



Northern Ireland
Assembly

Committee on Procedures

OFFICIAL REPORT (Hansard)

Review of Private Members' Bills: Ms Kellie
Armstrong MLA

1 December 2021

Until the point at which the drafting was finished, I found the system extremely helpful. I have to say that our Bill Office was fantastic. I went through the whole Assembly system; I did not go outside it. Nobody else wrote the Bill for me. We did the consultation with a lot of support from our Bill Clerk. We did all the work and ticked all the boxes concerning what we had to do for the Speaker. Then we got to the drafting stage; one of the expert panel of drafters did the drafting of the Bill and was fantastic. Then we came to the First Stage in the Assembly, and you know where we are with it now.

The difference between the support in the early, pre-drafting stages and what I have now is significant. The continuity of support is significantly different. I did not understand that. That could be my fault, but it would have helped me and would help the members of a Committee if there were clear guidance for MLAs to explain exactly all the processes that a Bill has to go through. It would help a Bill sponsor, an ordinary MLA, a Minister or a member of a Committee that is scrutinising a Bill to know all the processes that it has gone through before it gets to First Stage: for instance, that the Bill has to be put to the Speaker, and he has to be content with it before the consultation can go forward; that the Bill Office will help with the content of the consultation; and that the Bill will have gone through scrutiny — the drafter will have gone through it, legal advice will have been provided, and many hours of Bill Office work will have been done on it — before it even gets to the First Stage. I have found that some MLAs said that the consultation was not done on my Bill, but it was. They said that the drafting was poor, but the drafting was not poor: an expert drafter was brought in by the Bill Office to draft the Bill for me. I wish that guidance was provided to give a list of all the stages. You can find that if you go hunting on the Assembly website, but it needs to be spelt out so that MLAs do not criticise our Bill Office staff or draftspople, who are working very hard for us. That would be very helpful.

After drafting, once I had gone into the Assembly procedures, one thing that I — *[Interruption]* sorry, that is not me — found is that the type of support that you have is like night and day. I have to admit that our Bill Office did hand-hold me through the early stages and through drafting, but, after that, it is a very different process. I was not aware of that, and it has caused some frustration for me. I do not get access to the same level of legal advice as a Committee can access, and, rather than having a legal person or legal advice specifically available for private Member's Bill sponsors, if the Assembly is already paying for legal advice, would there be an option for a percentage of that advice to be set aside for private Member's Bills so that Members know that they have access to x number of hours — whatever that may be — and can then choose to use those hours, for instance, for drafting? When you get to that stage, and before Consideration Stage, improvements can be made, but, because you do not have direct access to or contact with a drafter or a legal service, it makes it quite difficult.

We are working through Bill Clerks, who are also giving evidence to and supporting Committees or other MLAs who are bringing amendments. Could we not have continuity of staff? Maybe there is something about qualifications at this stage — I do not know — but if you have Bill Clerks working with you right from the very start, can they not come through with you after drafting? That continuity needs to happen, because, as a private Member, you do not have access to a Department and are not part of a Committee. You are on your own.

I appreciate that that is what happens when you bring a private Member's Bill, but it was only after my Bill was drafted and we started to work with other parties to bring forward amendments that it was made very clear to us that we did not have that type of Bill Office support. For instance, there is an issue with the explanatory and financial memorandum (EFM) that I still have not got to the bottom of. Who is responsible for rewriting the EFM if an amendment by a Committee, another MLA or a Minister is agreed at Consideration Stage? If a Minister had tabled it, there would be a whole team doing the EFM update, but when you are a private Member and you are coming forward with your own legislation, you do not have access to the legal services, and rightly so, that a Committee or Minister has access to. How do I, as a private Member, amend the EFM when it is somebody else's amendment and somebody else's legal advice, which I do not have access to? Our Bill process is good. It is just that, after drafting, there needs to be a little more consideration of the private Member's Bill process, including access to legal advice, producing guidance and having some sort of consistency through the process.

Apart from that, I have found the Bill process unbelievably stressful, as you can imagine. It has not been a fun time. It causes added difficulties, but that is the risk that you take when you take on a private Member's Bill. It has been quite difficult, and, during the Bill stages in the House, there are no comfort breaks. I sat for seven hours. There was a break for Question Time, thank goodness, but it is a long time to sit in the House and concentrate. You are not like a Minister; you do not have anybody else in the Officials' Box. You may have staff elsewhere in Parliament Buildings, but you are sitting in the Chamber for hours on end. The Assembly should consider, in the same way as happens in a

council or another workplace, building in a comfort break every two hours or two and a half hours, especially when a debate can go on for so long.

I am trying to think of anything else, Chair. I believe that we need drafters in our Assembly. The drafter that I had was superb, but there has been criticism about the style of writing, and people who have a Westminster background say, "That is how Westminster does it, not how we do it". I do not have control, as a private Member's Bill sponsor, over that. We may need to consider that, going forward. We might need investment to have our own drafters. I think that the number of Bills that have come through would make that value for money, but it is about having access to legal services as well. I genuinely have no idea how much all that could cost. I am sure that it would be quite expensive, but it might be less of a cost than it would be to have to go out to independent experts who are on our panel.

The Chairperson (Ms Ní Chuilín): Thank you, Kellie. That was quite comprehensive. I will now throw it open to members for any questions or observations.

Mrs Barton: Maybe this results from my ignorance rather than what you have said, Kellie, and you may not know the answer: why do we not have drafters in the Assembly? You are more experienced in the Assembly than I am.

Ms Armstrong: I genuinely do not know. I do not know whether the issue is that we have been hit with so many private Member's Bills coming through. I am not sure, to be honest, Rosemary. I know that the Office of the Legislative Counsel works across all Bills, whether they are Executive or private Member's Bills. Maybe, because there are so many private Member's Bills coming through, it now makes sense for us to consider having them internally.

Mrs Barton: Kellie, I appreciate what you said about more consultation and consistency in legal advice. I can understand that totally and why one would need it, but, given the current pressures on Assembly business, have you any suggestions on how plenary time might be maximised and prioritised towards the end of a mandate? We are rushing now to pass as many Bills as possible, and you are aware of that. Have you any ideas on how to maximise it?

Ms Armstrong: To be honest, Rosemary, at this time, this is a bit of an unusual situation because we have had three years missing, and we are squeezing everything into this last period. I have to say that the Bill Office and the Speaker's Office, in any normal mandate, provide you with a timetable. As a private Member, you go in very early on in the mandate and put down your PMB proposal. You are told whether or not that proposal is within the scope of the Assembly, and then you start the work on your Bill. If that timetable had been stuck to, without the three years' gap, I would probably have had my Bill through in 2018. As a result of the gap and the rush, it feels as though there are an awful lot of private Member's Bills coming through now.

There are certainly many Executive Bills coming through, but I think that what the Speaker is doing right now is quite good. He is getting as many Bills as possible through to Second Stage. They can come back in the next mandate, so, in some sense, instead of people having to develop something and take quite a while to do that, they will be on the ground and running from day 1 of the next mandate. I do not know whether my researcher and I will introduce another private Member's Bill in the next mandate. We would be starting afresh, but we are very aware of the work that goes into that. You need at least 18 months prior to First Stage to go through all the processes that you need to comply with for the Speaker before you get to the House. If anybody falls outside that timetable, it puts pressure on the end of a mandate, so I would be happier if the timetable were a little bit more firm.

Ms S Bradley: Kellie, that was really comprehensive. Thank you. I have a couple of points, but I will just raise one of them with you. The person in the Bill Office who works with you to get it to the point where you give the instructions to draft will have a good understanding of what you are aiming to achieve. Once it leaves them, are you saying that there is a point in time where you want to reconnect with them or stay with that person? I hear what you are saying. It is one thing if it stays inside the Bill Office and the staff can work with you, but, once it is issued out, I would like to understand better who recommends who drafts. I have seen this come up across a few private Member's Bills; there are stylistic problems, and the Member is not to be aware of that. Maybe one drafter would write it in a different way. Are you directed to somebody by the Bill Office or how do you find out who will do the drafting for you? Are you asking that you keep in touch with one person in the Bill Office right through from inception to, hopefully, conclusion?

Ms Armstrong: In my situation, with the length of time that passed — obviously, there was a three-year gap — the person whom I started with in the Bill Office was promoted. That was fantastic, and I was glad. That person was very good. I then had a team in the Bill Office up to the drafting stage. That team finished with me at the drafting stage and, after the Bill's First Stage was read, I moved on to a sort of post-drafting Bill team. That continuity changed, and a new person was sent — a very good person — but I would rather have had continuity because the team that I was involved with up to the drafting stage helped me with the drafting instructions and the EFM; all of that.

I did not choose the drafter. The Bill Office has an expert panel of drafters. I could be wrong, but I believe that how the process works is that the Bill Office presents the Bill that is being introduced to the drafters and whoever comes forward and has the time and the capacity to take that drafting forward does so. I did not go looking for the drafter, but it happened that the person introduced to me by the Bill Office was someone with a particular interest in Northern Ireland and in what my Bill contained because it followed on from work that they had done years before. That person knew the subject, knew what I was trying to do and was very clear on the drafting. I could go back and forward with them, and they were very open to discussing things like why I wanted to use a “must” rather than a “may” — you know, the very detailed work on legislation. I did not have to go looking for that. That was provided to me through the Bill Office.

Continuity of Bill Office staff from pre-drafting through to post-drafting would help. The pre-drafting team had a fantastic wealth of experience because they had come through the consultation process, the drafting instructions and the development of the EFM. They were involved in asking Departments and other external stakeholders about the financial implications and getting costings. They were very involved with the Bill up to that point. Then it changed to a different team, the post-drafting team. That team certainly has their own skills, but it is not the same person as before. Plus, after drafting, that Bill Office person advises any MLA who wants to table amendments and the Committee. To be honest, I feel for that person. They are cut between three or four different people or Committees, because they have to retain a semblance of confidentiality. I cannot ask a Bill Office person what the Committee is asking them for, and it is vice versa for the Committee. That privacy is there and is very well protected. However, it seems as though that is an awful lot of pressure, when I could be doing with legal advice on the language and with a drafter to look at amendments to make sure that there are no unintended consequences. I hope that that answers your question.

Ms S Bradley: Yes, Kellie. That really was helpful. Thank you. It painted a very clear picture for me. Thank you very much.

Ms Bunting: Sinéad covered some of this. Kellie, can you clarify why the team changed post-drafting? Was that purely because of that promotion or was that promotion a happy coincidence? Is it standard practice for there to be a different team post-drafting?

Ms Armstrong: It seems to be standard practice, Joanne. My pre-drafting team changed personnel because somebody was promoted. The first person whom I worked with was promoted, which was fantastic. I got another couple of people who were involved with the Bill before drafting.

Ms Bunting: OK.

Ms Armstrong: To be honest, that was fine because we were still going through that long process before you get to First Stage. After that, it seems to be standard practice with the Bill Office for the team to change, and you leave behind your pre-drafting team and move forward with a different team. The team members certainly talk among each other, bandy about opinions on what a certain word would do, how to change something, how to make an amendment work or decide whether something will not work. However, the team that I have now are not there to provide me with legal advice. They will try to facilitate amendments, but they are also facilitating amendments for the Committee and individual Members. That seems like quite a big job. As a Bill sponsor, you are not the Minister and do not have a Department behind you. Therefore, it feels quite isolating. We need that continuity of support.

If we are going to have private Member's Bills and allow private Members to bring forward legislation, they need to be able to access a level of legal and drafting support that is equal to that which a Minister receives. A Minister has that support in their Department, so it would need to be provided internally by the Assembly.

Ms Bunting: I wonder, Chair, whether that is a result of different skill sets being required. I am not clear on what engagement we intend to have with the representatives from the Bill Office — I presume that the Bill Office will give evidence in the same way as everyone else — but maybe we should pursue with them whether it is a skill-set issue. Should continuity trump skill set? If so, what is the rationale behind that? We need to probe that a bit further, because every Bill sponsor has articulated a similar issue.

The Chairperson (Ms Ní Chuilín): They have. A raft of similar issues has been raised by all the PMB sponsors who have submitted evidence.

Are there any other questions? No. Kellie, I understand that you came to this meeting from a meeting with a local trust. Regardless of the trust, those meetings are always fairly intense, so I thank you for your attendance at the Committee. Thank you for all the information and advice that you have given us. We will include that in the report, and it will certainly be helpful in our deliberations at the next meeting, which is with the Bill Office and the Speaker. Kellie, without further ado, I thank you again and wish you all the best. Good luck.

Ms Armstrong: Thank you, Chair and members. All the best with it, guys.

The Chairperson (Ms Ní Chuilín): Take care.