

Council

22nd November 2006

**Ex-Councillor Fernandes
Information Report**

All wards

Report authorised by: Director of Legal & Democratic Services

Executive Summary

The purpose of this report is to provide a comprehensive final report to inform the Council of the outcome of the investigation by Lambeth's Benefit Investigation Team (LBIT) into the claims for housing and council tax benefit made by Lambeth's ex-Councillor, Gabriel Fernandes (Mr Fernandes).

Recommendations

That the Council notes the report.

Consultation

Name of consultee	Directorate or Organisation	Date sent to consultee	Date response received from consultee	Comments appear in report para:
Internal				
Mark Hynes	Legal Services	18.10.06		
Kathy Bateman	LBIT	18.10.06		
External				
N/A				
Entered in Consultation and Events Diary?				
No				

Report history

Decision type:	Urgency item?
Key Decision: N/A For information only	No
Date report drafted: 19 October 2006	Report deadline: 8 th November 2006
Date report sent: Report no 205/06-07	
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1. Context

- 1.1 The investigation relating to housing benefit claims submitted by ex-Councillor Fernandes, and his conviction in December 2004, have been the subject of a number of questions and motions to Council, at its meetings held on 23rd February 2005, 6th July 2005 and 22nd February 2006.
- 1.2 The purpose of this report is to provide a comprehensive final report to inform the Council of the outcome of the investigation as detailed within the executive summary below.

2. Detailed analysis and reasons

- 2.1. Gabriel Fernandes (Mr Fernandes) served as a Lambeth Councillor between May 2002 and June 2003.
- 2.2. Investigations were conducted into 2 separate Housing Benefit (HB) claim periods, 1995 – 2002 and a further application received by Lambeth's Benefit Service (LBS) in July 2005. LBIT conducted an investigation to establish whether these claims in respect of his property in Streatham were made fraudulently and if so whether there was sufficient evidence to support a criminal prosecution under the Social Security Administration Act 1992 or the Theft Acts.
- 2.3. As a result of a separate investigation by Ealing Council regarding housing benefit fraud within that borough, Mr Fernandes resigned as a Lambeth councillor in June 2003.
- 2.4. Enquiries were made with Ealing Council that established that Mr Fernandes had a current claim for HB/CTB in respect of a property in Greenford. As a result of the discrepancies, both authorities launched a joint investigation. The information he had supplied to Ealing Council in support of his claim was that he was the tenant of Tina Reiss. The address provided by Mr Fernandes for payment of HB was that of Conselho das Comunidades Portuguesas Ltd.(CCP), a Portuguese charity.(HB regulations allow for HB to be paid direct to the landlord in certain circumstances). Further enquiries established that the landlord was the wife of Mr Fernandes and that she was the owner of the Greenford property. This was a straightforward case of obtaining benefit by deception as he had not declared his wife's ownership of the Greenford property nor his income as a Lambeth Councillor. This was a relatively easy case to prove as clear documentary evidence to support the charges was available.
- 2.5. Prior to the Ealing claim, Mr Fernandes had received HB/CTB from Lambeth, for the period September 1995 to February 2002. This was in respect of his property in Streatham. The information gathered in relation to the Ealing investigation placed the validity of his Lambeth claim in question, though the issues were more complex and required further investigation. Both authorities agreed that it was in their and Mr Fernandes' best interest to have both matters dealt with at the same time and that Ealing would lead the investigation. At an interview under caution conducted by Ealing, Mr Fernandes refused to answer questions in relation to the Lambeth claim. On 9th December 2004 at Acton Magistrates Court Mr Fernandes pleaded guilty to four charges of obtaining £14,351.80 of benefit by deception and

was fined £5000 ordered to pay £10,000 compensation and £1512 costs were awarded.

- 2.6. Whilst the prosecution by Ealing Council against Mr Fernandes was straightforward, obtaining sufficient evidence to demonstrate that certain discrepancies contained within information held by Lambeth was more problematic. Housing benefit fraud officers made extensive enquiries but were unable to substantiate a case that would satisfy the criminal threshold of being 'beyond any reasonable doubt'
- 2.7. As a result of a second application for benefits by Mr Fernandes in July 2005 officers carried out another detailed investigation in respect of that claim. To ensure that the conclusions reached were sustainable, Counsel's opinion was sought in August 2006 and in his opinion a successful prosecution could not succeed because of the lack of evidence to the required criminal standard of beyond any reasonable doubt.
- 2.8. Lambeth Benefits Investigations Team and Legal Services are required to consider whether the evidence is sufficiently robust to bring about a successful prosecution. They must also uphold the principles of the Code of Crown Prosecutors and ensure that the decision to prosecute is reasonable, even-handed and in the public interest. Given the facts the Director of Legal and Democratic Services has concluded that there are no grounds for taking a prosecution and that no further action will be taken in relation to this matter.
- 2.9 Members will, no doubt, have some concerns as to the length of time which has elapsed since the Council first became aware of the concerns which gave rise to the investigations. This was due to a number of factors which were largely beyond the Council's control, including:
 - Awaiting the outcome of the Ealing court case
 - The DWP Appeal process
 - The death of Mr Fernandes' son
 - Many delays caused by Mr and Mrs Fernandes' failure to attend interviews and not providing information required of them.

In addition, and as indicated above, the Lambeth investigation was not as straightforward as the Ealing case. LBIT were required to establish whether there was undisclosed income. Mr Fernandes and his wife regularly failed to turn up for interviews and delayed providing information required of them. As LBIT have no powers of arrest or search they were dependant on obtaining any required information direct from a number of financial institutions, which is a lengthy process. The Ealing case was entirely different from that of the Lambeth investigation in that it was a straightforward case of deception. As part of the Lambeth investigation, evidence was gathered by LBIT proving that Mrs. Fernandes owned their Greenford property. (A false tenancy agreement was set up in order for Mr Fernandes to obtain housing benefit from the London Borough of Ealing in respect of that property). The evidence gathered to substantiate the allegation was obtained from a number of sources and was not dependant on the co-operation of Mr and Mrs Fernandes. The information together with supporting evidence was passed to Ealing's investigation team to complete the process by interviewing Mr and Mrs Fernandes and putting the prosecution case together.

- 2.10 A complaint was also made by the Standards Board for England (SBE). The case summary, which was published on the SBE's website in May 2005 includes the following statement:

"The Ethical Standards Officer considered that Councillor Fernandes acted in a manner which could reasonably be regarded as bringing his office or authority into disrepute. The Ethical Standards Officer therefore concludes that Councillor Fernandes failed to comply with the Code of Conduct.

Councillor Fernandes resigned as a councillor on 27th June 2003, now lives abroad and has no plans to be a councillor or live in England in the future. In these circumstances, the Ethical Standards Officer found that no action needs to be taken."

The Council formally raised with the SBE the fact that they were mistaken in their belief that Mr Fernandes lived abroad, given that he still resided in the borough, but they refused to take any further action.

3. Financial implications

- 3.1 There are no financial implications to this report

4. Legal implications

- 4.1 Legal implications are contained within the body of the report

5. Organisational implications

- 5.1 **Risk management:** There are considered to be no significant risks in the report.
- 5.2 **Equalities Impact Assessment:** None
- 5.3 **Community safety implications:** None
- 5.4 **Environmental implications:** None
- 5.5 **Staffing and accommodation implications:** None
- 5.6 **Procurement implications:** None.