

E. R.

HCS/3/28

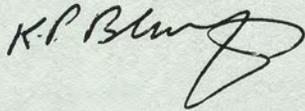
cc. NI Perm Secs
Mr Burns
Mr Stephens
Mr Spence
Mr Reid

PS/Ministers (B&L)

PUBLIC BODIES : POLITICALLY-MOTIVATED RESIGNATIONS

At a meeting on 17 February the Secretary of State asked me to submit an across-the-board picture of developments on this front with agreed advice.

- ✓ The attached draft submission has now been prepared in consultation with the NIO and Northern Ireland Departments at official level, but before putting it forward to the Secretary of State I would be glad to have any comments your Minister may wish to make, in particular as far as the recommended principles for handling vacancies are concerned.



K P BLOOMFIELD

16 March 1987

/JH

DRAFT

HCS/3/11

PS/Secretary of State B&L

PUBLIC BODIES: POLITICALLY MOTIVATED RESIGNATIONS

Purposes of this Submission

1. The purposes of this submission are:
 - (a) to report on the extent to date of politically-motivated resignations from public bodies in Northern Ireland;
 - (b) to comment on the impact of vacancies where these continue to exist; and
 - (c) to make recommendations on principles which should guide us in filling these or any future such vacancies.

Resignation as an Element of Political Strategy

2. The tactic of resignation from public bodies has arisen out of the wider unionist strategy to mount a wide-ranging opposition to the Anglo-Irish Agreement. Such resignation may be spontaneous (where a particular individual feels that continuing service of this kind is in conflict with his political principles) or orchestrated. There are divisions within and between the unionist parties as to whether and when it is a desirable tactic to employ. It is only one element of a range of political activities

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mounted in and through public bodies; that range includes continuing membership coupled with attempts to disrupt or adjourn meetings and a degree of absenteeism which can bring on disqualification for non-attendance. I have not attempted in this submission to discuss the distinct problem of the District Councils, on which DOE regularly reports. I would only say that here in particular members can find themselves placed between the Scylla of their party policy and the Charybdis of their legal obligations as defined by court judgements.

Extent and Nature of Resignations

3. / I have listed in the Annex the 25 cases which Departments (including NIO and IDB) have been able to identify of politically-motivated resignations since November 1985. The first point to be made is that this number (including 22 councillors) is really very small, when one considers that the Central Appointments Unit lists in all 152 public bodies within the ambit of the Northern Ireland Departments and NIO with places for some 2500 members in all.
4. As will be seen the main impact has been in the fields of the Health and Education Area Boards. But here too matters must be kept in perspective. In the Health & Social Services Board structure of 4 Boards there are 121 members of whom 35 are council nominees. Of these 6 have so far resigned. In the Education & Libraries Boards structure of 5 Boards there are 172 members of whom 69 are council nominees. Of these 9 (including one non-councillor) have so far resigned.

The Practical Effects of Resignations

5. Most of the vacancies created by politically-motivated resignations (including all of those arising from the resignation of councillors) remain at this time unfilled.

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It is worth noting, however, that not all resigning councillors were originally nominated by their own individual council; Mr Hatch had been nominated to the Staff Commission for Education & Library Boards by the Association of Education & Library Boards, and Mr Wilson to the Board of the Ulster Folk & Transport Museum by ALANI.

6. It is not possible to identify any body in which the resignations to date are creating a problem greater than inconvenience. In the case of the Health Boards, neither the resignations nor the absence from meetings of "boycotting" councillors have so far affected Boards' quorums or their ability to conduct business; indeed it has in some respects made life easier for the remaining members and officers.
7. Education & Library Boards have also been able to continue to conduct business, because so far there has been no significant support from other Board members for the forms of protest mounted by unionist Councillors. The quorum of a Board is one-third of the total number of members. In the case of the Belfast Board the quorum is twelve; at the moment three District Council members remain in office, together with nineteen non-elected members (with two vacancies existing in the latter category).
8. On the DOE front the problem so far is much more one of non-attendance than of resignation. The three Housing Council nominees do not participate in NIHE Board meetings (and the Council itself has not done any real business since November 1985); seven Council representatives on the Rent Assessment Panel do not undertake Committee work; in the south eastern panel of the Housing Benefit Review Board the unionist members are once again refusing to sit because of opposition to the Anglo-Irish Agreement; and unionist councillors do not attend meetings of the Belfast Co-Ordinating Committee. But in none of these cases has the work of the groups been adversely affected to any

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substantial degree, and business has been conducted more or less as usual.

The Filling of Vacancies

9. In the case of the Health and Social Services Boards, the Department is required by law to appoint to the Boards at least one person nominated by each District Council in a Board's area. When vacancies in the membership nominated by Councils occur, the practice has been for the Department to request further nominations from the Council concerned and to make appointments from them. To date Ards Council has not submitted nominations, Belfast City Council has refused to provide nominations on the grounds that Boards are "undemocratic" and Carrickfergus Town Clerk has replied that the Council is not meeting.
10. DHSS are advised that if following resignations no nominations are forthcoming from the relevant Council, the Department may appoint, as it could at any time, other persons including un-nominated councillors to the Board. This would however be a clear departure from custom and practice and would involve the Minister in making political appointments and choosing between parties. Such appointments could prove an embarrassment if normality returned and Councils sought direct representation. It would also make life much more difficult for non-Councillor members and might prompt some of them to withdraw.
11. In the Northern Health and Social Services Board, three Unionist Councillors have been absent since November 1985. Under the legislation, where any member is absent for more than six months consecutively (except for a reason approved by the Department), the Board shall forthwith declare the office vacant. We have to decide

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whether to advise the Board now to do so, or play for time in order not to aggravate the position of those still serving. The Councils concerned would not be likely to provide further nominations.

12. In the case of the Education Boards it is also the practice of the Department to seek replacements from the original nominating Council in the case of District Council members. DENI has however received legal advice that Schedule 1 of the Education and Libraries (NI) Order 1986 fails to make clear provision for the appointment by the Department of district councillors to fill casual vacancies, either in the event of nominations being made by a Council or in default of such nominations. The Department was advised that it may be possible to read into the Schedule words necessary to render its provisions effective, and that the courts might support such an approach should appointments to casual vacancies be challenged by way of judicial review. The Department was advised that it was difficult to evaluate the extent of the risk of challenge and of the likelihood of that challenge being successful.

Recent advice given throughout Whitehall that departments should be careful about decisions which may be subject to judicial review should be borne in mind when considering the exercise of powers which are not expressly conferred by statute.

13. I would recommend that we should be guided by the following principles:-

- (a) we should take any action open to us under the law to ensure that the business of public bodies continues to be carried out with reasonable efficiency and effectiveness;

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- (b) we must avoid as far as possible any action which may risk discouraging the continuing membership and participation of serving members, whether from a District Council or other background;
 - (c) we should be extremely cautious, where the "representative principle" is involved, about seeming to impose upon a locality an external judgement as to how its political views should be represented in the work of public bodies; and
 - (d) where, on the other hand, it has been merely custom and practice and not a requirement of law to look to a member from a particular District Council or Councils, there is no good reason not to fill a vacancy on its merits, whether by the appointment of a councillor who is willing to serve or otherwise.
14. Against this background it would, in my view, be a mistake, where those nominated by a Council majority to represent that Council have resigned and the Council has declined to make further nominations, and where the absence of the members who have resigned has no serious impact upon the conduct of business, to use any default powers which may exist to appoint other members of that Council as it were over the heads of the majority.

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NIO	Probation Board	Mrs Cunningham (Jan 87) Councillor	Not a Council Nominee	Not yet replaced
DHSS	Northern HSSB	Mr R M English (Dec 86) Councillor	Nominee of Carrick Council	"
	Eastern HSSB	Mr J C Elliott (Feb 87) Councillor	Nominee of Ards Council	"
	Eastern HSSB	Mr R N M Empey (Feb 87) Councillor	Nominee of Belfast Council	"
	Eastern HSSB	Mr J S D Gilmore (Feb 87) Councillor	Nominee of Belfast Council	"
	Eastern HSSB	Mr J Walker (Feb 87) Councillor	Nominee of Belfast Council	"
	Southern HSSB	Mr S Gardiner (March 87) Councillor	Nominee of Craigavon Council	"
DOE	NI Housing Council	Mr J Brown (Feb 87) Councillor	Nominee of Carrick Council	"
	NI Fire Authority	Mr Fred Proctor (March 87) Councillor	Nominee of Belfast Council	"
		Mr John Parkes (March 87) Councillor	Nominee of Belfast Council	"
		Mr Hugh Smyth (March 87) Councillor	Nominee of Belfast Council	"
		Ms Margaret Clarke (March 87) Councillor	Nominee of Belfast Council	"
DENI	Staff Commission of Education & Library Boards	Mr J Finney Chairman (Nov 85) Not a Councillor	-	Filled April 1986

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	"	Mr G A Hatch (Dec 86) Councillor	Nominee of Assoc of Educ & Lib Board to Represent SE ELB	Not yet Filled
	BELB	Mr F L Ashby Councillor Mr W Blair Councillor Mr H Ditty Councillor Mr N A Dodds Councillor Mr J D S Gilmore Councillor Mr T Patton Councillor Mr F Procter Councillor	Nominees of Belfast	Not yet appointed
	SEELB	Mrs G E K McIntyre Councillor Dr R Common Non-councillor	Nominees of Ards Council	Not yet appointed replaced
	Ulster Folk & Transport Museum	Mr C Wilson Councillor	ALANI nominee	Not yet appointed
DED	Panel of Industrial Tribunals	Mr H McKay Non-councillor	-	Replaced