

THE OVERVIEW AND SCRUTINY COMMITTEE

17 OCTOBER 2016

CLLR GOTTLIEB – MEMBERSHIP OF COMMITTEES

REPORT OF HEAD OF LEGAL AND DEMOCRATIC SERVICES

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RECENT REFERENCES:

Public Participation – The Overview and Scrutiny Committee, 12 September 2016

EXECUTIVE SUMMARY:

This report gives background information, following the Committee's decision at its last meeting to include an item on the agenda to consider Cllr Gottlieb's membership of Committees.

RECOMMENDATIONS:

- 1 That Members consider the report and decide whether there are any matters which they wish to bring to the attention of Cabinet.

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DETAIL:

1 Introduction

- 1.1 During the public participation section of The Overview and Scrutiny Committee meeting of 12 September 2016, Cllr Gottlieb addressed the Committee. He asked the Committee to investigate the circumstances surrounding his removal from all Council Committee appointments, pending investigation by the Standards Committee, following the decision taken by Cabinet at its meeting of 7 September 2016.
- 1.2 The Committee agreed that a report on the issue should be made to this meeting. This report therefore sets out the action which Cabinet has taken so far, and the relevant provisions of the Constitution which apply to this situation.
- 1.3 As noted in the minutes of The Overview and Scrutiny Committee of 12 September 2016, the matters to which Cllr Gottlieb made reference are undergoing consideration in accordance with the Council's procedures on standards, and no date has yet been set for a meeting of a Standards (Determination) Sub-Committee.

2 Action taken by Cabinet

- 2.1 At its meeting of Cabinet on 7 September 2016, it was resolved as follows:-

RESOLVED:

1. *That Councillor Gottlieb be removed from the list of standing invitees of the Cabinet (Local Plan) Committee and the Cabinet (Major Projects) Committee.*
2. *That Councillor Gottlieb be replaced on the Central Winchester Informal Policy Group by Councillor Weston (who would also chair the Group).*

3 Action Taken By Council

- 3.1 A standard item for all Council meetings is "The making or termination of appointments to bodies set up by the Council."
- 3.2 Under this agenda item, changes to membership of Committees appointed by the Council can be made.

4 Constitution

- 4.1 Under Rule 20 of the Council Procedure Rules, the Leader or Cabinet may appoint Cabinet Committees. Only members of Cabinet may be appointed to a Cabinet Committee, although practice has been to invite named relevant non-Cabinet Members to such meetings.
- 4.2 Informal Policy Groups (IPG) are set up and appointed by Cabinet to provide Portfolio Holders with a consultation mechanism as major policy is formulated. Practice is that the memberships of IPGs are cross-party, and reflect the broad political balance of the Council.
- 4.3 Rule 17 of the Council Procedure Rules provides for the appointment of various committees, including The Overview and Scrutiny, Audit, and Appeals & Disputes Committees. The effect is that Members are appointed to these Committees by full Council (although as noted below, this is subject to the rules on political balance).
- 4.4 Rule 17(13) provides that Deputy Members may be appointed to Committees. Groups may, when nominating their representatives to the Committee, nominate additional Members as Deputy Members.
- 4.5 Appointments are made at Annual Council. As noted above, the agenda for each Council meeting includes an item permitting full Council to make changes to the appointments it has made, generally following a decision of a Group to alter its representation on a Committee.

5 Legal Issues

- 5.1 Members will be aware that under the Local Government and Housing Act 1989, Councils are required to adhere to political balance rules when making appointments to Committees. Once seats on Committees have been allocated in accordance with these rules, there is a duty on the authority (i.e. full Council) to give effect to the allocation by making appointments in accordance with the wishes of the political groups.
- 5.2 The appointment of Cabinet Committees and IPGs are a matter for Cabinet rather than full Council. The rules on political balance do not apply to these bodies.
- 5.3 Case law prior to the 1989 Act confirmed that a local authority (i.e. full Council) can terminate a Councillor's membership of a Committee at any time. This needs to be considered to be subject to the political balance requirements, and the general duty on Local Authorities to act rationally (in the legal sense of that term).
- 5.4 Changes to Committee memberships by Council should be there for legitimate reasons, rather than as a punishment. In *R v Greenwich Borough Council ex. P Lovelace*, the Court held:-

"In my judgment the reason for the decision was a legitimate reason. A Councillor is always under some pressures from outside. The risk of not being

re-elected at the next election is one obvious constraint. It seems to me however that at the present day, when local government is organised on party lines, some additional constraints resulting from the existence of a party line or strategy on particular issues are inevitable. Penalties by way of punishment must clearly be avoided or any action which is vindictive or malicious. But a political party is entitled to take steps to ensure its cohesion and I can see nothing intrinsically wrong in a decision to change a party's representation on a Committee or Sub-Committee so as to advance the policies which the party considers desirable. In this sense "group discipline" does not connote punishment but any attempt to keep the party group together.

The line between constraints which are acceptable and even inevitable to enable a party group to function together, and constraints which are unacceptable because they involve improper coercion, may often be a narrow one. I am satisfied that in this case the line was not crossed."

- 5.5 That case concerned the decision of the Council to reduce the size of a Committee, and re-appoint (without appointing the Councillor who challenged the decision), rather than a decision of a political group to change its representative.
- 5.6 As Council is required to appoint in accordance with the wishes of the relevant political group, it is permissible for a Group to decide to change the identity of one or more of its representatives on a Committee. The Council is not required to enquire behind the group's reasoning for making such changes.

OTHER CONSIDERATIONS:

6 COMMUNITY STRATEGY AND PORTFOLIO PLANS (RELEVANCE TO):

- 6.1 There are no direct implications on the Community Strategy and Portfolio Plans from this report.

7 RESOURCE IMPLICATIONS:

- 7.1 There are no resource implications for this report.

8 RISK MANAGEMENT ISSUES

- 8.1 In dealing with appointments to committees, the Council must act in accordance with the wishes of the relevant political group, and comply with the legislation in the 1989 Act.

BACKGROUND DOCUMENTS:

None

APPENDICES:

None