



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Local Government Bill: Research and
Information Service

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basis of new information. In England, the Localism Act does not provide for any right of appeal for a complainant or member against a decision that is made by the local authority's monitoring officer or standards committee. However, if it is felt that the authority has failed procedurally to deal with the complaint properly, a complaint can be made to the local government ombudsman.

At the previous briefing, members requested information to clarify the situation in relation to the exemption of council staff becoming councillors. The Local Government Act (Northern Ireland) 1972 introduced a blanket ban on any person who holds paid office or other place of profit in that or any other council being elected as a councillor. England and Wales also introduced arrangements in its own local government Act in 1972. However, that applied less strict disqualifications to council employees. The 1972 Act only disqualifies council employees from becoming councillors in the councils in which they are employed. In 1989, the Local Government and Housing Act introduced a prohibition on council officers who hold politically sensitive posts in engaging in any political activity and standing for political office. Those posts may include the head of the authority's paid service, statutory and non-statutory chief officers, deputy chief officers and monitoring officers. Sections 3 and 4 of the Act outline further criteria that could class a person as being in a politically sensitive post on the basis largely of salary and role.

In 1989, a challenge to the Local Government and Housing Act was brought to the European Court of Human Rights.

Mr Elliott: Sorry, was that 1989 or 1998?

Ms Cave: The challenge was brought in 1998 to the 1989 Act. The petitioners all held politically sensitive posts and felt that the requirement was in interference with their rights for free elections and for freedom of expression, assembly and political participation. However, the case was not won, and the court ruled in favour of the restriction on those holding politically sensitive posts, based on the pursuit of impartiality for senior officers. In essence, the legislation has not changed. The provisions of the 1989 Act in relation to employees with politically sensitive posts still stand.

Does anybody have any further questions or any other areas that they would like me to discuss?

The Chairperson: There is still a lot of confusion about the disqualification.

Ms Cave: Just to clarify: the case was taken in 1998 and it was in relation to the 1989 Act, so it can get a bit confusing between the dates.

The Chairperson: We have also heard about cases more recent than 1998. There have been other challenges to the Act. Which is the most recent, the one that determines the proposed changes in the Local Government Bill?

Ms Cave: This is the most recent case in relation to challenges on senior officers.

The Chairperson: I do not mean challenges to senior officers in particular, just cases based on the human rights convention where the council did not allow employees to become councillors. There was a case in 2005. I had a quick look this morning at a paper tabled by the Department citing a case from 2005. We will leave that until later.

Ms Cave: Yes. That is about the voting rights of prisoners.

The Chairperson: Previously, departmental officials cited more recent cases or challenges that could create problems. I think that that is the reason why we are changing this. Is my memory of this correct? Julie is nodding her head.

Mr Weir: I appreciate the nods of the officials. There is a specific case. This is one of the bits of confusion around this. When we met the Northern Ireland Local Government Association (NILGA) officials, they referred to a particular case that seemed quite a while ago. This case is referenced in the papers. You are right: it seems to refer to a case principally focusing on voting rights, which is a different thing. It may be helpful if the officials could give us the citation of the case and that maybe could be fed in so that we can see the direct reference to the particular case.

The Chairperson: Peter, did you want to come in?

Mr Weir: It was less directly on that aspect. I just wondered about the aspect of the code of conduct, with the challenges and appeals mechanism side of it. In England, there is not really an appeals mechanism. In Wales, it seems slightly odd that, on one level, one person out of the ombudsman's office clearly deals with the initial complaint if it is regarded as serious enough. And then the final appeal is to someone else in the ombudsman's office, an arrangement which seems to be a little odd. With respect to England and Wales, do we know what levels of sanctions are available to deal with breaches of the code of conduct? If it is a question of a relatively light-touch appeals mechanism, where sanctions are relatively low, that might be one thing. However, if it is a question that there have been circumstances where, for instance, councillors have been disqualified from being on the council or suspended from it, that is different. The greater the gravitas and the level of sanction, the stronger the case for an appeals mechanism. Do we know about the powers available?

Ms Cave: I could certainly look into it.

The Chairperson: It would appear that, ultimately, in Wales and Scotland, judicial review is used as the last resort in the appeals mechanism. Is that right?

Ms Cave: Where they do not have the same form of appeals?

The Chairperson: Yes. Or the appeal is dealt with by the ombudsman's office. I think that when the ombudsman's officials came to us, they said that it was not just as simple as dishing out the sanction: the judgement involved communication with the councillor, and the councillor can bring legal representation. In some ways, it is like the situation in Wales, where one complaint officer deals with the case and makes the judgement, and if someone is not satisfied with it, he can bring it back and talk over the matter.

Mr Elliott: I wanted to talk about the restriction on employees standing for election as councillors, but I do not think that we can progress that much until we hear from officials.

The Chairperson: Right. Thank you, Susie.

Ms Cave: Community Places raised the issue of the duty for community planning being placed on the Department and said that in Scotland it is placed on Ministers. I had a very brief discussion with Legal Services, and, in fact, it does not seem to be just as clear-cut as I had hoped. Therefore it may warrant taking legal advice if the Committee wishes to take it further. It is beyond my remit.

The Chairperson: OK. Community Places suggests that, instead of putting the duty on departmental officials, the duty should be placed on the Minister.

Ms Cave: Yes.

The Chairperson: Your paper says that it is not that simple, and you cannot do that.

Ms Cave: Basically. Yes.

The Chairperson: OK. Members, do you want to pursue this? Legal advice will be provided from within the Assembly. Are members content for us to pursue that?

Members indicated assent.

The Chairperson: Thank you.