

Chapter 52 – Minuting of meetings with the Minister: DETI’s policy and the practice

52.1 A significant issue that hampered the work of the Inquiry to some degree was the absence of minutes or records of meetings at which important decisions relating to the NI RHI scheme were taken, or said to have been taken. In this chapter the Inquiry looks at the applicable guidance in this regard and what actually happened in practice.

Ministerial Code

52.2 The Northern Ireland (St Andrews Agreement) Act 2006 required the preparation of a Ministerial Code for Ministers of the Northern Ireland Executive. Section 28A of the Northern Ireland Act 1998, inserted by the 2006 Act, provided that a Minister or junior Minister of the Northern Ireland Executive shall act in accordance with the Ministerial Code.

52.3 The Inquiry notes that the Ministerial Code contains a Ministerial Code of Conduct. That Code of Conduct incorporates, and requires compliance with, “the seven principles of public life”.

52.4 The seven principles of public life had been restated by the Committee on Standards in Public Life in its first report published in May 1995. They are often also referred to as the “Nolan Principles”, so named after the chair of that committee, Lord Nolan.²⁸³⁹ The seven principles are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

52.5 As noted above, two of those principles are “accountability” and “openness”. In respect of “accountability”, holders of office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office. In respect of “openness”, holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

52.6 Further, paragraph 1.5(ii) of the Ministerial Code of Conduct for Ministers of the Northern Ireland Executive requires Ministers “to be accountable to users of services, including the community and, through the Assembly, for the activities within their responsibilities, their stewardship of public funds and the extent to which key performance targets and objectives have been met.”

52.7 Paragraph 1.5(iii) of the same document requires Ministers “to ensure that all reasonable requests for information from the Assembly, users of services and individual citizens are complied with; and that Departments and their staff conduct their dealings with the public in an open and responsible way.”²⁸⁴⁰

DETI Private Office Guidance

52.8 DETI also had applicable ‘Private Office Guidance’, which appears to have been produced in 2008,²⁸⁴¹ covering matters such as the handling of ministerial correspondence, ministerial submissions, meetings, visits and engagements, and other similar matters.

2839 DOF-00006 to DOF-00007 and Nolan Committee, Standards in Public Life, Cm 2850-1, May 1995

2840 DOF-00006

2841 TRA-07799

52.9 The Private Office Guidance for DETI provided, in paragraph 15, that the Permanent Secretary must be consulted on policy proposals which had major resource implications,²⁸⁴² and the Guidance contained the following provisions with regard to notes of ministerial meetings:

“Notes of Ministerial Meetings

37. Meeting notes are intended to record accurately any decisions taken or undertakings made by the Minister. They may also, if necessary summarise the main facts and arguments used during the meeting. They will not however record, blow by blow, each turn of a discussion.

38. The Permanent Secretary has directed that for all internal and external meetings involving officials it will be the responsibility of the agency, branch, division etc to record a relevant note of the discussion, decisions taken and action agreed. The author should ensure that he/she has issued the minutes to any relevant official – including PS/Minister [emphasis from original document]. This will allow the Private Secretary to concentrate on following up on the Minister’s action points. At the same time the minutes will properly record the discussions on complex issues as officials will have the advantage of a closer knowledge of topics. Please provide details of note taker in briefing, as requested.

39. Officials are normally responsible for any follow-up action detailed in the meeting notes.”²⁸⁴³

What happened in practice?

52.10 Dr Crawford told the Inquiry in his oral evidence that he believed that there was always a record of meetings with a Minister and that he was unaware that there was non-compliance with the Private Office Guidance. He said that he was aware of the existence of the Private Office Guidance document, but he had never had to refer to it.²⁸⁴⁴ Ms Foster said that she was not aware of the Guidance at the time and had no recollection of reading it,²⁸⁴⁵ but she also told the Inquiry that she expected notes to be made of significant meetings.²⁸⁴⁶ Neither the Minister nor Dr Crawford could remember being furnished with a minute or record of a meeting with the Minister in accordance with the requirements of the Private Office Guidance.²⁸⁴⁷

52.11 The Inquiry notes that the Private Office Guidance stated that notes of meetings with the Minister, as taken by officials, should be copied to the Minister’s Private Secretary. The Inquiry received evidence from those who served in Minister Foster’s Private Office such as Glynis Aiken (who served as the DETI Minister’s Private Secretary from June 2008 to May 2015)²⁸⁴⁸ that they never queried the absence of notes of ministerial meetings, nor did they chase notes that did not materialise.²⁸⁴⁹

2842 DFE-416559 to DFE-416571 at DFE-416562

2843 DFE-416559 to DFE-416571

2844 TRA-07507 to TRA-07520

2845 TRA-07799 to TRA-07802

2846 TRA-07794 to TRA-07795

2847 TRA-07798; TRA-07511 to TRA-07512

2848 WIT-13437

2849 In respect of Ms Aiken’s evidence to this effect, see WIT-13481

- 52.12 The Inquiry’s concerns about the apparent divergence between what was intended to be departmental practice and what actually happened in reality were such that they were raised by the Inquiry during the oral evidence of Mr Sterling, the Permanent Secretary of DETI between 2009 and June 2014. Mr Sterling accepted that the meeting of Ms Hepper with the Minister of 14 June 2011, referred to in detail elsewhere in this Report, should have been minuted;²⁸⁵⁰ and that the conversation or telephone call said by Ms Hepper to have taken place regarding Ofgem’s warnings about the GB proposal for interim cost control in June 2012 should have been both the subject of a formal submission and minuted.²⁸⁵¹
- 52.13 Ms Hepper told the Inquiry that the practice of officials minuting meetings had fallen into disuse, but a minute or record should have been taken.²⁸⁵²
- 52.14 With regard to the general practice in operation at the material time, Mr Sterling explained to the Inquiry that there was a general understanding that anybody who had reached the Senior Civil Service (grade 5 and above) would know that Ministers needed to get advice that was comprehensive, thorough and complete.²⁸⁵³ He went on to say:
- “Now, on occasions, there would be discussions between Minister and officials that may not be minuted, but I think my view would always be that the ultimate decision needs to be reflected in a submission so there’s a clear record of what considerations the Minister took and what the final decision was and why it was taken.”²⁸⁵⁴
- 52.15 Mr Sterling said that what he had described to the Inquiry would be the sort of thing that he would expect any Senior Civil Servant to know.²⁸⁵⁵ However, he also explained that an unwritten custom and practice had developed over recent years.²⁸⁵⁶ He explained that the minuting of meetings with Ministers was no different in Northern Ireland than anywhere else but went on to point out:
- “... but Ministers like to have space, safe space, where they can consider difficult things, think the unthinkable and not necessarily have it all recorded. A feature of the devolved Administration here has been that the two main parties have been sensitive to criticism, and I think that it’s in that context that, as a Senior Civil Service, we got into the habit of not recording all meetings on the basis that it is safer sometimes not to have a record that, for example, might be released under freedom of information which shows that things that might have been considered unpopular were being considered.”²⁸⁵⁷
- 52.16 When Inquiry Senior Counsel referred Mr Sterling to the relevant provisions of the DETI Private Office Guidance, he explained that, during the long period of direct rule in Northern Ireland, there would have been pretty firm adherence to the Guidance. In those days (i.e. during the time of direct rule) the number of meetings that a civil servant would have had with a Minister would have been relatively small and Private Secretaries would have taken notes. If

2850 TRA-06115 to TRA-06118

2851 TRA-06111 to TRA-06112

2852 TRA-05200 to TRA-05204

2853 TRA-06112

2854 TRA-06112

2855 TRA-06113

2856 TRA-06121 to TRA-06122

2857 TRA-06114

the meeting had involved somebody from outside, custom and practice would have been that it would have been a member of staff in the relevant branch who would have taken the note.

52.17 Mr Sterling said that the pace of day-to-day life had increased exponentially since 2008 and that meetings with devolved Ministers would have taken place quite often when the civil servant might have been called up at short notice for a “quick word” or the civil servant might have asked the Private Secretary for a “quick word” with the Minister. However, he fully accepted that a key decision on policy should always have been reflected in a submission at some stage, sufficient to provide a clear record of why the decision was taken.²⁸⁵⁸ When questioned further about his reference to the Freedom of Information Act, and asked whether there was a conscious decision to reduce minuting and “dumb down” the routine practice, Mr Sterling said:

“The absence of routine minuting of all meetings with Minister, that wasn’t a conscious dumbing-down at all. I think it’s largely a reflection of just the changed circumstances in which we were working. So, for example, again I drew a distinction with, or the contrast with, working in direct rule, where you wouldn’t have seen your Minister very often. Now, you were in much more regular daily contact with Minister and adviser, and I would’ve encouraged openness between Minister, adviser and officials....My view was that you get more efficient policy development if policy teams are talking to the special adviser and, indeed, the Minister, at a very early stage in the policy development process. You know, there’s no greater waste of time than a policy team going away, dreaming up some great policy idea, sending in a 20-page submission, and the Minister says, “This is nonsense. I can’t run with this.” So, we did have a much more fluid involvement and engagement between Minister and adviser, and I think that’s a good thing. But I think one of the consequences of that is it becomes more difficult to apply the rigid disciplines of minuting every meeting.”²⁸⁵⁹

52.18 The Inquiry pointed out that with an unwritten custom and practice it might become very difficult for an individual to decide where the boundary might lie as to when a minute should be recorded and when not. Mr Sterling was careful to point out that in respect of other major decisions taken during his period in the Department there would have been a clear audit trail setting out the relevant considerations, the factors at issue, the ministerial decision and the reasons for it.²⁸⁶⁰

52.19 Mr Sterling emphasised that it was important not to draw conclusions as to the general practice from this particular scheme.²⁸⁶¹ He informed the Inquiry that fresh guidance had been produced which would be implemented when the Northern Ireland Executive returned.²⁸⁶² The Inquiry welcomes the information that fresh guidance has been prepared and is ready to be implemented. However, with regard to Mr Sterling’s assurance that such practices did not extend outside the RHI scheme, the Inquiry bears in mind his paper of November 2012 for the Senior Management Team with regard to the PAC Report on the flawed Bioscience and Technology Institute project (considered further in chapter 55). Mr Sterling specifically recorded what was said to be a ‘culture’ existing some ten to twelve years prior to 2012, which

2858 TRA-06121 to TRA-06122

2859 TRA-06123 to TRA-06124

2860 TRA-06125

2861 TRA-06124 to TRA-06125

2862 TRA-06113

enabled procedures to be circumvented, including not recording important decisions and failure to adequately monitor the project, which led to substantial loss to the public purse. He went on to say that, speaking in November 2012, he was content that: “the culture within DETI is totally different to that which appears to have operated ten to twelve years ago.”²⁸⁶³

Findings

- 298.** The Inquiry would not wish to diminish the importance of establishing and maintaining positive personal relationships within the Northern Ireland Civil Service and, particularly, between civil servants and Ministers. The ability to seek informal guidance at relatively short notice from a Minister and/or senior officials is an important feature of how a Department works. There can be little doubt but that such approaches became more frequent after devolution, when visiting GB Ministers were replaced by more accessible Northern Ireland counterparts. However, such activity has the potential to become over-familiar. For example, the meeting of 14 June 2011, as well as the conversation relating to the Ofgem warning with regard to cost controls in June 2012, undoubtedly required to be the subject of formal procedure and minuting, since they were the basis of important ministerial decisions.
- 299.** Applicable departmental Private Office Guidance about the minuting of meetings was not followed. In the absence of having been withdrawn or amended, it should have been followed.