

BRIEF TO ADVISE

BELFAST CITY COUNCIL

Querist

in relation to the nomination of members to Policing and Community Safety Partnerships

COUNSEL'S ADVICES

INTRODUCTION

1. I am asked to advise Belfast City Council ('the Council') in relation to an issue which has arisen as to the nomination of members to Policing and Community Safety Partnerships under the Justice Act (Northern Ireland) 2011.

FACTS, INSTRUCTIONS AND RELEVANT STATUTORY PROVISIONS

2. The Chief Executive of the Council received a letter from the Department of Justice on 9 September 2011 informing it of the key milestones in the steps being taken to implement and establish the new Policing Community Safety Partnerships (PCSPs) by April 2012. In addition, the letter asked that the Council make arrangements to agree the number of political members in the partnership and then to identify these members as soon as possible.
3. The new PCSPs are established by Part 3 of the 2011 Act. They integrate the roles of Community Safety Partnerships (CSPs) and District Policing Partnerships (DPPs) to create a single partnership for each council district. Each single partnership comprises of councillors, independent members and representatives of delivery partners (both statutory and voluntary). Within each partnership there will be a 'policing committee' comprising councillors and independents performing the police monitoring functions inherited from the DPPs and reporting on these to the Policing Board. All of the other functions of DPPs and

CSPs are passed to the whole partnership reporting to the relevant council, the Department of Justice and the Policing Board. For present purposes it is unnecessary to describe in further detail the purpose or functions of the PCSPs.

4. Although Belfast is to have a PCSP in common with other council districts¹, it is also to have four smaller bodies called District Policing and Community Safety Partnerships (DPCSPs) corresponding to the police districts established under section 20(2) of the Police (Northern Ireland) Act 2000². Detailed provisions for the establishment and membership of PCSPs and DPSCPs are set out in Schedules 1 and 2 to the Act respectively³.
5. Looking firstly at PCSPs, political members are appointed by the Council⁴. The Council must decide whether to appoint 8, 9 or 10 such members (and there shall then be one fewer independent members). Paragraph 3(3) of Schedule 1 provides that:

“A council shall exercise its power to appoint political members so as to ensure that, so far as practicable, the political members reflect the balance of parties prevailing among the members of the council immediately after the last local general election.”

6. In respect of the Belfast PCSP, there is an additional requirement in paragraph 3(3A) as follows:

“The members of the PCSP who are appointed by the council in accordance with this paragraph shall include the persons who hold the office of chair of each of the DPCSPs.”

7. Accordingly, although the Council can appoint political members to the PCSP, four of these will be the respective chairs of the smaller DPCSPs.
8. As for DPCSPs, there is a fixed number of six political members⁵. Again, these members are appointed by the Council. As with the PCSP there is an obligation⁶ to reflect the balance of the parties in the following terms:

¹ See section 20(1).

² See section 20(2).

³ See section 20(3) and (4)

⁴ Schedule 1, paragraph 3.

“The council shall exercise its power to appoint political members so as to ensure that, so far as practicable, the political members of all the DPCSPs, taken together, reflect the balance of parties prevailing among the members of the council immediately after the last local general election.”

9. Schedule 2 also makes detailed provision for the holding of the posts of chair and vice-chair of the DPCSPs. The chair should be appointed by the Council from among the political members and this post. Paragraph 10(2) of Schedule 2 then provides as follows:

“In appointing to the office of chair, the council shall ensure that, so far as is practicable —

- (a) a person is appointed to that office for a term of 12 months at a time or, where that period is shorter than 18 months, for a period ending with the reconstitution date next following that person's appointment;
- (b) that office is held in turn by each of the four largest parties represented on the council immediately after the last local general election.”

10. Accordingly, there is an obligation “so far as is practicable” to ‘rotate’ the chairmanship of each DPCSP between the four largest parties each year.
11. The Council has a formula for the sharing out of committee posts and other posts where it is entitled to nominate representatives to outside bodies. This formula works on party strengths and is aimed at providing proportionate representation reflecting party strengths in the Council.
12. A draft report which is being prepared for the Council shows how the formula works in relation to appointments to the PCSP (whether the 19, 17 or 15 member model is adopted) and also the DPCSPs⁷. It is the latter which raises an issue of possible contention.

⁵ Schedule 2, paragraph 2(1)(a).

⁶ Schedule 2, paragraph 3(1).

⁷ The formula is: (number of political places) ÷ 51 x (party representation on Council).

13. The table showing the result of the formula in respect of appointments to the DPCSPs is as follows:

Party	No of seats	Allocation	Whole number	Balancing figure	Total
SF	16/51	7.53	7	+1	8
DUP	15/51	7.06	7	+0	7
SDLP	8/51	3.76	3	+1	4
ALL	6/51	2.82	2	+1	3
UUP	3/51	1.41	1	+0	1
PUP	2/51	0.94	0	+1	1
IND	1/51	0.47	0	+0	0
Total	51/51	23.99	20	4⁸	24

14. The issue which has arisen is that, applying this model, the Alliance party has only 3 members of DPCSPs. This means it could not have one member on each DPCSP. Accordingly, it would be unable to hold the chairmanship of at least one DPCSP in rotation as envisaged by the legislation.
15. The issue is whether appointments should be made on the foregoing basis or whether the Alliance should be permitted a further member of the DPCSPs (so as to ensure it could hold the chairmanship of each DPCSP in rotation with the other three largest parties). In the event that this latter approach was to be taken, it is likely that Sinn Féin's allocation would be reduced to 7 rather than 8 members, on the basis that its balancing figure (representing a round-up from 7 to 8 members) is based on the lowest part-allocation⁹.
16. I am asked to advise on the competing approaches.

DISCUSSION

17. This is plainly a difficult issue and one on which there is, I am afraid, unlikely to be one absolutely 'correct' legal answer. That is because there is a tension in the legislation.
18. On the one hand, the Council is required to appoint political members so as to ensure that the political members of all the DPCSPs, taken together, reflect the balance of parties on the council. Read strictly, this would lead to the result that Alliance had only three members on

⁸ This figure wrongly reads '3' in the version of the table provided to me.

⁹ 0.53 as opposed to 0.76 (DUP), 0.82 (Alliance) and 0.94 (PUP).

the DPCSPs, disabling it from enjoying the rotating chairmanship of one such partnership. However, the obligation is not a strict obligation. It need only be complied with “so far as practicable”.

19. It is interesting that the obligation described above is to seek to ensure proportionate representation in all of the DPCSPs taken together (that is to say, in the 24 members to be appointed to such bodies in total). Had the obligation been to ensure proportionate representation on each DPCSP, where only 6 members were to be appointed, the table would look like this:

Party	No of seats	Allocation	Whole number	Balancing figure	Total
SF	16/51	1.88	1	+1	2
DUP	15/51	1.76	1	+1	2
SDLP	8/51	0.94	0	+1	1
ALL	6/51	0.71	0	+1	1
UUP	3/51	0.35	0	+0	0
PUP	2/51	0.24	0	+0	0
IND	1/51	0.12	0	+0	0
Total	51/51	6	2	4	6

20. This approach would plainly solve the ‘problem’ since Alliance would be entitled to one member on each DPCSP. It obviously has disadvantages, however, since some of the smaller parties (the UUP and PUP) are deprived of any representation. More importantly, however, it is not the approach mandated by the legislation which addresses its mind to the representative nature of the total membership of all four DPCSPs. Nevertheless, it may be useful to bear this alternative model in mind for the purposes of comparison.
21. At paragraph 17 above, I mentioned the tension in the legislation. This is because the obligation described at paragraph 18 above is in conflict (given the particular arithmetic involved) with the obligation to ensure that the chair of each DPCSP is held in turn by each of the four largest parties represented on the Council. Read strictly, this would lead to the result that Alliance should have four members on the DPCSPs to enable this statutory purpose to be delivered. Again, however, the obligation is not absolute and need only be complied with “so far as practicable”.
22. However, on balance, my view is that the more defensible course – purely in legal terms since I am not concerned with the politics of the situation – is to follow the approach

whereby the Alliance Party benefits from only 3 members of the DPCSPs taken together. This is partly due to the fact that it would involve a simple application of the model which has been habitually used by the Council. (I do not say the Council would be acting unlawfully merely on the basis of choosing to depart from that approach. It would be free to do so provided there was a reason for doing so and the departure from the normal approach was not so unfair as to be an abuse of power. In this case, the provisions of the legislation directed towards rotating the chair of the DPCSPs would seem to me to be a perfectly legitimate reason for departing from the normal approach. However, there must be some value in consistency of approach.)

23. Much more importantly, however, it seems to me that it is important to focus on the power which is presently to be exercised by the Council. This is the power to appoint political members to the DPCSPs. It is when exercising that power that the Council is required to ensure that membership of the DPCSPs is proportionate to party strengths¹⁰. The obligation to rotate the DPCSP chairs arises not when appointing political members but when actually appointing the chair each year¹¹.
24. The principled approach looks at each of these stages in turn. The Council should now seek to appoint members to the DPCSPs which reflect party strengths in the Council. There is no reason why it is not practicable to do so (*i.e.* why this is not capable of being done). At some later stage, the Council will exercise a power to appoint chairs of the DPCSPs. Logically, this cannot be done in advance of the members having been appointed. At that stage, it may not be practicable to ensure that all four of the largest parties have the chair of one committee each year. This may not be practicable (*i.e.* capable of being done) if there is one DPCSP which has no Alliance member. However, that is a problem for a later day and, as the legislation envisages, if the desired rotation is not practicable, so be it.
25. Two potential difficulties I have identified with the draft report are (i) that it presents the obligation to rotate the chair of the DPCSPs between the four largest parties as an absolute obligation when it is not¹²; and (ii) that it fails to recognise the correct sequencing of the obligations, described at paragraph 24 above.

¹⁰ See Schedule 2, paragraph 3(1): “The council shall exercise its power to appoint political members to ensure...”.

¹¹ See Schedule 2, paragraph 10(2): “In appointing to the office of chair, the council shall ensure...”.

¹² In particular, the comment that “the legislation also provides that each of the 4 largest parties must have a

26. In addition, although the mechanism suggested to ensure that the Alliance Party was capable of having a member on each DPCSP seems to me to be entirely reasonable and logical on the present figures (requiring only a small increase in the Alliance's entitlement and a modest decrease in Sinn Féin's entitlement), the wisdom of this approach should be considered against other possible outcomes. For instance, if after a future election the party strengths on the Council were such as to entitle the third and fourth largest parties to only one member each of the total DPCSPs membership¹³, would it be suggested that there should be six members taken from the entitlement of the two larger parties in order to ensure that the rotation of chairs could occur? I suspect not; but once the approach is taken that there must be a representative of each of the four largest parties on each DPCSP, there is considerable potential for having to alter the outcome of the Council's formula to ensure this. On this occasion the adjustment is only a small one but on future occasions it may be much more significant.
27. This is, of course, not to say that it would necessarily be unlawful if the Council, voting freely on the matter, decided to make appointments to the DPCSPs to ensure that Alliance had a member on each. Politically, one can see how this may have an attraction. There is an argument that the Council is entitled to look forward to the obligation to rotate the DPCSP chairs and, since it is "practicable" to do something about that now, do what it can to ensure that. For the reasons I have given above, this does not appear to me to be the better course but (particularly given the fine balance in the figures on this occasion) a rational defence of its legality could be presented.
28. I am also conscious that the course I have suggested above as the better course would have an impact on the composition of the central Belfast PCSP (since the chair of each DPCSP is entitled to membership of the PCSP). This may be something which has to be considered in the context of appointments to the PCSP, although the 'imbalance' is likely to arise only one year in four.

Member on each of the 4 Sub-Groups in order to allow for the provision that the Chairmanship of a DPCSP shall rotate annually between the 4 largest parties on the Council" [underlined emphasis added] seems to me to be a distortion the actual legislative wording.

¹³ Because, whilst still being the third and fourth largest parties, they were so far behind the first and second parties as to only gain this entitlement only the proportionality model used by the Council.

CONCLUSION

29. In light of the foregoing, my advice would be that the draft report to Council should be amended and that appointments to the DPCSPs should be shared out on the basis of the model used by the Council without adjustment.

30. I trust the above is of some assistance. If I can be of any further assistance, my instructing solicitor should not hesitate to contact me.

David A Scoffield

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26 September 2011