

SEDGEFIELD BOROUGH COUNCIL

REPORT ON LSVT CONSULTATION

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1. BACKGROUND

- 1.1 The Council is currently in the pre-ballot stage of an intended transfer of its homes to a Registered Social Landlord pursuant to a Large Scale Voluntary Transfer (“LSVT”).
- 1.2 The Secretary of State of the Office of the Deputy Prime Minister publishes a “Housing Transfer Manual” (the “Manual”), which provides guidance on housing transfer. The Manual sets out various procedures which need to be adopted by the Council when seeking Secretary of State consent to the transfer following a positive tenant ballot.
- 1.3 The Manual does not have the effect of legislation but, in respect of those elements of the Manual which provide guidance on suggested procedures, it is expected that the Council will follow the Manual in order to ensure that those procedures enable the Council properly to discharge its duties (legal and otherwise) to its tenants.
- 1.4 This report provides guidance on a number of issues relating to the proposed LSVT, particularly in relation to the provision of information during the consultation process.

2. CONSULTATION MATERIAL

2.1 The Transfer Manual

- 2.1.1 The latest Manual (for the 2005 programme) at paragraph 10.15 states:

An authority must present an accurate picture to the tenants about the transfer proposal and the implications of staying with the Council, but it should not seek to persuade tenants to vote one way or the other. The prospective new landlord and tenants groups can, however, explain to tenants the benefits of transfer, providing its material is fair and accurate....

In Annex N (at paragraph 5) Councils are required to ensure that the information provides a “*full and fair*” picture of the proposed transfer. Later paragraphs refer variously to “*accurate and balanced*” (paragraph 8), “*balanced and informative*” (paragraph 57) and so on.

- 2.1.2 The term “authority” used in Section 10.15 of the Guidance applies to the Council as a corporate body so as to ensure that all information, informal and formal, issued during the LSVT consultation process by the Council is fair and accurate and does not seek to persuade tenants to vote one way or the other. However the term “authority” would also apply to the Council’s employees and elected members, who respectively comprise the workforce and decision-making “parts” of the Council. This would also apply to any information used in an opposition campaign.
- 2.1.3 Such a “constraint” on the provision of information (if constraint it is) should not be seen as stifling political debate. It must, rather, be seen in the context of providing fair and accurate material to tenants to enable them to make up their own minds.

2.1.4 The Council must ensure that employees and all elected members are aware of and comply with the requirements of the Guidance in relation to the provision of fair and accurate information (i.e. which is not calculated to persuade tenants to vote one way or the other).

2.1.5 Staff could usefully be reminded of their conditions of employment which are likely to include provisions relating to carrying out such duties as the Council appropriately directs and not to do anything which could be regarded as bringing the Council into disrepute.

2.2 **Codes of Conduct**

2.2.1 The Members Code of Conduct, which the Council will have based upon the Model Code, will no doubt require that a member must not in his/her official capacity, or any other circumstances, conduct him/herself in a manner which could reasonably be regarded as bringing his/her office or the Council into disrepute.

2.2.2 A failure to comply with properly notified guidance on the provision of fair and accurate information (i.e. not seeking to persuade tenants) might be regarded as bringing the Council into disrepute.

2.2.3 In addition, a failure to comply with the requirement to consult tenants in a fair and accurate way would render the outcome of a tenant ballot susceptible to legal challenge (e.g. by way of a judicial review of the Council's decision to ballot tenants or transfer its stock).

2.2.4 The Council has established, through its constitutional decision-making procedures, a policy to pursue LSVT, which is regarded by the Council to be in the best interests of the tenants. Opposition members are of course entitled to hold a politically opposed view to that policy. However, such opposition should not to be directed in such a way as to breach the requirements of the Guidance as outlined above.

3. **CONFLICTS OF INTEREST**

3.1 **Generally**

3.1.1 The model Members Code of Conduct deals with interests of a personal and of a prejudicial nature. A Member with a politically opposing view of the Council policy to pursue stock transfer does not have a personal interest as defined by the Code. In those circumstances there will be no prejudicial interest under Clause 10 of the model Code by mere fact of the opposition to the policy, no matter how vehemently held that opposition may be.

3.1.2 The Manual allows a Councillor to serve on both the Shadow Board of the RSL and the Council decision-making bodies. This is subject to the requirements of the Model Code of Conduct and Members in this position should satisfy themselves on each of the decisions being made that no prejudicial interests arise. We shall be pleased to advise further on specific issues. There is an important distinction between general housing issues and issues which relate directly to the proposed landlord.

3.1.3 The Manual also allows a Member to serve on both the Shadow Board and the Council's Cabinet. The Council however should consider carefully whether such an arrangement

will be impractical given the frequency with which conflicts may arise and it may therefore decide to avoid Members playing dual roles.

- 3.1.4 The Standards Board for England issued guidance in September 2004 entitled “Lobby Groups, dual-hatted members and the Code of Conduct”. If it has not already been circulated all Council Members should be provided with a copy of this. The guidance acknowledges that it would be wholly unreasonable to expect an elected member to be devoid of general views about a range of local issues and that in fact members may have been elected because of their particular views on those issues. However the guidance does make it clear that Councillors who are members of lobby or campaigning groups (whether membership is formal or informal) need to ensure that the Council can even-handedly decide matters on their merit – and can be seen to be doing so. Members are reminded in the guidance that:

.....You must also act in accordance with the General Principles which underpin the Code of Conduct. So, for example, you should not place yourself in situations where your honesty and integrity may be questioned, and you must reach your own conclusions on the issues before you. The law requires you to take decisions fairly, on the merits known to you at the time you make the decision. You should not reach a final conclusion before you come to a decision on an issue.....

.....Your statements and activities should not create the impression that your views on a matter are fixed, and that you will not fairly consider the evidence or arguments presented to you when you are making a decision. Public confidence in the probity of decision making is paramount.....

- 3.1.5 Each individual member will need to consider at the appropriate time whether a personal prejudicial interest arises owing to the membership of a lobby or campaign group (e.g. any “No” campaign). The guidance emphasises that the public would appreciate that those involved in local government are likely to have strong views on a range of issues, based on their experiences and outlook and in many cases opinions of that kind may not amount to a prejudicial interest “*even if you belong to a campaign or lobby group*”. The guidance makes it clear that it is only possible to decide whether a personal prejudicial interest arises when all the facts are considered and each case is determined on its own merits.

- 3.1.6 Consideration will need to be given, in due course, to how to deal with conflicts of interest arising after transfer has taken place.

3.2 **Members on the Shadow Board Opposed to the Stock Transfer**

- 3.2.1 All Board Members have a legal duty to act in the best interests of the Company. This is a fundamental fiduciary duty that all Board Members must accept and abide by. This is true even during the period when the Board is acting in a shadow capacity only. All decisions of the Shadow Board will, upon conversion from shadow to full capacity, be ratified by the full Board so that valid decisions taken in shadow capacity will be valid decisions of the full Board.

- 3.2.2 The RSL has been established as the delivery vehicle for the implementation of the Council’s policy to pursue the LSVT. Board Members are therefore sitting on the Shadow

Board in order to ensure that the Company is established in order to take the transfer of the Council's housing stock should the tenants vote in favour of the proposal in the forthcoming ballot. As the RSL is being established as the delivery vehicle for the Council policy to pursue stock transfer to it, a Board Member who is opposed to the transfer of the stock to the Company will not be acting in the best interests of the Company. That Board Member will therefore be in breach of his/her fundamental fiduciary duty to the Company.

4. **CONDUCT OF THE CONSULTATION PROCESS**

4.1 **The Publicity Code**

4.1.1 The Code of Recommended Practice on Local Authority Publicity was first published in 1988 and updated most recently in 2001.

4.1.2 Clauses 18 and 19 of the Code provide as follows:-

18. Publicity campaigns by local authorities are appropriate in some circumstances: for example, as part of consultation processes where local views are being sought, or to promote the effective and efficient use of local services and facilities, or to attract tourists or investment. Publicity campaigns may also be an appropriate means of influencing public behaviour or attitudes on such matters as health, safety, crime prevention or equal opportunities.

19. Legitimate concern is, however, caused by the use of public resources for some forms of campaigns which are designed to have a persuasive effect. Publicity campaigns can provide an appropriate means of ensuring that the local community is properly informed about a matter relating to a function of the local authority and about the authority's policies in relation to that function and the reasons for them. But local authorities, like other public authorities, should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy.

4.1.3 These issues have been rehearsed in well-publicised District Audit reviews of the Bath & North East Somerset LSVT consultation process. It is generally accepted that the District Auditor took an unjustifiably narrow view.

4.2 **Campaigning**

4.2.1 The ODPM Guidance explicitly rules out "campaigning" in the sense of persuading tenants to take a view for or against transfer.

4.2.2 This applies to the Council as a corporate body and to Councillors individually – whether as party/group members or as individuals. For officers or councillors to participate in a "No" campaign which would by implication be designed to persuade tenants to vote against the proposed transfer, would be a breach of the ODPM Guidance.

4.2.3 Any opposition councillors who are proposing a "No" campaign should be mindful of their responsibilities under the Code of Conduct.

4.2.4 Opposition councillors should be encouraged to ask for expert advice on the form and content of any material they are proposing to circulate. The over-riding aim must be to ensure that tenants only receive material which is “fair and accurate”. The same standards of fairness and accuracy should be applied to all material, whether “Council” or “Opposition”.

5. COMMENTS AT CONSULTATION EVENTS

5.1 It is a common feature of the LSVT consultation process that Council officers attend meetings, roadshows, information days etc. When the proposed new landlord is a newly established company (i.e. not part of an existing group) it is only existing Council staff who can attend such information sessions to provide answers to questions raised by tenants about the proposals. When the LSVT is proposed to be to a new landlord within an existing group (as is the case here), it is again appropriate for Council officers to attend these sessions, alongside officers from the new landlord. Not to do so would mean that potentially many of the questions that tenants may wish to have answered which can only be answered by the Council would not be addressed.

5.2 Officers and members can legitimately reply to queries raised along the lines that: *“the Council considers the transfer is in the best interests of tenants but that it is for the tenants to decide themselves once they have received all the information”*. Officers and members should refrain from setting out their own personal view of what is or is not in the best interests of the tenants, because such personal remarks could be interpreted as a means of persuasion and thus taint the fairness and accuracy of the consultation process. It is legitimate to re-emphasise that the Council has settled on a policy which it considers to be in the best interests of the tenants to pursue stock transfer and that the proposed landlord has been chosen to deliver the improvements in the housing stock and in the housing services that the Council is unable to deliver itself.

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