

From: Peter May
Principal Private Secretary

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cc: PS/Mr Semple
Mr McCusker
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Circulation

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NOTE FOR THE RECORD

RELATIONS WITH THE ASSEMBLY: MEETING WITH THE SPEAKER

David Lavery and I met the Speaker on 2 May as the initial element of follow-up to the mini-project identified at the first project board meeting on 5 April relating to the way in which the Executive interacted with the Assembly.

Summary

2. An initial meeting to identify the issues and consider suggestions for improvement in Executive/Assembly affairs. Discussion of machinery at official level which might be established to address proposals for forthcoming business and to address problems between the Assembly and the Executive. The gap in perceptions between the Assembly and Executive was clear at a number of junctures, and tensions are likely to continue in some areas. The role of junior Ministers was helpfully touched upon, but the Speaker indicated an unwillingness to intervene in the operation of Assembly Committees.

Overview

3. The Speaker suggested that the primary role of the Assembly was to hold the Executive to account. The decisions on the flying of flags and on maternity services exposed a fundamental question regarding the actual accountability of Ministers to the Assembly. It was quite clear from the latter decision that, even where the Assembly as a whole made a decision, Ministers were not bound by that. Similar problems would not arise in Westminster both because of the structure of government and because of the ability of the Prime Minister to sack Ministers who no longer enjoyed the support of the House.

4. The Speaker believed that the situation, as reflected by the maternity decision, whereby the Assembly could not intervene in Ministerial action was undesirable. However, he recognised there was no legislative recourse given the terms of the Good

Friday Agreement. He suggested the need for a convention to be established which would effectively get round the problem. He wondered whether Ministers should only be allowed to bring forward proposals which cut across Committee or Assembly positions when they had the approval of the Executive (as that should in practice mean that there would be sufficient support in the Assembly for such a proposal). David Lavery explained that the role of the Ministerial Code in terms of clarifying the extent of Ministerial autonomy and the role of the Executive Committee. The Speaker wondered whether the Code might include a duty to take seriously any Assembly decisions or resolutions. We noted that problems the collectivity or collegiality of Ministerial decision-taking and the willingness of certain Ministers to respect the Code complicated matters still further.

Relationships

5. The Speaker noted that the Assembly had faced difficulties during devolution in ensuring that the business of the Executive Committee could run. The issue surrounded knowing what decisions had been reached by the Executive Committee for the following week's business, and the lack of business the Executive came forward with.

6. The Speaker said he had been pressing for legislation to be prepared ready to be introduced into the Assembly for months before devolution. In the event only the 3 Assembly-sponsored Bills had been ready, and this had led to criticism which was very damaging to the Assembly and he believed to some extent damaging for the Executive also. He clearly believed that Civil Service obduracy lay behind the failure to bring forward legislation, and suggested local Ministers here were told a different story from their predecessors. Apparently, Lord Dubs had told him in the House of Lords that various pieces of legislation were ready to be introduced, and had asked why they had not yet been made law. He claimed Lord Dubs had said officials from his old Department (unspecified) had told him it was the Assembly which was blocking progress.

7. There was a good deal of resentment about the difficulties he had faced getting the Assembly Bills ready, and a belief that he had been given a bad legal advice on a number of points. Suggestions that the need for Ministers to be briefed and take decisions about their priorities, and the difference between a policy having been approved and the legislation drafted for introduction might lie behind some of the problems rather than deliberate obfuscation were not well received. He expressed concern about whether legislation would be ready for introduction immediately on resumption.

Legislation

8. I reflected OLC concerns at the lack of stages for revision of Bills to the Speaker. He agreed strongly that the combination of the lack of a revising chamber, and the failure to include a report stage would cause very serious difficulties. He very much feared that bad legislation would be made by the Assembly because of the inability to reflect on debates and bring forward subsequent amendments. He did not however agree that the lack of opportunities to revise justified a delay in the preparation of legislation or its introduction until all issues (such as passage of parity legislation through Westminster) had been resolved.

9. The Speaker noted that any legislation introduced to the Assembly had to be provided to him first in order that he might satisfy himself it fell within the competence of the Assembly. He could not be required to bring such legislation forward in less than 7 days, but could do so earlier if he was satisfied that it met the requirement. To assist him in this, his clear preference was for sight of the legislation in draft, even before the intention was announced to bring the legislation forward. (Comment: I cannot foresee Ministers being willing to jump through this hoop on a regular basis).

Executive Business in the Assembly

10. The Speaker suggested he currently performed not only the role of Speaker but also that of Chief Whip and Leader of the House. The Chief Whip/Leader of the House role effectively came about from his chairmanship of the business committee which comprised all of the Party Whips and determined the business to be run in the Assembly the following week. He said he was somewhat uncomfortable with having to perform all of these roles (but he was not obviously willing to give any of them up).

11. He stressed the Executive essentially had a free hand regarding the time allocated to it. He had tried to make this very clear to the Whips. One of the difficulties in the Business Committee had been that the Whips often had no idea what their Ministerial colleagues wanted, or completely the wrong idea about what was required. The internal party channels of communication needed to be improved.

12. The Speaker clearly placed considerable weight on his regular Monday meetings with Mr Semple as a basis for having notice of forthcoming business and an understanding of what was going on. He referred to the channel on a number of occasions.

Mechanisms

13. We suggested on a number of occasions that there needed to be a way for the Executive formally to feed in its forthcoming business requirements to the Assembly. We trailed the suggestion that that could, potentially, be done by junior Ministers - perhaps attending the business committee meetings - or at official level. The Speaker was very resistant to the idea of the involvement of junior Ministers. He was attached to the Westminster model under which the Whips determined the business of Parliament. We suggested the analogy did not run here because of the enforced coalition government arrangements, and because there was no leader of the House figure who sat in the Executive in the way in Westminster that the leader of the House sat at the Cabinet. Despite lengthy discussions about the different nature of government here, and renewed efforts to seek some flexibility regarding how the Executive might feed its business in, the Speaker was unyielding, suggesting the Whips would not be willing to change the current arrangements.

14. He was more open to contact at official level, provided his office was treated on a par with that of the First Minister and Deputy First Minister. A contact group of officials perhaps comprising representatives both from the machinery of government side of

OFM/DFM and from the clerk of business side of the Assembly, private secretaries and special advisers would be acceptable. The Speaker was keen to label this "the group of sherpas". Such a group would share information about forthcoming business reflecting the views of FM, DFM and Speaker, and exchange "early warnings" about potentially controversial issues.

Junior Ministers

15. We noted that there was not complete clarity about the role of junior Ministers in regard to their ability to contribute to Assembly business on behalf of the First Minister and Deputy First Minister, although the Speaker had agreed they could answer questions. Issues of statements and legislation had not been resolved. The Speaker stressed that anything said by the junior Ministers would be as if said by the First Minister and Deputy First Minister. That principle must be clear and accepted by everybody. In terms of questions, that would allow junior Ministers to speak on behalf of First Minister and Deputy First Minister. However, he said it would cause a very significant problem were both the First Minister and Deputy First Minister to be absent for one of the oral question times, and to be represented by junior Ministers. We noted the basis upon which junior Ministers would effectively answer questions - based on their day-to-day responsibilities - and posed the hypothetical that a series of oral questions might only concern those day-to-day responsibilities. The Speaker was not willing to concede the point, suggesting that supplementaries could always span more widely. (Comment: There is a presentational issue here but this seems to be an ad hoc attempt to regulate Executive business without rationale in a way all too familiar under devolution).

16. On legislation, the Speaker agreed junior Ministers might sponsor a bill. But he said there could be no swapping and changing between Ministers, with the same Minister having to take the lead throughout. (Comment: I think in practice this would allow the 2 junior Ministers to take a piece of legislation through together, but presumably only if both were present all of the time). Once again we probed further, quoting the Westminster example where there is no such requirement, and quite common practice for the Secretary of State to delegate part of the passage of a bill to a junior Minister. The Speaker did not accept the Westminster analogy (in contrast to the Whips) and suggested in any event that the First Minister and Deputy First Minister ought not to be taking legislation through the Assembly. The Prime Minister would not do so (although we noted both that there was no "Cabinet Office enforcer equivalent here and that there were more substantive policy responsibilities resting with OFM/DFM than under the Prime Minister's Ministerial control).

Statutory Committees

17. The Speaker noted that the operation of statutory committees had been very diverse in practice depending almost entirely on the way in which the chairmen interpreted their role and the desire to delve into more or less detail. The committees existed to hold Ministers to account, and the chairmen were 'elected' by the Assembly. As such, he did not feel it was his role to intervene in the workings of the committees. His own proposal, which he has voiced before, is for the creation of a liaison group of committee chairmen which might ostensibly meet to decide the mechanics of meetings,

availability of research grants etc, but also become a means to establish conventions which might be employed across the board.

18. The Speaker did not feel that a suggestion for the development of even simple rules of procedure to determine, for example, the amount of notice a department should receive before having to answer questions put by its committee should fall to his office but to the liaison group of chairmen. He noted that his proposal had been turned down previously by the parties because of their fear that the chairmen might become an alternative source of power to the Executive. He hoped Ministers would intervene to allow such a gathering. Given his general approach, we did not take the opportunity to suggest meetings of clerks with officials, although that is something which might be addressed through the contact group once established.

Next Steps

19. We covered a good deal of ground with the Speaker, and he has mapped out his position on a wide range of issues. It would be desirable to prepare a short summary note for circulation to the 'awayday' summarising the issues, where the Assembly stand and some thoughts on what we might propose to Ministers on their return. I will prepare a draft for comment and it might be that a meeting with Linda Devlin, Geoff Beattie, David Lavery and myself would be helpful. If any other copy recipient wishes to attend they are welcome to do so.

Peter May

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