We've got to kill the Allister Bill".

**Mr Murphy:** You are putting your interpretation on what they said. They said that they are opposed to it. How they choose to express that opposition in the House is a matter for themselves.

**Mr Wells:** Second Stage was not simply a matter of Members saying, "This is a Bill that should be considered". The tenor of the debate was one of enthusiastic support from all parties —

**Mr Murphy:** That is your interpretation.

**Mr Wells:** — apart from your party, which was consistent and clear that it did not want the Bill. Mr O'Dowd could not have been clearer. Everybody who spoke from the other four parties supported the Bill enthusiastically, yet you are telling me that, at Executive level, they are saying that it is dead in the water.

**Mr Murphy:** That is something that party members need to square with their Executive colleagues.

**Mr Wells:** OK. Finally, you and Ms Gray allege that you have a beefed-up code of conduct. What is to be lost by having that embedded in legislation? I cannot understand what would be. It is Mr Allister who is going to do all the work on getting the Bill through, so there are no cost implications, as far as I can see, to the Exchequer. What is the problem with having the code strengthened by its having a legislative basis?

**Mr Murphy:** I have outlined a number of issues, and I am sure that there are others. First, the codes, as you will know, are fairly living documents. They are frequently amended and added to, depending on political circumstances or issues that arise that were unforeseen when the code was being drafted. That is much easier to do when you have a code that can be taken through the process and approved by an Executive and an Assembly. Secondly, the code very firmly places the responsibility for special advisers on the person who appointed them to their post. That person is accountable and responsible for their discipline. The idea of legislation takes that accountability and responsibility away from that person and makes it a police and judicial matter.

**Mr Wells:** Even if the legislation, in which I see huge merit, were in place, it would do nothing to stop you amending the codes, which are subservient to the legislation. You have this idea that you would have a lack of flexibility, but you would not. You would have your overarching legislation, and you already have the code, which can be amended.

**Mr Murphy:** This is not overarching legislation. It is legislation that is specific to special advisers, who are covered in one code out of three codes under which the Assembly operates.

**Mr Wells:** Do you accept that there is nothing in the legislation that would stop you amending the code daily if you wanted to?

**Mr Murphy:** There is something that would delay the amending of the code on a daily basis: it would have to be done through legislation, and that would involve consultation and ultimately the passage of legislation.

**Mr Wells:** No. The codes do not have to be amended by legislation. The codes can be —

**Mr Murphy:** They do if you place them in legislation. The Bill is placing in legislation one code out of a group of three codes, which apply to Ministers, the Civil Service and special advisers respectively. Bear in mind that special advisers become civil servants on a temporary basis, so they are subject to

the Civil Service code. There is read-across. The Bill is therefore not overarching legislation under which other things can be framed but a specific piece of legislation for one part of the codes that apply to people who work throughout the system, be they Ministers, advisers or civil servants.

**Mr Wells:** For the sake of argument, and this is a purely fictional suggestion, a spad in the Department of Finance has behaved very badly — perhaps he or she has been leaking information to someone at party headquarters — and action is taken against him or her. What is to stop the Minister stepping in and preventing any disciplinary action being taken against that spad?

**Mr Murphy:** Doing so would probably put the Minister in breach of the ministerial code of conduct.

**Mr Wells:** Who takes the ultimate decision on whether action is taken against him or her? Who makes that decision, under what you are suggesting?

**Mr Murphy:** The Minister makes the decision.

**Mr Wells:** The Minister makes the decision. Having —.

**Mr Murphy:** If, as in the case of a former colleague of yours whom, I think, you supported at the time, the Minister refuses to take action against a special adviser when it is clear that there is a breach of the code under which the special adviser was appointed, the Minister can be held accountable for that refusal to act.

**Mr Wells:** What action can be taken against the Minister in those circumstances?

**Mr Murphy:** The Minister can then be investigated under the ministerial code of conduct and —.

**Mr Wells:** And what?

**Mr Murphy:** The very code that you operated under as a Minister — gladly, I am sure — states that the party responsible for the appointment of that Minister is obliged to take action. If it does not, it faces the choice of the electorate at the next election. That is the code that you operated under as a Minister. You did not object to it at the time. I know that you have a different position, now that you are no longer within the fold of the party, but that is the code under which you operated.

That was entirely the behaviour of a Minister that you supported at the time. He refused to act on the basis of a Committee's findings on a special adviser. This code would make that situation unacceptable, in that the Minister would be held accountable for a lack of action.

**Mr Wells:** I certainly would have had no problem with a legislative underpinning of the code at the time. What I am saying to you is that you had a code, which —.

**Mr Murphy:** You are saying that a code is deficient. Had you been found as a Minister to be responsible for behaviour that was unacceptable, the consequence of having that code was that your party would have been obliged to take action against you.

**Mr Wells:** What I am saying to you is —.

**Mr Murphy:** That is still the consequence. It was not an issue for you at that time, but it is an issue for you now.

**Mr Wells:** It is, because I subsequently heard about the appalling behaviour of spads in all parties.

**Mr Murphy:** In all parties?

**Mr Wells:** Yes, particularly in Sinn Féin and the DUP.

**Mr Murphy:** There is no record of criticism of the behaviour of any spad in Sinn Féin. There is criticism of how people were appointed and of how people were acting, but there is no record of criticism of their behaviour. There is a record of criticism of DUP spads.



**Mr Wells:** No. Your spads were carrying information out of this Building to those who are their superiors in a party political office and who were not appointed under the system or the code that you have outlined. That is what was happening. That is documented in the RHI report. It is factual. That is a major breach of the code of conduct. There was nothing under that system that could stop it, and there is nothing in your code of conduct that would stop it either.

**Mr Murphy:** That is your view, but I remind you that you were part of a party that was responsible for major breaches of the code of conduct. It did not cause you so much of a problem then. You did not leave the party over it. You left it over other matters, subsequent to all that has been revealed since you parted company. You were a Minister serving in that party under those arrangements, and I suggest that you were answerable to people in the party other than yourself.

**Mr Allister:** I thank the Department for a meeting that was facilitated last week between me and the permanent secretary and Bill Pauley about some of the presentational and terminology issues in the Bill. That was useful to me, and I am taking forward some matters.

I want to focus if I can on the fundamental divide, Minister. It is not so much that there is a disagreement about the need to cover certain issues. The disagreement is over whether that is adequately done by code or whether legislation is needed. You will agree that that is the essence of the point.

**Mr Murphy:** Yes.

**Mr Allister:** Do you also agree that there is nothing mutually exclusive in having legislation and a code? Let me illustrate this by way of one of the clauses in the Bill. One clause states that no special adviser shall be paid more than a grade 5 civil servant. It sets a ceiling, but that allows the codes, as you have done, to set the bandings. The clause does not state, "This shall be the salary". Rather, it states, "Here is the ceiling for the salary." Codes and legislation can, therefore, live very comfortably together. Do you accept the principle of that?

**Mr Murphy:** Your legislation goes much further than the salary issue.

**Mr Allister:** Yes. I was just using it by way of illustration.

**Mr Murphy:** The question is whether individual clauses in your legislation are more compatible than others and whether their sum total means that your legislation is necessary or desirable.

**Mr Allister:** The principle is that legislation and codes can live one with the other.

**Mr Murphy:** I would argue that, in this case, the legislation applies to one code, which is in a suite of three codes. In particular, the Bill overlaps with codes, and probably with all three. It certainly overlaps with the Civil Service code, because the persons whom you are legislating for are temporary civil servants.

**Mr Allister:** No, no. This Bill applies to Ministers, to special advisers and to civil servants. It is not only a special advisers' Bill. It is the Functioning of Government Bill. It is about all of those.

The codes that you were able to bring about were possible only because of the 2013 Act, which says that there shall be codes, but that did not inhibit you in the content of those codes outside the parameters set by that legislation. Likewise, here, the codes that you change from time to time can be changed subject to their being compatible with what the governing legislation says. That is the essence of how codes and legislation work, is it not?

Mr Sterling was here last week, and he agreed that legislation gives stronger protection than codes. Do you disagree with him?

**Mr Murphy:** I did not hear his view being expressed.

**Mr Allister:** If that was his view, would you disagree?

**Mr Murphy:** It would lead me to wonder why he accepted, as the head of the Civil Service, that these codes were the way forward. They were brought through the Executive process and agreed.

**Mr Allister:** I do not want to mislead you. He was saying that in a generic way.

**Mr Murphy:** If the implication of what you are saying is that the head of the Civil Service accepts that this is a lesser approach, that leaves me, a little like the five parties on the Executive, in a bit of a quandary on how people say one thing in one forum and one thing in another.

**Mr Allister:** No. I do not want to be unfair to him at all. I think that he was accepting the generic principle that legislation will always give more certainty than a code, which is a lesser thing. It is, of course, in line with what I said at Second Stage, when I quoted what Lord Bingham said in the House of Lords:

*"It is in my view plain that the Code does not have the binding effect which a statutory provision or a statutory instrument would have."*

It is a truism. It is undeniably so that a code cannot have the binding effect of legislation, which leads me to wonder what the fear of legislation is. Your letter of 27 April was interesting. It said:

*"It is also important that those rules are amenable to interpretation and the application of judgement".*

That sounds a little like, "We want to be able to do what we like".

**Mr Murphy:** It is clearly not.

**Mr Allister:** Therefore, you want codes that are amenable to interpretation and amenable to the application of judgement. Is that the truth of it?

**Mr Murphy:** Is the law not amenable to interpretation and to the application of judgement?

**Mr Allister:** There is a supreme authority when it comes to the law.

**Mr Murphy:** The process that I have ended up having responsibility for, and under which I produced these codes, was the product of a five-party Executive agreement before the Executive were reinstated. It was undertaken and developed over many meetings in the light of the evidence emerging from the RHI inquiry, which confirmed, as the five parties had agreed, that improved codes were needed, not legislation. The RHI inquiry confirmed that belief. The inquiry said that improved codes, not legislation, were needed, and we had already taken some steps towards that.

**Mr Allister:** It did not say that it did not need legislation.

**Mr Murphy:** Sorry?

**Mr Allister:** The inquiry did not say that it did not need legislation. It said that the codes that you have need to be strengthened and implemented.

**Mr Murphy:** It did not recommend legislation. Neither did the five parties that drafted the codes.

**The Chairperson (Dr Aiken):** For the sake of clarity, and given that I was involved in those conversations, we did not say that we would not have legislation. The principle was that we wanted proposals that would reform Government so that we would not return to a situation such as RHI. There was no discussion about whether it would come to legislation. That is not to say that legislation was not part of the consideration — it was. For the record, let us make sure that that is part and parcel of the process.

**Mr Murphy:** I presume that, if you recommended that the codes be strengthened, you did not consider that such strengthening would not achieve the outcome that you desired, which was to ensure that we had a system that would not allow a recurrence of the issues that the RHI inquiry threw up. I presume that there was satisfaction that strengthening the codes would achieve that outcome. That is my point

to Mr Allister: the inquiry obviously had the same view as the five-party working group that produced the bulk of what is in this code, which is that strengthened codes would be sufficient to ensure that we do not have the type of behaviour that the RHI inquiry threw up.

**Mr Allister:** Yes, but, Minister, no matter how strong you make the code, it is still just a code.

**Mr Murphy:** The judgement of five parties, plus the RHI inquiry, was that it was possible to improve the situation.

**Mr Allister:** It might have been the judgement of five parties at the time, but that is not the judgement of Solomon.

**Mr Murphy:** Yes, but you are putting your judgement and opinion against that, and it is your prerogative to do so.

**Mr Allister:** I am putting my opinion to the House, and the House agreed the principles of the Bill at Second Stage.

**Mr Murphy:** That is the prerogative of the House. Here, in my capacity as the Minister of Finance responsible for producing the code, I am being questioned on why that standard of approach was considered acceptable.

**Mr Allister:** I am asking you why you are scared of legislation.

**Mr Murphy:** It goes back to the agreement that was made by the five parties in the production of the material for this. That was confirmed by the inquiry's saying that the way to deal with the issue was to strengthen the codes, and that is what we have done.

**Mr Allister:** The old codes also stated that individuals must preserve confidentiality and act with integrity and honesty. That was stated strongly in the codes, but it did not prevent the situation evolving in such a way that the code was breached. Your code can put all those things as boldly as you like, but it could have the same fate as the old codes.

An Agriculture Minister's spad distributed documents to his family. That was a breach of confidentiality and a breach of the code. An Economy Minister, no less — Minister Hamilton — colluded with his special adviser and a special adviser in the First Minister's office to leak to his permanent secretary a false trail of internal documents to try to take the heat off his party. That was in patent breach of codes and the ministerial code, but it happened. Civil servants gave documents to Moy Park. That should not have happened, but this was happening long before RHI. Mr Brimstone did what he should not have done in the Red Sky situation — in essence, he bullied Jenny Palmer. Your Department stepped in and recommended that he be disciplined, but the Minister at the time, Mr McCausland, quashed it. At that time, the Social Development Committee produced a report that recommended a change to stop a Minister intervening and aborting investigative processes. That is exactly one of the clauses that is in my Bill.

**Mr Murphy:** It is also one of the issues that is addressed by this improved code for Ministers, whereby they are responsible and accountable, and, if they do not take action, they can be reported and investigated for a breach of their own code. This is exactly the discussion I had with Mr Wells, who was supportive of Mr McCausland at the time.

**Mr Allister:** You know that that is a phantom thing.

**Mr Murphy:** The RHI inquiry also had the ability to recommend people for prosecution in relation to those matters.

**Mr Allister:** You know that that is a phantom thing because it is down to the Minister's party whether he is disciplined. It is a fiction.

**Mr Murphy:** That is the party of which you were a member when it had Ministers in this institution.

**Mr Allister:** No, I was not.

**Mr Murphy:** You were a party member at the time of the first Executive.

**Mr Wells:** He was not.

**Mr Murphy:** You were a member right up until the St Andrews Agreement.

**Mr Allister:** Yes.

**Mr Murphy:** I was at St Andrews with you. You were a member when DUP Ministers sat in the Executive under the weakened codes, as you see them, that applied at that stage. This is a bit like Mr Wells.

**Mr Allister:** Frankly, Minister, I have to correct you. You are wrong. There were no codes under law until my special advisers Bill of 2013, which your party voted against. You were not here; you were furloughed to the House of Commons at the time.

**Mr Murphy:** I was not on 80% of my salary, I can assure you. *[Laughter.]*

**Mr Allister:** Just full expenses. Until that time, Minister, there were no statutory codes. It was my first Bill, which your party opposed, that brought in statutory codes. You now oppose legislation that would supplement the codes and make sure that they do not fail again. Why are you scared of legislation? Is it because you want the flexibility for things to be amenable to interpretation and the application of judgement so that you can do what you like?

**Mr Murphy:** Not at all.

**Mr Allister:** Then, there is nothing to fear in legislation.

**Mr Murphy:** I am following through on the proposition that was developed by five parties in accordance —

**Mr Allister:** Five parties —

**Mr Murphy:** You either believe in democracy or you do not. I know that you have issues with how this institution is framed. However, the five parties make up the Executive.

**Mr Allister:** I believe in democracy in this House.

**Mr Murphy:** If the parties change their view and support your Bill, that is a matter of democratic choice.

**Mr Allister:** No one called a vote to oppose the principles of this Bill at Second Stage.

**Mr Murphy:** That is correct, and that is the democratic prerogative of the House.

**Mr Allister:** Many spoke in favour. It is no answer, Minister, surely, with respect, to say that, six months, nine months ago or whatever, the five parties took a view. That is like the law of the Medes and the Persians: it cannot be changed. It does not matter whether I come up with something better. You are sticking with it. That is it. That is the most churlish attitude that I can imagine.

**Mr Murphy:** I am representing the code that I produced, and I have given you the basis for it.

**Mr Allister:** I am saying that your code can live alongside this legislation.

**Mr Murphy:** You are arguing to do something different in legislation, and that is your prerogative. If the Assembly supports that legislation, it will be passed and become law. I am operating on the basis of the remit that I was given. I do not believe that legislation is necessary. I state that view to you clearly. I have supporting guidance from my Department, which does not believe that legislation is necessary. I had discussions at the Executive table, where Executive colleagues did not believe that it was necessary. If the Assembly changes its mind and votes to support your Bill, it will pass.

**Mr Allister:** The fundamental point that I am making to you is that there is a compatibility between having codes and having legislation. The two dovetail. They are not mutually exclusive. Your mindset seems to be that it has to be one or the other. That is not the case. You can have legislation that sets certain parameters and codes that amplify. That is how codes work.

**Mr Murphy:** As I say, that is your prerogative. The Assembly can decide whether it agrees with you.

**Mr Allister:** Yes. I take issue with your saying that creating criminal offences would transfer responsibility from Ministers to the police and courts. That is just not correct. If, today, a civil servant or special adviser commits an act of theft in their office —

**Mr Murphy:** That is a crime.

**Mr Allister:** — that is a crime.

**Mr Murphy:** It is not part of a code.

**Mr Allister:** Yes, but that is a crime.

**Mr Murphy:** These codes apply to behaviour in office in terms of —

**Mr Allister:** I want to create the crime —

**Mr Murphy:** A civil servant who assaults somebody in their office is guilty of a crime.

**Mr Allister:** That does not undermine Ministers' authority.

**Mr Murphy:** No, but it is dealt with under criminal legislation.

**Mr Allister:** Yes. Likewise, if a civil servant leaks confidential material for the advantage of someone else, that should be a crime. That is what clause 11 says.

**Mr Murphy:** That is your view.

**Mr Allister:** Yes.

**Mr Murphy:** However, the two points that you are making do not conflate. You say that we should put into a code that a civil servant should not steal from the office or assault another person in the office. Those are crimes in their own right. We are creating a code of behaviour in office, and these are the types of codes that apply to employment in the public and private sectors.

**Mr Allister:** We had examples of spads leaking documents for the advantage of others.

**Mr Murphy:** Yes.

**Mr Allister:** We had an example of a Minister leaking documents for the advantage of others.

**Mr Murphy:** The inquiry could have recommended prosecution.

**Mr Allister:** I am saying that that is such a gross thing to do that it should be an offence. If the House agrees with me, well and good. However, simply having a code that says that people will get their wrists slapped for doing something that they should not do is, given that they got away with it under codes that said the same, not a sufficient response to the situation.

**Mr Murphy:** I believe that it is. These are issues that, I agree with you, were reprehensible and should not have happened. We were obliged to strengthen the codes to make sure that such things cannot happen again. Those responsible should be held accountable or, if not, those responsible for putting them in that position should be held accountable for their actions.

**Mr Allister:** It can all happen again under your codes.

**The Chairperson (Dr Aiken):** Thank you, Jim. Just for a moment of clarity: Sue, in your experience of working in the Cabinet Office, if a Minister's special adviser had leaked, in any form, a classified document to another company or business, and that was used for business or economic advantage by that company, would that have been investigated by the Metropolitan Police? Would it have been taken as a criminal offence?

**Ms Gray:** The threshold for referring something to the police is very, very high. You would have to look at the individual circumstances, but I think there is a very high threshold for something to be referred to the police.

**The Chairperson (Dr Aiken):** OK.

**Mr Frew:** Thank you for your attendance. Minister, I want to talk about the letter that you sent us on 27 April, which Jim mentioned. However, before that, there is something that has troubled me since the Bill's Second Stage. You are the Minister, and you happen to be in a party, but your party colleague stated that his party — your party — would not support the Bill or vote for it at Second Stage because it came from a private Member. Is that your understanding of why Sinn Féin does not support the Bill? If it is, it is a grievance to every private Member in this place, and it completely disrespects their ability to bring forward private Member's legislation at any time on any subject.

**Mr Murphy:** I do not know who made the remark. It is not a principle. We have supported private Member's Bills before, and I am sure that we will support them again. Our issues are the content, purpose and intent of the Bill. That is what has caused us to express our opposition, as has your party, the Chairman's party, the Alliance Party and the SDLP. That is what causes us to oppose the Bill.

**Mr Frew:** My party gave me authority to support it at Second Stage. You realise that there are different layers of legislation and stages to go through, and that the Bill could look completely different by the time we go to vote on it.

**Mr Murphy:** That may be your intention, and I am sure that Mr Allister will be interested to see how you intend to neuter his Bill at some stage in the future.

**Mr Wells:** Strengthen it.

**Mr Allister:** Strengthen it.

**Mr Frew:** "Neuter" is not the word that I would use.

**Mr Wells:** Make it stricter.

**Mr Murphy:** I made the point to Mr Wells earlier that, of course, an indication of support at Second Stage does not mean that any MLA or party will support the final outcome of the Bill. That is the passage of legislation. It may well mean that people want to expose what they consider to be the inadequacies of the Bill at Committee Stage or a further amending stage, or it may be that they wish to add to it and change it in some fashion. That is the passage of legislation.

**Mr Frew:** Or there could be a genuine will to make sure that the errors of the past do not happen again. There is a strong whiff of a need for reform in this place, and there is a duty on all of us, MLAs, Back-Benchers and Ministers alike — and the Executive, which is different, to try to reform this place so that it performs better.

**Mr Murphy:** If people had behaved according to the codes, perhaps we would not be in the situation where we are discussing the strengthening of the code. For me, the principal issue around how special advisers behave and how their Ministers respond to that behaviour, is something that — I do not think that it is a very strong argument to say, "Make codes stronger so we'll behave better". That should be a facet of public life anyway.

**Mr Frew:** It should be, but it certainly has not been.

**Mr Murphy:** Well —.

**Mr Frew:** That is why we are exploring the possibility of needing legislation. If the codes of conduct are continuously being misinterpreted or not used, and there is continuous misconduct, it is not good enough to simply keep strengthening a code of conduct that is going to be ignored anyway. Do you agree?

**Mr Murphy:** I can only speak for myself. I have no intention of ignoring a code of conduct. If a party intends to continue to ignore it, try to exploit it, try to find loopholes in it or disregard it, that speaks to that party and its behaviour. It does not speak to the code. All of these institutional arrangements have a set of rules and regulations, as do all democratic institutions. If somebody wants to try to thwart them and misbehave, you look to codes to protect the institutions and democracy in that regard, but you cannot stop the behaviour of individuals. What you can do is hold them to account for that behaviour.

**Mr Frew:** In your letter of 27 April, you state:

*"Having rules on the standards of behaviour for Ministers and civil servants including special advisers is critical, and it is very important that those rules are observed and enforced" —*

I agree —

*"but it is also important that those rules are amenable to interpretation and the application of judgement, and that the rules can be developed and enhanced as circumstances require."*

So, you have a code of conduct, which is the standard-bearer. In what circumstances should that then be developed? Surely that rule is the rule that is a good and efficient standard of behaviour and work, so in what circumstances would you change that code of conduct? Where would you see fit that another Minister and another spad in your Executive could interpret the codes of conduct in whatever way that they see fit?

**Mr Murphy:** It is not a question of them interpreting the code of conduct in the way that they see fit. Circumstances change. I am long enough here, with Mr Wells, to remember when we set in place the first set of Standing Orders. They have changed multiple times over the years. That is why we have the Committee on Procedures: to continuously look at the Standing Orders of this institution, to add to them, to remove ones that become outdated or do not address current circumstances.

Take for instance, technology. This refers to emails, and we have all had a massive technological advance over the last six or seven weeks in how we communicate, so perhaps the codes will need to be refreshed to take in Webex or Zoom or certain things like that. Codes in relation to any institution — this is why you have books that size in Westminster that have developed over the years — are constantly changing. That is because society and the systems we use for government are constantly changing and codes need to be able to move to reflect that and to be amended quickly, if it is needed, and to be a constantly living document, if you like. That is what codes are.

**Mr Frew:** Yes, but you address that in your last sentences in that paragraph by saying:

*"Putting these standards of behaviour into primary legislation would rule out the kind of responsiveness and judgement that is required to make rules effective in fast-moving and complex environments."*

I do not agree, because primary legislation is different from codes of conduct, but you still have not addressed:

*"but it is also important that those rules are amenable to interpretation and the application of judgement".*

What does that actually mean? I do not want to misquote you or to put a slant on your terminology, but what do you mean by that?

**Mr Murphy:** I mean that a Minister has to make a judgement. If somebody is alleged to have been in breach of the code of conduct and the Minister is responsible for their behaviour, the Minister will have to make a judgement. If they refuse to make a judgement, the commissioners will have to make a judgement. The commissioners have to be able to take into account all the circumstances, which will be complex or changing, or the circumstances within. For instance, to give one aspect, the way

communications are conducted has changed rapidly in the last six weeks, so commissioners have to be able to interpret and understand the circumstances in which a particular set of behaviours were undertaken and make a judgement as to whether that was a very deliberate breach, along the lines that Mr Allister is talking about with the deliberate leaking of confidential information for material gain, or an inadvertent breach of a communication rule. That is just an example. Of course there has to be an ability for somebody to make a judgement. We put commissioners in place to make that judgement, and people can make complaints to them in that regard.

**Mr Frew:** On the actual — sorry, my screen has gone boogaloo here. On the actual clauses, I will not take up the meeting too long, but it is very important that we get into the nitty-gritty of some of your responses, because you were kind enough to put them in clause by clause, and I appreciate that. On clause 1(6) of the Bill, your response states that the code of conduct and the contract of employment already include provision for only a properly constituted spad being able to fulfil the functions of a spad, and that everything else would be unlawful. How would it be unlawful?

**Mr Murphy:** It would be unlawful if you were trying to purport to fulfil the function of an appointment that you were not appointed to.

**Mr Frew:** So you would have a scenario whereby a collective of spads — I do not know what that is. *[Laughter.]*

**The Chairperson (Dr Aiken):** A rubber of spads, maybe?

**Mr Frew:** A collective of spads. You can have all sorts of fun with terminology here. *[Laughter.]* A collection of spads would, maybe, report to a higher source, body, collective or person. How would those codes of conduct prevent that spad from going to, and being accountable to, a line manager who is not the Minister?

**Mr Murphy:** The only situation where that would pertain would be in TEO, where there are a number of special advisers, so I presume that they are line-managed.

**Mr Frew:** That someone could even be outside the Executive room — maybe a party official or officer. I could talk about any party in that regard, because we are trying to safeguard the accountability and the confidence of the Assembly and Executive.

**Mr Murphy:** On line management, the only spads who would be line-managed in a collective way would be the spads in TEO, on either the First Minister or deputy First Minister side. The other spads are individually appointed by a Minister, so they are answerable to that Minister; that is their line management. The spad in Finance is answerable to me, the spad in DAERA is answerable to Edwin Poots. The only place where line management might occur is when you have a collective group of spads in TEO.

**Mr Frew:** What if the line manager for the Minister is actually the spad?

**Mr Murphy:** This is not Tim Johnston that we are talking about; this is normal parties.

**Mr Frew:** So, if it could happen in any party, it could happen in yours. Even if it happens in any party, surely you need to safeguard against that because you are a member of the Executive?

**Mr Murphy:** The person who is first answerable for the behaviour of the special adviser is me, and the person who is answerable for decisions and actions that I take is me. I am subject to complaints being made and a commissioner making a judgement on my actions. In the Department of Finance, the buck stops with me for my behaviour and that of my special adviser.

**Mr Frew:** Yet we have had concerns shown by senior civil servants in the past, with your predecessor not being able to make decisions on his own and being under instruction.

**Mr Murphy:** Do you take your instructions from Tim Johnston?

**Mr Frew:** No.



**Mr Murphy:** You must be the only person in DUP who does not. I am sure that Mr Wells would concur with me. *[Laughter.]*

**Mr Frew:** That is as may be. You see, I am a Member of the Legislative Assembly —

**Mr Murphy:** Well, do your Ministers take their —?

**Mr Frew:** — and a spad is completely different.

**Mr Murphy:** I pose the question back to Mr Wells. Did he take instructions, while he was a Minister, from Tim Johnston?

**Mr Frew:** So if I was lily-livered in any sense —.

**The Chairperson (Dr Aiken):** On the grounds that I am probably enjoying this conversation too much, I shall ask you to keep to the key issue.

**Mr Frew:** So if there were MLAs who were prone to being victims of bullying, and if there were Ministers in the same guise, surely those people need to be protected by legislation that ensures —?

**Mr Murphy:** Can you tell me —? I have been looking at Mr Allister's legislation, and I do not see in it protection of Ministers from bullying. You may be describing a situation that you are more familiar with in your own party terms than I am, but I am telling you now that, under these codes, as they are written and agreed by the five parties that were responsible for drafting them, a Minister is responsible for his or her own decision-making. They are also responsible for the behaviour and the conduct of their special adviser, and they are answerable to a complaints commissioner if they are found to be in breach of that. I would suggest that to go into a commissioner and say, "I'm sorry, I was bullied into doing that", is hardly a reasonable defence. I do not recognise that situation having happened, certainly in any experience that I have ever had, where I was bullied into decisions that I otherwise would not have taken.

**Mr Frew:** So the issue around, and the concerns shown by the Civil Service with regards to, Ministers being under instruction from people outside of the Executive room — you do not recognise that? You do not fear that that could happen?

**Mr Murphy:** I do not recognise it, certainly in relation to my party, and I can only speak to my own party experience.

**Mr Frew:** Surely you should be guarding against other parties being involved in practices such as that when you are a part of the collective Executive? Confidence is key nowadays. Surely you want to progress that and make it better and more resilient?

**Mr Murphy:** So, do we bring in a rule in to say that Tim Johnston cannot instruct your Ministers? Is that it? If you are going to make those suggestions, you are going to have to bring forward some solutions. The premise of your discussion here is that all the Ministers are controlled by somebody outside the Executive.

**Mr Frew:** No, no. I am saying is that it only takes one occasion where that could happen, and the confidence in the Executive falls.

**Mr Murphy:** So, then, we go back to the original thing about, "Make rules so that I will not misbehave". If a party comes into the Executive intent on misbehaving, it is very difficult to draft a set of rules for every one of those circumstances. What you have to do, and what all responsible parties should be doing, is to go into an Executive to behave properly within the defined rules of that institution and do the best job that you can for the people you represent.

**Mr Frew:** Yet here we are with an RHI inquiry, with a whole lot of issues and circumstances and question marks around the conduct of a lot of the spads. Not all of the spads, but a lot of them. We need to try to resolve that for the confidence of our people.

**Mr Murphy:** What you are suggesting to me is much beyond that. You are suggesting an authority over Ministers and some kind of regulation to prevent Ministers from being bullied into taking decisions that they would not otherwise have taken.

**Mr Frew:** What I am most definitely suggesting is a reform Bill from the Executive. Is there any sign of a reform Bill from the Executive?

**Mr Murphy:** Is there any sign of a —?

**Mr Frew:** A reform Bill, in the light of the RHI inquiry. The Executive should not leave it to private Members to put through legislation.

**Mr Murphy:** No, but what the Executive agreed, including your party along with other parties, was that we would strengthen the codes. That is what we have done. The Executive also agreed, as part of NDNA and the commitments that got this institution back up and working again, that, in the light of the findings of the inquiry, we would form an Executive subcommittee to analyse those findings and strengthen where required. Had the RHI inquiry suggested that we needed legislation, I am sure that we would have looked at the idea of legislation.

**Mr Frew:** Finally, is there a timescale on the work of that committee?

**Mr Murphy:** There was a timescale. As you will understand, it has been interrupted by COVID, and the Executive have not been able to function in the way that they would normally have functioned. There was a timescale. It was a number of months.

**Ms Gray:** Within three months.

**Mr Murphy:** Three months, yes.

**Ms Gray:** We will get back to that.

**Mr Murphy:** When we pick up that work again, we will come back to the same timescale.

**Ms Gray:** On the issues about civil servants or other people raising concerns, we have strengthened the Civil Service code. Unlike anywhere else, we are very specific that, if a civil servant has a concern about the behaviour of a Minister or a special adviser, they can raise that concern with anybody in the Civil Service, such as their line manager or their permanent secretary, or with the Civil Service Commissioners. We also have the enforcement panel of external commissioners, and, as a civil servant, you can go there as well. Anybody can make a complaint to them. In the Cabinet Office, where I came from, only the Prime Minister can decide whether there is something to be investigated and then can refer it to an adviser, but that is all done very internally. This is a very external complaints process that we have put in place.

**The Chairperson (Dr Aiken):** For the sake of clarity, what is a speak-up champion? Is it the same as a whistle-blower?

**Ms Gray:** It is the same as a whistle-blower. I think whistle-blowing can sometimes have connotations and people can sometimes think that, if they have a concern, it is not really whistle-blowing. They see whistle-blowing in a particular way, so it is just about speaking up.

**The Chairperson (Dr Aiken):** Will the role of the speak-up champion have the same sort of force as with the whistle-blowers' legislation and the rest of it?

**Ms Gray:** Yes, they are there to act as a champion for somebody who may not feel that they have the confidence perhaps to raise the concern themselves. They can go and talk to them. They are a bit like, I suppose, somebody in the Department who will support them through a process and give them advice on what to do and what the legislation says. It is a supporting role.

**The Chairperson (Dr Aiken):** The role for this is if somebody feels that a special adviser or a Minister is acting outwith the rules.

**Ms Gray:** Yes. As a civil servant, you may feel that you do not need to get any advice on that and will go straight to the Civil Service Commission or you will go to your permanent secretary, but, if you are a bit unsure, you might want to talk to somebody about what you might do. The role of the speak-up champion is supportive: to give advice but to also sometimes even take the complaint forward if an individual feels that they cannot do it.

**The Chairperson (Dr Aiken):** I am looking at the new code of ethics. There is the idea of a time limit, but it does not specify the time limit for bringing forward a complaint.

**Ms Gray:** I am not sure that there is a time limit.

**The Chairperson (Dr Aiken):** It just mentions a time limit taken for the commissioners — "within a specified time limit".

**Ms Gray:** That is for the Civil Service Commission. I do not know what its time limit is, but I suppose what it is trying to avoid is getting involved in cases that are many, many years old and perhaps the records would not be around or something. I do not know.

**The Chairperson (Dr Aiken):** Can you find out what the time limit is and let the Committee know?

**Ms Gray:** Yes, I will.

**The Chairperson (Dr Aiken):** That would be of use.

**Mr O'Toole:** Thank you both for coming in. Thank you in advance for craning your necks, or not; I will not be offended if you do not make eye contact as you are answering me. *[Laughter.]* Since you took office in January, the new code has been put in place. How has that changed your approach to government? That applies to both of you.

**Mr Murphy:** My own approach, or —?

**Mr O'Toole:** Yes.

**Mr Murphy:** We have all been through the experience of watching the outcome of the inquiry. We all had a strong sense, whether or not parties felt more culpable about what went down in RHI and on previous issues, that that probably underpinned the work of the five-party group. I was not on that group, but I got various reports from it. That underpinned that work to recognise that there was a real need, not just to satisfy the ability to hold people to account but, in general terms, to demonstrate to the public that there was a much more robust approach to ensuring that the type of behaviour that became evident during the RHI inquiry, which, arguably, manifested itself before that in various other incidents, was not going to be permissible and would be dealt with in a much more robust fashion.

I cannot sit here today and tell you what is going on in every single Department at the moment. As Sue mentioned, the arrangements are in place whereby civil servants can speak out and special advisers are, now, clearly accountable to the Ministers who appointed them. If some matters are brought to the attention of a Minister and they refuse to act on them, they will be accountable to a commission should a complaint be made. The complaints process is much more accessible to individual Members than you will find in any other institution in these islands. In my view, that all leads to a stronger position. Obviously, the experience of that will be in how people demonstrate how they do their business over the coming period, and I hope that, as I answered to Mr Frew, the strongest guarantee of all of that working is the way in which parties behave when they are in office.

**Mr O'Toole:** Relative to your previous stint as a Minister, which, I think, was between 2007 and 2011, are you, on a day-to-day basis, doing anything differently in how you approach the job or your management of a special adviser?

**Mr Murphy:** I had no issues between 2007 and 2011 with the special advisers that I had. There were never any questions raised about them. I notice the difference with the private secretary being a much more senior figure — rather than just an administrative assistant — someone who gives advice at meetings rather than simply recording contributions. That is no reflection on the people whom I worked with in the previous private office; they were all very wonderful people and were very professional in

what they did. The private office seems to me to be much more empowered with regard to giving advice, ensuring that it is correct and that the proper checks and balances are there so that communications are correct and in order.

I had a gap of a number of years when I did not serve as a Minister, so I cannot attest to whether that has only occurred now or had begun to occur over that period, but I see a much stronger approach by the private office. I am fortunate in that I have a good working relationship with the permanent secretary. I have no doubt that, should I have any disregard for the rules, it would not be long before I would be advised of it.

**Mr O'Toole:** I want to come on to, if I may, Chair, the uniqueness of the institutions here, but does having a more senior private secretary mean that they do more of the — if I say, "bartering", I do not mean that in a pejorative sense — necessary negotiation and arbitrage that goes on between a multi-party Executive? Some of the concern in the past has been that spads were doing a lot of that. Is your private secretary and private secretaries in general doing more of that than they were in the past?

**Mr Murphy:** Let us bear in mind that we have a limited experience of this mandate. A lot of it has been taken up by a very unusual circumstance and response to the COVID pandemic. People have been operating in a very different manner from that which we expected when we went in. I do not mean that people have been disregarding rules or regulations, but it is not a normal set of circumstances. I do not see the private secretary in a bartering role. It is quite often the case that, if you have to submit a proposition to the Executive, you circulate it among Ministers. If some Ministers have particular issues, and they are communicated back to you, you try to see who can match that. There will be a role for permanent-secretary-to-permanent-secretary communication in that regard, and whatever other senior officials in the Department might be talking to their counterparts on the other side. It is a very formal role between the different levels of different civil servants to make sure that those things are teased out to the satisfaction of both Ministers, so that when a proposal goes to the Executive, it has a reasonable prospect of being supported and moved through. That is why we bring propositions to the Executive, so I do not necessarily see — and Sue may have more of an understanding on that — the role of the private secretary as being involved in that way. They are responsible for assisting in the communication —

**Ms Gray:** Yes.

**Mr Murphy:** — of all of that and having an understanding of where things are at, but not necessarily in engaging in some kind of negotiation on your behalf.

**Ms Gray:** First of all, I think that the private office — obviously, I can only speak about our own — is operating hugely efficiently. An awful lot of work is going on, and they are managing and coordinating all of that. I see notes of every meeting being produced really quickly, and they are coming out to inform people about what has been discussed and what the actions are that have been agreed. It is proving to be a very efficient operation, and I have, obviously, worked in Whitehall and what I am seeing is a very good set of working.

**Mr O'Toole:** On the role of the permanent secretary, is there a specific role in the Northern Ireland institutions, and has it increased since coming back, that is about managing tensions or relationships between Departments? Is that greater than it would be in Whitehall, where you are much more of an accounting officer?

**Ms Gray:** I think that managing relationships in Whitehall was quite a bit of work. *[Laughter.]*

**Mr O'Toole:** Indeed, but in a multi-party Executive like ours, is there something distinct about it?

**Ms Gray:** There is. First of all, I have worked in a two-party coalition in Whitehall, and this is five parties. Of course, permanent secretaries talk to each other to try to get agreement and to get things eased through, or whatever we are trying to do. It works in quite a similar way. I have worked in a single-party Government, and it was sometimes like working in a two-party coalition *[Laughter]* so, it is working well.

**Mr O'Toole:** It would be helpful if, on the question of why legislation is too inflexible, either or both of you could set out an example of where legislation would be too inflexible to deal with a particular situation? Or is that question too vague?

**Ms Gray:** One of the interesting things — we discussed this last week — is around the record-keeping of meetings. I think that you make judgements about the length of what you need to do. You are sometimes in a meeting, and at the end of the meeting, depending on who it has been with and what the actions are, you may just record the actions and who was there. In other circumstances, you need a much more detailed note. I do not think that you can specify that you must take a note of the meeting and record the actions, but you need to allow people the flexibility. Things are sometimes overtaken; you can sometimes find yourself in a meeting, actions are discussed and agreed, and, actually, the actions are the further note that comes forward. There is a clause in here about what you must do for a note of a meeting, and I think that I would like to be able to make a judgement about the length of, and what needs to be in, that note of a meeting.

**Mr O'Toole:** One of thing things that you mentioned — I would like the views of you both on this — is that in Whitehall, ultimately, some of the biggest calls on the conduct of a particular special adviser would be made by the Prime Minister. I am sure that that would be the case in Dublin, and it is probably the case in Edinburgh, where you have a single head of Government, even in a coalition, whose ultimate point of accountability is through an election. That simply is not straightforwardly the case here. Does that not mean that there is a particular challenge, when you have the principle of joint working and a mandatory coalition, that you just do not have the built-in accountability mechanism of a single head of Government who is responsible to the electorate at the end of it? Does that not mean that the system here is fundamentally different in that you do not have accountability in the same way?

**Mr Murphy:** I think that, arguably, it is stronger, because a Prime Minister can make a judgement that this is too much of a hot potato for them in the run-up to an election and decide to obfuscate or put it to the bottom of the in tray and not have it dealt with. Here, there is much more ready access to a set of commissioners who will go off and investigate and you do not require a decision to be taken by the First Minister and deputy First Minister. They are subject to the same level of inquiry as any of the rest of us. Arguably, it is a stronger position than one that relies on the political judgement of a head of Government who may be in a wholly different set of political circumstances that influence the exercise of that judgement. I think that, arguably, we are in a stronger position here.

**Ms Gray:** The commissioners' findings will be published. To have that transparency is huge.

**Mr Lynch:** If you look through the report, page after page, you see the same names jumping out at you, and they have been mentioned here: Johnston; Crawford; Brimstone; and Cairns.

**Mr Wells:** McAteer.

**Mr Lynch:** The sponsor of the Bill said that there were breaches of the code. Some of those people go back to Red Sky. There were major breaches here. Sue, if those types of scenarios arose again, how would they be dealt with in the context of the upgraded, strengthened code?

**Ms Gray:** First of all, if I was concerned about something, I would not just sit back and worry about it. The way that we operate in our daily jobs is that, if you have a concern, you go and talk to the individual and tell them the concern. If it was about a special adviser, you would talk to the special adviser and talk to the Minister. On the strengthened codes, if action was not taken or if I felt that I could not raise a concern, although I do not think that I would ever feel that, there are provisions in the Civil Service code and under the ministerial code through the enforcement commissioners to have a route to make a complaint. That is far stronger than in other places, where there is not that provision. We have been explicit in the codes about how to do that.

**Mr Lynch:** You are saying that that would be sufficient to deal with the types of scenarios that arose in the past?

**Ms Gray:** If a civil servant or anybody externally — I am thinking about the whistle-blower — had concerns that they felt were not being dealt with, they would have somewhere to go. The enforcement commissioners, which the five parties discussed and agreed, have a timeline for completing their investigation. I think that it is 21 days. The first stage is within seven days, the following stage is a further 14 days or something and then their findings are published. I think that that is a huge thing.

**Mr Lynch:** From your experience in the past of dealing with spads, can you give some sense of where we are now compared with then?

**Ms Gray:** What you have here is an enforcement mechanism that is far stronger than in other jurisdictions. If ever I have an issue with a spad, I would raise it.

**Mr Lynch:** I just want to make one point. It is interesting that the five parties here had a working group to work up these codes and that there was an agreement on it. I get a sense that people are beginning to talk out of both sides of their mouth when they say that they or their party was not at the table. It is interesting to me.

**The Chairperson (Dr Aiken):** For the sake of clarity, having sat round the table for those discussions, I can say that those are not the discussions that I recognise.

**Mr Wells:** That is a useful point that Mr Lynch raised. Obviously, if that is correct, we are wasting our time because the five parties will be whipped ruthlessly to vote against it, even though, personally, MLAs might be in favour of it. When did the five parties decide to oppose the Bill? Was it before or after Second Stage? That is crucial to know. Even with all the strong support that it received in at Second Stage, did the parties meet after that to say that it had to be ditched, or was it before?

**Mr Murphy:** They did not say that anything had to be ditched. I took the codes to the Executive, and, at that time, we were aware that a private Member's Bill was in the offing. The Executive were very clear that they felt that this was the way to go and did not feel that legislation was the way forward.

**Mr Wells:** So it was before Second Stage?

**Mr Frew:** That is different from saying that the parties in the Executive are opposed to it. That is a completely different thing.

**Mr Murphy:** As I said, you can square that circle with your own party. I have a very clear recollection of what the views were.

**Mr Wells:** But that was before Second Stage?

**Mr Murphy:** Do you think that your oratory won them over during Second Stage?

**Mr Wells:** No, my oratory certainly would not win anybody over.

**Mr Allister:** Was it before the Bill was published?

**Mr Wells:** Yes, I am just trying to see when —.

**Mr Murphy:** I cannot recall the time factors involved in this. I can recall clearly that we were presenting a discussion on these codes, and, if people had different recollections, they did not manifest themselves in the Executive discussion on this because people were largely satisfied with the issues that were brought forward and agreed the codes. A discussion also arose about the idea of legislation, and my clear recollection was that all the parties were agreed that legislation was not required and that the codes —.

**Mr Allister:** Do you mean that this specific legislation, my Bill, was not required?

**Mr Murphy:** Yes.

**Mr Allister:** OK.

**Ms Dolan:** You will be relieved to know that all my questions have been answered. Sue, I want to get clarity on something. Did you say that this was the strongest code on these islands and that it goes further than the code anywhere else?

**Ms Gray:** Obviously, I have a lot of experience of the code that is in place in GB, including Scotland and Wales, because they take the same code and reproduce it. This code goes further than those codes.

**Ms Dolan:** Thank you.

**Mr McHugh:** Go raibh maith agaibh, agus tá fáilte romhaibh anseo inniu arís. You are very welcome here today again. We are becoming well acquainted at this Committee.

**The Chairperson (Dr Aiken):** We enjoy the opportunity to talk.

**Mr McHugh:** Many of my questions have, in a sense, been answered, but I cannot help but feel that, once again, when we saw the names that were popping up, there seemed to be a culture — a culture in a particular party — that existed and that is possibly still there. That maybe has to be addressed in that party.

**Mr Allister:** Then you should vote for the Bill.

**Mr McHugh:** I am not sure whether the code of conduct would help to address that, but, clearly, it is an issue for a particular party, and that party should address it.

I am glad to hear that the code of conduct has been reinforced from what was in existence. I am very glad to hear from the permanent secretary that you regard it as one of the strongest codes of conduct that you have seen drawn up. Your reputation, in a sense, goes before you. I read a book by a particular author and reporter who said that you had been sent over here to clear up the bureaucracy and the likes of it. Quite clearly, I am sure that your contribution has in many ways helped to strengthen that, too. How would you summarise your experience with the spads who are in place now and your relationship with them?

**Ms Gray:** I think that the special advisers who are in place are very hard-working. Having been here for about 20 months without an Executive and now four months with one, I see that they are hard-working and committed and are working well. I have not seen the issues that you all talked about and that were maybe around before. I am seeing people who really want to do the best job that they can in very difficult circumstances at the moment; for example, Mr Swann's adviser. They are working really hard. I say to our own special adviser that they are workers. You want workers; you want people to do their work. The code gives more guidance to them about how to do their job. It is the same for all the codes. The three codes have a lock; they are related, and they overlap. You pick up things in one code, and then you pick it up in another. That was a very important part of the work that was done by the parties.

**Mr McHugh:** We were all fully aware at the time of the RHI inquiry of how people were dancing on the head of a pin when they talked about responsibility and accountability. The code very clearly identifies that the buck stops with the Minister and that they are accountable and responsible. You can use any word that you like, but in the event of any spad not adhering to the code, the Minister is the person who will deal with that.

**Mr Murphy:** That was probably one of the more memorable exchanges in the inquiry. The inquiry took the view that that was and should have been the case. The code makes that much more explicit, and it probably addresses the issue, which others referred to, that, where a Statutory Committee found that a special adviser behaved in an inappropriate way and the Minister refused to take action, the codes now mean that that Minister could be held accountable for that refusal to act.

**Mr Catney:** Thank you very much, Minister and permanent secretary. It has been three years since I came in, and we have not done a whole lot. It is all about trying to restore faith. I hear about the legislative approach, and I hear about what can get done through the regulations in the code. I will go back to my time when Jenny Palmer — I hope that it is all right to mention her name — was a councillor with me. There was a personal attack on her, and it really affected her health. Given what we have here and what is being imposed, I am talking about integrity, honesty, objectivity and all the things that make those the cornerstones. The code roots those down and gives us a chance. As you said, Sue, in response to Jemma's question, this is as good as we possibly can get, but we do not want any more Jenny Palmers coming out of this or any more RHIs or Red Skys. I am thinking about the note taking and everything that comes out of that. It is nailed down, and you cannot see any slippage coming through it.

By the way, Mr Allister's Bill will still come. It has only had its Second Stage, and, as you said, Minister, we will all have a chance to vote on it. Is that not correct? Am I reading that right?

**Mr Murphy:** Yes. People here will know about the passage of legislation. It goes on, and the Second Stage is about the broad principles of the Bill. It will go on to Consideration Stage and Further Consideration Stage, and the Committee will have its view on the Bill as well. People can ultimately decide whether it goes ahead.

**Mr Catney:** Are you fairly confident that we will not have any more of that? There was a personal attack on Mrs Palmer, and those attacks have to stop. You mentioned whistle-blowers, permanent secretary. Are you fairly confident that this will bring all that to the fore? I do not want there to be any more slippage. I want this to be built on a strong foundation for us going forward.

**Mr Murphy:** Sue can answer the detail of that. As I said to Mr Frew, the biggest guarantor of things being done properly is the behaviour of parties and individuals in parties. You can strengthen all the codes that you want and argue for legislation if you want, but the biggest guarantor that you will not end up in a situation where people have to be held to account and have to go through the whole process of finding out who said what and who did what is people's personal behaviour. A set of standards is expected of people in public life, and if everybody adheres to that, the codes do not become necessary. The primary motivator for all parties in the Executive and for anybody who is elected to this institution is to look at those lessons and say, "That standard of behaviour is not acceptable, and we should all hold ourselves to a higher standard".

**Mr Catney:** I started that off with those four cornerstones. I am sure that for all of us here who are involved in politics the strongest one is integrity. That is probably what makes us what we are. It is about cementing all that. If there is any slippage or breakage in that, this will catch out any malpractice and bring it to the fore.

**Ms Gray:** I obviously do not know the case that you are referring to —

**Mr Catney:** That is OK. That is fine.

**Ms Gray:** — but the special adviser code actually says:

*"The preparation or dissemination of inappropriate material or personal attacks has no part to play in the job of being a special adviser as it has no part to play in the conduct of public life. Any special adviser found to be disseminating inappropriate material will be subject to a disciplinary process that may include dismissal."*

In those codes, you have very clear statements about the standards of behaviour and conduct that we expect. That is for not just special advisers but civil servants and the Minister. The Civil Service code now has an absolutely explicit requirement that we must keep accurate records. That is new in the code.

**The Chairperson (Dr Aiken):** Matthew, you said that you had a short question.

**Mr O'Toole:** You just read from the special adviser code, Sue. One of the things that the Bill does, and I have had conversations with Mr Allister about this as we examined it, concerns leaks or official information of different kinds being leaked. Would either of you think that no special adviser has leaked — I do not mean officials necessarily — sensitive or market-sensitive information? Is it your expectation that, since the institutions were restarted in January, no special adviser from any party has leaked information to a member of the media?

**Mr Murphy:** I cannot say for certain. I know that there is an inquiry ongoing into information that a particular member of the media got. That is ongoing, and if the inquiry into that is able to find the source, should it be civil servants, special advisers or Ministers, the codes will apply. There is an ongoing investigation into that to find out how that information was received by a particular sector of the media.

**Mr O'Toole:** If that investigation found that it had been inappropriately leaked, what should the penalty be?

**Mr Murphy:** The penalty should be according to the codes.



**Ms Gray:** Whatever investigation you are doing —it may be into leaking — if there is leaking, you will look at it on a case-by-case basis. You look at the individual information that has been leaked, and, depending on the seriousness of it, the penalty could be up to dismissal.

**Mr O'Toole:** Part of the job of special advisers is to brief the media on behalf of their Minister and their party, and we need to be realistic about that. Where do you draw the line in what is appropriate for a special adviser to brief to the media? What information is not appropriate for a special adviser to give to the media?

**Mr Murphy:** It is also part of the job of the information service in a Department to talk to the media and journalists, so it is not just the special adviser's role. If a complex proposition is being brought forward, quite often the people in the public information side of a Department will talk journalists through it so that there is a clear understanding of what is being proposed. That is a necessary function of government, because the Government have to communicate and make sure that what they are communicating is understood.

The lessons learned from RHI, which are about maliciously undermining someone or another Department or leaking information that was not part of what the Department intended but that then undermined what the Department was doing, clearly come under that. However, apart from that one incident in relation to that show — the investigation has not concluded, so we do not know who was responsible or what the motivation was — it is very hard to make a judgement on that. It is not just the special advisers who are responsible for talking to journalists; the Executive information service and the various people who work in the Departments are also responsible.

**Mr O'Toole:** I understand, and, indeed, it was my job not so long ago.

**Ms Gray:** I was thinking that. *[Laughter.]*

**Mr O'Toole:** Indeed it was, yes. I was aware that it is the job of press officers and civil servants who work on the communications side to brief about Government policy, or Executive policy here, but we all know, as civil servants, that information finds its way into the media and the civil servants will say, "I do not know how that got there. A special adviser might have leaked it". It is probable that there is a behavioural line and that that line may be permeable and may not be exact when it comes to what is and what is not appropriate. It may be politically appropriate and acceptable for a special adviser in the Executive or in any Administration to brief on behalf of their Minister to a political journalist that their Minister is annoyed about x issue, and there should not necessarily be anything illegal about that. What I am trying to get to is this: does the code, as it currently stands, set out where that becomes inappropriate?

**Mr Murphy:** The code is very clear about what behaviour is required. If someone alleges that a special adviser has breached that, it will be up to the commission or, in the first instance, the Minister to make a judgement as to whether that has been breached or whether it was justifiable. They always have the Civil Service code as well. There are judgements attached to the standards that are set down in the code. I suppose that —.

**Mr Allister:** Sorry, Minister: there is nothing in the code that refers the actions of a spad to the commissioners.

**Mr Murphy:** No, I am saying that it would be up to the Minister.

**Mr Allister:** The Minister decides about his own spad.

**Mr Murphy:** If that Minister decides, in a case that would clearly constitute a breach, that they are not prepared to take any action because they think that it is OK, that Minister is then themselves held accountable for that lack of action.

**Ms Gray:** In the ministerial code, the guidance to Ministers, which is where it goes a bit further, actually says that the Minister is responsible for the conduct and discipline of a special adviser, which is the same as other codes. It then goes on to say that the Minister is also responsible for the special adviser's adherence to their own code of conduct. That is where there is a bit of a lock. If there is then a breach of the code, that can be referred. If it is a breach of the ministerial code, it gets referred to the enforcement commission.

**Mr O'Toole:** This is my very final question. I suppose that what I am trying to get to is to invite either of you to reflect on the fact that it may be that the reason that your view is that legislation is not appropriate is that, once you create legislation, you stop there being room for politics to happen, and a certain amount of politics has to happen that involves special advisers briefing journalists off the record. I am just putting that out there. Is that your view?

**Mr Murphy:** There is a reference in my letter to judgements needing to be made. People need to be able to examine the circumstances in which certain things happen. It is quite clear that, if there is a view that something has been breached by a special adviser, and the Minister disregards that in some way, they themselves are subject to an investigation and will have to account for why they considered that what was arguably a breach of the special advisers' code did not merit any particular action. There is, if you like, that double and triple lock.

**Ms Gray:** They are civil servants, so, if they breach the special advisers' code, complaints can be made against them to the Civil Service Commissioners and the internal channels.

**Mr Wells:** Do you accept that that is, of course, all done behind closed doors? The difference with court proceedings is that the antiseptic of sunlight is shone on affairs that were going on, and the public finds out what the spad was up to.

**Ms Gray:** The enforcement commission will publish its findings, and that will be done within three weeks.

**Mr Allister:** Not on the spad; on the Minister.

**Ms Gray:** It is the Minister's responsibility to ensure that the special adviser adheres to the code. If the Civil Service Commission is involved in investigating a complaint against the special adviser, it also would make public its findings.

**Mr Allister:** Then you would have to make the special adviser subject to the Civil Service disciplinary process, which is what the Bill suggests.

**Ms Gray:** They are subject to the Civil Service code. Therefore, they come within the remit of the Civil Service Commission.

**Mr Allister:** Yes, but if they breach it, that goes to the Minister who appointed them without any selection panel or anything else, whereas if they are civil servant — and they are — why should they not be subject to the disciplinary processes of the Civil Service?

**Mr Murphy:** They are uniquely appointed by the Minister.

**Mr Allister:** Yes, but that does not denude them of the requirement to live by the code of the Civil Service. If they breach that code, the disciplinary processes of the Civil Service do not apply to them. The person who handpicked him or her is the only arbiter, whereas if they breach the Civil Service code, surely it should be the Civil Service processes that deal with them.

**Ms Gray:** If a special adviser breaches the special advisers' code, it depends what that breach is. For example, if there was fraudulent use of expenses or something, I think that you would do your NICS process. The issue with the Civil Service process is that there is normally a line manager, which is assumed to be a civil servant.

**Mr Allister:** Yes, but the code could be written to adjust to that situation. As the Bill suggests, a spad, because they are a civil servant, could be made subject to the disciplinary code of the Civil Service, and then the code of conduct and appendices could be adjusted in order to allow that to happen. You create, in terms of perceived independence, a far more saleable proposition that spads are appointed as civil servants and that the independent Civil Service will look after their discipline, rather than the person who handpicked them, without their having to go through any selection process, being the person who will look after their discipline.

**The Chairperson (Dr Aiken):** Just on a note of clarification, if you are on a —.

**Mr Murphy:** If the person who appointed them, "looks after them", in your pejorative terms — in other words, protects them, as has happened in the past, and you are well aware of the examples — that person can be subject to complaint and investigation for that lack of action.

**Mr Allister:** Which is ultimately decided by their own party leader.

**The Chairperson (Dr Aiken):** Excuse me —.

**Mr Allister:** No independence.

**Mr Murphy:** That is the system that pertained when all you guys were happy enough with it.

**Mr Allister:** I was not happy with it.

**The Chairperson (Dr Aiken):** Hold on a wee second. I have a question. If a consultant or contractor comes into the Civil Service and is employed on a temporary basis, they are fully subject to all the rules and disciplinary procedures of the Northern Ireland Civil Service. That is based on their contract of employment, by which that person is employed and paid by the NICS. How is that person different from a spad?

**Mr O'Toole:** They are not appointed by Ministers.

**Ms Gray:** A contractor in the NICS is actually a civil servant and is subject to the code. They would have a Civil Service line manager, who is the person who would be involved in that process. That is the difference; the special adviser does not have a Civil Service line manager. I can imagine — first of all, I do think —.

**The Chairperson (Dr Aiken):** It is interesting that you said that if a spad had been, let us say, fiddling travel expenses, that would be dealt with under the Northern Ireland Civil Service code.

**Ms Gray:** The reason why I think that different circumstances may apply in different cases is that you may not always have a particular process. You may want to vary your process a little bit. If an issue arises with a special adviser, I might go and say, "Actually, this has happened. I think that we need to have an investigation", or whatever it is. You will use whichever process you may need to use. Sometimes you might use a bit of a variant of the Civil Service process if it related to a conduct issue. Sometimes you would go and have a conversation with a Minister and actually say, "That person has got to go". There are varying degrees. You need that flexibility to decide which one to use. I am saying that, and I am not somebody who would be soft on any of that. I know what I would have to do. There is flexibility, and you need to look at the individual circumstances.

**Mr Allister:** Sorry, could I just —?

**The Chairperson (Dr Aiken):** Sorry, Jim. Maoliosa, did you want to say something?

**Mr McHugh:** No.

**The Chairperson (Dr Aiken):** Sorry. You were just nodding at me.

**Mr Allister:** Can I just make one point?

**The Chairperson (Dr Aiken):** Just a small one, Jim.

**Mr Allister:** If a civil servant who is not a spad steps out of line, they are subject to the full weight of the disciplinary process of the Civil Service. If a civil servant who is a spad does exactly the same thing, he is not subject to any of that, and his appointing Minister is the sole arbiter of the rights and wrongs of what he did.

**Ms Gray:** The way I see it is that if we are talking about two similar things that have happened — I cannot think of an issue — you may have a Civil Service investigation up to the particular point at which the Civil Service could not take a decision on it. It would not take a decision on that individual,

because the Minister has appointed them. The Civil Service would tell the Minister what it thinks should happen.

**Mr Allister:** Sorry, where does it say in the code that a spad who is alleged to have breached the Civil Service code would be subject to Civil Service processes? It does not.

**Ms Gray:** I am saying that I think that you would decide on the individual case.

**Mr Allister:** Who would decide?

**Ms Gray:** If it were me, I would have a conversation with the Minister. Sometimes —.

**Mr Allister:** You would have to say to the Minister, who is the sole appointing authority and disciplinary authority, "I advise you to ask the Civil Service to investigate that, and then you can decide whether to act on the recommendation". The Minister could say "No, I am not asking them to investigate it." There is nothing in the code that compels anyone —.

**The Chairperson (Dr Aiken):** Which what has happened in the past, which is why we are looking at this.

**Ms Gray:** I honestly think that we have stronger arrangements.

**Mr Murphy:** They can raise that complaint outside of the Department.

**Mr Allister:** Against the Minister.

**Mr Murphy:** Yes.

**Mr Allister:** Not against the spad.

**Mr Murphy:** The Minister has to defend their inactivity in relation to the spad.

**Mr Allister:** Minister, you still have someone who is a temporary civil servant and is supposed to live by the rules of the Civil Service, who can defy those rules and get away with it if his Minister lets him.

**Mr Murphy:** No.

**Mr Allister:** Whereas, if he was a full-time civil servant and not a spad, he would be subject to the Civil Service processes.

**Mr Murphy:** Well, if the Minister allows him to get away with it —.

**Mr Allister:** Surely it comes with the territory; if you are a civil servant, then you are subject to the processes.

**Mr Murphy:** If the Minister allows him to defy those rules and get away with it, then the Minister is answerable.

**Mr Wells:** To whom?

**Mr Allister:** But the spad is away in the smoke.

**Mr Murphy:** If the Minister is prepared to fall on his sword to defend the spad, then that is his or her choice.

**Mr Allister:** It has happened before.

**Mr Murphy:** I am not aware of that. I have seen cases where Ministers have refused to act and there is no consequence for them, but, in this case, there is a consequence for them refusing to act.

**Mr Allister:** If their party leader thinks so.

**Mr Murphy:** Well, the ultimate authority over all —.

**Mr Allister:** Let us get real.

**Mr Murphy:** The ultimate authority over all Ministers is those who appoint them. That has been the case here since 1998.

**The Chairperson (Dr Aiken):** Just a small one, Paul.

**Mr Frew:** Minister, you talked about a breach that is currently being investigated. If it is a live investigation, you may not be able to give us any detail. Is it from the Department of Finance?

**Mr Murphy:** No.

**Mr Frew:** Another Department?

**Mr Murphy:** Yes.

**The Chairperson (Dr Aiken):** Just one small thing — well, two things. One I will talk to the Minister about in a second, but just a quick one for Sue.

Sue, you said that the private secretary grade has gone up by two grades.

**Ms Gray:** Yes.

**The Chairperson (Dr Aiken):** Were people who were in the post automatically elevated by two grades or was there an appointments process? There is quite a lengthy recruitment —

**Ms Gray:** They have gone up by two grades. It would have been staff officer, then you have deputy principal and grade 7. They are grade 7s. It is my understanding that, of the people holding those posts, none of them was holding the post previously at the more junior grade. So there have been internal expressions of interest, which were done at the time.

**The Chairperson (Dr Aiken):** Has all of this has happened since the Executive have been back up and running?

**Ms Gray:** Yes.

**The Chairperson (Dr Aiken):** So there has been a recruitment process?

**Ms Gray:** I think that different Departments have done it slightly differently, but there has been a process to identify people to undertake the private secretary role.

**Mr Allister:** Does the Minister make a choice?

**Ms Gray:** No.

**The Chairperson (Dr Aiken):** OK. Thanks very much, Sue.

**Mr McHugh:** It would be remiss of me to miss this opportunity.

**The Chairperson (Dr Aiken):** Oh, no. Come on, come on.

**Mr McHugh:** Minister, this is maybe unrelated but, with regard to the self-employed and the whole issue about Irish passports and Northern Irish driving licences, has there been any development on that recently?

**Mr Murphy:** You are taking more of a liberty than some of the rest of them. *[Laughter.]* We are regularly in touch with the Treasury, and Sue has spoken to HMRC. There was a compatibility issue with regard to their data and the data on Irish passports. For some reason, there is a compatibility issue around Northern Ireland driving licences. They are working to address that compatibility issue. There are other means to get through, aside from providing those forms of identification. Ultimately, a phone discussion service is available. The problem with that is that it is patchy, but there is work ongoing to improve that. We have raised all those issues, and they assure us that they are working to address them.

**Mr McHugh:** Thank you, Minister, and I apologise for being so cheeky.

**The Chairperson (Dr Aiken):** I am going to be cheeky, but I am not going to apologise.

**Mr Murphy:** It is the Chair who indulges you, not me.

**The Chairperson (Dr Aiken):** Conor, just a quick question: Gareth Hetherington. There are lots of discussions going on about rates, where we are going in the rates process and the work that is being done with Ulster University. Can we get an early oversight on what is going on with that? MLAs are getting a lot of questions about what we are doing about continuing the rates holiday, whether we are going to tailor it or whatever. Some companies are now reaching the point where, despite the increase in the furloughing time, they are going to have to start making significant decisions about redundancy. I am not asking you to answer now, because that would be unfair, but can you give us an indication of how far we are getting along with that and when we are likely to see an output?

**Mr Murphy:** We are working on it and are very close to a final draft to bring to the Executive. We have said publicly that we wanted to use the initial rates relief, which we applied to all businesses. You will have heard me say in the Assembly that about 60% of businesses would not be currently having a rates holiday if we had followed the system that was adopted in England. We had always intended — we signalled this from an early stage — to use that period to get a greater analysis of how the pandemic was impacting on certain sections of businesses as opposed to others. Obviously, the Executive have to agree this — it is only my proposition and my idea — but there is a clear intention to have a more targeted rate relief for the longer term for the sectors that are suffering the most and which, by all analysis, such as that undertaken by Ulster University, would continue to suffer even if the restrictions were lifted. Clearly, hospitality will continue to struggle, even if the restrictions are lifted, around how people can be safely managed within those businesses. So, that has been the guiding principle.

We have done the analysis, and it has been very useful. Not only will it serve the Department of Finance with regard to rates initiatives but it will suit the Executive as a whole for economic recovery. It has been a useful piece of work, and we are finalising a paper to bring to the Executive. Of course, we will share that at the earliest possible stage with the Committee.

**The Chairperson (Dr Aiken):** OK. Sue and Conor, as usual, it has been a pleasure. Thank you very much indeed.

**Ms Gray:** Thank you.

**Mr Murphy:** Thank you.