

<p>CONSULTATIVE COMMITTEES – STRUCTURE AND MEMBERSHIP</p>
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What this paper is about

It is known that a number of Committees have been giving thought to the structure, membership and purposes of consultative committees. This paper provides background information members to share experience on these important issues

Points for Discussion

The paper aims to provide information for a wideranging discussion by members of the structure, membership and purposes of consultative committees. There are some possible questions for discussion in the paper at paragraph 11.

Points for Possible Action

No specific action points are suggested but these might arise from the discussion of the papers by members. The discussion might prompt some delegates to look again at the structure and membership of the committee they represent

Introduction

1. A number of Committees have been having a fresh look at their membership, how they are structured and how they should respond to public interest and especially to bodies set up primarily to oppose the airport and/or its development/expansion and who might see the consultative committee as a good route through which to pursue their objectives.
2. Against this background it is thought delegates might like to remind themselves of the purposes for which consultative committees are set up, and the interests they should represent, and to share experience in grappling with some of the organisational and operational issues which have sprung up in recent times.

Background Papers

3. Attached to this paper are:
 - *Annex A*: The Department for Transport's latest (2003) *Guidelines for Consultative Committees*. Paragraph 1 of the Guidelines describes the legislative basis for airport consultation which lies in s.35 of the Civil Aviation Act 1982 ("the 1982 Act"). It should be noted that s.35 of the 1982 Act reproduces section 8 of the Civil Aviation Act 1968. It should also be noted that section 35 does not appear to apply in Northern Ireland and much of what is said in this paper does not apply formally to airports in the Province.
 - *Annex B*: The judgement in the case of Regina V Fairoaks Airport, a case heard in the High Court in November 1998 which needs to be taken into account in considering the membership of a consultative committee.
4. Other relevant documents are:
 - *The Aerodromes (Designation) (Facilities for Consultation) Order 1996 (SI 19961392)* as amended (*SI 2002/2421*) which list the airports which have been designated under s.35 of the 1982 Act "for the purposes of consultation". All UKACCs airports are designated except for Belfast City in Northern Ireland and Robin Hood Airport which only recently came into use as a civil airport but which already has a consultative committee which is a UKACCs member. These orders can be accessed via the UKACCs website¹.
 - The recent paper *The Way Ahead* prepared by Stewart Ashurst, the Chairman of the Stansted Airport Consultative Committee (STACC), which sets out ideas for the restructuring of the consultative committee at that airport. A link to this paper - on the STACC website - was sent to all members on 25th April².
 - The papers recording the responses of consultative committees to the various recent requests for information on:
 - Public participation in consultative committee meetings
 - How Chairmen are appointed
 - Complaint handling
 - Passenger Service Groups

Copies of these papers were sent to all members – further copies will be supplied on request to the Secretariat.

Key Points

5. Where an airport is designated under s. 35 of the 1982 Act it is not an absolute requirement that a consultative committee should be set-up. But the Department for Transport (DfT) suggests that the best means of ensuring fair treatment of all the different interests is through a consultative committee - see paragraph 3.2 of Annex A . Some delegates will recall that the Liaison Group actively participated in the Department's review which produced the 2003 *Guidelines*

¹ <http://www.ukaccs.info/statutory.htm#Order>

² <http://www.ukaccs.info/stansted/wayforward.doc>

6. It needs to be understood that at the outset at least it is the *airport operator* which is charged with the responsibility for setting up the consultative committee and accordingly it is the *airport operator* which is responsible initially for the committee's membership. Some people argue that this is a *continuing* responsibility although most airport operators in practice leave it to the committee how best to structure itself, change its membership structure and other details.
7. It should be noted that some committees were set up before the present legislation was first passed and the membership and structure of others reflects the requirements of local planning and other agreements. The *Guidelines* recognise the differences in circumstance between individual aerodromes and that arrangements and procedures for one committee may not be appropriate for another. They go on to say that "it is important that the aerodrome and the committee retain the flexibility to adapt to local circumstances."
8. Section 35 of the 1982 Act stipulates the groups for which the airport is to provide facilities for consultation. They are
 - users of the airport,
 - any local authority in whose area the airport (or any part of it) is situated or whose area is in the neighbourhood of the airport, and
 - "any other organisation representing the interests of persons concerned with the locality in which the aerodrome is situated".

Where an airport follows the DfT recommendations and sets up a consultative committee its membership must include these groups. There does not have to be numerical equality but there must be sufficient representation from each group to ensure that the views of that group are adequately expressed. This is one of the key findings of the Fair Oaks case for which the judgement is to be found at Annex B.

9. Section 35 says that when an airport is designated under that section the airport must provide "*adequate facilities for consultation with respect to any matter concerning the management or administration of the aerodrome which affects their interests*". This is elaborated in the DfT's *Guidelines* which describe in paragraphs 2 and 3 what the Department sees as the purposes and form of consultation. It is clearly important that committees should remind themselves on a regular basis both of the requirements of s.35 of the 1982 Act and the DfT's *Guidelines*.
10. It is important that Committee's should remember that according to the *Guidelines* a consultative committee:
 - should not detract from or constrain the responsibility of the airport owner and/or operator to manage the aerodrome;
 - should not prevent interested parties from raising concerns directly with the airport, or through other channels.
 - is not a body for dispute resolution;
 - does not have any executive or decision-making power over the airport

Some Questions

11. In view of the recent discussions and requests for information on the role and practice of consultative committees, the Liaison Group may wish to consider the following questions:
 - a) How well does the membership of committees match the groupings in s.35 of the 1982 Act and are they in "reasonably balanced proportions" as required by the Fair Oaks case?
 - b) Should the airport be members of the consultative committee? The *Guidelines* – see paragraph 6.6 of Annex A – are not keen on this but there are instances where airport representatives are members of the Committee and in those cases it is argued that this is a very positive step giving the airport a direct stake in the Committee which helps to sustain its work.

- c) What has been the impact where member bodies and groups use the Committee to express their opposition to the airport and/or its development/expansion plans. Has this had an impact on relationships with the Airport and the manner in which they react to the Committee? Is the Committee in consequence less effective in fulfilling its main roles?
- d) What policy should a Committee adopt towards public participation in its meetings? Most member committees responded to the recent round-up on public participation and the results showed:
- o Meetings held in Private – 6
 - o Public admitted but not permitted to speak – 7
 - o Public admitted and permitted to speak by prior notice – 5
 - o Public admitted and permitted to speak with the consent of the Committee – 1
 - o Fifteen minute period for public participation – 2
- e) Have opposition groups tried to take advantage of any facilities to speak at meetings as a forum to express their views? Has this disrupted the regular work of the committee? How have the members and the Airport reacted?
- f) The Guidelines say it is important that “all those significantly affected by or involved in the operation of the aerodrome should, so far as reasonably possible, have access to a representative who can speak on their behalf”. To what extent is this aspiration being borne out in practice? Do people with concerns seek out members of the Committee? Or (where it is allowed) do they come to the Committee and expect to be heard? Is there more which can be done to emphasise and support the representational role of members?
- g) To what extent do consultative committees concern themselves with existing and proposed facilities and services for passengers? Are they representing adequately the needs of passengers? Of the 17 members who responded to the recent inquiry, 6 said they had a specialist passenger service group. On the other hand one of the other airports offers committee members each year the opportunity to experience the airport as a passenger – this includes a look at airside facilities for passengers and a flight to one of the destinations served by the airport, usually with a briefing by the airport there. Elsewhere on the Agenda the meeting will be talking about the CAA Study *Improving the Passenger Experience*.
- h) What about complaints? In what kinds of complaint is the consultative committee interested? Do the procedures need to be tightened up and the role of the Committee more clearly defined?

Stuart Innes
May 2009

Guidelines for Airport Consultative Committees

These guidelines are intended to assist those involved in establishing, running and participating in airport consultative committees. They supersede the guidance issued by the then Department of Transport in 1987-88.

Aerodromes³ to which section 35 of the Civil Aviation Act 1982 applies have a responsibility to provide facilities for consultation. However, this guidance will also be applicable to any aerodrome with a consultation process and others with an interest in consultative procedures. We recognise the differences in circumstance between individual aerodromes and that arrangements and procedures for one committee may not be appropriate for another. It is important that the aerodrome and the committee retain the flexibility to adapt to local circumstances.

1. The legislation

1.1 Section 35 of the Civil Aviation Act 1982 (as amended), which deals with facilities for consultation at certain aerodromes, states:

1. "This section applies to any aerodrome which is designated for the purposes of this section by an Order made by the Secretary of State.
2. "The person having the management of any aerodrome to which this section applies shall provide:-
 - a. for users of the aerodrome,
 - b. for any local authority (or, if the person having the management of the aerodrome is a local authority, for any other local authority in whose area the aerodrome or any part thereof is situated or whose area is in the neighbourhood of the aerodrome), and
 - c. for any other organisation representing the interests of persons concerned with the locality in which the aerodrome is situated, adequate facilities for consultation with respect to any matter concerning the management or administration of the aerodrome which affects their interests.
3. "The reference in subsection (2)(b) above to any local authority includes in relation to the area of Greater London a reference to the Mayor of London acting on behalf of the Greater London Authority."

2. The purposes of consultation

The purposes of consultation are:

- to enable aerodrome operators, communities in the vicinity of the aerodrome, local authorities, local business representatives, aerodrome users and other interested parties to exchange information and ideas;
- to allow the concerns of interested parties to be raised and taken into account by the aerodrome operators, with a genuine desire on all sides to resolve any issues that may emerge;
- to complement the legal framework within which the aerodrome operates;

However, consultation is not intended -

- to detract from or constrain the responsibility of the aerodrome owner and/or operator to manage the aerodrome;

³ In these guidelines 'aerodrome' applies to any aerodrome, irrespective of the size of operation. The term 'airport' is used interchangeably.

- nor to prevent interested parties from raising concerns directly with the aerodrome, or through other channels.

Engaging with stakeholders

An airport informs interested parties about its operations and receives feedback in a number of ways including:

- *airport visits,*
 - *information leaflets,*
 - *dedicated telephone comment line,*
 - *newsletters,*
 - *website,*
 - *public meetings,*
 - *involvement in community events,*
 - *public surveys,*
 - *correspondence with individuals,*
 - *displays and exhibitions.*
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3. The form of consultation

3.1 The nature of 'adequate facilities for consultation' will depend upon the type and scale of the aerodrome operation and is likely to be site specific. An aerodrome engages with those affected by and involved in its operation in a number of ways, of which the consultative committee is only one mechanism.

3.2 However, the Department recognises that the best means of ensuring fair treatment of the different categories of statutory consultees is through a consultative committee formed for this purpose. This provides an opportunity for the aerodrome to consult relevant groups simultaneously, but also allows those groups to engage with each other directly.

3.3 A consultative committee provides:

- an opportunity for information exchange between aerodrome and interested parties;
- a structured forum for discussion so as to make recommendations to the aerodrome management and other bodies when appropriate;
- the opportunity to reach common understanding between interested groups about the nature of aerodrome operation, thereby increasing the scope for issues to be resolved amicably. However, people interested in and affected by an aerodrome operation may have mutually inconsistent viewpoints and it is not realistic to expect that all matters of concern will be able to be resolved through discussion;
- to promote understanding about aerodrome operations more widely, through dissemination of relevant information by committee members;
- to promote understanding by the aerodrome operator of the nature of its impacts on local communities and businesses.

However,

- a consultative committee is *not* a dispute resolution forum;
- a consultative committee does not have any executive or decision-making power over the aerodrome.

Constitution of Consultative Committees

4. Terms of reference

The terms of reference of the committee should be sufficiently widely drawn to allow it to consider all matters arising from the operation of the aerodrome. The exact terms of reference will be at the discretion of the committee but would be expected to cover existing and proposed facilities and services at the airport, input into environmental monitoring of the aerodrome, surface access, responses to formal consultation papers issued by government and other regulatory authorities, and consideration of the economic, and the social and environmental impact of committee recommendations.

Examples of terms of reference

- *to consider aerodrome issues as they affect the communities represented or the amenities of the aerodrome;*
 - *to make suggestions to the aerodrome where this might further the interests of the communities represented;*
 - *to stimulate the interest of the local population in the development of the aerodrome;*
 - *to monitor the environmental impact of all aspects of the operation of the aerodrome and to advise on operating procedures resulting from such monitoring with a view to minimising noise or other pollution from whatever source;*
 - *to protect and enhance the interests of users of the aerodrome;*
 - *to discuss with the aerodrome formal procedures for recording complaints about aircraft noise and other adverse effects of the aerodrome.*
 - *to consider the contribution of the aerodrome to the local, regional and national economy.*
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5. Officers of consultative committees

5.1 **Chairman.** To maintain the confidence of the general public it is important that the Chairman should not be closely identified with any sectional interest. Where the Chairman is appointed by the airport, this appointment should be made with the involvement of the committee. To ensure continuity in the operation of the committee it is desirable for the Chairman to be appointed for a minimum period of three years, although there should be no prescribed maximum period of appointment. The Chairman may receive appropriate remuneration, depending on local circumstances and workload.

5.2 **Secretary.** The Secretary, too, should not be closely identified with any sectional interest. A local authority (ideally, not a planning authority for the airport) may be suitably placed to carry out this function.

5.3 A properly resourced secretariat shall be appointed to ensure the effective working of the committee. The necessary secretarial support will depend upon the size of the committee and the volume and nature of the business handled. The duties of the secretariat shall be to:

- prepare minutes of the committee and distribute them to all members;
- issue notices of meetings of the committee and to place on the agenda any matters that are proper for the committee to consider;
- circulate relevant documents;
- assist the committee on policy and technical issues, where appropriate.

The Committee should determine how the costs of providing this adequate secretarial support should be met.

6. Composition of consultative committees

6.1 **Representation.** Section 35 of the Civil Aviation Act 1982 specifies the categories of bodies or organisations that should be consulted: see above, para 1.1.

6.2 It is important that all those significantly affected by or involved in the operation of the aerodrome should, so far as reasonably possible, have access to a representative who can speak on their behalf. While the exact size of the committee will depend upon local circumstances, the committee should be of a manageable size.

6.3 For fair and equitable treatment of the different categories, it is more important to ensure that there is a representative balance of affected interests rather than to attempt equal numeric representation.

6.4 The groups represented will vary between aerodromes: the users at an airport with a mixture of commercial air transport and GA flights may potentially encompass a wider spectrum of interested parties than either a major airport or small GA aerodrome. The scale of interest from the local community and local authorities is also likely to be more significant at larger aerodromes as the positive and negative impacts are likely to cover a wider geographical area.

6.5 **Members' tenure.** If possible, the term of office for members should be more than one year. Where a member is unable to attend, he or she should be permitted to send a notified deputy of suitable standing. Elected council members and others nominated *ex officio* may,

of course, be obliged to resign upon loss of office. Represented councils should have procedures to ensure smooth transition following local elections.

Examples of good practice in representation

- *Many committees require community organisations on the committee to have a written constitution and documented membership to help secure the legitimacy of representatives.*
 - *Luton conducts a formal review of the balance and representation of the committee at its AGM.*
 - *At Bristol, members of the committee nominated candidates for appointment of its Chairman from outside the committee membership. The airport MD, together with the committee secretary, interviewed candidates, and made a recommendation upon which the committee voted.*
 - *At East Midlands the post of Chairman was advertised, and candidates were interviewed by the airport management and a representative from each category of member.*
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6.6 Airport management. It is essential that the airport management participate fully in the committee proceedings by offering items for the agenda, attending meetings and by providing relevant information on the operation of the airport. As the committee's role is to advise the airport management we recommend that airport officers should preferably *not* be formally members of the committee. It may also, in some cases, detract from the public perception of the committee's independence. However, we recognise that in practice there may sometimes be locally specific reasons for airport personnel to be members.

6.7 Advisers. It is often useful, especially at the larger airports' committees, if members are permitted to be accompanied by technical advisers (for example, elected council members may be supported by officers). Such advisers should not, however, intervene in committee proceedings unless invited to do so by the Chairman.

Examples of good practice in providing technical advice

- *Heathrow ACC retains an aviation technical consultant and ensures that technical matters are brought to the attention of the Committee with sufficient notice.*
 - *Luton recommends that local authority members should consider appointing an appropriate aviation consultant to act as a specialist technical information officer.*
 - *Depending on the size of the aerodrome and the subject matter for consideration, the committee could consider appointing an appropriate consultant having aviation and/or other relevant expertise to act as a specialist adviser to the committee as a whole.*
 - *A number of airports organise an annual familiarisation tour of airport facilities to assist members in understanding the complexity of aerodrome operation. London City arranges annually a flight to another airport so members can experience the airport as a passenger and compare the facilities.*
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7. Sub groups

7.1 It may be useful for some committees, particularly at the larger airports but not necessarily limited to these, to form sub groups dealing with specific issues or areas. However, the need for sub groups will depend on the scale of activities and the location of the particular airport.

Example of Sub groups

At Manchester Airport three smaller sub groups - Users Advisory Group, Technical Advisory Group and Community Trust Fund - have been created. These groups meet on the same cycle as the main committee and can cover topics in more detail and investigate particular issues on behalf of the main committee e.g. provision for disabled passengers.

7.2 Some larger airports are required to establish a Transport Forum. In such cases, provision should be made by the airport management to ensure that mechanisms are in place to involve the consultative committee with the work of the Forum.

Organisation of Meetings

8. Agenda and Papers

8.1 Agenda. If possible all members should make available to the Committee (through the Secretary) at as early a date as possible details of any matter of concern to that member which he or she wishes to raise at a meeting of the Committee. Provided that a matter is

within the terms of reference, it is recommended that all committee members be able to propose agenda items for discussion.

8.2 Circulation of documents. Papers should be circulated well in advance to allow representatives to prepare fully and obtain technical advice if necessary. The secretariat will need to ensure that the circulation of papers does not breach copyright, privacy or data protection.

Examples of Agenda Items

- *Airport Operator's Report;*
 - *Airport Statistics;*
 - *Passenger numbers and new services*
 - *Complaints*
 - *Runway utilisation*
 - *Night flights*
 - *Environmental statement;*
 - *Noise and Track keeping*
 - *Community noise monitoring*
 - *Local air quality monitoring*
 - *Noise insulation schemes*
 - *Surface Access*
 - *Airport Development*
 - *Airspace Changes*
 - *Government Consultations*
 - *EU Regulations*
 - *Community Initiatives*
 - *Flying training and circuits*
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9. Proceedings

9.1 Participation. To ensure the effective operation of the committee; it may be considered useful to have a commitment from all members to participate actively in the work and discussions of the committee. During meetings it is important that members should be given adequate opportunity to represent their views and that no organisation or one group should dominate proceedings.

9.2 Voting. It is expected that matters would be resolved by consensus. In general, the Chairman should avoid taking votes on matters other than those relating to the membership of the committee and its sub-groups.

9.3 Minutes. The minutes of the meeting should be concise, but thorough. Committee publications should reflect the range of views and advice and/or recommendations to the airport operator put forward by members and should not merely reflect the majority viewpoint on any issue.

Examples of Presentations

- *Surface Access*
 - *Air Passenger Rights*
 - *Airport Development*
 - *Noise measurement techniques*
 - *Local Airspace Arrangements*
 - *Air Quality*
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10. Venue

10.1 The venue of the meeting should be decided by the committee. Unless otherwise agreed by the committee, the management of the aerodrome should arrange adequate facilities for meetings, having regard to travel convenience of members from the whole catchment. Venues should be accessible by public transport where reasonably possible.

11. Frequency of meetings

11.1 The consultative committee should meet at least three times a year, unless the committee is satisfied that fewer meetings would suffice.

12. Administrative Costs

12.1 The expenses incurred by the committee should be met in such a way as the Committee may determine. However, the default option is for the airport, particularly if designated under s.35, to cover expenses. It is not expected that the committee would normally meet individuals' expenses.

Engaging with the Wider Community

13. Publicity

13.1 The wider local community and airport users should be made aware of the existence of the consultative committee and its role in relation to aerodrome operation, and how it may be contacted. Any publicity undertaken by the aerodrome should be in proportion to the scale of the aerodrome operation.

14. Public access to meetings

14.1 Meetings of the committee may be open to the press and the public at the discretion of the committee. It is recognised that in some circumstances public access could hinder the flow of information, possibly preventing free and frank discussion. It may therefore be necessary to hold meetings, or parts of meetings, in private when matters of a confidential or sensitive nature are being discussed.

Publicising the committee to the wider community

The existence and role of the committee should be extensively publicised to the wider community. This could be achieved by:

- *A visible notice and information at the airport;*
- *Local press coverage;*
- *An annual or biennial committee report;*
- *Publication of committee agendas and minutes;*
- *References in airport and represented organisations' public reports;*
- *Information on the airport website (or on a dedicated consultative committee website, if resources allow).*

Organisations represented on the committee should be encouraged to provide hyperlinks from their own websites.

15. Complaints

15.1 The *aerodrome* should have an agreed formal procedure for recording complaints about aircraft noise and other impacts of the aerodrome on the environment. These arrangements, which should be very well publicised, should provide for complaints to be made to the aerodrome management by telephone, electronically or in writing. Complainants should normally be invited to give their name, address, telephone number and sufficient detail to enable any investigation to be carried out.

15.2 Passenger complaints, if referred to the consultative committee, could be reviewed by a passenger services sub-committee if the committee has established one.

15.3 The number and general location of complaints should be made available to the committee.

15.4 Airports might suggest that complainants, if dissatisfied with the airport response on a matter of wider interest, could contact the committee to raise the matter for discussion. However, it should be remembered that the consultative committee is not an arbiter of last resort, and its recommendations are not binding on the aerodrome. So, it should not be the committee's function to investigate individual complaints as a matter of routine. Where, exceptionally, this is done, for example because of wider issues arising, the secretariat should ensure that complainants are given anonymity unless express permission has been given for their identities and addresses to be circulated.

Good Practice for Engaging with the Community

- *Wycombe Air Park holds a thirty minute open session after the meeting for the public to raise any concerns.*
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- *London City allows the public to attend its meetings and, subject to prior notice, to speak on particular issues.*
 - *Luton encourages local groups to join alliances to ensure the communication of accurate information to interested local residents.*
 - *Gatwick invites the press to meetings, which allows matters of wider public interest to be publicised.*
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Interaction between Airport Consultative Committees

16. The sharing of good practice and information between consultative committees is strongly encouraged. The committee should determine how this is managed in practice.

17. The Government issues these guidelines to assist those who are required to provide adequate facilities for consultation under Section 35 of the Civil Aviation Act 1982 and any aerodrome with a consultation process. It believes that local issues are best resolved locally, through the consultative committee. It has no direct role in the operation or conduct of consultative committees.

18. Those aerodromes currently designated are listed in Statutory Instrument 2002/2421.

Department for Transport - December 2003

Annex B – Judgement in R. v. Fairoaks Airport Ltd. exp. Roads

REGINA -v- FAIROAKS AIRPORT LIMITED EX PARTE RICHARD ROADS

J U D G M E N T

Tuesday, 3rd November 1998.

MR JUSTICE DYSON: The Respondent is responsible for the management of Fairoaks Airport, Surrey. The airport is designated for the purposes of section 35 of the Civil Aviation Act 1982 ("the 1982 Act") which, so far as material, provides:

"(2) The person having the management of any aerodrome to which this section applies shall provide-

(a) for users of the aerodrome,

(b) for any local authority ... in whose area the aerodrome or any part thereof is situated or whose area is in the neighbourhood of the aerodrome, and

(c) for any organisation representing the interests of persons concerned with the locality in which the aerodrome is situated,

adequate facilities for consultation with respect to any matter concerning the management or administration of the aerodrome which affects their interests."

The airport had previously been designated for the purposes of section 8 of the Civil Aviation Act 1968 which was in the same terms as section 35(2) of the 1982 Act.

The Applicant is a local resident who has lived about one-third of a mile from the boundary of Fairoaks Airport since 1967. He suffers interference with the enjoyment of his property due to the noise and vibration caused by aircraft using the airport. He has been actively involved in local amenity groups and is currently a member of the Chobham Society, an amenity society with about 300 members. He is also convenor of the Fairoaks Environment Consultative Committee.

In these proceedings he complains that by excluding representatives of any local residents' organisations from membership of its airport consultative committee, the Respondent has failed to provide adequate facilities for consultation for organisations representing the interests of persons concerned with the locality, and is in breach of the statutory duty imposed by section 35 of the 1982 Act. The Respondent does not dispute the existence of the statutory duty, but contends that it has provided adequate facilities for consultation with such organisations notwithstanding that their representatives are not members of the committee.

This is apparently the first case in which the court has had to consider the scope of the duty imposed by section 35(2) of the 1982 Act.

The Consultative Committee

The inaugural meeting of the committee took place on 1st February 1972. The terms of reference were to provide a means of consultation for the purposes of section 8 of the 1968 Act and to afford a channel of communication and discussion between the interests mentioned in section 8 whereby, inter alia, the local authorities and local residents could bring to the notice of the management any matters affecting their interests arising from activities at or from the aerodrome. There were to be 10 members of the committee: five from the managers and occupiers of the aerodrome and one each from the Surrey County Council, Bagshot Rural District Council, Chertsey Urban District Council, Woking District Council and Chobham Parish Council. Following local government reorganisation, the successor local authorities became members with effect from 1st January 1974.

The constitution provided inter alia:

"3. (3) The Committee is a corporate body on which each member is appointed not solely as a representative of the Council, company, body or other organisation but as an individual member exercising local or special knowledge and individual judgment. Whilst able to ensure that the views of the Council, company, body or other organisation by which the member is appointed are clearly understood he or she is entitled to speak and vote for or against those views.

...

(7) The Committee shall have power to co-opt additional members not exceeding two in number to serve for such period or periods as the Committee may determine."

No provision was made for representatives of organisations representing local interests to be members of the committee, and that has always been its position.

In the early 1970s the Fair Oaks Action Group ("FAG") pressed for representation on the committee. In refusing to accede to this application, the committee made it clear to FAG and other local organisations that it was willing to meet their representatives to discuss matters of mutual interest relating to the aerodrome at any time. In October 1970 the committee again decided not to amend its constitution, but that arrangements should be introduced to enable organisations to request the inclusion in the committee agenda of items for consideration, and jointly to appoint a representative to allow meetings of the committee to speak on any ideas they had put forward. Although dissatisfied with this proposal, FAG accepted it. They nominated Mr Alan Browne as their representative. In 1977 he was replaced by Dr Robert Evans, who served for about 11 years.

In 1978 FAG decided to disband itself. During the 1980s, Dr Evans attended committee meetings, although the Applicant contends that this representation was in practice ineffective primarily because Dr Evans was not a full member of the committee, being excluded from parts of the meetings. There seems to have been something of a lull in the complaints by the local interests.

The question of representation surfaced again in the late 1980s. In April 1989 the Chairman of the Chobham Society wrote to Councillor Bailey, the Surrey Heath Borough Council representative on the committee, objecting to the proposal that the County Council representative, who happened also to be a member of the Chobham Society, should represent both interests. On 16th December 1991 the Chairman of the Chobham Society again requested that the Society be represented on the committee. On 26th February 1992 the committee refused this request. It considered that it had the most appropriate membership, having members elected from local government bodies, and that the parish councillor for Chobham would be able to keep the Society informed of any relevant matters.

The arrangement for provision of the minutes of the committee meetings via the Parish Council began to break down in 1994. Sometimes the Chobham Society received no copy of the minutes at all; where minutes were received, they arrived very late.

In January 1995 the problem of night flying by helicopters, which had long been of concern to local residents, came to a head when an application was made by the Respondent for a hanger at the airport for the use of police helicopters. Moreover, from about January 1995, the police helicopters started to fly regularly up to 2 am. There were other developments or threatened developments which the residents viewed with alarm.

A new body, the Fair Oaks Environment Consultative, was formed on 8th April 1995. It comprises four amenity societies, two residents' associations and various individuals. The relationship between the local interest organisations and the consultative committee became more strained. Eventually, on 1st November 1986, a letter before action was sent to the committee in which proceedings were threatened unless representatives of the residents' groups were invited to join the committee.

Guidelines issued by the Department of Transport

These were announced for airport consultative committees on 1st March 1988. They were expressed to provide a voluntary code and intended to assist those who have a responsibility to provide facilities for consultation pursuant to section 35 of the 1982 Act.

The following passages are material:

"2. The Purposes of Consultation

Consultation is not intended to detract from the responsibility of management to manage aerodromes. The aim should be to provide an effective forum for the discussion of all matters concerning the development or operation of the aerodrome, which have an impact on users of the aerodrome and on "people living and working in the surrounding area. Consultation should be seen as a positive and interactive process through which the concerns of interested parties can be taken into account - aiming to allow the efficient operation of an airfield while moderating its impact on local communities. It should be seen as a means of keeping all interested parties adequately informed of matters affecting them, of providing an opportunity to try to reconcile any differences of view that may arise, and for resolving differences through agreed voluntary action.

3. The Form of Consultation

Consultation is best carried out through a committee set up for this purpose, except where it can be demonstrated that the particular circumstances call for a different arrangement.

4. Composition of Consultative Committees.

4.1. Representation

...

An appropriately representative committee is therefore likely to include members from all of these groups in balanced proportions. Local interests may be represented by parish councils and local residents' groups, community groups or groups formed to represent local interests in the environment or amenities. Committees should seek to achieve a comprehensive input to their deliberations by ensuring fair representation of the full range of users of the aerodrome and of local interests and by seeing that members are given an equal opportunity to express their views. In pursuing this, account may have to be taken of the need to secure a committee which is not so large that it is unable to function effectively."

Submissions on behalf of the Respondent

Since the Respondent seeks to justify treating bodies referred to in section 35(2)(c) of the 1982 Act differently from the way it treats bodies referred to in paragraphs (a) and (b), it will be convenient to start with the submissions advanced by Mr Gordon QC. His starting point is that there is nothing in the statutory language which requires that a consultative committee be established by an airport operator, since section 35(2) does not prescribe any particular form of consultation. From there, he moves to the submission that if an operator chooses to establish a consultative committee, there is nothing in the language of the statute which requires that to be done in any particular form or manner. All that is required is that adequate facilities for consultation be provided, and this gives the operator a measure of discretion, subject to overall fairness.

He further contends that there is nothing in the language of section 35(2) which requires each of the three categories to be treated in the same way provided that they are all treated fairly. The question of fairness or adequacy involves the exercise of judgment on the part of the Respondent which will depend on local conditions and circumstances, and which is capable of being exercised properly in different ways; and the question for the court is to consider whether overall the Respondent has exercised its judgment in a manner which is manifestly unfair to the aggrieved group.

Turning to the facts of this case, Mr Gordon submits that the facilities for consultation afforded to the local residents' groups are not manifestly unfair. He points to a number of features of the arrangements that are in place which ensure that the facilities are adequate. These are: (i) paragraph 3(3) of the constitution was specifically included to enable representatives to ensure that local views could be articulated by the members both on behalf of the organisations that they represented and as individuals. Thus the representatives of the category (a) and category (b) groups can and should represent the interests of the category (c) group as well as their own; (ii) the complaints of individual residents about the manner in which the airport is operated are invariably dealt with by the Respondent and dealt with courteously; (iii) those complaints are made known to the consultative committee and taken into account by it; (iv) any development which requires planning permission will be subject to the usual requirements as to publicity so that local residents will have advance notice and be able to make representations to the consultative committee about them; (v) paragraph 3(7) of the constitution of the committee provides the right to co-opt up to two members: this is a valuable

means whereby the views of category (c) bodies can be made known to the committee; (vi) Chobham Parish Council is a member; and (vii) the committee is always willing to meet representatives of local residents' organisations to discuss any matters of mutual interest.

Looking at the position overall, he submits that it is not manifestly unfair in these circumstances to exclude representatives of the category (c) bodies from the committee, since the mechanisms for consultation that are in place do afford to those bodies adequate facilities for consultation.

I should say that in his first affidavit sworn on 23rd December 1997 on behalf of the Respondent, Mr Mackay deposes at paragraph 10(v):

"There have been requests from a number of local interest organisations for direct representation on the Consultative Committee in recent years and the Respondent has had to balance representation for such organisations against other factors such as the likely pressure from other organisations for similar representation. On each occasion the issue of membership has been discussed by the Consultative Committee the Committee members have also taken the view that, in the light of the existing representation, the fact that individuals who are also members of local interest organisations may represent those interests (albeit ex officio), and the Respondent's constant readiness to discuss matters with organisations and individuals, the membership should remain unchanged at present. The Respondent has also agreed to circulate minutes via the Parish Council to the Chobham Society."

Submissions on behalf of the Applicant

Mr Steel emphasises the fact that the categories specified in section 35(2) of the 1982 Act include residents' associations and action groups as a separate and distinct class in addition to aerodrome users and local authorities. He accepts that the statute does not oblige an operator to establish a consultative committee. He submits, however, that, where a committee is established, consultation under the Act is inadequate in law if one of the section 35(2) categories is treated materially differently from the others in the consultation process.

To be treated materially differently in this context includes the exclusion of one of the categories from the committee. It is unfair to require one category to have its views expressed only through the agency of another category, or to prevent a category from being able to participate in discussion, thereby enabling it to seek to persuade others to see its point of view.

None of the features of the existing arrangements relied on by Mr Gordon cure this fundamental unfairness in the consultation facilities provided by the Respondent to the category (c) group.

The local authority members of the committee cannot adequately represent the interests of the category (c) group. They are obliged to represent the interests of all their constituents. These will include the people work at the aerodrome and the people who use it. As Mr Mackay says at paragraph 14 of his first affidavit:

"... The approach taken by the Respondent is recognised by the local planning authorities who accept the role that business aviation has to play and work closely with the Airport to ensure that an appropriate balance between the interests of the airport and the surrounding locality is struck. ..."

Complaints, submits Mr Steel, are by definition always dealt with after the event. The real grievance of the residents is that the category (c) bodies are denied the opportunity of influencing decisions before they are made. The point about planning permission does not carry much weight, since it is only development on the largest scale which will require an application for planning permission to be made: see Part 18 of Schedule 2 to the General Permitted Development Order 1955 which prescribes the circumstances in which development is permitted at an airport without going through the hoops of the planning legislation.

The helicopter hanger and helicopter landing pad at Fairoaks aerodrome were both examples of development which was deemed to be permitted under the provisions of Part 18. As to paragraph 3(7) of the constitution, Mr Steel submits that this does not advance matters much, since there is a maximum of two in the number of possible co-optees, and persons may be co-opted from any of the three section 35(2) categories or indeed from outside those categories altogether. As for reliance on the fact that Chobham Parish Council is a member of the committee, Mr Steel submits that Parish Councils have the interests of other residents to consider, for example people employed at the aerodrome who may be unaffected by noise in their homes, and not only those of residents who are concerned about noise from the aerodrome. The affected areas of Ottershaw and Woking do not even have Parish Councils. The fact that the committee is always willing to meet representatives of local residents' organisations to discuss any matters of mutual interest does not meet the fundamental point that they are denied the opportunity to participate in the discussion at committee, and influence its decision.

Decision

The approach

The first matter that I have to decide is, what is the correct approach for the court to adopt in reviewing the procedures established by the Respondent for the discharge of its statutory duty. At one stage Mr Gordon submitted that I should determine this application in favour of the Applicant only if persuaded that no reasonable airport authority could consider that the facilities for consultation were adequate. He later modified this submission, but continued to maintain that the hurdle to be surmounted by the Applicant is a very high one, and that I should grant relief to the Applicant only if satisfied that there was manifest unfairness.

It is clear, in my view, that the test that I have to apply is not a *Wednesbury* test. The question for the court is whether the facilities for consultation are adequate. It is common ground that this imports or, at any rate, is analogous to the test of fairness that underpins the approach of the court to questions of procedural irregularity. That the test is not a *Wednesbury* test seems to me to emerge clearly from *R v Take-over Panel, ex parte Guinness* [1990] 1 QB 146, 178G-179A, 184C-185F. It is for the court to decide whether there has been unfairness in cases of procedural irregularity. It must follow that it is for me to decide in this case whether the facilities for consultation provided were adequate. The question arose in argument as to the extent to which I should give weight to the Respondent's own view as to the adequacy of the facilities provided. In *ex parte Guinness*, Lord Donaldson MR at page 178H said that fairness must depend in part on the tribunal's view of "... the general situation ..." and that a *Wednesbury* approach to that view might well be justified. Lloyd LJ said at page 184D:

"... Of course the court will give great weight to the tribunal's own view of what is fair, and will not lightly decide that a tribunal has adopted a procedure which is unfair, especially so "distinguished and experienced a tribunal as the panel. But in the last resort the court is the arbiter of what is fair. ..."

Again, at page 185C, he said:

"I would only comment at this stage that no amount of urgency in compensating former shareholders would justify depriving Guinness of a fair opportunity of presenting its case. It was said that the concept of fairness is flexible; and so in a sense it is. I would accept that what is required of a tribunal, if it is to be fair, must depend on the nature of the task in hand and the circumstances prevailing at the time in question. But it is certainly not flexible in the sense that once what is fair has been ascertained, the tribunal can be allowed to fall short of that standard by so much as an iota.

Secondly, if, by his emphasis on the panel's balancing task, Mr Buckley was hinting that the decision as to what was fair in the present case was really one for the panel rather than the court, then I would disagree. One can understand the view that the panel, with its great experience of City affairs, is well equipped to decide what is fair by City standards. The court does not seek to match the panel's experience in that regard. But it does have long experience of other tribunals of all sorts, high and low. It would be failing in its duty if it did not enforce those principles of fair procedure which it has developed over many years. As the court pointed out in *Reg v Panel on Take-overs and Mergers, Ex parte Datafin Plc* [1987] QB 815, the unique character of the panel should not, and does not, exclude it from the court's purview in this or any other respect."

In this case I think it right to take account of the Respondent's views of "the general situation", to use the words of Lord Donaldson, and its opinion of what is practicable. I also consider that I must take into account the fact that the Respondent has clearly given much thought over the years to the question whether category (c) groups should be represented by membership of the committee. But I do not consider that I am enjoined by what Lloyd LJ said in *ex parte Guinness* to give great weight to the Respondent's opinion that the facilities that it has provided are adequate. It seems to me that that is essentially a matter for the court to decide. The Respondent is not a tribunal with specialist knowledge which is relevant to a judgment on what is fair. Nor do I accept Mr Gordon's submission that I should find in favour of the Applicant only if satisfied that the facilities provided are manifestly inadequate or that there is manifest unfairness.

Application to the facts of the case

The starting point is that Parliament has identified three discrete groups, each of which is entitled to adequate facilities for consultation with respect to any matter concerning the management or administration of the aerodrome which affect their interests. Broadly speaking, it is likely that the interests of the users of the aerodrome will not coincide with, and will usually be opposed to, the interests of the category (c) group. As is exemplified by the facts of this case, the interests of local authorities (category (b)) are likely to be neutral in the sense that they will seek to hold the ring between the two other groups. It is because the interests of the category (c) group are likely to be in conflict with those of the category (a) group, and the category (b) group are likely to adopt a neutral position that it is likely that, if an operator establishes a consultative committee, adequate facilities for

consultation will require representatives of all three groups on it, and in reasonably balanced proportions.

That was the view of the Department of Transport expressed at paragraph 4.1 of the guidelines, and I agree with it. I cannot improve on the language of that paragraph. It does not follow that there has to be numerical equality of representation from the three groups, but there must be sufficient representation from each group to ensure that the views of that group are adequately expressed. As Mr Steel submits, the whole point of having a committee is that its members should have the opportunity to participate in discussion and influence its decision.

On the face of it, therefore, by excluding the category (c) group from the committee, the Respondent was failing to provide adequate facilities for consultation to that group. That is why I have summarised the submissions of Mr Gordon before turning to those of Mr Steel, since it seems to me that it is for the Respondent to justify the differential treatment according to the category (c) group, and satisfy the court that notwithstanding their exclusion from the committee members of that group are provided with adequate facilities for consultation within the meaning of section 35(2).

I am unpersuaded by Mr Gordon's submissions, and largely for the reasons advanced by Mr Steel. The Local Authority members cannot properly and effectively represent the interests of the category (c) group. No doubt that is why Parliament identified the category (c) group as a separate group. It is clear from paragraph 13(iv) of Mr Mackay's first affidavit that the Respondent has been considerably influenced in its views as to the adequacy of the facilities provided by the fact that all members on the committee are required to serve not only as representatives of their own organisations, but also as individual members exercising local or special knowledge and individual judgment. In my view, however, it is unrealistic to suppose that the users will represent the interests of the category (c) group unless those interests coincide with their own. I have already dealt with the position of the Local Authorities.

Conscientious attention to complaints is no substitute for allowing the group to make its views known on issues relating to the management or administration of the aerodrome, particularly issues relating to its development. Nor is it sufficient that members of the category (c) group are or may be sent copies of the minutes of the committee meetings several weeks or months after they have taken place. Once a decision has been taken, it may be too late for a category (c) person to have any influence. Thus a number of the features relied on by the Respondent as affording adequate facilities for consultation are no more than the giving of an opportunity to make views known after the event. This would matter less if there were members on the committee who could reasonably be relied on to represent the views of the category (c) group even if not actually drawn from it. But, as we have seen, the committee members are likely to be opposed to the interests of the category (c) group or, at best, neutral.

It seems to me that Mr Gordon's best point is that the committee has the power to co-opt. It is not clear whether the appointment of Mr Brown and later Dr Evans was as fully co-opted members pursuant to paragraph 3(7) of the constitution. At paragraph 12 of his first affidavit, Mr Mackay refers to them as "observers". At paragraph 5 of his second affidavit, the Applicant refers to "the experience of co-opted membership" as having been unsatisfactory. Mr Mackay was airport manager from 1972 to 1996. He ought to know whether the power to co-opt was exercised. I infer from his affidavit that it was not. In any event, for the reasons given by Mr Steel, the power to co-opt is an unsatisfactory substitute for full membership of the committee.

I accept Mr Gordon's submission that, in assessing whether the facilities for consultation provided by the Respondent are adequate, it is necessary to have regard to all the relevant circumstances, and to take into account all the features relied on by the Respondent.

Looking at the matter in the round, I have reached the clear conclusion that, unless there are any factors which make it impracticable to afford full membership on the committee to representatives of the category (c) group, the Respondent is in breach of section 35(2) of the 1982 Act in denying that membership.

It is conceded by Mr Gordon that it would be possible to devise a system whereby a reasonable number of representatives of the category (c) group became members of the committee, and that this would present no problems for the efficient working of the committee. Mr Mackay deposes that to include members of all the category (c) organisations on the committee would result in a committee that was so large as to be unmanageable. Mr Steel does not take issue with that. The manageability of a committee is a factor to which explicit reference is made in paragraph 4.1 of the DOT guidelines. The spectre of unmanageability vanishes once it is agreed (as it is) that a sensible system for representation, whether by rota or otherwise, can be devised.

In the end, no satisfactory reason has been advanced by the Respondent for discriminating against the category (c) group. Nor is it suggested on behalf of the Respondent that the category (c) interests

would seek to wreck the committee. There is no reason to suppose that the Applicant and those he represents want anything other than the right to be consulted adequately and not to be treated materially differently from the other groups in the consultation process.

For the reasons that I have endeavoured to explain, this application succeeds. I should add, for completeness, that when applying for leave, the Applicant did not apply for an extension of time. At one stage of his submissions Mr Gordon submitted that the Applicant had showed no good reason for extending time, so that the application should fail on that ground. He did not, however, persist with those submissions and, in my judgment, he was right not to do so. The breach of statutory duty which I found is a continuing breach. If this application had been refused on grounds of delay, a fresh application would have been made on the same grounds. In these circumstances, it is unnecessary for me to deal with the question of delay.

MR STEEL QC: My Lord, there is the declaration which is sought and is found in the Form 86A. This is in the bundle at page 2. I wonder if I could ask that the Order be in the form of the relief sought there, and also that the costs of this application be payable by the Respondent?

MR GORDON QC: My Lord, in terms of costs, I clearly cannot resist the costs Order.

MR JUSTICE DYSON: What about the relief?

MR GORDON QC: In terms of the relief I do resist it. Certainly, my Lord, the decision itself can be quashed. I apprehend that your Lordship will not feel it necessary to order mandamus because the Respondent would clearly comply with that. However, so far as the declaration is concerned, there is an important point to make, and it is this: the declaration is expressed in the most general terms:

"... all representatives of local residents' groups from membership of the consultative committee is unlawful."

This is a particular case, and on the particular facts of the case your Lordship has reached a decision of unfairness. It is, in my submission, very dangerous to grant relief of this sort which does not inevitably flow from the rationale of your Lordship's approach to the case. It is for that reason that I do resist.

MR JUSTICE DYSON: Mr Steel, it is sufficient, is it not, if I simply quash -- I do not know whether you are pressing for mandamus.

MR STEEL QC: No, my Lord. In the light of what Mr Gordon has said, I do not press it, if that helps.

MR JUSTICE DYSON: I think he has a point about declaration. I do not think it is necessary. The judgment is there. It sets out the reasons. I am not determining how many members should be admitted to the committee or anything like that. I am merely saying that the decision they have taken is an unlawful decision.

MR STEEL QC: In the light of your Lordship's judgment, I do not press, if my Lord is not seeking to make a declaration in those terms, for a declaration to be made, as it is clear in terms, that the reasons for the unlawfulness are as set out in the declaration. I do not think one has to go any further.

Insofar as they are different, then, of course they can be taken into account in the light of my Lord's judgment, which gives further reasoning behind it, that a declaration cannot do.

RULING

MR JUSTICE DYSON: I will simply quash the decision evidenced in the letter of 11th March.

MR GORDON QC: My Lord, there is one further application: for leave to appeal?

MR JUSTICE DYSON: I have had quite a lot of those this morning, Mr Gordon.

MR GORDON QC: My Lord, I hope I should be more successful. The two points are these: (i) it is the first case, as your Lordship has noted in the judgment, on the constituent elements of the duty; (ii) there is an important and difficult point on the threshold approach to fairness. Your Lordship has rejected our submission that the test is a high one or, to put it another way, that there must be manifest unfairness, and that is an important point.

There are other points. A second point, for I have not had chance to digest your Lordship's judgment in full, would be, as it were, the prima facie approach and the justification that the Respondent has to show to the court. It is important. It has wider ramifications from this case, and the extent of involvement of residents' groups in planning decisions is certainly a very controversial sub-text to the case.

For all those reasons, I do respectfully invite your Lordship to grant leave to appeal?

MR STEEL QC: It is a matter for the court entirely, my Lord.

RULING AS REGARDS LEAVE TO APPEAL

MR JUSTICE DYSON: I think, Mr Gordon, that this is case where, if you want to take it further, I am not going to stand in your way.

MR GORDON QC: My Lord, I am grateful.