

WILTSHIRE COUNTY COUNCIL

AGENDA ITEM NO.

INTERIM STANDARDS PANEL
31 October 2000

**CONSIDERATION OF OMBUDSMAN FINDINGS IN RELATION TO COUNTY
COUNCILLOR MRS BRYANT**

Introduction

1. The purpose of this report is to briefly explain the background to the law relating to members' rights as it currently stands and seek your guidance on what sanctions, if any, might be appropriate in this instance.

Background

2. As the Monitoring Officer for Wiltshire County Council I am obliged under Section 5 of the Local Government and Housing Act 1989 to report to the County Council with recommendations when there is a finding of maladministration by the Local Government Ombudsman. This includes circumstances where there has been a finding by the Local Government Ombudsman of maladministration by a County Councillor.
3. The Local Government Ombudsman has power to consider complaints by the public against action by members that lead to injustice and maladministration. A finding of maladministration against a member is effectively a finding of maladministration against the County Council.
4. The summary of the Ombudsman's findings was that the Council had a vacant smallholding adjacent to the complainant's existing land. It allocated the tenancy to another farmer. Mrs Bryant was a member of the Selection Panel, formed to allocate the tenancy. The Ombudsman found that she had a clear and substantial interest under the National Code of Local Government Conduct that she failed to declare, in that she was related to the successful candidate. She also failed to leave the meeting while the applications were discussed. But he found no evidence that a different decision would have been reached had she withdrawn from the meeting. He found maladministration causing injustice. He recommended that the Council make the complainant an ex-gratia payment of £500 for his avoidable distress and annoyance, and to review its procedures.
5. The Director of Environmental Services has apologised to the complainant and has sent him an ex-gratia payment of £500. The Director has reviewed his departmental procedures.

6. As the County council's Monitoring Officer I have to report to the County Council with recommendations on what action should be taken within three months of the Ombudsman's reports, or such longer period as may be agreed. This includes making recommendations to the council in relation to the conduct of Mrs Bryant.
7. There has not been a previous finding of maladministration in Wiltshire as a result of a member's failure to declare an interest. As Monitoring Officer, following consultation with the Chief Executive, I will make recommendations to the full County Council. Members have the right to accept or reject my recommendations.

Why This Matter is coming Before the Interim Panel

8. Under the Local Government Act 2000 the County Council is going to have to establish a Standards Committee from the summer of next year. In order to prepare for that the Council has set up this independent panel to consider how the Council should prepare for the implementation of that new legislation. The objective of the new act is to ensure that the public have confidence in the integrity of local government and its decision making.
9. In the light of that, it was thought it would be helpful to the panel (and myself as Monitoring Officer), to consider the matter of Mrs Bryant. It is felt that this will allow you an early opportunity to consider the issues a Standards Panel is likely to generate.
10. This panel is being asked to consider the Ombudsman's report, to consider the representations that Mrs Bryant wishes to make to the panel, and then, in the light of the National Code of Conduct and the Ombudsman's Guidance number 4, to recommend to the County Council what sanctions, if any, it should adopt in respect of Mrs Bryant.
11. As matters currently stand, there is no explicit statutory framework setting out how the County Council should sanction members who have fallen foul of the National Code of Conduct. In local government the majority of business is conducted through a hierarchy of committees and sub-committees. Members sit on various committees depending upon their particular interests and the particular requirements of their political group. The majority of the day-to-day business of the County Council is conducted through these committees. Individual members have no automatic right to membership of committees.
12. The basic principle is that individuals can be removed from Committees and sub-committees if the County Council so wishes, providing it behaves reasonably.

Circumstances of Mrs Bryant's Case

13. The basic principle underlying all codes of conduct in public life is that not only must members act impartially they must be seen to do so. If there is the prospect that their motives could be misunderstood, albeit that the member is not in practice influenced, they should take steps to avoid any impression of bias.

14. It is for a member to decide whether they have an interest. Officers can advise but the final duty is on members to consider whether they have an interest under the Code.
15. The Ombudsman's finding that Mrs Bryant had a clear and substantial interest that she should have declared and that she should have withdrawn from the meeting seems unassailable.
16. It is not clear why Mrs Bryant decided she did not have a clear and substantial interest, and why she felt that someone looking in on the process would not feel it was potentially tainted.
17. Mrs Bryant has indicated that she does not wish to attend the panel, but she will make a written submission.
18. The Panel may wish to address the following questions, (this is not an exhaustive list).
 - a) Why did Mrs Bryant not declare a clear and substantial interest?
 - b) Was Mrs Bryant motivated by a desire to further the interests of a relative, or was her decision to remain based upon a belief that she had an unique perspective on farming matters and had some special contribution to make?
 - c) Does it make a difference that she declared a non-pecuniary interest because she knew some of the applicants but remained at the meeting?
 - d) Does it make any difference that the outcome was not affected by her actions?
 - e) What might have been the consequences had the decision not been as clear-cut?
 - f) Was she familiar with the National Code of Conduct and was enough done to establish the nature of her interest?
 - g) Should the recording of her interest have been more specific, eg should it have spelt out the nature of the relationship?
19. Depending upon the outcome of your deliberations there is a range of sanctions you could potentially recommend:
 - a) No Action.
 - b) Admonishment, remembering that the Council Meeting is a public meeting and that a press release will be issued this is more than just a gesture.
 - c) Removal from the County Farms Tenant's Selection Panel, either permanently or for a period of time.

- d) Removal from all committees of the council for a period.

20. In considering what sanction you might wish to recommend you might wish to bear in mind there is no precedent that I can discover in Wiltshire for the County Council imposing sanctions on a member. The reasons for the council wishing to imposing any sanction could include:

- a) Deterrant to prevent any further breaches.
- b) To publically mark its disapproval of the behaviour.
- c) To restore public confidence in the process by demonstrating that it takes the breach seriously.
- d) To demonstrate to the complainant and the Ombudsman that it wishes to put its house in order.
- e) To prevent a recurrence, if for example membership of a particular committee by a particular member will often lead to a conflict because of personal circumstances.

Recommendation

21. The Panels advice is sought.

STEPHEN GERRARD
Solicitor to the County Council & Monitoring Officer

Unpublished documents relied upon in the production of this report: None

Environmental impact of the recommendations contained in this report: