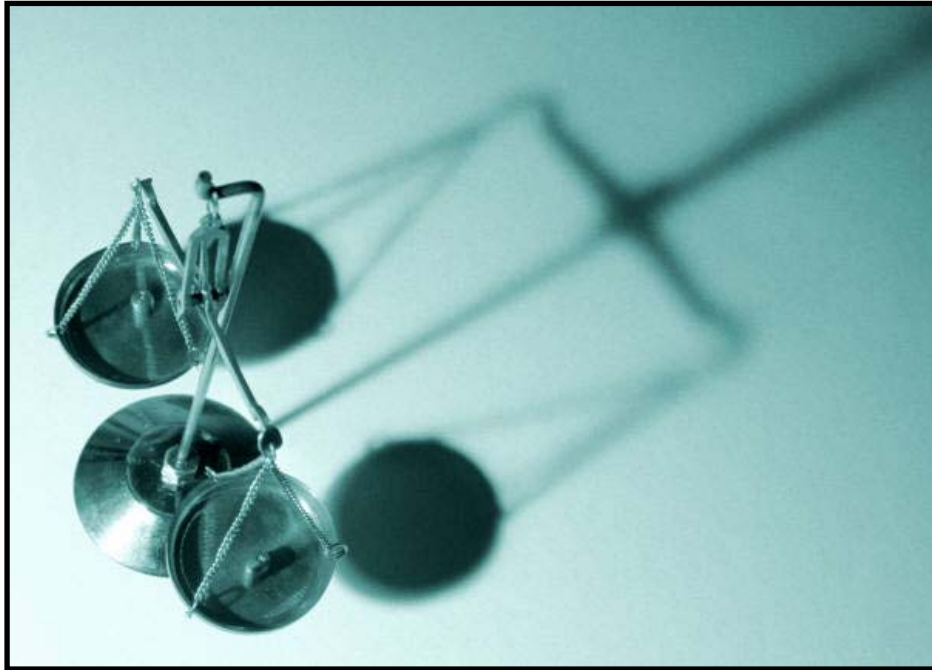


# Checks & Balances

NILGA RPA Working Group Away Day

Oxford Island 27<sup>th</sup> July 05

## Report



## **INTRODUCTION**

NILGA members, together with the political parties, have recognised that no powers can be returned to Local Government until a robust system of Checks and Balances is in place.

Members agreed that NILGA should take a lead in beginning a more detailed debate on how this issue, particularly in relation to the issue of representation of minority interests, could be addressed (other areas largely being already covered by existing legislation). On the 27<sup>th</sup> of July the NILGA RPA Working group set aside a day to consider this issue. Dr Derick Wilson, the Director of Future Ways, who has considerable experience of working with councils on these issues, facilitated the group.

The report below is set out in 5 sections, namely;

1. A draft NILGA definition of checks and balances
2. Key agreements
3. Recommendations for further action
4. Agenda & Objectives for the day
5. Participants List
6. Unedited notes of ideas expressed on the day.

This work sits well in the international context of modernising democratic systems, where generally there is a move to more inclusive, participative systems, which have the capacity to deal equitably with diversity.

## **DEFINITION**

Draft Working Definition of Political Checks and Balances:

“Checks and balances are legal structural safeguards that secure the integrity of elected institutions and ensure that the representation, behaviours and decision making of elected representatives are fair and equitable. These checks and balances must be flexible and independently, monitored and enforced”

## KEY AGREEMENTS

The issues for further actions and key agreements developed on the day are outlined below:

1. The group agreed that the long-term goal for local government should be to function as a '*corporate entity*' in the best interests of the common good. However to ensure and build trust in the short to medium term there needs to be a robust system to **guarantee equitable representation of minority interests**.
2. Members recognised the many checks and balances already in place, (particularly Section 75 in relation to policy, the LG Auditor, d'Hondt, local agreements, proportionality, innovative governance agreements) but there was unanimous agreement that a **legislative base** supported by codes of practice would be required to secure fair representation.
3. While legislation must be in place, a balance must be provided which can guarantee equity, but also maximise **flexibility**.
4. A **formal enforcement and sanction system** must be developed
  - a. Firstly at council level, (perhaps delivered by a Council Committee?)
  - b. Secondly through external systems, (utilising the offices of a Local Government Ombudsman and/or appeal to the Assembly.)
5. Members agreed that the aspiration of a council should be to act as a corporate body, to deliver an agreed community plan, in the best interests of the common good. All elected members should be asked to commit to this goal, receive formal training on this issue and that the legislation should only be used as a **safety net** in extreme circumstances.

## FURTHER ACTIONS

1. Write up a report, including a draft definition of checks and balances, and seek wider NILGA support for the work.
2. NILGA should set up a sub group to develop firm proposals for further debate on this issue to feed into the RPA process and into the proposed Local Government Modernisation Task Force.
3. NILGA should research modern democratic practices in other parts of the world, to help inform further work.
4. NILGA should request that the DOE Minister should ensure this issue is dealt with innovatively and as a matter of priority within the Task Force, involving NILGA, political parties and other experts.

5. NILGA should explore with the DoE the potential for the new Code of Conduct for Councillors to support the development of a formal system of Checks and balances.

## AGENDA

### Desired Objectives

- To secure a facilitating/leading role for NILGA within LG development
- To create a broad definition of what NILGA mean by checks and balances
- To agree a vision of how a new councils could operate in a demonstrably fair and equitable manner
- To develop some ideas and principles on how checks and balances could work for the benefit of all our communities
- To identify next steps for NILGA

<b>Time</b>	<b>Activity</b>	<b>Lead Person</b>
10.15 – 10.25	<b>Introductions</b>	Derick, Heather, Francie
10.25 – 10.45	<b>Ice breaker</b> 10min In groups of 3 ( mixed) think of an experience where you have been in the minority and felt excluded	Derick Wilson
10.45 – 11.15	<b>Definition</b> What do we mean by Checks and Balances. Brain storm on flip chart sheets Discussion - to agree a broad definition	Brainstorm
11.15 – 11.50	<b>Visioning</b> In groups of three write 5 – 7 cards detailing the key elements present in a fair and equitable council  Define the vision	Derick plus NILGA staff member
11.50 – 12.30	<b>Mapping</b> What is available already – mind map	Derick and NILGA staff member
12.30 – 1.00	<b>What is the gap</b> Discussion in Plenary Identify key issues	
<b>1.00 – 1.45</b>	<b>Lunch</b>	
1.45 – 3.00	<b>Solutions and development of key principles</b>  Revisit key issues - In self selecting groups - develop solutions to fill gap	
3.00 – 3.30	<b>Feed back</b>  Agree key principle and actions	Plenary
3.30 – 4.00	Next steps	Plenary

## PARTICIPANTS

### Members

Ald Jim Dillon (Lisburn)  
Cllr Tom Ekin (Belfast)  
Ald Arnold Hatch (Craigavon)  
Cllr Ms Patricia Lewsley (Lisburn)  
Cllr John Mathews (Larne)  
Cllr Pearse McAleer (Cookstown)  
Cllr Jim McElroy (Banbridge)  
Cllr Francie Molloy (Dungannon)  
Cllr Maurice Mills (Ballymena)

### Officers

Mr Victor Brownless (Armagh)  
Mr Mick McGuckin (Cookstown)  
Mr Alvin McKinley (CEF)  
Mr Ronan Cregan (Belfast)  
Mr Tom McCall (Newry and Mourne)  
Mr Pat Cumiskey (Banbridge)  
Ms Heather Moorhead (NILGA)  
Ms Karen McCambley (NILGA)  
Mr Russell Smyth (NILGA) observer  
Ms Denise McStravog (NILGA) observer

## UNEDITED NOTES FROM THE AWAY DAY

### Exercise 1

*Ice Breaker - How did you feel as a minority well treated?*

More willing to understand others  
perspectives  
Respected  
Felt a sense of sharing  
Very humbling  
Included  
Equal  
Interested  
More responsibility

Fairness in relationship  
Trust  
Recognition by majority of the value of a minority  
More open to change  
Not having to change  
Confidence  
Enlightened  
Politely treated

### Exercise 2

*Definition – what do we mean by Checks and Balances?*

Aims/ objectives/ principles	<u>“Strengthening Democracy”</u>	Scrutinize
Equity	NILGA-common ground	Encouragement of participation
Public accountability	Encouragement → sanction	Fair representation
Inclusiveness	“checks to interests”	“Safety net”
Challenging	“needs to be taken account of”	Enforcement
Discrimination	“Political mandates being acknowledged”	Auditor
Open/ honest	<u>Different voting majorities</u>	Local themes
Legislation → “sensitive issues” in private space → committee system or alternatives?	“Codes of conduct”	Equality
Cabinet System	“Common decency”	Service delivery
Common good	Ombudsman for Local Government	Equity
Decency	Uniformity	Building Public confidence
Protecting future positions	Fairness	Civil responsibility and leadership (above political mandates)
“Danger of sanction”	Compromise	Abuse/ prevent misuse of power
Standing orders	“Common Standard”	Transparency
“Structure as control”	Appeals Procedure	Control legislation
“Limiting areas of debate”	<u>Good decision making procedures</u>	Minority Treatment
Allocation of money?	Good governance/building trust	

### Exercise 3

*Visioning – Identify key elements present in a fair and equitable council*

“Vision of a shared and equitable council”	<u>Political high checks and balances</u>	
Auditable i.e. Finance representation and policy (v community plan)	→ properly trained chair	
Clear political direction	→ check with other statutory agencies/central government	
Clear plan – all “bought in”	<u>Operational checks and balances</u>	
Shared vision	→ sanctions	
Agreed vision	→ appeal mechanism with sanctions	
	→ Ombudsman	
<u>Compulsory/ revise voting system</u>	Open and Transparent	Internal checks & balances
Effective constitution	Approachable	Current mistrust
Effective standing orders	Respect for diversity	Securing fair representation
Equitable funding sources	Act on principals and ETHOS (not because of law)	Fairing no abuse of power
Formal structures/ procedures available to public e.g. Code of practice, standing orders/legislation	Team approach	External accounting
Power sharing / d’Hondt	Strategic core	Governance
Strategic members (full time)	Trust, respect basis	Positions
Open and transparent decision- making	Local freedoms	Representative (formula)
Evidence-Based/ policy-making	Equality	Structures/rules
Equitable decision-making process	Agreed principles	Avoid provocation

### Exercise 4

*What is available already?*

Section 75 / Human Rights Legislation  
 D'hondt?  
 Proportionality?  
 Shared Agreements  
 New TSN (resources)  
 Statutory Base dominates actions  
 Surcharging  
 Freedom of information  
 NIAO  
 Civil Law

Ombudsman  
 LSP → Community Planning → Executive to build a corporative plan  
 Rules of CLA (Limited Voluntary “Buy-in”)  
 Finance  
 Simplify
 

- Innovative practices
- (Inclusive Forum—councils)
- Assembly System

### Exercise 5

*What is the gap?*

Variation between councils  
 Lack of sanctions for improper behaviour  
 Lack of flexibility at present  
 Ultra Vires is a hindrance at times  
 Need realistic operational checks and balances  
 Simple system?  
 Trust  
 Contract for councillors/ parties?

Guidance notes on codes of practice?  
 Low expectations?  
 Legislation as a “firewall”  
Legislated, agreed framework  
 Standardisation by legislation  
 Legally enforceable sanctions  
 Legal guidance  
 Need flexibility to operate

### Exercise 6

*Key Agreements*

- Agreement that checks/ balances are needed as a way forward to secure maximum powers returned to local government.
- Legislation that protects, enables comforts and encourages fair/equitable need is needed
- A range of measures to ensure compliance.
- If there is a dispute referred to external authority-local ombudsman.
- NILGA to draw up a draft code to present to Task Force meeting convened to review/agree this.
- Current code of conduct for Councillor behaviour to be examined for this discussion.
- New structures will support the development of an equitable and fair system.
- Representatives to appraise own parties with a view to progressing forward.
- Nolan Principles

### Exercise 7

*Additional comments from the day*

#### Legal

-Political Parties  
 -New act?  
 -Including Representation  
 -Sanctions/Enforcement - what kind?

**Voting mechanism** - Cross community voting on certain issues?

#### However...

Less legislation is better  
 Where needed- broad principles  
 Already lots in place - may need tightened- not working all over at present - hasn't resolved current issues

Need to be balanced and not get hamstrung

**Need to avoid abuse of power** - debate within political parties

More legislation verses agreed code of conduct between political parties (not adequate - lack of trust / referee?)

Act as Assembly acted as a flexible framework – use this for basis of legislation?

**However**

No sense in which executive was a collective body ‘solo runs’ – no collective responsibility

Arguments for including minority perspectives

Behaviour in councils? Mandatory code of conduct

How to organise decision-making? Evidence, Scrutiny, Section 75

Flexibility important

Political parties need to decide

Can talk about ideas and commonalities

Need to ensure a better future - not extreme

- not to tie hands

With larger councils in smaller numbers- minority becomes larger

Sizeable minorities

If you legislate for D’hondt etc will be limiting options once trust built up

Standards committee? Peer review? Eg in NILGA

Old Style Committee system will not work in new 7/11/15 structure due to community planning base\*

Councillors sign up to council ethos (Inc this legal paragraph) on appointment.