

STANDARDS COMMITTEE

4 SEPTEMBER 2003

WILTSHIRE COUNTY COUNCIL SUBSTITUTION SCHEME

Purpose of Report

1. To consider the report of the Solicitor to the Council with regard to concerns expressed by Members of the Independent Group with regard to the County Council's Substitution Scheme.

Background

2. The Independent Group on the County Council has expressed concerns about the County Council's Substitution Scheme to both the Solicitor to the Council and to the Council's Chief Executive. Both the Solicitor to the Council and the Council's Chief Executive have been in correspondence with the leader of the Independent Group regarding his concerns.
3. In the event, neither the Solicitor to the Council nor the Council's Chief Executive have been able to fully allay the concerns of the leader of the Independent Group with regard to the Council's Substitution Scheme. At the County Council meeting on the 15 July 2003, when the Review of Wiltshire County Council's Constitution was considered, Mr Newbury, the leader of the Independent Group, moved an amendment, which was seconded by Mr Allnatt, another member of the Independent Group, which read as follows:

"To delete the section on page 44 of the Constitution "Appointment of substitute members of Committees and Sub-Committees" on the grounds that the County Council has no power to appoint substitute members".

4. The leader of the Council asked that the matter be referred to the Standards Committee with a view to them reporting back to the Council in November. On that basis Mr Newbury withdrew his amendment.

Legal Background

5. Generally speaking authorities may appoint committees as they think fit (Local Government Act 1972, sections 101 and 102, as amended).
6. Having decided what committees they want, membership of committees is fixed by the council. Membership of a sub-committees is fixed by the relevant

committee. By virtue of the Local Government and Housing Act 1989 the council must conduct a review at the Annual General Meeting and at other prescribed times to give effect to the principles of political proportionality on committees.

7. Once that determination has been made, that is to say:

- what committees the council is to have; and
- how many seats it is going to have on each committee; and
- how many of those seats should be made available to each political group to give effect to the political proportionality provisions;

it is the duty of the Council or committee to exercise the power of appointment as soon as practicable thereafter, and to give effect to such wishes about who is to be appointed to the seats allocated to a political group as expressed by the group. Those wishes are to be expressed either (a) orally or in writing by the leader or deputy leader, or (b) in writing by a majority of group members; in cases of conflict, the wishes expressed as in (b) prevail.

8. If no wish is expressed within three weeks, the authority or committee may make such appointment as it thinks fit (SI 1990 No. 1553 Regulations 13 - 15).

9. The important point about this is that it remains the Council making the appointment to give effect to the wishes of the political group. Until the council makes that appointment that "wish" has no effect. The obligation on the council is to give effect at the "first practicable opportunity". That does not require the calling of a special meeting. It merely requires it to consider it at the next available meeting.

10. This context is important when considering the question of substitutions. There is no express statutory authority for any substitution scheme. That means that when drawing up a substitution scheme one has to go back to first principles and draw up a scheme which is consistent with existing legislation. It was with the introduction of the political proportionality requirements in the Local Government and Housing Act 1989 that the issue of substitution became significant. Political groups wanted to maintain their control at committees in the event that one or more of their members was unable to attend. Substitution schemes were therefore drawn up at the behest of and for the benefit of members. They primarily operate for the benefit of members to allow them to, from time to time, excuse themselves from meetings without embarrassing the political group.

11. The principle one has to go back to is that members of committees have been appointed by the council. A substitution scheme which allows individual members to select their substitute is, to my mind, unlawful because the power to appoint committees cannot be delegated to an individual member. A scheme which allows the group to appoint substitutes would also be unlawful, unless a member of the group resigned from the committee and the new appointment

was made by the group leader and there was an opportunity to ratify that at a council meeting before the committee meeting. That is inherently so cumbersome that it cannot in practice operate as a substitution scheme.

12. Is it possible to delegate to officers the power to determine the appointment of committees, thereby circumventing the need to call a meeting of the Council to approve changes? The power to change the membership of a committee may not be delegated to a committee, sub-committee or officer. It can only be exercised by the council (*R v Brent London Borough Council Ex parte Gladbaum* (1989) 88 LG R 627. Section 102 of the Local Government Act 1972 contemplates a rigid and formal hierarchy of committees and sub-committees. While this decision predates the Local Government and Housing Act 1989, with a matter as important as the constitution of the council's decision-making process, a prudent line should be adopted. I therefore remain of the view that delegations to officers of the decision relating to the constitution of committees is unlawful and inappropriate.
13. The scheme Wiltshire has currently adopted is the scheme taken from the model constitution commended to local authorities by the Office of the Deputy Prime Minister. It gets around the above problem by asking the council to appoint the substitutes in advance. It is at least possible to argue that the committee members are appointed by the council.
14. Is this ideal? Probably not. Is it however satisfactory? Yes. Is it the best that can be done within the current legislative framework? Yes, I believe it is. To my mind the only realistic alternative is to have no substitute scheme at all.
15. Therefore, in summary, substitution schemes are adopted by a large number of authorities in order to make the day-to-day business of Council Meetings manageable for Members. A Council can operate without a substitution scheme, and indeed some do. However, to my mind, there is nothing unlawful per se about a substitution scheme which is consistent with existing legislation. While in the absence of express statutory authority it is impossible to say that a substitution scheme can never be challenged, it is a perfectly proper approach by an authority to adopt a substitution scheme consistent with the model code recommended by the Office of the Deputy Prime Minister.
16. There are no financial or environmental implications to this report.

Recommendation

17. Standards Committee is asked to
 - i. Note this Report
 - ii. Advise the County Council that as this is a matter of legal interpretation, it is satisfied the Council has taken appropriate legal advice and therefore makes no recommendations for change.

STEPHEN GERRARD
Solicitor to the Council & Monitoring Officer