

REPORT TO
SEDGEFIELD BOROUGH COUNCIL

CONFLICTS OF INTEREST
AND
DECISION MAKING ARRANGEMENTS

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REPORT TO SEDGEFIELD BOROUGH COUNCIL

ON CONFLICTS OF INTEREST AND DECISION MAKING ARRANGEMENTS

1. PURPOSE OF REPORT

- 1.1 The purpose of this Report is to identify, for the benefit of the Members and Officers of Sedgefield Borough Council (“the Council”), the potential for conflicts of interest arising during the stock transfer process, both generally and, more specifically, for Members, should they choose to sit on the Board of the proposed Registered Social Landlord (“RSL”).

2. EXECUTIVE SUMMARY AND INTRODUCTION

- 2.1 The Office of the Deputy Prime Minister (ODPM) Housing Transfer Guidelines 2005 emphasise the need to ensure an appropriate degree of independence between a disposing authority and the prospective acquiring landlord throughout the transfer process. This is to avoid conflicts of interest or any perception of any such conflicts.
- 2.2 The Guidelines accept that some Members and employees will inevitably have dual roles in the early stages, prior to a ballot, and that there are requirements on Members to declare interests.
- 2.3 Members should be aware of the overriding need for Board Members of the RSL neither to profit from their position nor to put themselves in a position where their personal interest conflicts with their duties as Members.
- 2.4 This Report considers these issues and recommends the adoption of policies and decision making arrangements designed to minimise the risk of conflicts arising.

3. COUNCIL REPRESENTATIVES SITTING ON THE RSL BOARDS

- 3.1 The Council’s representatives on the Board of the RSL will be required under company law (as indeed with all Board Members) to act in the best interests of the RSL at all times. At times, Members may feel that there is potential for these interests to cut across interests in other capacities and their responsibilities to their constituents.
- 3.2 In particular, Members will be required to attend Council meetings at which the RSL or stock transfer process may be discussed. In doing so, Members must comply with the Council’s Code of Conduct, provided it does not conflict with any other lawful obligations of the RSL.

3.3 The Council is bound by the mandatory provisions from the Local Authority (Model Code of Conduct) (England) Order 2001 (“the Model Code”). Set out below is a summary of the disclosure provisions that in our opinion are relevant to Members.

3.4 **The Model Code**

3.4.1 The Model Code deals with the disclosure by Members of their “personal interests” and “prejudicial interests”.

3.4.2 A “personal interest” arises for a Member in the following situations:

- (a) in any matter which relates to a RSL (or similar body) of which the Member is either a Board Member, or holds some management position; or
- (b) where a decision is required on any matter which will promote (to a greater extent than the general public in the area) the well-being or financial position of:
 - (i) the RSL, or
 - (ii) the Member personally; or
 - (iii) any friend or relative (or their associated employment, business or financial interests)

3.4.3 A “prejudicial interest” arises where a “personal interest” could be regarded by the public as so significant that it is likely to prejudice that Member’s judgement of the public interest. However, of the “personal interests” listed above in paragraph 3.4.2, only those at sub-paragraph (b), excluding (i), can become “prejudicial interests”.

3.4.4 A “personal interest” must be disclosed by the Member:

- (a) at a Council meeting, either at the start or when the interest becomes apparent; or
- (b) in the written record of an executive decision made by the Member.

3.4.5 A Member with a “prejudicial interest” must, unless a dispensation has been obtained, withdraw from meetings where the matter is being considered, and must not exercise executive functions or improperly influence decisions in relation to the matter. However, a Member on any overview, scrutiny, joint or area committee who has a “prejudicial interest” may still participate in meetings of these committees, provided that no functions of the Council or the Cabinet are being exercised.

4. **THE REQUIREMENTS OF THE OFFICE OF THE DEPUTY PRIME MINISTER (ODPM)**

4.1 The Council’s representatives on the Board will also need to take into account the ODPM’s Guidelines with regard to conflicts of interest in the stock transfer process. It

- is important to note that these Guidelines are additional to the Council's Code of Conduct.
- 4.2 Because the Cabinet/Scrutiny Structure has only recently been introduced in England, the ODPM have not produced full guidance on conflicts of interest specifically designed for this structure.
 - 4.3 However, the Guidelines accept the need for Members to declare interests and authorities are strongly recommended to identify possible conflicts and put in place structures and protocols designed to eliminate, or at least minimise them.
 - 4.4 The Guidelines allow for the possibility of a councillor serving on both the Shadow Board and the Council decision making bodies. This is however subject to the requirements of the Model Code and a Member in this position should satisfy themselves on each of the decisions being made that no prejudicial interests arise.
 - 4.5 For this purpose, the Council should:-
 - 4.5.1 Establish a steering group to oversee the transfer involving the full range of Council interests which the Council has already done. The ODPM's guidelines recommend this steering group be chaired by the officer who will lead the negotiations on behalf of the Council post-ballot. Steering group members should not also serve on the RSL's Shadow Board.
 - 4.5.2 Recognise that many employees may transfer to the new landlord. Accordingly, guidance should be issued to them on how to deal with potential conflicts of interest.
 - 4.5.3 Be particularly careful about conflicts of interest post ballot, when negotiations about the price and terms of sale will take place. The Council will be expected to demonstrate a clear split of responsibilities at this stage. It is therefore important that officers making key recommendations in relation to the transfer are not solely those who would transfer to the new landlord and that officers who are to remain with the Council have a leading role at all times.
 - 4.5.4 Review and update regularly the arrangements for dealing with potential conflicts of interest and ensure that any changes are made known to all those involved in the transfer.
 - 4.6 To satisfy these criteria, we set out below our recommendations with regard to the role of all Members and employees, as well as specific guidance to those Members who sit in Cabinet or in Scrutiny, or who are also Tenants. We also set out procedures for the Council regarding confidential information and requests for further guidance.
 - 4.7 **All Members and Employees**
 - 4.7.1 Conflicts of interest may arise for Members or employees involved in advising, discussing, negotiating, promoting or opposing stock transfer.
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4.7.2 The ODPM recommend that to guide Members and employees involved in the possible transfer of the housing stock, Councils should adopt a protocol to eliminate or minimise any conflicts of interest. A suggested protocol based on the ODPM Guidelines is annexed to this report.

4.8 **Cabinet Members**

4.8.1 As mentioned above at paragraph 4.4, ODPM Guidelines allow for the possibility of a Member serving both on a Shadow Board and the Council's Executive 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.

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

4.9 **Members who are Tenants**

4.9.1 We do not believe that a material conflict of interest will arise for a Member who is also a tenant in situations or matters affecting all or a substantial group of tenants.

4.9.2 However, there is a real risk of a conflict of interest where the matter in question only affects a particular Member in their capacity as a tenant, or only affects a limited group of tenants which includes the Member (e.g. demolition of certain houses, including the Member's house).

4.9.3 It is important, therefore, for any Member who is a tenant to identify such situations where a potential conflict of interest may exist or arise and to ensure they do not participate in any discussions or decisions on the matter.

4.10 **Confidential Information**

4.10.1 In addition to the issues identified above, the Council should also put in place arrangements for handling information which is confidential to the authority during the negotiations with the acquiring RSL on the valuation of the stock and the terms of the contract. In practical terms this will mean that relevant Council (or Cabinet) papers should only be released to those Members and employees who have a need to receive particular documents and information and who are approved by the Chief Executive.

4.11 **Further Guidance**

4.11.1 The Council should ensure that any requests for further guidance regarding conflicts of interest which relate to stock transfer are delegated to the Chief Executive. The types of guidance that could be provided by the Chief Executive include:

- (a) Guidance on exceptional circumstances which might permit a conflict of interest situation to continue. For example:

- (i) where a Board Member did not know of the interest and could not be expected to have known;
 - (ii) where a Board Member is a director or officer of a parent, subsidiary or associate company.
- (b) Guidance on situations where it is unclear whether a conflict of interest might arise or has arisen. For example:
 - (i) where a Board Member is asked to comment upon stock transfer in their capacity as Councillor;
 - (ii) where a Board Member is asked by constituents (who are tenants) to oppose a proposed RSL policy.

5. **CONCLUSIONS**

- 5.1 The ODPM guidance indicates that the Council should put in place arrangements which minimise the risk of conflict of interest at both Councillor and employee level. This report identifies how such arrangements can be achieved and suggests the adoption of a formal protocol for this purpose.

6. **RECOMMENDATIONS**

- 6.1 It is recommended that the protocol attached at Appendix 1 be adopted to guide the Council, Members and employees in dealing with the possible transfer of the Council housing stock to an RSL.

APPENDIX 1

SEDGEFIELD BOROUGH COUNCIL

CODE OF CONDUCT – PROTOCOL

1. The purpose of this protocol is to guide Members and employees to avoid any conflicts of interest, both actual and perceived, before, during and after the ballot of tenants in connection with the possible establishment of a Registered Social Landlord (RSL).
2. The Guidance in this protocol does not take the place of the Council's Code of Conduct or conditions of employment of Members and employees. It is intended as supplementary guidance to clarify roles and responsibilities. It recognises Members' corporate responsibilities and that they represent the interests of their constituents. The Council believes, therefore, that Members should be free to discuss the issue with their constituents but that they should only assist the stock transfer process in a balanced way based on agreed accurate information.
3. The protocol should help to ensure that at all stages before, during or after the tenants and Council have determined a way forward on the possible stock transfer, Members and staff will be seen to have maintained high standards of integrity and personal conduct.
4. In order to achieve and maintain standards:-
 - 4.1 The Council will:-
 - 4.1.1 Establish a Shadow Board for the RSL made up of Council, Tenant and Independent representatives.
 - 4.1.2 Only appoint the Councillor nominees on the Shadow Board from amongst those Members who are not members of the stock transfer steering group or equivalent.
 - 4.1.3 Appoint or continue the appointment of an independent consultant to act as tenants' adviser who shall be independent from, and not seen as representing, the views of the Local Authority, the proposed RSL or tenant groups.
 - 4.1.4 Ensure that timely and complete information is supplied to tenants to enable them to be best informed prior to the formal ballot.
 - 4.1.5 Restrict circulation of documents containing confidential information to only those Members who have a "need to know" for the performance of their duties on behalf of the Council. Any determination as to what information is to be classified as confidential and which Members are eligible to receive such information shall be made by the Chief Executive.

- 4.1.6 Ensure that appropriate stock transfer decisions are delegated to the Chief Executive where a potential conflict of interest exists or might arise for a Member or employee.
- 4.2 Members will:-
 - 4.2.1 Ensure that confidential information obtained by them, whilst acting on behalf of the Council, is not disclosed to Members, officers or other persons representing the Shadow Board of the RSL or to tenants.
 - 4.2.2 Not act in an advisory capacity, either formally or informally, to both the Council and the Shadow Board.
 - 4.2.3 Not undertake any formal role on behalf of tenants in connection with the possible establishment of the RSL.
 - 4.2.4 Not accept any paid office with the Shadow Board.
 - 4.2.5 Comply with the Council's Code of Conduct.
 - 4.2.6 Discuss stock transfer issues with constituents in a balanced way based on agreed accurate information.
- 4.3 Employees will:-
 - 4.3.1 Ensure that confidential information obtained by them, whilst acting on behalf of the Council, is not disclosed to Members, other employees or persons representing the Shadow Board of the RSL or to tenants.
 - 4.3.2 Not, without the prior approval of their Director, promote the retention or disposal of the housing stock prior to any formal recommendation being made by the Council and approved by the ODPM.
 - 4.3.3 Not, without the express consent of their Director, act in a formal or informal advisory capacity to both the Council and the Shadow Board.
 - 4.3.4 Not undertake any formal role on behalf of tenants in connection with the possible transfer of the stock other than such duties as may be required under their Terms and Conditions of Employment by the Council.
 - 4.3.5 Not accept, except for any secondments of Officers approved by the Council, any paid office or other appointment with the Shadow Board.
 - 4.3.6 Comply with statutory rules and regulations relating to the Council's Code of Conduct and their Contracts and Terms and Conditions of Employment.