

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Housing Portfolio Holder

8th July 2008

AUTHOR/S: Executive Director/Housing Futures Project Manager

HOUSING FUTURES: MANAGING CONFLICTS OF INTEREST

Purpose

1. To identify the potential for conflicts of interest that may arise as a result of a housing transfer proposal.
2. To consider the options for managing any identified potential conflicts of interest both during the pre ballot and any post ballot phase of a housing transfer proposal.

Executive Summary

3. The Communities and Local Government (CLG) Housing Transfer Guidance emphasises the need to ensure an appropriate degree of independence between the local authority and the prospective new housing association landlord throughout the transfer process. This is to avoid conflicts of interest or any perception of any such conflicts.
4. Some elected members and council employees will inevitably have dual roles in the early stages, particularly prior to a ballot and there are consequently requirements on members to declare interests.
5. This report considers these issues and recommends the adoption of a protocol and appropriate decision making arrangements designed to minimise the risk of conflicts arising during the pre ballot and any post ballot phase.
6. The issues of personal liability and shadow directorship are also explored along with appropriate measures to mitigate against such risks where appropriate although overall these have been assessed to be low in terms of their likelihood even in any post ballot phase of the Housing Futures process.

Background

7. The current CLG guidance on establishing arrangements for avoiding conflicts of interest is contained in the *Housing Transfer Manual 2005 and Supplement to the Housing Transfer Manual 2006*. This suggests once a local authority looking at a housing transfer proposal has identified the prospective new landlord it should ensure that it establishes an appropriate degree of independence to avoid conflicts of interest arising.
8. Whilst it is recognised that some officers and councillors will inevitably have a dual role working for both the authority and the prospective new landlord during the early stages of a transfer proposal and the run-up to the ballot it is important that an authority puts in place at the earliest opportunity arrangements for avoiding conflicts of interest.
9. It is recommended that a report on the issue of potential conflicts of interest should be formally considered by the relevant decision-maker within the council. The report

should identify possible conflicts and proposes structures and protocols designed to eliminate or minimise them.

Elected members

10. In relation to housing transfers, the CLG advice is that an elected member appointment to the shadow board of a new local housing association by the council should not necessarily prevent him/her from taking part in the consideration or decision making process of the council in relation to the proposed housing transfer, unless they believe that they have a prejudicial interest in the outcome of that decision.
11. The CLG Supplementary Guidance on housing transfer issued in 2006 states as follows:

"Only where a local authority can be entirely certain that no conflict will occur, should they consider any of their officers or members to sit on the board of the new RSL".
12. The Council's representatives on the board of a new local housing association will be required (as indeed with all board members) to act in the best interests of the housing association 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.
13. In particular, members will be required to attend Council meetings at which the new local housing association or the housing 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 housing association.
14. Elected members who are also on the board of the prospective new housing association landlord should be made aware of the Housing Corporation's regulatory requirements relating to the avoidance of conflicts of interest and general corporate best practice
15. The advice provided by the council's legal adviser for the pre ballot phase of the housing transfer process Trowers & Hamlin is that provided members are following the Council's Code of Conduct and appropriate arrangements are in place to deal with any conflicts that arise, there is no bar to local authority members generally sitting on the board of a new local housing association that would acquire the council's homes in the event that tenants support a housing transfer at a ballot.

Officers

16. Since many officers may ultimately transfer to a new local housing association landlord should tenants support a housing transfer proposal, the council should issue guidance on potential conflicts of interest. Particular care should be taken about conflicts after a positive ballot, when negotiations about the price and terms of the transfer will take place. The council will need to be able to demonstrate a clear split of responsibilities at this stage where employees are seconded to the new housing association to act as executive support to the shadow board prior to actual transfer.
17. The council will need to think carefully at an early stage about the resources it will need to manage the project in relation to the skills needed and level of resources. In particular, after the ballot, some officers will be taking on new roles on behalf of the prospective new landlord and their services will no longer be available to the

authority. An authority will want to ensure 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 authority have a leading role at all times.

18. The council will need to ensure that its arrangements for dealing with potential conflicts of interests are reviewed and updated regularly, and that any subsequent changes are known to all those involved in the housing transfer process.
19. It will also be important to have in place arrangements for handling information that is confidential to the council during the negotiations with the prospective new housing association landlord on the valuation of the stock and the terms of the contract.
20. The principles described above apply also to the employment of consultants, including legal, financial, stock condition and independent tenant advisers. Arrangements should be put in place to ensure there is a clear separation of interests and that no conflict can arise, including ensuring different firms of consultants are employed by the council and by the prospective new housing association landlord in any post ballot phase.

Personal liability and shadow directorship

21. Issues of personal liability for board members do not generally arise until well into the post ballot phase of a housing transfer process. It is not until the new local housing association starts letting contracts and/or trading that any potential liabilities will arise.
22. For example any letting of contracts for the appointment of consultants for the post ballot phase are conventionally covered by a costs indemnity which is provided by the council.
23. Further we are advised by Trowers & Hamlin that in their experience any decisions made by the shadow board pre ballot would almost certainly be reviewed post ballot at which stage the board would receive independent professional advice of any particular position.
24. A shadow director is 'a person in accordance with whose directions or instructions the directors are accustomed to act'. There is potential for the council itself and/or officers to be deemed a shadow director.
25. One of the major implications of being deemed to be a shadow director is that they could be liable for the wrongful trading of a housing association in an insolvency scenario.
26. There is a risk that officers of the council and/or the new local housing association, once appointed, will engage in such conduct that they are deemed to be shadow directors. Officers of the council should, therefore, exercise caution in any advice/directions given to the board particularly in any post ballot phase. The risks of shadow directorship are generally understood and accepted by senior officers within the housing association sector and so should not be an issue for officers who would be guiding the new housing association through the post ballot phase.

Options

27. In order to avoid or minimise conflicts of interest that may arise for members or employees involved in advising, discussing, negotiating, promoting or opposing a housing transfer proposal the following measures should be given consideration.

28. That the council adopt a protocol to guide members and employees involved in a potential housing transfer and a suggested protocol for this purpose is attached as Appendix 1. The matters addressed by the protocol will include the following measures:
- i) That council nominees for the shadow board to be established for a new local housing association, that will either be a stand alone organisation or part of an existing or new group of housing associations, should not include members of the Executive because of the potential frequency with which conflicts of interest may arise;
 - ii) That arrangements should be put in place for handling information which is confidential to the council during any negotiations with the acquiring new local housing association landlord, including on the valuation of the housing and terms of the transfer agreement;
 - iii) That requests for further guidance regarding conflicts of interest relating to the housing transfer proposal are delegated to the Chief Executive;
29. That the project team for the pre ballot phase of the Housing Futures process should comprise officers who will represent the full range of council interests including a senior officer who would take a lead role in the negotiations with the new housing association landlord on behalf of the council in a post ballot phase.
30. That the project management arrangements for any post ballot phase are considered and agreed in principle ahead of any ballot in order that a clear split of roles and responsibilities can be achieved This should also include an assessment of resources to take forward the post ballot negotiations on behalf of the council and secondment arrangements to provide executive support to the prospective new housing association landlord.
31. In order to avoid the council being regarded as a shadow director of a new local housing association landlord it is suggested that:
- i) the council should avoid asserting any control over all or part of the affairs of the prospective new local housing association landlord or in its day to day management particularly in any post ballot phase;
 - ii) Arrangements are put in place to limit the flow of information from the council to the prospective new local housing association landlord;
 - iii) Individual members or officers of the council should avoid becoming personally involved in giving directions regarding the management of the prospective new local housing association landlord;

Implications

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| 32. Financial | Not Applicable. |
| Legal | The legal implications are set out in the body of the report and have been informed by Trowers & Hamlin the council's appointed legal adviser for the pre ballot phase of the Housing Futures process. |

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| Staffing | The key implications for housing and corporate staff involved in the development of the housing transfer proposal are set out in this report and relate to: <ul style="list-style-type: none"> - roles and responsibilities within the process both in the pre ballot and any post ballot phase - avoiding conflicts of interest |
| Risk Management | The strategic risk register for the Housing Futures pre ballot project plan includes managing conflicts of interest. The risk management implications are set out in detail in Appendix 2. |
| Equal Opportunities | Not Applicable. |

Consultations

33. The council have appointed Trowers & Hamlin as legal advisers for the pre ballot phase of the Housing Futures process and they have provided advice on managing conflicts of interest and the issues of personal liabilities and shadow directorships.
34. The Principal Solicitor has been consulted on the issues raised in this report and the advice received from the council's external legal advisers.

Effect on Service Priorities and Corporate Objectives for 2008/09

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| 35. | <p>Work in partnership to manage growth</p> <hr/> <p>Deliver high quality, value for money and accessible services</p> <hr/> <p>Enhance quality of life and build a sustainable South Cambridgeshire</p> | <p>The council will need to ensure that any potential conflicts of interest are avoided or minimised through appropriate measures both during the pre ballot and any post ballot phase of a housing transfer proposal. This will enable the council to protect its interests and be able to negotiate effectively with the prospective new local housing association landlord should tenants support a housing transfer proposal at a ballot. This will help maximise the benefits of a housing transfer for both tenants and the wider community within South Cambridgeshire.</p> <p>Through putting into place effective measures to manage potential conflicts of interest both elected members and officers will be clear on their respective roles and responsibilities within the housing transfer process.</p> |
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Recommendations

36. To agree the following **RECOMMENDATION TO FULL COUNCIL**:

That the council adopt a protocol to guide members and employees involved in a potential housing transfer and a suggested protocol for this purpose is attached as an Appendix to this report.
37. That the project management arrangements for any post ballot phase are considered and agreed in principle ahead of any ballot in order that a clear split of roles and responsibilities can be achieved This should also include an assessment of resources to take forward the post ballot negotiations on behalf of the council and secondment

arrangements to provide executive support to the prospective new housing association landlord.

Background Papers: the following background papers were used in the preparation of this report:

Housing Transfer Manual 2005 and 2006 Supplementary Guidance
Communities & Local Government (CLG)

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South Cambridgeshire District Council

Housing Transfer Protocol

- 1 The purpose of this housing transfer 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 transfer of council homes to a new local housing association.
- 2 The guidance in this housing transfer protocol does not take the place of the Council's Code of Conduct or terms and conditions of employment for council 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 housing transfer process in a balanced way based on accurate information.
- 3 The housing transfer 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 housing 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 a new local housing association made up of Council, tenant and independent members.
 - 4.1.2 Only appoint the council nominees on the shadow board from amongst those members who are not members of the Executive
 - 4.1.3 Appoint or continue the appointment of an independent tenants' adviser who shall be independent from, and not seen as representing, the views of the local authority, the proposed new local housing association 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 on the implications of both a housing transfer and retention of homes by the council.
 - 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 members who are eligible to receive such information shall be made by the Chief Executive.

- 4.1.6 Ensure that appropriate housing 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 prospective new local housing association landlord or to tenants.
 - 4.2.2 Not act in an advisory capacity, either formally or informally, to both the Council and the shadow board of a new local housing association.
 - 4.2.3 Not undertake any formal role on behalf of tenants in connection with the possible establishment of the new local housing association. For example acting as a formal or informal tenants advisor, or act for or on behalf of a tenants lobby group.
 - 4.2.4 Not accept any paid office with the shadow board of the new local housing association
 - 4.2.5 Comply with the Council's Code of Conduct.
 - 4.2.6 Discuss housing transfer issues with constituents in a balanced way based on 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 new local housing association or to tenants.
 - 4.3.2 Not, without the express consent of their Corporate Manager or Chief Executive, act in a formal or informal advisory capacity (for example advising on policy or financial implications relating to a housing transfer proposal) to both the Council and the shadow board of the new local housing association.
 - 4.3.3 Not undertake any formal role on behalf of tenants in connection with the possible housing transfer other than such duties as may be required under their terms and conditions of employment by the Council.
 - 4.3.4 Not accept, except for any secondments of officers approved by the Council, any paid office or other appointment with the shadow board of the new local housing association
 - 4.3.5 Comply with the council's code of conduct for employees and their contracts and terms and conditions of employment.

RISK MANAGEMENT IMPLICATIONS

APPENDIX 2

| Threat | Possible Consequences | Impact | Likelihood | Actions |
|--------------------------|---|-----------------------------|-----------------------------|--|
| 1. Conflicts of interest | <p>Negotiations in any post ballot phase could be adversely affected.</p> <p>The interests of the council are not fully protected.</p> <p>Inadequate resources within the council to manage any post ballot phase.</p> <p>Lack of continuity in lead roles within the Housing Futures process for the council in the post ballot phase.</p> | <p>Low</p> <p>Score = 2</p> | <p>Low</p> <p>Score = 2</p> | <ul style="list-style-type: none"> • promote ‘one team’ approach • aims and objectives should be those that can be shared • no separation of council and new landlord roles pre ballot • project management structure to be flexible to enable a separation to be easily achieved at the appropriate stage in the project • project team to provide support for all work streams within the project • ensure the interests of both transferring and non-transferring staff are fully taken into account • ensure that the council’s interests as well as those of new landlord are protected • ensure that the new landlord is able to deliver on any promises made in the offer • consider early the terms of any contract and relationships that will need to exist between the council and new landlord post transfer • consider and agree a protocol to avoid or help minimise conflicts of interest |

Total score: 4