



Belfast City Council

Report to	Strategic Policy & Resources Committee
Subject:	Appointments to the Belfast Education & Library Board
Date:	7 June 2013
Reporting Officer:	Ciaran Quigley, Town Solicitor/ACX (ext 6038)
Contact Officer:	

1	Relevant Background Information
	<p>At its meeting on 10 May 2013 the Committee considered a report submitted by the Democratic Services Manager in relation to the ongoing issue of appointments to the Belfast Education & Library Board. In that report, the Committee was reminded that correspondence has been received from the Department of Education indicating that, following the selection process which had been carried out to appoint 4 Members to the Board from the 8 names submitted, which involved the completion of application forms by the nominees, an eligibility sift of applications against the criteria and, for those who met the eligibility criteria, a conversation with a purpose, the outcome was that three of the nominees did not progress beyond the eligibility sift stage and one candidate had withdrawn from the process.</p> <p>This resulted in only four eligible candidates remaining in the process and the Minister for Education subsequently asked for the current pool of candidates to be augmented before he made his choice of candidates to be appointed. The Department had therefore requested the Council to submit an additional four nominations, who would be required to undergo the same selection process as that set out above. Effectively, the Minister is insisting that he has a pool of 8 eligible nominations from which he can then proceed to make the appointment.</p> <p>At the meeting of 10 May, the Committee deferred consideration of the above report to enable a legal opinion to be obtained regarding the decision of the Minister of Education.</p>

2	Key Issues
2.1	The legislative position in relation to the appointment of members to the Education & Library Boards is set out in the Education & Libraries (NI) Order

	<p>1986. Article 3 of the 1986 Order provides for the establishment of the 5 existing Education & Library Boards, and further provides that the Boards shall be constituted in accordance with the provisions of Schedule 2 of the Order.</p>
2.2	<p>Paragraph 2 (1) of Schedule 2 provides that the Department of Education shall determine the total number of members to be nominated to a Board by the relevant district council, and the number to be nominated by each district council. Each council is required to select the members of the council to be nominated by it and to send to the Head of the Department the names and addresses of the persons so nominated. There is no requirement in the Schedule as to the methodology to be employed by the councils in selecting the members to be nominated, but the Schedule goes on to provide that if a district council fails to nominate members to a Board, or fails to nominate the requisite number of such members, then the Head of the Department has the default power to make the nominations himself on behalf of the council.</p>
2.3	<p>There is nothing in the Schedule which defines the “requisite number of members” but the Department of Education has referred throughout its correspondence with the Council to the “principle of Ministerial choice”.</p>
2.4	<p>The Department has also referred to the fact that appointments of members to the Education & Library Boards are made in accordance with the Code of Practice of the Commissioner for Public Appointments (CPA).</p>
2.5	<p>In the current version of the Code of Practice for Public Appointments in NI (Sept 2012), it is made clear that responsibility for appointments rests with the relevant Minister, and the whole thrust of the guidance is that, while ultimate responsibility for the making of appointments rests with the Minister, nevertheless appointments of holders of public office should be made on the basis of merit. Departments are accordingly charged with the responsibility of ensuring that the principle and practices contained in the Commissioner’s Code are upheld throughout every public appointment recruitment competition.</p>
2.6	<p>It is clear from the reading of the Code that the objective of the appointment process is to provide for a transparent and fair selection process, with a view to presenting a pool of qualified candidates from which the Minister can then proceed to make his or her final choice. That is also reflected in the guidance issued by the First Minister and Deputy First Minister in relation to public appointments, of which provides that “..... ultimate responsibility for appointments rests with the Minister and the Minister’s approval is required before an appointment process can begin and that in keeping with the principle of ministerial choice, departments should provide advice and request guidance from the Minister as to how he/she would wish to have details of recommended candidates presented to him/her.”</p>
2.7	<p>It is also relevant to note that the Office of the Commissioner for Public Appointments in England and Wales has published a document ‘Procedures for Making Formal Nominations to Public Bodies’, which includes an express stipulation that “..... Departments should request at least two nominees for each vacancy and encourage such nominating bodies to comply with this request, as it upholds the Commissioner’s Code of Practice principle of ministerial choice.”</p>
2.8	<p>It follows from the foregoing that it is a matter for the Northern Ireland Departments to decide on the precise procedure of any particular appointment process, subject to compliance with the relevant provisions of the CPA Code of</p>

	Practice and the OFM/DFM guidance. Clearly, the procedure must also comply with general administrative law provisions in terms of being reasonable, fair and fit for purpose.
2.9	In this case the Department of Education, and the Minister, have decided that the appointment procedure, in terms of providing a requisite number of nominations, should provide for a pool of 8 eligible candidates, from which the Minister can then make 4 appointments. The eligibility requirement clearly satisfies the principle of merit referred to in the CPA Code of Practice, whilst the requirement to have a pool of 8 candidates upholds the principle of Ministerial choice. The process for appointment of members to the BELB as adopted by the Department follows best practice and is accordingly legally sound.

3	Resource Implications
3.1	None.

4	Equality and Good Relations Implications
4.1	The Democratic Services Manager in his report of 10 May (copy attached at Appendix 1) noted that the identification of those Parties entitled to nominate Members for consideration for appointment is based upon the Council's accepted system of proportionality. There are therefore no relevant equality and good relations implications.

5	Recommendations
5.1	The Committee is requested to note the foregoing legal advice and to give further consideration to the appended report of the Democratic Services Manager. .

6	Decision Tracking
Ciaran Quigley, Town Solicitor & Assistant Chief Executive	
June 2013	



Belfast City Council

Report to	Strategic Policy & Resources Committee
Subject:	Appointments to the Belfast Education & Library Board
Date:	10th May, 2013
Reporting Officer:	Stephen McCrory, Democratic Services Manager (ext 6314)
Contact Officer:	

1	Relevant Background Information
1.1	Members will recall that, at the meeting on 18th May, 2012, the Committee was reminded that correspondence has been received from the Department of Education indicating that, following the selection process which had been carried out to appoint 4 Members to the Board from the 8 names submitted, which involved the completion of application forms by the nominees, an eligibility sift of applications against the criteria and, for those who met the eligibility criteria, a conversation with a purpose, the outcome was that three of the nominees did not progress beyond the eligibility sift stage and one candidate had withdrawn from the process.
1.2	This has resulted in only four eligible candidates remaining in the process and the Minister for Education has asked for the current pool of candidates to be augmented before he made his choice of candidates to be appointed. The Department had therefore requested the Council to submit an additional four nominations, who would be required to undergo the same selection process as that set out above. It was noted at that time that those Councillors who had previously been nominated and who did not progress beyond the eligibility sift would not be eligible for re-nomination.
1.3	The Committee agreed that the Minister be requested to make as many appointments as possible from those candidates who had already been deemed to be appointable, in line with the Council's d'Hondt system of proportionality which provided that the four appointments should comprise two Sinn Féin Party representatives and one each from the Democratic Unionist and Social

	<p>Democratic and Labour Parties, with any places remaining unfilled using this process to be selected from those Parties which had not been offered their entitlement. In addition, the Committee agreed that should the Minister not agree to make such appointments, then the undernoted process should be employed to select the additional four nominations:</p> <p>Choice 11 – Democratic Unionist Choice 12 – Sinn Fein Choice 13 – Democratic Unionist Choice 14 – Alliance</p>
1.4	<p>However, if the Democratic Unionist Party maintained its previous position of only submitting one candidate (which it had already done as part of the process in October, 2011), then the nominations from the Parties willing to supply names would fall to:</p> <p>Choice 12 – Sinn Fein Choice 14 – Alliance Choice 15 – Ulster Unionist Choice 16 – Sinn Fein</p>
1.5	<p>Correspondence was received from the Department indicating that the Minister was unwilling to make any appointments to the Board until he received an additional 4 nominations from the Council and those persons have completed the selection process. Accordingly, in line with the Committee decision of 18th May, the Party Leaders concerned were to be requested to provide the names of suitable candidates.</p>
1.6	<p>However, at the Council meeting on 3rd April, that decision was amended to provide that the Minister be requested to appoint the four current nominees from the Council who had successfully passed the eligibility sift. A letter was sent to the Department of Education on 8th April making this request.</p>

2	Key Issues
2.1	<p>A response has been received from the Department (copy attached at Appendix 1) indicating that the Minister has considered the request from the Council but has confirmed that he is unwilling to make any appointments to the Board until the Council provides the names of an additional four nominees.</p>
2.2	<p>The Committee will be aware that this matter has been under discussion between the Department of Education and the Council for a considerable time and the Council has expressed its frustration that the Board continues to operate without any local political input. In order to move things towards a resolution, it is recommended that the four names are sought from those political parties eligible to nominate under the d'Hondt table of choices. If any Party refuses to nominate a Member then that choice will pass to the next eligible Party until the four places are filled.</p>

3	Resource Implications
3.1	None.

4	Equality and Good Relations Implications
4.1	The identification of those Parties entitled to nominate Members for consideration for appointment is based upon the Council's accepted system of proportionality. There are, therefore no relevant equality and good relations implications.

5	Recommendations
5.1	The Committee is requested to agree to the process set out in paragraph 2.2 for the identification of the four additional Council nominees.

6	Decision Tracking
<p>Stephen McCrory, Democratic Services Manager</p> <p>June, 2013</p>	