

**CORPORATE RESOURCES OVERVIEW AND SCRUTINY COMMITTEE
(SPECIAL)**

WEDNESDAY 4 AUGUST 2004 AT 10.00 AM

PRESENT: Councillor Mrs Prest (Chairman), Councillors Bradley, Farmer (P) (as substitute for Councillor Guest), Glover, Hendry (as substitute for Councillor Quilter), Jefferson, Joscelyne and Mrs Styth

ALSO PRESENT: Councillor Mrs Geddes, Firth, Mrs Bowman and Knapton.

Councillor Bowman (S) was also present as an observer.

CROS.120/04 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Guest and Quilter.

CROS.121/04 DECLARATIONS OF INTEREST

There were no Declarations of Interest.

**CROS.122/04 CALL-IN – COMPREHENSIVE PERFORMANCE
ASSESSMENT 2003 – DAYS LEAVE GRANTED TO STAFF**

Councillors Mrs Bradley, Glover and Mrs Styth had called-in for scrutiny Executive Decision EX.143/04 dealing with the CPA Days Leave. The decision in EX.143/04 was :

- (i) “That the decision taken by the Corporate Resources Portfolio Holder on 2 December 2003 to award Council staff a day’s leave be confirmed.
- (ii) That the legal basis for taking the decision as set out above and in the comments of the Head of Legal and Democratic Services in Report CE.17/04 be confirmed.
- (iii) That the different method of calculating the “opportunity costs” of the extra day's leave be noted.”

The reason given by Members for the Call-In was to seek reassurance from the Portfolio Holder on the future conduct on such matters and to clarify the Council’s response to the District Auditor.

Councillor Bradley added that the item had been called-in to query the basis on which the decision was made in that she did not believe that the Portfolio Holder had the delegated powers to take such a decision and she wished to

ensure that the situation would not be repeated in the future and the Council's response was robust enough to meet any further challenge which might be made on the way the decision was made when the Authority's accounts were published.

She also felt that the method which had been used in working out the cost to the Council of granting a days leave was not the normal method of calculation which would have been used and, following the receipt of advice from the District Auditor, that it would have been better if the Council had used a different method for calculating the cost of that leave.

She added that, on the basis of the calculations which had been used, which set the cost of granting the days leave as £12,000, the Portfolio Holder could have decided under her delegated powers to give all staff 5 days leave at a cost of £60,000.

The Portfolio Holder – Corporate Resources, in responding to the call-in commented that she had made the decision to grant a day's leave to all staff in good faith. The information which was given to her at the time of her decision was that one days leave would not involve any actual cost to the Authority other than the cost of providing cover in Commercial and Technical Services amounting to £12,000 and in accordance with the Council's Scheme of Delegation the decision was, therefore, within her delegated powers.

A Member questioned whether the Portfolio Holder had received any legal advice prior to taking her decision and what the advice was.

The Portfolio Holder – Corporate Resources commented that the advice she was given was that as the cost of the decision was £12,000 under the Constitution she had the delegated powers to make that decision.

A Member sought details of meetings which had taken place on the matter, whether notes were taken at those meetings, the date of such meetings, the level of consultation which had taken place and with whom and asked to see a copy of the legal and financial advice which had been given to the Portfolio Holder.

The Head of Legal and Democratic Services commented that he had given advice to meetings of CMT and JMT on the basis that the Authority should tread carefully on the subject, given that there had been legal precedents regarding the legality of what might be perceived as making a gratuitous payment to staff. He also added that the Portfolio Holder was entitled under the Council's Delegation Scheme to make decisions which had a cost of up to £60,000. He believed that the Portfolio Holder had taken advice with regard to the level of cost and he understood that the advice given was that the cost of the decision would be £12,000 approximately. He added that his advice was to be cautious on the way in which the Authority dealt with the proposal. With regard to the calculation of costs, he explained that there were different methods to use in calculating the level of cost to the Authority. The cost which the Authority had suffered in respect of the cost of buying in cover and

the savings which had been made by closing the Civic Centre came to a value of £12,000 or thereabouts i.e. under the £60,000 limit. There was a different method which the District Auditor had referred to which divided the Council's wage bill by the number of days in the year and in that respect the cost to the Authority came out above £60,000 and, if that method was used opportunity, the Portfolio Holder may not have had the authority to make a decision under the delegation scheme.

A Member added that the District Auditor had come to a conclusion on the matter but had not said that the decision was illegal or challenged the legality of the decision, but had only suggested that there was a different method, which could have been used in calculating the cost.

A Member in referring to Report CE.17/04 noted the consultations which had taken place between June and December 2003 with the Corporate Management Team, the Executive Management Group, Joint Management Team, City Council's Executive, Audit Commission and other Local Authorities who had awarded a days leave following a good or excellent CPA score. She sought details of the consultation which had taken place with the Audit Commission, where and when those meetings had taken place and whether there was a record of the meetings.

Portfolio Holder – Corporate Resources commented that consultations had taken place between Maggie Mooney and the District Auditor to address the concerns of the Audit Commission on the report and thought there would be e-mails and correspondence relating to the concerns which the Audit Commission had raised as part of the preparation for Report CE.17/04 and added that she had not instructed anyone to contact the Audit Commission.

A Member questioned whether the Council had queried the process followed in other Local Authorities who had awarded an extra days leave.

Portfolio Holder – Corporate Resources reported that in some cases the decision to award an extra days leave following a good or excellent CPA score had been taken by the Chief Executive in consultation with the Group Leaders, in other cases it had been taken by the Head of Personnel on his own and in other cases the decision had been taken by the Council's Executive.

A Member questioned whether in any of the other Authorities the Council had consulted the decision had been taken by a Portfolio Holder acting on their own.

Portfolio Holder – Corporate Resources confirmed that no other Authority the Council had consulted had made the decision in that way.

A Member indicated that the report CE.17/04 might not compare like with like in that different Authorities operate under different Constitutions and in that respect the information which was contained in the report was not helpful to

the Portfolio Holder or the Overview and Scrutiny Committee even though the report had been written after the decision had been made.

Portfolio Holder – Corporate Resources indicated that the decision to grant a days leave was a management decision which had been taken in line with the Council's Constitution.

Dr Gooding commented that the question of a reward for staff in respect of the Council receiving a good CPA result had been discussed at CMT and following those discussions the Council had consulted the District Auditor on an appropriate reward.

A Member felt that in dealing with the matter the Member making such a decision should be protected. She noted that the Executive Directors had discussed the question of a reward for staff and questioned whether the Executive Directors had felt that staff should be rewarded and taken the lead in the issue.

Dr Gooding commented that he had not taken a lead personally in this matter but the Executive Management Group felt that the staff should be rewarded for achieving a good CPA score.

A Member noted that consultations had taken place on the question of the CPA days leave between June and December 2003 with the Corporate Management Team, Executive Management Group, Joint Management Team, City Council's Executive, Audit Commission and a number of other local authorities who had awarded an extra day's leave following good or excellent CPA scores, and asked to see minutes of those meetings or copies of correspondence.

A Member questioned why given the level of consultation which had been carried out, the question of the CPA day's leave had not been brought to the Overview and Scrutiny Committees for their view which could have given the Executive a broader input on the matter and thereby avoided the embarrassment of the matter being investigated by the District Auditor.

Portfolio Holder – Corporate Resources indicated that the question of rewarding staff had been discussed and a number of options had been considered but it was felt to be a management function not a policy decision.

A Member considered the question of how staff might be rewarded should be a Policy matter and suggested that the Executive had dealt with the matter in a secretive fashion. The decision had however set a precedent and she sought assurances that any consideration of matters relating to rewards for staff in the future would be dealt with after having taken account of the lessons learnt in this instance so as to not to embarrass the Council further.

Portfolio Holder – Corporate Resources added that she had dealt with the matter in good faith in accordance with the Constitution and felt it was not a matter for the Portfolio Holder to say that any advice which she had received was wrong.

A Member indicated that staff had been rewarded for their efforts as a way of boosting morale and as an incentive to help the Council progress from a good CPA's score to an excellent score in the future.

A Member compared the Council's CPA's result with School OFSTED reports and questioned whether the reward for a good OFSTED report would be to close the school down for a day.

A Member questioned whether the Portfolio Holder would do anything differently if the situation arose again and specifically whether the Council would use a different methodology in calculating the cost of an additional day's leave in informing any Council decision which may be made in the future. He asked what would happen if the good CPA result became an excellent result, had a precedent been set for rewarding staff with another day's leave. He noted that the Council had retained its IIP status and asked whether that should be reflected in a reward to staff, and if so, on what basis would the Council calculate the cost of such a reward.

Portfolio Holder – Corporate Resources felt that the staffs' reward in the Council retaining its IIP status was in the level of investment which the Council made in training and development of staff and members. She added that it was not a matter for the Portfolio Holder to calculate the cost of any reward or day's leave, that was a matter for Officers but she had tried to be fair in making a decision to grant staff a day's leave to reward staff for their input and she had made her decision in good faith in accordance with the Constitution and on the advice of Officers.

A Member added that the District Auditor had made it clear that there were different methods of calculating the cost, and he wished to know what method would be used by the Council in any future calculations.

A Member noted that in the Head of Finance's opinion the question of calculating the opportunity cost accurately would require offsetting savings from the closure of the Civic Centre, plus analysing the amount of Officer's time that was worked over and above the contracted hours, and this would be a significant piece of work which the Head of Finance did not consider at this stage to be a worthwhile exercise.

Portfolio Holder – Corporate Resources added that it was not a matter for her as the Portfolio Holder to make those calculations or to decide what method of calculation to use.

The Portfolio Holder for Policy Performance and Finance drew attention to the statement in the report that the information which was given was "the opinion" of the District Auditor.

A Member noted the two concerns which had been raised by the District Auditor and questioned in particular the issues the Council had raised with the District Auditor and reminded the meeting that the matter had come about as a result of a complaint which had been submitted by a member of the public. He referred to the Executive Decision under Minute EX.143/04 to "note the different methods of calculating the opportunity cost of the extra day's leave" and questioned whether the "noting" of the decision meant that the Executive did not agree with those different methods of calculation. He felt that if the Executive had taken the advice of the District Auditor and agreed to look at different ways of calculating the cost and acknowledged that the Council had not used the right method and agreed to change that method in the future, the matter would have been finished but the response from the Executive seemed to be that the Executive and the Council had not done anything wrong. He added that under the methodology to work out the cost which had been used by the Portfolio Holder it was not expensive to grant a day's leave and a precedent had been set that the cost of a day's leave was £12,000. He felt that the cost of the day's leave should be calculated in a robust manner and that method and cost should be reported to the Executive and the Executive endorse the decision. He felt that such a method would ensure that those calculations were set as a precedent that could be followed in any future decisions.

Portfolio Holder – Corporate Resources commented that she had acted in good faith in accordance with the advice of Officers of the Authority. She did not believe that the advice which had been given was wrong at the time. She questioned how members of the Labour Group knew that a member of the public had submitted a complaint on the matter.

A Member responded by saying that the Labour Group had received a copy of the District Auditor's letter, although they did not have the name of the complainant. She also added that she could not understand why the Portfolio Holder felt that the matter had to be conducted in a secretive fashion.

A Member questioned again whether with the benefit of hindsight the Portfolio Holder would act differently in this matter.

Portfolio Holder – Corporate Resources indicated that she had taken the advice of Officers and she had not done anything that she thought was not right.

Dr Gooding felt that Officers in calculating the opportunity cost on any such matter in the future, would have to take on board the advice which had been given by the District Auditor.

The Head of Legal and Democratic Services commented that the District Auditor had been consulted on the Report CE.17/04 considered by the Executive in July to query whether the District Auditor accepted the legal basis on which the decision had been made, and the Council's response to the District Auditor's suggestion regarding the method of calculating the cost of a day's leave. He added that the draft report had been sent to the District

Auditor for comment, and he read out a copy of the DA's response by e-mail which stated that the report "reflects our comments". Subsequently the Executive Director had written to the District Auditor and the Council had received a letter dated 3 August 2004 in which the District Auditor noted the Council's response to the concerns which had been raised but was not able to conclude the matter as there could be a further challenge on this issue on the publication of the Council's accounts, in particular, with regards to the question of calculating the opportunity costs which could require the matter to be investigated again. The District Auditor had also noted that the Council had not revised the calculation of the opportunity cost of the exercise and that she herself may wish to give the matter further consideration as part of her audit. The Head of Legal and Democratic Services added that in the light of the above response Officers would need to discuss the issue further.

A Member felt that the matter could not be taken further at the present time as it still was subject to investigation, but that it would have helped the scrutiny of the decision if papers setting out the advice sought from the District Auditor and a record of the District Auditor's response whether in notes of meetings or in correspondence, together with the results of the comparison studies which had been carried with other authorities, had been circulated as this would have helped the Council review the processes which had been followed, and enabled the Council to judge whether the processes had been robust or whether improvements could be made. She added that the issue needed to be addressed as the decision under EX.143/04 did not in her opinion satisfactorily address the various issues which had been raised and felt it would be preferable to refer the matter back to the Executive to allow them to consider the issue further and to determine how they would deal with such instances in the future. She added that the matter of awarding an extra days leave for staff as a reward for their CPA performance was not an issue but the robustness of the procedure which had been followed, the legitimacy of the decision and the question of the calculation of costs were issues which needed to be investigated so that the Council's deliberations were beyond reproach and referring the matter back to the Executive would enable the Executive to acknowledge those concerns and agree how matters would be dealt with in the future.

A Member also noted the inconsistencies in Report CE.17/04 with regard to the analysis/costing of the additional time worked by officers and she asked whether the Portfolio Holder could confirm that extra work had been carried out by all staff in order to achieve the "CPA score". The Portfolio Holder – Corporate Resources indicated that she could not confirm that.

A member thought that by maintaining the Executive's attitude on this matter it encouraged further investigation and she felt that the Executive should take on board the District Auditor's advice as to the more usual way of calculating the opportunity costs. She also added that as the decision had been taken on behalf of the Council and in that respect included both the Labour Group and herself she asked the Portfolio Holder to ensure that in any future instances that more usual method of calculating opportunity costs as advised by the District Auditor would be used.

A Member felt that the Portfolio Holder had carried out consultations prior to making the decision and had made the decision correctly. There were alternative methods of calculating the costs but the Head of Finance had indicated that the different methods of working out the opportunity costs would result in a significant piece of work which was not worthwhile at the present time. He noted that discussions which had taken place with the District Auditor who had not criticised the Councillor's action. He felt that the matter was worthy of discussion but questioned whether it was a serious matter. He felt that the conduct of the Portfolio Holder in the issue had been exemplary.

A Member commented that the Overview and Scrutiny Committee were scrutinising the decision which had been taken and felt that the Committee's work should be directed towards protecting the Portfolio Holder and any other Member from being placed in a similar position in the future. She felt it unfair to the Portfolio Holder that the advice which had been received had not been circulated and added that she considered report CE.17/04 to be a poor report which contained a number of anomalies. She believed that the Portfolio Holder had made her decision in good faith but questioned whether the Portfolio Holder had the authority to make the decision. She felt that such an incident would probably not happen again but the Overview and Scrutiny Committee's job was to protect the Authority and its Members and address the issues which had been raised so that in the future the Committee could be sure that members had acted in good faith.

A Member believed that the Portfolio Holder had made her decision for what she considered to be the right reasons at the time but given the advice which had now been received from the District Auditor the Council needed to consider whether to accept District Auditor's advice and consider whether it would act differently in the future.

A Member felt that the decision which the Portfolio Holder had made had been made in the proper way and he felt that the matter should not be referred back to the Executive and the decision take effect from the date of this meeting.

A Member felt that the matter was a serious matter which could end up being referred to the Ombudsman or to Judicial Review and in that respect he considered that the matter should be referred back to the Executive for reconsideration to give the Executive an opportunity to look again and see how it might address such a matter in the future and determine a policy to provide a framework for such future decisions.

Another Member felt that the decision should not be referred back to the Executive on the proviso that the Executive members who were present at the meeting take on board the comments which had been made during the Overview and Scrutiny Committee's deliberations.

A Member felt that if the matter did go further and was referred on for further consideration, it would require the Council to provide an Audit trail and the Overview and Scrutiny Committee asking the Executive Members to take on board the discussions which had taken place in today's meeting would not be sufficient. She felt that the matter should be referred back to the Executive so that the Executive could consider the latest District Auditor's advice and consider the method of calculating opportunity costs in the future as per the suggestion of the Audit Commission. If it was not referred on to the Executive she did not feel that the Overview and Scrutiny Committee would have done justice to the matter, particularly in the light of the latest District Audit letter. She felt that the Overview and Scrutiny Committee should recommend that the Executive adopt the appropriate method of calculating costs as recommended by the District Auditor for use in any such decisions in the future.

A Member felt that if the matter was not referred to the Executive to give consideration to the matter then the Overview and Scrutiny Committee would be failing in their duty to protect members of the Council. She added that a number of items had been raised and in order to protect members the Executive should consider those issues and determine the procedures which should be followed in the future so that the Portfolio Holder could confirm that they had acted properly. She added that if the issues were not referred back to the Executive and members of the public raised questions on the matter of granting an extra days leave to staff as part of the publication of the Council's accounts then the Portfolio Holder was still unprotected.

Following voting thereon it was:

RESOLVED – (1) That the decision EX.143/04 be not referred back to the Executive as the decision making body and the decision therefore take effect from the date of this meeting.

In accordance with Procedure Rule 17.5 Councillors Mrs Styth, Mrs Bradley, Glover and Hendry recorded that they had voted against the above decision.

(2) That copies of the various documents setting out legal and financial advice which had been given with regard to the question of granting an extra days leave to staff, the minutes of the meeting of Corporate Management Team, Executive Management Group, Joint Management Team, City Council's Executive which had taken place between June and December 2003 relating to this item together with copies of correspondence with the Audit Commission and other Local Authority's who had awarded an extra days leave following "good" or "excellent" CPA scores together with information on records of meetings with the District Auditor be forwarded to Councillor Styth.

Councillors Mrs Bradley, Glover and Mrs Styth had called in for scrutiny executive decision EX.153/04 dealing with the nomination of representatives on outside bodies. A copy of the decision setting out the executive's appointments to outside bodies was circulated.

The reason given by the Members for the call-in was to give the Executive the opportunity to explain the rationale behind its choice of representatives on outside bodies.

Portfolio Holder – Corporate Resources informed the meeting that the Executive's rationale on decisions relating to representation on outside bodies had been made on the basis of what was best for the Authority and the Executive had appointed representatives on outside bodies who would represent the Council, follow Council policy and provide a report back to the Council on the outcome of meetings. The Executive believed that members of the Executive were best equipped to do that as they had the best grasp of the Council's Policy Framework and Corporate Plan. She added that the Council's representatives on outside bodies were there to represent the views of the Authority and not their own or their parties views.

A member commented that she had no objection to Executive members being appointed to bodies in respect of which there were the Portfolio Holder which covered a particular area of work but noted there were bodies where the Council were asked to nominate two or more places and the Executive had allocated those places only to members from one party and ignored the claim of the largest party for representation. In particular she drew attention to the appointments to the Carlisle Police Sub-Division Community Liaison Group where two appointments had been made which were both Conservative, to the Citizens Advice Bureau Management Committee where two appointments had been made which were both Conservative, to the Cumbria Branch of the Local Government Association where three appointments had been made from the Conservative group, the Cumbria Tourist Board where two appointments had been made from the Conservative group, the East Cumbria Countryside Project two appointments from the Conservative group neither of which were the Portfolio Holder and the Petteril Bank Community Centre Management Committee where a Conservative member had been nominated who was not from the area and where elected members from the ward had not been included.

Portfolio Holder – Health and Community Activities commented in regard to the Cumbria Branch Local Government Association that previously the appointment had been made on the basis of two Labour and one Conservative but a Council meeting in 1997 had changed that nomination to three Labour representatives. The Leader of the Council at the time had stated that the ruling group would take those places.

A Member acknowledged that that decision had been taken some five years ago and questioned whether the Executive were bound by Labour Group policy from five years ago.

Portfolio Holder – Health and Community Activities indicated that the Executive did not follow Labour precedence but apart from Petteril Bank all Community Centre Management Committee spaces that had been allocated to ward members.

A Member expressed concern on the Portfolio holder comments with regard to the professionalism of members of the opposition in respect of appointments to outside committees in that the members would need to represent policy of the Council as opposed to party policy. He also raised concern with the appointments to bodies such as the West Coast 250 and the Carlisle Settle Line which had ignored the claims of members of the Council who could bring previous experience to these roles and questioned whether the Executive's nominations to outside bodies was a revenge attack. He also highlighted the issue of the Local Government Association's Urban Commission where two members had been nominated who represented rural areas. He listed in particular Petteril Bank Community Centre where claims of ward Councillors had been discounted and he was also concerned about those bodies which requested two or more representatives where the opportunity to bring in a member of the opposition had been ignored.

A Member felt that the nominations to outside bodies was an opportunity for the Council to use the talents and wisdom of Councillors for the benefit of the City as a whole irrespective of how appointments had been made in the past. He highlighted the Citizens Advice Bureau case where two appointments had been made who were both Conservatives and highlighted his own previous role as Chairman of the CAB which could have been useful to the Council in making its appointment.

A Member did not feel that the appointments of outside bodies was a revenge attack but felt that the matter should be taken forward and in that respect he didn't feel that the appointments to outside bodies should be referred back to the Executive or altered.

A Member commented on the nominations to outside bodies which were made in 1997 and 1998 which followed a similar rationale to the appointment which had been made by the Executive in this decision. He highlighted appointments which had been made in 1997/98 to the Brampton Community Association and to the Solway Coast AONB Joint Advisory Committee by members outside of those areas and also on the nomination of Labour group representatives to the Carlisle Police Sub-Division Rural Area.

A Member objected to the comments which had been made with regard to the nomination of representatives who would represent the Council's view and not their own political view. She also highlighted the nomination of representatives on the Petteril Bank Management Committee who was not a ward member and questioned the appointment of Councillor Patrick to the

Greystone Community Centre when she had not been consulted to see if she would wish to be appointed.

The Portfolio Holder – Corporate Resources added that the Executive had given careful consideration to the nomination of representatives on various Community Centre Management Committees as the Executive believed that the local member was the best person to represent the Council's view. She added that in respect of the Petteril Bank nomination the Executive had been informed that previous nominations had not attended meetings.

Following voting thereon it was:

RESOLVED – That decision EX.153/04 be not referred back to the Executive and that the decision take effect from the date of this meeting.

(The meeting ended at 11:15 am)