

## STANDARDS COMMITTEE – 16TH OCTOBER 2006

**SUBJECT: REPORT FROM PUBLIC SERVICES OMBUDSMAN FOR WALES**

**REPORT BY: MONITORING OFFICER**

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### 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 1st 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 This Act has superseded but not completely repealed the previous legislation (Local Government Act 1974) and deals with maladministration complaints made to the Ombudsman.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 and on the Council’s website from the 12th October 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 a complaint to the Ombudsman by persons identified in the report as “Mr. and Mrs. R.” who complained that the Council as a housing authority failed to take effective action to deal with their complaints of nuisance from their neighbour who is a Council tenant. Their complaints were primarily about harassment and unneighbourly behaviour.

- 3.7 There are a number of factors in particular which led to the Ombudsman's decision and these are set out in the attached report. The report sets out a chronology of events and involvement by the Ombudsman's office. The events are set out in paragraphs 14 to 47 of the report. The Ombudsman's conclusions are in paragraphs 63 to 70. These conclusions set out the history again to a certain extent and then goes on to deal with his view about the time taken to respond to complaints and the way in which the Council should have responded but did not, in respect of other incidents.
- 3.8 Officers in comments on the draft report repeated the view that there was equal provocation from the complainants to the Council tenants and invited the Ombudsman's investigator to view video evidence and also to interview the tenants. I understand that the video has since been viewed but this is not reflected in the report and because there is no reference to it I do not believe that the tenants were contacted.
- 3.9 Officers were also concerned that the Ombudsman had previously received, and dismissed, a complaint from Mr. and Mrs. R. in late 2003, but notwithstanding this the current report re-examined the authority's actions in the light of "detailed information not available to the Ombudsman's predecessor" (paragraph 65).
- 3.10 There are four recommendations from the Ombudsman:-
- (a) apologise to Mr. and Mrs. R. for the failings;
  - (b) pay Mr. and Mrs. R. £2,000 in recognition of the avoidable distress suffered by them and their time and trouble in making the complaint;
  - (c) that the Council ensures that any future complaints are dealt with promptly, objectively and in accordance with the policy with decisions being supervised by a senior housing officer who has not dealt with the complainants at an operational level and involving legal officers in advice on the action being taken;
  - (d) that the Council should review the operation of the protocol with the police to ensure that it is working in practice.
- 3.11 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.
- 3.12 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.
- 3.13 In relation to recommendation (a), this should be accepted.
- 3.14 In relation to recommendation (b), this should be accepted.
- 3.15 In relation to recommendation (c), while as an immediate response within the statutory period to the Ombudsman's recommendation, the principle of the recommendation is accepted. However it seems the ombudsman requires a senior officer in every case to preside over decisions made on how the complaint is being actioned. If so this would have considerable resource implications and ignores the fact that the Chief Housing Officer has restructured the division which now has a dedicated tenancy enforcement unit that was not in existence at the time, and have new procedures in place to deal with anti social behaviour. This includes liaison with a dedicated solicitor from Legal Services in appropriate circumstances. Given these changes, the recommendation seems excessive. To keep involving senior officers who

have not been involved in some of the operational requirements in dealing with a case will become unworkable. Similarly if every decision has to have input from Legal, then a solicitor will need to be based in the team and effectively manage it. The recommendation fails to acknowledge how systems work, and doesn't reflect the improvements already made. The arrangements that have been developed can be explained to the Ombudsman and can be shown to be equally robust as what is suggested in his recommendations.

- 3.16 In relation to recommendation (d), this should be accepted. There is quite independently of the Ombudsman's investigation a review of the information sharing protocol with the police and I have already discussed with appropriate officers how training and awareness can be achieved when the revised protocol is in place to include the tenancy enforcement staff within the Housing Service. This again was independent of the Ombudsman's investigation but now clearly becomes relevant in the context of the Ombudsman's decision.
- 3.17 There is in addition a comment from the Ombudsman about appropriate record-keeping (paragraph 69) and while this does not form part of the Ombudsman's recommendations, I think it is a matter that needs to be addressed by reinforcing to officers generally the need to keep proper and accurate contemporaneous notes.

#### **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.

#### **5. PERSONNEL IMPLICATIONS**

- 5.1 There are no immediate personnel implications but the ongoing consideration of recommendation (c) might have future personnel implications.

#### **6. CONSULTATIONS**

- 6.1 There are no consultation responses which have not been taken into account in the recommendations to this report.

#### **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 Mr. and Mrs. R. for the failings identified in the report;
  - (iii) that the Council pays Mr. and Mrs. R. £2,000 in respect of the distress suffered by them as a result of the maladministration but also their time and trouble in making the complaint;
  - (iv) that the Ombudsman's recommendations to improve the process of dealing with complaints be accepted in principle but that a further report be presented to the Cabinet by officers about how that recommendation could be implemented in practice, following discussion with the Ombudsman's office about the points made by officers and referred to in this report;
  - (v) that the Council should review the operation of the protocol with the police to ensure that it is working in practice;
  - (vi) that officers generally be reminded (in the light of the Ombudsman's comments

on this case) of the need to keep proper and accurate contemporaneous notes of meetings, visits and conversations.

## **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 dated 27 September 2006.