

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Corporate Services

Council: 25 FEBRUARY 2009

Subject: Replacement of Members of Committees or Working Groups

1. Purpose

1.1 On 28 January 2009 Council considered a report dealing with a review of parts 1 and 2 of Standing Orders. Paragraph 3.4.8 of that report dealt with issues relating to the replacement or permanent substitution of members of committees or working groups. Council resolved that a report be brought to the next Council meeting presenting options for the replacement of political and independent nominations on committees. This report deals with this matter.

2. Background

2.1 It is the view of the Head of Legal, Administrative and Regulatory Services that the replacement or permanent substitution of committee members requires a Council decision. This view is based on:-

- The provisions of the present Standing Orders. The relevant paragraphs are:-

Standing Order 1 – “The Council may elect the committees, Convenors and service spokespersons and appoint representatives to composite and outside bodies” .

Standing Order 26 (I) – “There will be no substitution of members of committees and sub-committees unless specific provision is made for the substitution of members of a particular committee or sub-committee within these Standing Orders or in any relevant minute of agreement, constitution or similar document”.

It would appear that previous practice which allowed political groups to swap representatives on committees was based on an interpretation of the word “substitution” in Standing Order 26(I) to the effect that substitution was only a temporary replacement of members. However the Oxford English Dictionary definition of substitute is “to serve in place of” or “replace with another”. Thus Standing Order 26 (I) properly applies to both temporary and permanent substitutions of members.

- Existing case law, in particular the case of R v Brent LBC ex parte Gladbaum is to the effect that only the Council has the power to appoint and remove members from a committee and that this power cannot be delegated. This means that it is not legally competent for

the Council to amend Standing Orders to allow political groups to replace members appointed by them. This applies even if the incoming and outgoing members are happy with the change.

- The law in Scotland is based on the traditional position that members are elected as individuals and serve as Councillors in an individual capacity. The increased role of political parties and their interaction with individual Councillors is not really recognised by the law in Scotland. Sections 13 to 17 Local Government and Housing Act 1989 was introduced to reflect the increasing politicalisation of Councillors and in particular allowed political groups to nominate and remove their own members. While this legislation was implemented in England and Wales it has not been implemented in Scotland.

In June 2007 Council agreed that certain members would be as nominated by the Labour Group. Having regard to the basic common law position that Councillors serve as individuals, it is the view of the Head of LARS that once the Labour Group nominated members and once those members joined a committee, they serve as individuals. Thus, having regard to the Gladbaum case, they can only be replaced by Council.

3. Main Issues

3.1 From the December 2008 seminar on Standing Orders it was evident that members were concerned at the following implications of the rule that only Council could replace members:-

- It was administratively inconvenient where the incoming and outgoing members and the party group were all agreed with the change.
- If the replacement was considered by Council then it opened up consideration of the political balance on Council. Council could decide to appoint a member of another party in place of the member who wished to resign. Alternatively Council might, for political reasons, decide to replace the outgoing member with a member of the same party, other than the one suggested. (It should be noted however that a Council resolution cannot force a member to join a committee if he does not wish to accept the appointment.)
- Groups wishing to make single changes for good reason such as illness, might find themselves prohibited from doing so by the 6 month rule. As members will be aware this requires a two thirds majority to suspend Standing Orders in order to consider a matter which has been considered within the previous 6 months.

In attempting to find a solution which is both legally competent and workable the key legal principles which need to be borne in mind are:-

- The law in Scotland is based on the principle that members serve as individuals. Thus, once they are on a committee they serve as

individuals. If they no longer wish to serve on a committee then as individuals they need to resign. The law in Scotland does not recognise the role of political groups and it is up to the Council to determine which individual member should replace the outgoing member.

- The Gladbaum case makes it clear that the decision to appoint members to a committee is one for Council and cannot be delegated to either the committee itself or a political group.

The only apparent way of allowing certain members to replace others without referring the matter back to Council would be as follows. Council could, when making appointments to committee provide that each individually named member would have an individually named substitute. In the event that the principal committee nominee resigned his post the substitute would then take their place. It could be provided that where this happened the original nominee became the new substitute.

There do not appear to be any means of allowing members to be replaced on the decision of a political group. As members serve as individuals they need to resign as individuals and Council needs to reappoint the new individual members.

4. Personnel Issues

- 4.1 There are no personnel issues.

5. Financial Implications

- 5.1 There are no financial implications.

6. Risk Analysis

- 6.1 If Council resolves to allow replacements on committee without specific Council approval then this may be open to challenge.

7. Recommendations

- 7.1 Council is asked to consider whether it would wish to nominate individual members to replace individual committee nominees in the event that the committee member resigned. Finally and for the avoidance of doubt it maybe worthwhile to make a small change to Standing Order 26 (I) to provide that the rule on no substitution of committee members is "without prejudice to the Councils powers to appoint and replace members". This avoids any argument that Standing Orders need to be suspended for Council to replace members of committees.

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Appendices: None

Background Papers: None

Wards Affected: All