

AGENDA ITEM 6

STANDARDS COMMITTEE

5th DECEMBER 2006

OMBUDSMAN REPORT

RICHARD LONG, DIRECTOR OF LEGAL & DEMOCRATIC SERVICES

Purpose of the Report

- 1 To inform Standards Committee of a recent decision by the Ombudsman in respect of Members' Interests and Maladministration.

Background

- 2 Last year a number of complainants made complaints to the Standards Board for England alleging that three Middlesbrough Councillors failed to declare a personal and prejudicial interest in a report on housing in central Middlesbrough that was considered at a meeting of the Executive on 20 July 2005. The councillors were alleged to have had a prejudicial interest because they were members of the board of Erimus, which owned a small number of properties in the area.
- 3 The Ethical Standards Officer considered that the Councillors concerned did have a 'personal' interest in the report. This was because the report specifically mentioned the housing company to which they had been appointed by the council. Moreover, the company was seen as a possible participant in the housing strategy outlined in the report. The Ethical Standards Officer therefore considered that the three councillors breached the Code of Conduct by failing to disclose their personal interest.
- 4 However, the Ethical Standards Officer did not consider that the councillors' unpaid position on the board of the company was likely to impair their judgement of the public interest in looking at a report on a long-term strategy for housing in Middlesbrough. The Ethical Standards Officer therefore considered that the councillors did not have a prejudicial interest and were entitled to fully take part in the meeting. In the circumstances, the Ethical Standards Officer found that no action needs to be taken in relation to this matter.

- 5 At the same time that the complainants reported the Councillors to the Standards Board, they also complained to the Local Government Ombudsman about a number of actions by the Council, including the attendance of the three Councillors at the Executive meeting of 20 July 2005.

Ombudsman Findings

- 6 In general terms the Ombudsman has found that neither the processes undertaken by the Council, nor any of the decisions it has taken, in respect of the redevelopment of Gresham area constituted maladministration.
- 7 However the Ombudsman did consider that the failure by the three Councillors concerned to declare personal interests did amount to maladministration. The Ombudsman decided to take no action for two reasons:
- ⇒ First, there was no injustice suffered by the complainants, and
 - ⇒ Second, because the Councillors interests were 'personal' interests, they would have been permitted to remain in and fully participate in the meeting, so the outcome would have been the same.
- 8 Nevertheless, the Ombudsman also noted that the fact that she was taking no further action in respect of the complaint was not "to excuse or condone what happened and the Council does need to learn from these issues".
- 9 The relevant paragraphs from the Ombudsman's letter are reproduced at Appendix 1.

Action Taken

- 10 Following receipt of the letter from the Ombudsman, the three Councillors who were subject to the complaint, and a fourth Councillors who has subsequently been appointed to the Erimus board, were written to by the Members' Office Manager. They were advised of the Ombudsman decision, and that they will need to exercise diligence in order to avoid a similar situation arising in the future. A copy of the letter is attached at Appendix 2.

Conclusions

- 11 The actions taken are felt to be sufficient in the circumstances. What is important in relation to this finding is that the Ombudsman decision makes it very clear that a failure on the part of a Member to properly declare an interest is not only a personal matter in respect of the individual Councillor breaching the code of conduct: it can also constitute maladministration on the part of the Authority.

Author:

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Members' Office Manager

**EXTRACT FROM LETTER DATED 8 SEPTEMBER 2006
FROM THE LOCAL GOVERNMENT OMBUDSMAN**

COUNCILLORS' INTERESTS

Concern was later raised about interests held by some Councillors involved in the decision-making process. Three Councillors held unpaid positions on the Board of a registered social landlord whose interests were directly affected by the decision to re-develop Gresham. A complaint was made to the Standards Board for England.

The Standards Board's Ethical Standards Officer agreed that the Councillors had 'personal interests' which they ought to have declared but did not do so. However, the investigator went on to say that these interests were not 'prejudicial interests'. This means that if they had been declared then the three Councillors would still have been entitled to remain and participate fully in the meetings and there is no reason to suppose that they would not have done so.

In other words this failure to declare interests made no real difference, in the end, to how matters were handled. Their failure was maladministration but no injustice flows from it. That is not to excuse or condone what happened and the Council does need to learn from these issues. We have not independently investigated this issue but we can rest safely here on the judgement from the Standards Board.