

Copy to Mr White 110 MAR 87
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Please discuss with me tomorrow

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cc. Mr Spence
Mr M Reid

NI Permanent Secretaries
Mr Stephens
Mr Burns

PUBLIC BODIES: POLITICALLY MOTIVATED RESIGNATIONS

I attach the draft of a submission which I propose to send forward to the Secretary of State, and I would be grateful for any comments by not later than close of play on Thursday, 12 March.

It would be my intention to let junior Ministers see a final draft before putting forward to the Secretary of State.

K.P. Bloomfield

K P BLOOMFIELD
9 March 1987

~~*Ann Elliott*~~

1. I am not sure that I accept the assumptions of par 9. Does this accord with our legal advice? There would surely have to be a vacancy. We should primarily feed the response for Belfast. The Secretary of State would be asked what we are doing etc.

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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 twenty 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 seventeen 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 five have so far resigned. In the Education & Libraries Boards structure of 5 Boards there are 172 members of whom 60 are council nominees. Of these nine (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; 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 some cases the law about what must be done when a vacancy is created by resignation is quite clear. In the case of the Health 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 procedure is for a Department to request further nominations from the Council concerned and to make appointments from them. To date Carrickfergus Council has not submitted any nomination to replace Mr England, and the Belfast and Ards Councils have only recently been asked for further nominations. DHSS are advised that if no nominations are forthcoming from the relevant Council they cannot fill the particular vacancy. There is, of course, nothing to stop the Minister concerned from choosing someone who is a councillor as a direct Ministerial nominee; I recall this being done in the past in the case of the NIHE which the Housing Council insisted on nominating only unionist councillors.
10. 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. But DENI has received legal advice that, if a Council declines to make a nomination to fill a casual vacancy it may be valid for the Department to make a nomination in default. However, I do not find very reassuring the advice that:

"The extent of the risk of challenge and the likelihood of that challenge being successful is difficult to evaluate, but it may be that there would be no great detriment to the Department even

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if the court was to find against the Department on judicial review, and it may be better to purport to exercise such powers rather than to acknowledge from the outset that the legislation is deficient."

This has to be set alongside recent advice given throughout Whitehall that Departments should be particularly careful about decisions which may be subject to judicial review.

11. 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;
- (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.

12. Against this background it would, in my view, be a mistake, where those nominated by a Council majority to

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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	"
DOE	NI Housing Council	Mr J Brown (Feb 87) Councillor	Nominee of Carrick Council	"
DENI	Staff Commission of Education & Library Boards	Mr J Finney Chairman (Nov 85) Not a Councillor	-	Filled April 1986
	"	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	Nominees of Belfast	Not yet appointed

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		Mr J D S Gilmore Councillor Mr T Patton Councillor Mr F Procter Councillor		
	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

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