

# The Status of Task and Finish Groups

## 1 Background

The Cabinet of the authority has resolved to establish a task and finish group comprising a majority of members of the majority party group and a minority of members from each of the other groups on the Council, to review work undertaken to date in implementation of a Cabinet Policy decision on an executive function and to report back to Cabinet with recommendations on the further implementation, including recommendation of preferred sites for development.

The phrase "Task and Finish Group" does not exist in local government legislation, so we need to try to work out what sort of animal it is.

## 2 The Task and Finish Group cannot be a Committee or Sub-Committee of Council –

Section 101 of the Local Government Act 1972 provides that Committees must be appointed by Council, and Sub-Committees must be appointed by Committees. If it was a Committee or Sub-Committee of Council it would have to be appointed in strict proportionality to the strengths of the various party groups on Council, and it would be subject to the access to information requirements of Sections 100A to K of the Local Government Act 1972, requiring the advance publication of the agendas and reports, listing background papers, and the approval and publication of minutes at the next convenient meeting of the Task and Finish Group, and the public right to attend the meetings of the Task and Finish Group, unless it resolved to exclude press and public on the basis that it was about to consider "confidential" or "exempt" (as defined in Schedule 12A of the Local Government Act 1972) information. It would appear that this has not been done.

## 3 The Task and Finish Group cannot be a Sub-Committee of an Overview and Scrutiny Committee –

Section 21 of the Local Government Act 2000 provides for Council to establish Overview and Scrutiny Committees, and for Overview and Scrutiny Committees to be able to establish Overview and Scrutiny Sub-Committees. The functions of such Committees and Sub-Committees can include reviewing the discharge of executive functions and making recommendations to Cabinet, and an Overview and Scrutiny Committee or Sub-Committee would normally be subject to proportionality and so could comprise members of both the majority and minority parties.

However, Overview and Scrutiny Committees must be appointed by Council, and Overview and Scrutiny Sub-Committees must be appointed by Overview and Scrutiny Sub-Committees, not by Cabinet, and Section 21(9) provides that such Committees and Sub-Committees may not include any member of the Cabinet. Further, Overview and Scrutiny Committees and Sub-Committees are subject to exactly the same rules on access to information, publication of agenda and reports and public access to meetings as any other Committee or Sub-Committee of Council.

## 4 The Task and Finish Group cannot be a Committee of the Cabinet –

Section 15(4) of the Local Government Act 2000 provides that the Executive Leader may himself discharge any of the executive functions or may arrange for the discharge of any of those executive functions by the Cabinet, by another member of the Cabinet, by a

Committee of the Cabinet or by an officer of the authority. However, a Committee of the Cabinet can only comprise members of the Cabinet. There is no power in the Local Government Act 2000 which enables a Cabinet Committee to co-opt persons onto the Committee who are not members of the Cabinet, in contrast to Section 102 of the Local Government Act 1972 and the power to co-opt onto Committees of Council. It would be possible to set up a Committee of Cabinet comprising a defined number of members of the Cabinet and then invite other members to attend and speak at meetings of the Cabinet Committee, but the non-Cabinet members would not be able to vote on the Cabinet Committee. Also, as a Cabinet Committee, the Task and Finish Group would be subject to the requirements of the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, Regulation 4 of which only permits the exclusion of press and public by resolution, where the meeting is likely to consider confidential or exempt information, and Regulation 5 of which requires the prior publication of the agenda for each meeting, together with any reports which the Proper Officer has not judged to disclose confidential or exempt information.

**5 So, what is it?**

The answer is that it is not a legally recognised body, and so cannot have delegated to it the discharge of any executive or non-executive function of the authority and cannot make a decision or recommendation in its own name.

At best, it is an ad-hoc group of Councillors who are to be consulted by an officer before the officer takes a decision or makes a recommendation back to Cabinet.

**6 Does it matter?**

It would appear that the process under which the evaluation was undertaken by Task and Finish Group was unlawful and so no valid recommendation can have been received by the Cabinet from the Group.

It may be possible for the Cabinet to remedy the defect by itself repeating the evaluation process on the basis of the information provided to the Task and Finish Group by officers.

In order to persuade a Court of Law to declare the process and the decisions which are based on that process to be invalid, it would be necessary to demonstrate that there was a real injustice, which might be the case if affected persons or groups were denied the opportunity to make representations and influence the evaluation and decision-making process which they would have had if the process had been properly undertaken by a lawfully constituted body complying with the statutory requirements, for example on access to meetings and to information, or if it could be demonstrated that the improper composition of the Task and Finish Group was likely to have affected the outcome of the evaluation and the Group's eventual recommendation. Mere procedural irregularity will not normally succeed as a basis for judicial review in the absence of demonstrable injustice.