

STANDARDS COMMITTEE

17 DECEMBER 2014

REPORT OF THE MONITORING OFFICER

A.3 **ESSEX POLICE AND MONITORING OFFICER PROTOCOL**

(Report prepared by Lisa Hastings)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To inform the Standards Committee on the outcome of negotiations between Essex Police and Monitoring Officers across Essex to agree a Protocol which applies County wide, on dealing with potential breaches of the Discloseable Pecuniary Interest requirements.

EXECUTIVE SUMMARY

Under Section 34 of the Localism Act 2011, the Government introduced summary offences, relating to elected and co-opted Councillors' failure to disclose / register and participate in meeting where they have certain interests (termed Disclosable Pecuniary Interests –“DPI”). These are detailed in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

Prosecution of such offences is by the Police (by virtue of s34(5)), therefore Essex Police and Essex Monitoring Officers have agreed a Protocol relating to the reporting / information sharing for potential criminal offences arising under Section 34 Localism Act 2011. The Protocol is attached as Appendix A.

RECOMMENDATION(S)

It is recommended that:

- 1. The Committee note the contents of the report and the Protocol with Essex Police and Monitoring Officers across the County.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The protocol builds on the Council's good governance arrangements whilst dealing with the statutory requirements of the Localism Act 2011 and the associated Regulations.

FINANCE, OTHER RESOURCES AND RISK

Finance and Other Resources

Finance

None associated with the content of this report.

Risk

Without the Protocol in place, there is a risk that Essex Police will deal with potential criminal offences in a different manner leaving Monitoring Officers responding to complaints concerning failure to disclose DPis inconsistently. The Protocol has been agreed at the request of Essex Monitoring Officers to ensure that Essex Police and the individual councils are aware of the procedure to be followed.

LEGAL

Under Section 34 of the Localism Act 2011, the Government introduced summary offences, relating to elected and co-opted Councillors' failure to disclose / register and participate in meeting where they have certain interests (termed Disclosable Pecuniary Interests –“DPI”). These are detailed in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder/Equality and Diversity/Health Inequalities/Area or Ward affected/Consultation/Public Engagement.

Wards Affected: All

PART 3 – SUPPORTING INFORMATION

BACKGROUND AND CURRENT POSITION

Since the Localism Act 2011 came into force, council's across Essex have experienced different approaches within Essex Police on how potential breaches of Discloseable Pecuniary Interest complaints should be dealt with. Essex Monitoring Officers were aware that in Cambridgeshire, a Protocol had been agreed with the Police and the local authorities. Consequently, negotiations have taken place with Essex Police and the attached Protocol has been agreed with Essex Monitoring Officers.

Members will note that the Protocol does distinguish between serious offences and securing advantage to genuine errors or oversight however, the latter may still be regarded a breach of the Code of Conduct, if not considered serious enough to warrant criminal investigation.

BACKGROUND PAPERS FOR THE DECISION

There are no background papers arising from this report.

APPENDICES

Appendix A – Essex Police and Monitoring Officers Protocol

Protocol between Essex Monitoring Officers and Essex Police

Purpose

Under Section 34 of the Localism Act 2011, the Government has introduced some new summary offences, relating to elected and co-opted Councillors' failure to disclose / register and participate in meeting where they have certain interests (termed Disclosable Pecuniary Interests –“DPI”). These are detailed in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

Section 34 of the Localism Act 2011 came into force on 1 July 2012, following The Localism Act 2011 (Commencement Order no.6 and Transitional Savings and Transitory Provisions) Order 2012.

Prosecution of such offences is by the Police (by virtue of s34(5)), therefore the parties have agreed a Protocol relating to the reporting / information sharing for potential criminal offences arising under Section 34 Localism Act 2011. The relevant legislation is appended at A.

- 1) In the event that the Monitoring Officer receives a complaint and there is evidence that a serious potential DPI offence may have been committed they will make immediate contact with the Police through the nominated single point of contact (see Appendix B for named Police contact). For the avoidance of doubt there is no requirement for the Monitoring Officer to refer cases to the Police where it appears there may have been a genuine error or oversight by the member concerned and no advantage has been secured by them.
- 2) Similarly if the Police receive a complaint from a member of the public they will inform the relevant Monitoring Officer of the receipt of that complaint (each Authority will be responsible for providing up to date contact details of their appointed Monitoring Officer from time to time – See Appendix B for named Monitoring Officer contact).
- 3) Essex Police will register the complaint and will advise the relevant Monitoring Officer. The Police will conduct an initial assessment of the complaint and may approach the relevant Monitoring Officer for background information on the complaint.
- 4) If Essex Police decides not to prosecute in the public interest, they may consider less formal action, such a warning. Following consideration of the matter, the Police shall confirm their decision and any action or prospective action on the matter to the relevant Monitoring Officer.

**Protocol between Essex Monitoring Officers
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- 5) The Essex Police and Monitoring Officers shall keep this Protocol under review on a 2 yearly basis.

Signatories

Signed on Behalf of Essex Police

Signed on Behalf of District Council

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**Appendix A
Extract of Localism Act 2011**

30 Disclosure of pecuniary interests on taking office

(1) A member or co-opted member of a relevant authority must, before the end of 28 days beginning with the day on which the person becomes a member or co-opted member of the authority, notify the authority's monitoring officer of any disclosable pecuniary interests which the person has at the time when the notification is given.

(2) Where a person becomes a member or co-opted member of a relevant authority as a result of re-election or re-appointment, subsection (1) applies only as regards disclosable pecuniary interests not entered in the authority's register when the notification is given.

(3) For the purposes of this Chapter, a pecuniary interest is a "disclosable pecuniary interest" in relation to a person ("M") if it is of a description specified in regulations made by the Secretary of State and either—

- (a) it is an interest of M's, or
- (b) it is an interest of—
 - (i) M's spouse or civil partner,
 - (ii) a person with whom M is living as husband and wife, or
 - (iii) a person with whom M is living as if they were civil partners,

and M is aware that that other person has the interest.

(4) Where a member or co-opted member of a relevant authority gives a notification for the purposes of subsection (1), the authority's monitoring officer is to cause the interests notified to be entered in the authority's register (whether or not they are disclosable pecuniary interests).

31 Pecuniary interests in matters considered at meetings or by a single member

(1) Subsections (2) to (4) apply if a member or co-opted member of a relevant authority—

- (a) is present at a meeting of the authority or of any committee, sub-committee, joint committee or joint sub-committee of the authority,
- (b) has a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting, and

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(c) is aware that the condition in paragraph (b) is met.

(2) If the interest is not entered in the authority's register, the member or co-opted member must disclose the interest to the meeting, but this is subject to section 32(3).

(3) If the interest is not entered in the authority's register and is not the subject of a pending notification, the member or co-opted member must notify the authority's monitoring officer of the interest before the end of 28 days beginning with the date of the disclosure.

(4) The member or co-opted member may not—

(a) participate, or participate further, in any discussion of the matter at the meeting, or

(b) participate in any vote, or further vote, taken on the matter at the meeting,

but this is subject to section 33.

(5) In the case of a relevant authority to which [Part 1A](#) of the Local Government Act 2000 applies and which is operating executive arrangements, the reference in subsection (1)(a) to a committee of the authority includes a reference to the authority's executive and a reference to a committee of the executive.

(6) Subsections (7) and (8) apply if—

(a) a function of a relevant authority may be discharged by a member of the authority acting alone,

(b) the member has a disclosable pecuniary interest in any matter to be dealt with, or being dealt with, by the member in the course of discharging that function, and

(c) the member is aware that the condition in paragraph (b) is met.

(7) If the interest is not entered in the authority's register and is not the subject of a pending notification, the member must notify the authority's monitoring officer of the interest before the end of 28 days beginning with the date when the member becomes aware that the condition in subsection (6)(b) is met in relation to the matter.

(8) The member must not take any steps, or any further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by the member).

(9) Where a member or co-opted member of a relevant authority gives a notification for the purposes of subsection (3) or (7), the authority's monitoring officer is to cause the interest notified to be entered in the authority's register (whether or not it is a disclosable pecuniary interest).

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(10) Standing orders of a relevant authority may provide for the exclusion of a member or co-opted member of the authority from a meeting while any discussion or vote takes place in which, as a result of the operation of subsection (4), the member or co-opted member may not participate.

(11) For the purpose of this section, an interest is “subject to a pending notification” if—

(a) under this section or section 30, the interest has been notified to a relevant authority's monitoring officer, but

(b) has not been entered in the authority's register in consequence of that notification.

32 Sensitive interests

(1) Subsections (2) and (3) apply where—

(a) a member or co-opted member of a relevant authority has an interest (whether or not a disclosable pecuniary interest), and

(b) the nature of the interest is such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

(2) If the interest is entered in the authority's register, copies of the register that are made available for inspection, and any published version of the register, must not include details of the interest (but may state that the member or co-opted member has an interest the details of which are withheld under this subsection).

(3) If section 31(2) applies in relation to the interest, that provision is to be read as requiring the member or co-opted member to disclose not the interest but merely the fact that the member or co-opted member has a disclosable pecuniary interest in the matter concerned.

33 Dispensations from section 31(4)

(1) A relevant authority may, on a written request made to the proper officer of the authority by a member or co-opted member of the authority, grant a dispensation relieving the member or co-opted member from either or both of the restrictions in section 31(4) in cases described in the dispensation.

(2) A relevant authority may grant a dispensation under this section only if, after having had regard to all relevant circumstances, the authority—

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- (a) considers that without the dispensation the number of persons prohibited by section 31(4) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,
- (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
- (c) considers that granting the dispensation is in the interests of persons living in the authority's area,
- (d) if it is an authority to which [Part 1A](#) of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive, or
- (e) considers that it is otherwise appropriate to grant a dispensation.

(3) A dispensation under this section must specify the period for which it has effect, and the period specified may not exceed four years.

(4) Section 31(4) does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this section.

34 Offences

(1) A person commits an offence if, without reasonable excuse, the person—

- (a) fails to comply with an obligation imposed on the person by section 30(1) or 31(2), (3) or (7),
- (b) participates in any discussion or vote in contravention of section 31(4), or
- (c) takes any steps in contravention of section 31(8).

(2) A person commits an offence if under section 30(1) or 31(2), (3) or (7) the person provides information that is false or misleading and the person—

- (a) knows that the information is false or misleading, or
- (b) is reckless as to whether the information is true and not misleading.

(3) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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- (4) A court dealing with a person for an offence under this section may (in addition to any other power exercisable in the person's case) by order disqualify the person, for a period not exceeding five years, for being or becoming (by election or otherwise) a member or co-opted member of the relevant authority in question or any other relevant authority.
- (5) A prosecution for an offence under this section is not to be instituted except by or on behalf of the Director of Public Prosecutions.
- (6) Proceedings for an offence under this section may be brought within a period of 12 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge.
- (7) But no such proceedings may be brought more than three years—
- (a) after the commission of the offence, or
 - (b) in the case of a continuous contravention, after the last date on which the offence was committed.
- (8) A certificate signed by the prosecutor and stating the date on which such evidence came to the prosecutor's knowledge is conclusive evidence of that fact; and a certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.
- (9) The [Local Government Act 1972](#) is amended as follows.
- (10) In section 86(1)(b) (authority to declare vacancy where member becomes disqualified otherwise than in certain cases) after “2000” insert “or [section 34](#) of the Localism Act 2011”.
- (11) In section 87(1)(ee) (date of casual vacancies)—
- (a) after “2000” insert “or [section 34](#) of the Localism Act 2011 or”, and
 - (b) after “decision” insert “or order”.
- (12) The [Greater London Authority Act 1999](#) is amended as follows.
- (13) In each of sections 7(b) and 14(b) (Authority to declare vacancy where Assembly member or Mayor becomes disqualified otherwise than in certain cases) after sub-paragraph (i) insert—
- “(ia) under [section 34](#) of the Localism Act 2011,”.
- (14) In section 9(1)(f) (date of casual vacancies)—

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- (a) before “or by virtue of” insert “or [section 34](#) of the Localism Act 2011”, and
- (b) after “that Act” insert “of 1998 or that section”.

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**Appendix B
Monitoring Officer/ Police Contacts**

(Police)
email: ; tel:

(District Council)
email: ; tel:

(District Council)
email: ; tel: