

STANDARDS COMMITTEE – 2ND OCTOBER 2006

SUBJECT: REPORT FROM PUBLIC SERVICES OMBUDSMAN FOR WALES

REPORT BY: MONITORING OFFICER

1. PURPOSE OF REPORT

- 1.1 To consider a report from the Public Services Ombudsman for Wales on a maladministration complaint made against Caerphilly County Borough Council, and to make recommendations to the Cabinet or Council as appropriate.

2. LINKS TO STRATEGY

- 2.1 The authority is under a statutory duty to consider reports from the Ombudsman and to give effect to their recommendations. The duty to oversee this is within the terms of reference of this committee.

3. THE REPORT

- 3.1 Since the 1 April 2006 the Public Services Ombudsman for Wales (“the Ombudsman”) has had jurisdiction under the Public Services Ombudsman (Wales) Act 2005. This Act has superseded but not completely repealed the previous legislation (Local Government Act 1974) and deals with maladministration complaints made to the Ombudsman.
- 3.2 There are two forms of report - under Section 16 which is the form of report which needs to be formally considered by the authority and Section 21 where the Ombudsman feels that a public report is not required and the matter has been satisfactorily resolved.
- 3.3 This report before members is in relation to an Ombudsman report under S.16 and the report is attached at Appendix 1.
- 3.4 The report needs to be formally considered and published. The report has been available for public inspection since the 21 September 2006 and on the Council’s website since 25 September 2006.
- 3.5 An earlier decision of the Council was that if any payment is recommended under a maladministration finding this committee should make a recommendation and then oversee any other issues in relation to the maladministration complaint. It will be necessary for this committee
- if its view is that the Ombudsman’s report be accepted, to recommend to the Cabinet;
 - if its view is to not accept the Ombudsman’s recommendations then the recommendation will be to the full Council.
- 3.6 The maladministration complaint arose from the way in which the Council dealt with a disabled person’s parking place (DPPP) application from a person called in the report “Mr. K”. The detailed circumstances are all set out in the Ombudsman’s report. Officers have

concerns about the way in which the report did not fully reflect all the steps that had been taken by the authority and some of its findings of fact, in particular how the decision to refuse the application was reviewed, and changed by an officer of the authority.

3.7 There are two factors in particular which led to the Ombudsman's conclusion that the authority was guilty of maladministration:-

- (a) the fact that Mr. K was turned down because he was not a driver despite the fact that the Council's existing criteria allow for a passenger in appropriate circumstances to qualify for a DPPP; and
- (b) what was in the Ombudsman's view a lack of rigour and detailed investigation, where the application could have been considered and approved far earlier than it was.

The grounds of the conclusions are set out in paragraphs 18 and 19 of the Ombudsman's report.

3.8 There are three recommendations from the Ombudsman:-

- (a) that the authority apologises and makes a payment in the sum of £750 in recognition of the undue delay and the stress caused to Mr. and Mrs. K;
- (b) that the Council considers urgently and sympathetically the provision of a DPPP;
- (c) that the Council reviews its existing eligibility criteria and adopts a scheme which satisfies the requirements set out in paragraph 22 of the Ombudsman's report.

3.9 The Council needs to consider its response to these recommendations. In the new legislation if an authority does not accept recommendations in a S.16 report the Ombudsman may then prepare a further report ("special report") dealing with the Council's failure and making further recommendations, and will publish that report. The Ombudsman can reclaim the costs of the special report (preparation and publishing) from the Council.

3.10 There is also a power under the 2005 legislation for the Ombudsman, where he is satisfied that the authority has wilfully disregarded his report without lawful excuse, to report this to the High Court where it can be dealt with as a contempt of court. That provision in the legislation has however not yet been brought into effect so is unlikely to apply to this particular case.

3.11 In relation to recommendation (a), albeit that there are concerns about some aspects of the report and the level of compensation to be awarded, officers accept that recommendation of the Ombudsman.

3.12 It is important at this point to refer to the other DPPP in the same street (paragraph 11 of the report) where this had been provided outside the strict rigours of the Council's policy. This has been acknowledged during the investigation as having been an error, but the point must be made that an error in that case should not be the sole reason for acknowledging and granting an application to Mr. K.

3.13 In relation to recommendation (b), the Council has already acknowledged the eligibility of Mr. K under the Council's criteria. It should now move to:-

- (i) a technical appraisal;
- (ii) the formal traffic order statutory process (which is subject to budget availability). The point has already been made to the Ombudsman that because of the statutory traffic order process, it could not give an absolute assurance about making a DPPP because the Council could then be seen as pre-judging the case and prejudicing its statutory duty to properly consider any representations made a third party objecting to the

making of a traffic order.

3.14 In relation to recommendation (c), officers have already consulted scrutiny committees in preparation for a report to the Cabinet giving options

- (a) of not making any further DPPP's or
- (b) amending and clarifying the eligibility criteria.

The proposed report to the Cabinet has been deferred pending a review of its recommendations in the light of what is said in the Ombudsman's report and it is now accepted that option (a) will not be pursued. Members will see that the Ombudsman has asked for evidence of this policy within "the next three months" i.e. by the end of November 2006. Officers are working towards the revised criteria being put to the Council's Cabinet before that date.

3.15 While there are concerns about the way in which the Ombudsman reached the conclusion that he did, the view of the officers involved is that in all the circumstances and given the disproportionate cost and time that would be involved in a special report, they feel, reluctantly, that the Council should agree to the Ombudsman's recommendations.

4. FINANCIAL IMPLICATIONS

4.1 The only significant cost implication to the authority is in relation to the payment recommended by the Ombudsman which will be met from existing budgets. There may be additional budgetary implications in respect of the making of an additional order in this particular case but the amount is not significant and can be reviewed at the time.

5. PERSONNEL IMPLICATIONS

5.1 None.

6. CONSULTATIONS

6.1 Both the Senior Assistant Engineer, Traffic Management and the Service Manager for Physical and Sensory Disability have expressed concern about the financial award being made to the complainants and in particular the precedent that this could set. I do not think it necessary to change the recommendation below because the finding of maladministration is in relation to two specific grounds (paragraph 3.7 above) and so does not set a precedent in respect of any other applicants for DPPP's.

6.2 The Senior Assistant Engineer, Traffic Management has also referred to the successful operation of this Council's existing DPPP policies and has pointed to the fact that the Council has efficiently managed the demands against resources and the Council's public highway responsibilities. These comments need to be recorded but it is the processing of this particular application rather than the policy that has led to the finding. The points that he makes are however valid as part of the review of the policy already underway and referred to in paragraph 3.14 above.

7. RECOMMENDATIONS

- (a) that the Ombudsman's report and the officers' comments be noted;

- (b) that the committee recommends to the Cabinet:-
- (i) that the Ombudsman's report be noted and accepted;
 - (ii) that the Council apologises to the complainant for the shortcomings in the application process and makes the complainant a payment in the sum of £750 in recognition of the undue delay and the stress and time and trouble involved in the complaint;
 - (iii) that the Council immediately proceeds to evaluate the making of a DPPP and if thought appropriate, pursues the appropriate statutory process to make, and implement a traffic order;
 - (iv) that officers are requested to present before the 30 November 2006 a report proposing amendments to the Council's policy on eligibility for DPPP's.

8. REASONS FOR THE RECOMMENDATIONS

- 8.1 To satisfy the Council's statutory duties under the Public Services Ombudsman (Wales) Act 2005.

9. STATUTORY POWER

- 9.1 Public Services Ombudsman (Wales) Act 2005, Local Government Act 1974. As explained in the report this is a Cabinet or a Council function dependent upon the recommendation being made by this committee. Consideration of the report and making of the recommendations is a function delegated to this committee.

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Background Papers:
None other than published documents.

Appendices:
Appendix 1 Report of Public Services Ombudsman for Wales 30 August 2006
Appendix 2 Executive Summary issued by Public Services Ombudsman for Wales