

ORDINARY COMMITTEES

Council Decisions: 23 April 1996 (Minute 94(7))

RESOLVED:

- (1) That the refinements suggested by Counsel in tabulation, calculation method and advice to Group Leaders in connection with proportionality be adopted;
- (2) That the following supplementary rules suggested by Counsel for achieving proportionality be adopted:

Ordinary Committees – Individual Entitlements

- (a) that all political groups be allowed to take up the seats on individual committees (including small panels and boards) to which they are entitled, subject to any adjustment to the aggregate entitlement;
- (b) that, if there is no agreement under (a), the Council stipulates that relevant seats should be taken from any group with more seats than its entitlement but having the lowest proportion on the Council overall;

Ordinary Committees – Aggregate Adjustment

- (c) That, if there is disagreement over the aggregate reallocations between groups on ordinary committees, the following procedure shall apply:
 - (i) the seats to be reallocated shall comprise initially seats on committees where representation is greater than entitlement, then if necessary seats on committees where representation matches entitlement and finally, where necessary, from Committees where representation is less than entitlement;
 - (ii) reallocation of seats under (i) above be to groups due to gain seats in descending order of priority according to their proportion of seats on the Council; and
- (3) That, as advised by Counsel, no changes be made to the listing of Committees under the "ordinary" and "advisory" lists or to be procedure for appointing Sub-Committees by the full Council at its annual meeting.

Statutory Sources: Sections 15-17 Local Government Act 1989

Other Sources: Counsel's opinion dated 25 March 1996

EPPING FOREST DISTRICT COUNCIL
LOCAL GOVERNMENT AND HOUSING ACT 1989
PROPORTIONALITY RULES FOR COMMITTEE MEMBERSHIP

ADVICE

1. I am asked to advise on various questions relating to proportional representation on ordinary committees of the Council. They were discussed in conference on 18 March 1996.

LOCAL GOVERNMENT AND HOUSING ACT 1989

2. The 1989 Act in s.15(5) lays down four principles that are to be followed in making allocations to committees and sub-committees under the scheme in the Act. This applies when political groups have been formed (s.15(1) and (2)) and there is no unanimous agreement to do something else (s.17(1)). The Department of the Environment letter dated 5 June 1991 helpfully sets out the four principles and gives an illustration how the principles operate in practice.
3. The first principle is that not all the seats on the committee or sub-committee are allocated to the same group.
4. The second principle is that the majority of the seats on a committee or sub-committee is allocated to a particular group if that group holds a majority of seats on the Council as a whole. This principle does not, of course, apply when the Council is hung.

5. The third principle is that, subject to the above two principles, the number of seats on the total of all the ordinary committees of the Council are to be allocated in proportion to the membership of the Council. This is the aggregate entitlement. "Ordinary committee" is a decision-making committee appointed to discharge the Council's functions under s.102(1)(a) of the Local Government Act 1972 (Sch.1, para.4(1)), as opposed to an "advisory committee" appointed to advise under s.102(4) of the 1972 Act (Sch.1, 4(1)).
6. The fourth principle is that, subject to the above three principles, membership of each committee and sub-committee is to be in proportion to the membership of the Council.

Method

7. The method of calculating the proportional representation on the Council's committees and sub-committees is set out in Appendix 2, Paper No.4, entitled Pro-Rata Committee Membership, Exemplification Only.
8. I consider the method complies with s.15 of the 1989 Act.
9. I suggest the following refinements.
10. The requirements of the 1989 Act (at present set out at the end of the second page) should include the third principle in s.15(5)(c) (para.5 above).

11. It would be helpful to explain "ordinary committee". See para.5 above.
12. I suggest the fourth principle is set out as in para.6 above. The principle is subject to the previous three principles. It applies to all committees and sub-committees. In the case of committees, it applies subject to adjustments to reflect aggregate entitlement.
13. I suggest it is stated that it is for the Council by majority to decide on which ordinary committees adjustments are to be made to reflect aggregate entitlement under the third principle (see the DoE letter, para.17).
14. The requirements of the Act should be set out at the start, because they govern what follows. In para.2(a), which works out the aggregate entitlement to ordinary committee seats, the reference to "sub-committees" should be deleted.
15. I understand that the Council has decided to calculate proportions to one decimal place. I consider proportions should be calculated, where necessary, to three decimal places, as in the DoE letter, to give precise proportions, where one decimal place would show equal proportions. I give an example below.
16. As regards a schedule of pro rata entitlement on ordinary committees, I find it helpful to have entries against the headings "Total of Individual Entitlements, with actual number of Seats Held in brackets" and "Changes Necessary". I prefer "Aggregate

Entitlement" as a heading, rather than "Adjusted Aggregate Entitlement" as the adjustments are made under "Changes Necessary". See Appendices 3 and 4.

17. In the schedule of pro rata entitlement I suggest the groups are listed in order of proportion, so "LD" should be switched with "LRA".

Allocations

18. Appendix 3 dated 12 December 1995 shows the May 1995 allocations to ordinary committees taking into account the transfer of an Independent to Labour in December 1995.
19. Appendix 4 dated 16 January 1996 shows the position after ERA had been given one seat on the Development Committee, to which they were entitled; and had given up one seat on the Staff Appeals Panel, to which they were not entitled.
20. I believe the January 1996 allocations were fair, as they were agreed by the Council.
21. I suggest the following refinements. I stress that these are suggestions, as it is for the Council to decide on its own rules.

Aggregate Entitlement

22. Appendix 3 sets out the Aggregate Entitlement and Changes Necessary. The Aggregate Entitlement totals on rounding up 174 seats, as compared with the actual

number of 173 ordinary committee seats. CON and LRA are each shown to be due another seat. CON's entitlement was 61.6, rounded up to 62. LRA's was 20.6, rounded up to 21. I understand it was agreed that CON and LRA should draw lots as to which should have the extra seat, leaving the total number of seats at 173.

23. The alternative would be to allocate the extra seat to the group with the largest aggregate over the break point of .5, calculated to three decimal points.
24. On this basis CON's aggregate is 61.575, while LRA's is 21.52. So CON gets the extra seat.
25. It could be made a rule that calculations are made to one decimal point, except when it is necessary to establish more precise proportions, in which case calculations should be made to three decimal points (as in the DoE letter).

Individual Committee entitlement

- × 26. I consider a group should be entitled to take up the seats to which it is entitled on an individual Committee (fourth principle), subject to adjustment for aggregate entitlement (third principle).
27. So, as was accepted in January 1996, ERA were entitled to their seat on the Development Committee.

28. The Council could make a rule to the effect of para.26 above.
29. In passing, I understand it was agreed that LAB should give up a seat on the Development Committee to ERA.
- X 30. In the absence of agreement, a possible solution would have been to take the seat from the group with more seats on the Committee than its entitlement, but having the lowest proportion on the Council. In which case, the seat would have come from LRA.

Panel entitlement

- X 31. I consider that, subject to agreement, on Panels (5 and 11 seats) a group should be required to take up its entitlement, rather than forego its entitlement, thereby requiring another group with no entitlement to take a seat. In effect, the larger groups should play their part on the Panels.
32. So, subject to agreement, I consider LD should take up its seat on Housing Management Appeals (5 seats), rather than ERA with no entitlement having a seat. Subject to agreement, I think the same should have applied to Staff Appeals (5 seats). In fact, by agreement in January ERA's seat went to LAB.
33. On the Licensing Panel (11 seats) CON have one seat more than their entitlement and LD one seat less, presumably by agreement.

34. A rule could be made to the effect of para.31 above.

Changes necessary to reflect aggregate entitlement

35. Where changes are necessary to reflect aggregate entitlement, I understand Mr Willett informs group leaders of the necessary adjustment. They notify him which seats they wish to gain and which lose. The Council then decides. So far there has not been disagreement.
- X 36. If there were disagreement, I consider that priority should go in turn to groups entitled to gain seats, in descending order of proportion of seats on the Council. The seats would be available from groups due to lose seats. I suggest the pool of available seats should start with seats on Committees where representation is greater than entitlement, then seats on Committees where representation equals entitlement, and so on as necessary.

Rules

37. It is a matter for the Council whether they wish to resolve to turn into rules any of these suggestions or other suggestions which Officers may make.
38. If the Council do so wish, I leave detailed drafting of my suggestions to Officers. They may well have amendments to meet the situations which I have not considered.

LIST OF ORDINARY COMMITTEES

39. I do not consider that the Housing Management Appeals and Staff Appeals Panels should be transferred from the list of ordinary committees to the list of advisory committees.
40. It is clear from the terms of reference for the two Panels in Appendices 6 and 7 that they have decision-making powers for the purpose of discharging functions of the Council. This is not altered by the fact that they also have advisory powers.
41. Plans Sub-Committees A and B should not be transferred from the advisory list to the ordinary list. Although their terms of references in Appendix 8 show that they have substantial delegated decision-making powers and do not routinely need to submit their decisions to their parent Development Committee, nevertheless they are sub-committees in the hierarchy. Therefore s.15(5)(c) of the 1989 Act in respect of ordinary committees does not apply to them. They should not be listed with ordinary committees to which the third principle of aggregate entitlement in s.15(5)(c) applies.

APPOINTMENT OF THE COMMITTEES, SUB-COMMITTEES, WORKING GROUPS, PANELS AND BOARDS

42. The Standing Orders in Appendix 9 comply with s.102 of the 1972 Act. Since the 1989 Act the Council has had power to appoint ordinary sub-committees as well as committees (s.102(1)(a)) and advisory sub-committees as well as committees (s.102(4A)).

43. The Council has power to appoint Chairmen and Vice-Chairmen of Committees and Sub-Committees. See Knowles, *The Law & Practice of Local Authority Meetings*, 2nd ed, 1993, para.11.9, which includes a draft standing order.

GENERALLY

44. If there are queries on this advice, please do not hesitate to raise them.



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