

COUNCILLOR CONDUCT COMMITTEE

6 FEBRUARY 2013

DISCLOSABLE PECUNIARY INTERESTS – POLICE PROTOCOL FOR INVESTIGATING CRIMINAL OFFENCES

Report from/Author: Perry Holmes, Monitoring Officer

Summary

This report presents a draft protocol, attached at Annex 1, for the investigation of offences under the Localism Act 2011 in Kent and Medway, produced by the Police for consideration and comment.

1. Budget and Policy Framework

- 1.1 Full Council approved the new Code of Conduct and terms of reference for the Councillor Conduct Committee. It is for this Committee to advise members on how to comply with the Code of Conduct supported by professional advice from the Monitoring Officer.

2. Background

- 2.1 The Council has approved a light touch Code of Conduct with a heavy emphasis on seeking a local informal resolution wherever possible to any complaints about the conduct of a councillor. This reflects the very limited sanctions that can be imposed under this new conduct regime. It also reflects the wish to use sparse resources carefully and only investigate the most serious of cases that cannot be otherwise resolved.
- 2.2 The Localism Act 2011 introduced eight criminal offences related to conduct which the Police would investigate. The draft protocol, attached at Annex 1, sets out how the Police would investigate any such matters and details in particular what role this Committee, the Monitoring Officer and the Independent Person would play in any investigation.
- 2.3 On 11 January 2013 the Chairman of the Councillor Conduct Committee, Councillor O'Brien and the Monitoring Officer met with Chief Inspector Ellis and the Force Solicitor to consider the relationship between a Police protocol and the Council's councillor conduct

processes. At that stage the draft flowchart was considered and a discussion took place of the proposed protocol and how it might operate.

- 2.4 A number of suggestions were made for inclusion in the draft protocol including the reference to Medway considering the “Legal Jurisdiction Test” at the Councillor Conduct Committee rather than that being a function of the Monitoring Officer, as well as the particular significance of the run up to an election period.
- 2.5 Chief Inspector Ellis agreed to seek views on a draft protocol prior to issuing it within the Police. Councillor O’Brien suggested that the public consideration of this at the Conduct Committee would also act as a timely reminder to councillors of the seriousness of dealing appropriately with Disclosable Pecuniary Interests.

3. Consideration and Comment

- 3.1 Members of the Committee are asked to consider the draft protocol and to offer comment on the relationship with the Council’s internal conduct processes and in particular the roles assigned to this Committee, the Monitoring Officer and the Independent Person.

4. Independent Person

- 4.1 As a result of a direct reference to the Independent Person in the draft protocol and because of the nature of that role, Councillor O’Brien has asked that Mrs Veloso be invited to attend the Committee to offer any views she may have.

5. Financial Implications

- 5.1 This report contains no specific financial implications as the conduct of investigations by the Police has no direct impact on the Council. If evidence was sought from the Monitoring Officer then there would be an opportunity cost which is difficult to quantify. Seeking evidence from the Independent Person would need to be appropriately remunerated and would be accommodated within the Monitoring Officer’s budget for investigations.

6. Legal Implications

- 6.1 These are contained in the body of the report and in the draft protocol.

7. Recommendation

- 7.1 The Committee is requested to consider the draft protocol and offer comments which can be fed back to the Police.

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Background Papers:

None

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DRAFT POLICY v.5 24 jan 13**LOCALISM ACT 2011 – s.34 CRIMINAL OFFENCE
INVESTIGATIONS IN KENT AND MEDWAY****1. Security protective marking**

1.1. Not restricted.

2. Summary of changes

2.1 This is the first document in this category therefore no historical revisions.

3. Application

3.1. This policy applies in Kent and Medway, to the handling and investigation of criminal offences created by Section 34 of The Localism Act 2011, enacted by Statutory Instrument on 1st July 2012.

4. Purpose

4.1. The purpose of this policy is to assist the initial investigation and handling of criminal offences that are connected with the Localism Act 2011, assist officers and staff in identifying and correctly categorising such offences and provide guidance as to their handling and initial investigation.

4.2 There are risks of adverse publicity if police fail to investigate such offences correctly. The actus reus of such offences can also be indicative of wider Corruption and Bribery Act offences which are investigated by Serious Economic Crime Unit in SCD at Force Headquarters. It is important that supervising staff reviewing the reports and investigation logs of such offences are aware of the sources of adverse publicity in these reports and review the actions required in Section 6.

5. Localism Act Offences – definition and description.

5.1.1 Section 34 of the Localism Act creates 8 new offences that are all summary only.

5.1.2 These offences are applicable to members of councils who are elected, or have a vote on any committee or sub committee of the council's functions. This includes county councils and Medway Unitary Authority, Fire and rescue authorities, local councils and local parish councils.

5.1.3 The offences are committed in a variety of ways that relate to the disclosure of relevant interests on the subject matter under discussion in such committees and encompass those business interests of family members living at the same address.

5.1.4 Investigators should note that whilst these are summary only offences they require the consent of the Director Public Prosecutions to proceed. There is therefore a level of seriousness attached to these offences but, conversely, they do not allow a specific powers of search for example under PACE Sec 8, Sec 18 or Sec 32.

5.1.5 All officers should note that these offences relate to persons who are employed or elected in their role in councils and should therefore be mindful of the need for impartiality to political parties and the potential for media impact on the issues surrounding such offences. An example would be planning committees in local councils where there is intense local interest in the outcome of such meetings.

5.1.6 Officers should also be mindful of both local and national elections being held around the dates of the reports and act in accordance with [Purdah policy C04](#).

5.1.7 If purdah has commenced and an allegation has been made, about a person standing for election, in relation to an offence contrary to the Localism Act, then a crime shall be recorded and investigated in due course but no investigation will take place until after the result of the election is known. Advice should be sought from the SECU D/Sgt.

5.2 List of offences with descriptions summarised from the original act:

It should be noted that the apparent purpose of the Act by Parliament is to criminalise aspects of what was historically a 'code of conduct' for persons in public office. The essence of this code for public office rests on the 'Nolan Principles of public life' referred to on

www.public-standards.gov.uk/Library/Seven_principles.doc

These principles are: - Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership and are listed in full in Appendix A.

When referring to the offences under the Localism Act these principles should be borne in mind and the Act is intended to penalise those in public office who do not comply with these principles.

The Localism Act should not be used where there are more serious and substantial crimes involved eg. Misconduct in Public Office, Fraud Act 2006 or Bribery Act 2010. These will be recorded and dealt with in the usual manner and with reference to the relevant force policy and the SECU.

5.2.1 - Failure to comply with an obligation imposed on a person by section 30(1). Failure to declare, within 28 days of appointment as a member or co-opted member, any disclosable pecuniary interests. Such interests are to be kept in the authority's register.

5.2.2 Failure to comply with an obligation imposed on a person by section 31(2). Failure to disclose an interest to the relevant meeting if not so recorded in the authorities register subject to the provisions of sensitive disclosures. If there is such a sensitive disclosure as defined by Section 32(1) then it is sufficient for a member to declare that an interest exists.

5.2.3 Failure to comply with an obligation imposed on a person by section 31(3). Failure to notify the monitoring officer of an interest not recorded on the authorities register and not subject to a pending notification within 28 days of such a disclosure.

5.2.4 Failure to comply with an obligation imposed on a person by section 31(7). Failure to notify the Monitoring officer of an interest within 28 days of the member becoming aware of a disclosable pecuniary interest in any matter to be dealt with or being dealt with by the member in the course of discharging a function of a relevant authority.

5.2.5 Participates in any discussion or vote in contravention of section 31(4). A Member or co-opted member may not participate, or participate further in any discussion of the matter at the meeting. Unless he has a dispensation to do so (under section 33 of the Act) so granted by the authority. A Member or co-opted member may not participate in any vote, or further vote taken on the matter at the meeting. Unless he has a dispensation to do so (under section 33 of the Act) so granted by the authority.

5.2.6 Takes any steps in contravention of Section 31(8). The member must not take any steps or any further steps in relation to the matter (except for the purposes of enabling the matter to be dealt with otherwise than by the member)

5.2.7 Knowingly providing false or misleading information OR is reckless as to whether information is true and not misleading in under Section 30(1). Failure to declare, within 28 days of appointment as a member or co-opted member, any disclosable pecuniary interests. Such interests are to be kept in the authority's register.

5.2.8 Knowingly providing false or misleading information OR is reckless as to whether information is true and not misleading in under Section 31(2). Failure to disclose an interest to the relevant meeting if not so recorded in the authorities register subject to the provisions of sensitive disclosures. If there is such a sensitive disclosure as defined by Section 32(1) then it is sufficient for a member to declare that an interest exists.

5.2.9 Knowingly providing false or misleading information OR is reckless as to whether information is true and not misleading in under Section 31(3). Failure to notify the monitoring officer of an interest not recorded on the authorities register and not subject to a pending notification within 28 days of such a disclosure.

5.2.10 Knowingly providing false or misleading information OR is reckless as to whether information is true and not misleading in under Section 31(7). Failure to notify the Monitoring officer of an interest within 28 days of the member becoming aware of a disclosable pecuniary interest in any matter to be dealt with or being dealt with by the member in the course of discharging a function of a relevant authority.

6. Initial action on receipt of report of Localism Act offence.

Outlined below is the SOP for reporting arrangements as agreed between District Council and Medway Unitary Authority Monitoring Officers and the Force.

Also see Appendix B - SOP flow chart

6.1 Classes of persons reporting to police.

It is expected that these offences will be reported to police from one of the following classes of persons though this list is not exhaustive:-

- Political rival or associate of the named suspect.
- Employee of council reporting direct to police as a 'whistleblower'.
- From the Monitoring Officer or Independent Person within the council nominated under the Localism Act who has designated responsibility to report such offences. The Monitoring Officer will have first applied the Legal Jurisdiction Test before referral to Police.
- From a member of the public reporting as an offence of 'corruption' or misconduct in public office.
- From members of the press by enquiry to Kent Police Media office.
- Person who feels aggrieved at a recent decision of the council or councillor concerned.

Such reports may present as verbal reports, via e mail or letter to the District Commander for example or by telephone to the FCR. They may also be made by persons approaching officers on patrol or by way of attendance at the front counter. They may also be made anonymously via any of these routes.

6.1.2 Legal jurisdiction criteria test:

This is a test of relevance. If the report has been made directly to the council or Unitary Authority it has been agreed that the Monitoring Officer will have ensured that these criteria are passed prior to any reporting to Police. Conversely, if the report has been made directly to Police, the D/Insp IMU will request that the Monitoring Officer undertakes this test prior to further police involvement.

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct?
- (b) Was the person complained of a member of the District or Parish Council at the time of the alleged conduct?
- (c) Was the person complained of acting in an official capacity at the time of the alleged conduct?
- (d) Did the alleged conduct occur when the person complained of was acting as a member of another authority?
- (e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?
- (f) The complaint is about dissatisfaction with the County, Unitary Authority, District or Parish Council's decisions, policies and priorities

6.2 Nature of crime reported.

Not all members of the public or members of councils will recognise a Localism Act offence and so they will report the crime most likely as one of the following types:-

- Corruption.
- Fraud by abuse of position of Trust.
- Bribery.
- Misconduct in Public Office.
- Breach of codes of conduct (in public office).

6.3 Actions to be taken following reporting of a Localism Act Offence.

6.3.1 In all cases a storm record should be created that records the details of the allegations as follows:-

- Name and address and contact details of complainant / informant.
- Name and address of suspect – if known.
- Grounds for complaint – i.e. what interest has the suspect not declared and at which council meeting?

The Storm record should then be tagged with 'IMU' unless the suspect is a police officer or member of police staff in which case it will be referred to the Professional Standards Dept.

6.3.2 Allocation of Investigative Officer.

On recording such a complaint as a crime it should be assessed by the D/Insp IMU (Force SPOC's for this policy) and allocated to a person of the rank of no less than Detective Sergeant based on a different Division to where the offence was committed. This is to minimise the risk of the Investigating Officer and the suspect being known to each other in a personal or professional capacity. This should be the Reactive D/Sgt unless the matter is serious or complex in which case advice from the D/Sgt SECU should be sought. If the suspect is a police officer or member of police staff the investigation will be referred to the Force Professional Standards Department.

Prior to acceptance of the criminal investigation by police, the D/Insp IMU will make contact with the relevant Council Monitoring Officer and request that they undertake the Legal Jurisdiction Test. Provided this test criteria is met, the allegation will be recorded as a crime and a police investigator be appointed.

6.3.3 Initial Investigative review by Crime Supervisor/Investigating Officer.

- The Investigating Officer must make early contact with the relevant Council Monitoring Officer outlining the nature of the allegation. The Council Monitoring Officer will provide advice and assistance with regard to evidential capture. They will also determine who within their Council to notify, this may include the Chief Executive, Leader or Press Officer for example but will be at their discretion.
- The Council Monitoring Officer will already have undertaken the Legal Jurisdiction Test (para 6.1.2 above)

In liaising with the Monitoring Officer, the Investigating Officer should:

- Request that register of interests is checked and minutes of relevant meeting are made available or be sign posted to their whereabouts.
- Inquire whether the named suspect been the subject of similar complaints in the past?
- Inquire whether the named informant been the subject of similar complaints in the past?
- Ask for any other relevant material or intelligence on the offence, the suspects and witnesses involved or the circumstances surrounding it.

- Ask for any other information relating to the 'personal interest' complained of that is held by the council.
- Ascertain whether it is possible through the circumstances complained of, that the suspect or another party has substantially benefited by the failure to disclose the personal interest.
- Ascertain if a substantial crime has been committed within the Localism Act definition OR another substantive crimes eg. Bribery Act, Misconduct in public office at common law, Fraud by abuse of position of trust.

NB – The Localism Act requires that a 'sensitive register' of personal interests is recorded and maintained by the council. This is similar in definition to the sensitivity of police information and includes the risk of subjection to personal violence or threat of life. Initial investigators should be mindful of the existence of such sensitive information and, in accordance with established principles; they should **not** record such interests on any CAD storm report or crime report log.

The circumstances of the complaint may also be indicative of a wider, more substantive criminal act which will need referring to SECU at FHQ.

6.3.4 Circumstances that may indicate wider or more substantial criminal activity.

Where the reviewing officer believes that the following factors may be present then the matter should be reported to SECU or PSD as appropriate:-

- The suspect has potentially made substantive gains from the failure to disclose the interest. e.g. suspect has voted on building works to be instigated when their family member runs a local building firm and that firm has gained from the award of the contract.

- The suspect has been the subject of similar complaints to either police or council in the past from different complainants.

- There are substantial complicating factors in the investigation that require detailed investigation. Possible examples are as follows:-

eg 1) The whistleblower in the council who has reported the complaint is now being subject to pressure from the suspect in terms of employment or capability to continue in their role.

eg 2) There are corporations or limited companies involved with commercial interests AND the suspect or their family members or their associates are involved in these companies.

eg 3) Investigation of the offences requires production orders or search warrants to review special procedure material as defined under Schedule 1 PACE (this includes business records held in confidence)

- There is a political element to either the nature, the substance of the complaint, the suspect or the informant that relates to an important public interest or local issue being promoted by one or more registered political parties.

- The complaint is made around an issue that is relevant to a local election and or the complaint is in a Purdah period or just after an election. (Refer to police policy C04)

- The circumstances of the allegation constitute a substantial crime of:-

- Bribery as defined in the Bribery Act 2010,
- Misconduct in public office at common law
- Fraud by abuse of position of trust Contrary to the Fraud Act 2006.

- The reviewing officer believes that the surrounding circumstances require NIM Level 2 investigation. Examples include, but are not limited to:-

- Risk of a 'Critical Incident'
- Cross border criminality with a National or international context.

- The complainant or the suspect are serving police officers or civilian staff or are family members, or otherwise related to, serving police officers or civilian staff.
- There exists Substantial and relevant sensitive information relating to the offence.
- There is a serious risk of prejudice to an important public interest.
- The reviewing officer believes that the offence and the circumstances surrounding it are not suitable for investigation by Officers in a different district or area.

It should be noted that referral of the report to Serious Crime Directorate should only be made where there are substantial grounds for doing so. The essence of the Localism Act is to ensure greater transparency and public accountability and these principles should be mirrored in the police investigation.

7. Conflict of Interest

7.1 Any Officer or member of police staff who investigates these allegations should be mindful of these principles and apply them to their own personal circumstances in relation to the offence being investigated.

7.2 There are real and substantial risks of adverse publicity if the investigator, statement taker or reviewing officer does not themselves declare any interest associated with the investigation of the offence. Any Officer or member of Police Staff who considers that they or another may have a conflict of interest in relation to such an allegation or investigation must seek advice on this matter the Professional Standards Dept or Legal Services as a matter of urgency.

7.3 Wider advice and support in relation to the investigation can always be sought from D/Insp IMU, SECU or Legal Services.

8. Internal Notifications

8.1 The investigating officer will expeditiously notify the relevant District Commander or in their absence the Divisional Commander (or Deputy). If the matter is out of hours then the Duty Superintendent will be notified if appropriate to the circumstances. Any of these individuals will then consider whether the matter should be brought to the attention of the Force Gold Commander. The investigating officer will also notify the Divisional/Force media officer.

9. Crime Recording

9.1 The following actions will be taken in accordance with National Crime Recording Standards [Home office counting rules]:-

Offences under s.34 Localism Act are not notifiable ie. a crime report is not required for [Home Office] National Crime Recording Standards purposes

Where an investigating officer identifies a more serious notifiable offence (eg. pecuniary advantage) a crime report for this crime will be created in consultation with the D/Sgt SECU / SCD. [note: fraud offences will be recorded by Action Fraud]

Where a more substantive crime is alleged/recognised. (eg. Fraud by abuse of position of trust) then a crime report for this crime will be generated, and DS SECU / SCD notified prior to allocation.

Where an alleged offence is deemed sensitive or has NIM level 2/3 factors a D/Sgt in SECU / SCD must be notified.

10. Initial Investigative Actions for Localism Act offences.

10.1 On allocation the investigating officer should consider performing the following investigative actions. These actions should be reviewed on a case by case basis and made proportionately to the circumstances of the offence being investigated.

10.2 Material to be requested of the Monitoring Officer/Independent Person.

10.2.1 The Investigating Officer will seek the views expressed by the Monitoring Officer and if appropriate by the Independent person as nominated by the Council under the Localism Act.

10.2.2 These views should be in writing and contain answers to the following questions and are disclosable under Criminal Procedures and Investigations Act 1996 (CPIA).

10.2.3 The Independent Person or Monitoring Officer is a potential witness in the case and he or she should be aware that subsequent to providing this information they may be required to provide a witness statement and attend court as a witness.

- a) What circumstances were reported to the Monitoring Officer/Independent Person regarding this offence?
- b) What complaints have been received against the named suspect to this offence historically and from whom?
- c) If not reported to the police, what was the basis of this decision? Where is this decision and rationale recorded?
- d) What explanation was given in any previous complaint against the suspect by either the suspect themselves or any other person?
- e) What other complaints have been received from or against the complainant in this case and how were these dealt with?
- f) What has the suspect said either in explanation or mitigation or remorse about the offence to any other person and where is this recorded and who witnessed this relevant comment.
- g) Where not available via other means eg. on Unitary/Parish/District Council website request that police are provided with copies of the following:-
 - i. Register of interests that relate to the matter under investigation.
 - ii. The suspect's entries on that register both current and historic.
 - iii. Copies of any letters notices or restrictions that were sent to the suspect that require or request them to notify the council of their interests and copies of the response of the suspect to any such notices or requests.
 - iv. Where relevant, the minutes of the meetings where the interest was not declared.
 - v. Names and contact details and role of persons present at the meeting (s) concerned
 - vi. Specific records made at the meeting by the secretary or clerk to the meeting (Some meetings in some councils are video recorded and copies of these should be requested and preserved).
 - vii. Any publicised minutes or sanctioned record of the meetings concerned.
- h) Request that a search is made of the following communications or records and formally request that steps are taken to preserve them for possible review by police:-
 - i. Any emails, messages, letters or other correspondence received by the council in relation to the matter under investigation. Both prior to, during and after the relevant period of the offence.
 - ii. Any emails, messages or communications or other correspondence received or sent by the suspect during the relevant period of the offence.
 - iii. Any emails, messages or communications or other correspondence received or sent by the complainant during the relevant period of the offence.

10.3 Material to be sought with respect to the disclosable interest.

10.3.1 The investigating officer should ensure that suitable checks are made to establish that the alleged 'interest' of the suspect has been in existence and known by the suspect. The actual checks made are different in each circumstance and the following is a guide only.

- i. Companies House including filed reports, current and historic directors and shareholders, previous company names, names and addresses of company office holders, accountants and tax advisers (if so recorded).
- ii. HMRC checks for declared earnings under PAYE VAT return for the relevant period.
- iii. Public, open source (Eg Google) checks and local media websites and 'blogs'.
- iv. Police data and intelligence sources Including PNC, PND etc..
- v. Council voters checks on appropriate addresses and persons.
- vi. Council tax records for occupancy held on appropriate addresses and persons.
- vii. Checks via area Financial Investigator on the subject and the disclosable interest under investigation via Kent police form 3238.
- viii. Any other check that the investigating officer believes is relevant to the investigation.

10.4 Powers to obtain evidence and proportionality.

10.4.1 It should be noted that the offences under the Localism Act are summary only offences and therefore the power to obtain warrants under Sec 8 of Police and Criminal Evidence Act is not available to officers.

10.4.2 Investigators should also be mindful of proportionality in the investigation and the need to resolve these offences.

10.5 Suspect Interviews

10.5.1 These should be conducted with a view to the circumstances of the investigation and fully comply with current codes of practice.

10.5.2 Investigators should bear in mind that a lot of investigative work can be avoided by an early account from the suspect of these offences and in early liaison with the council Monitoring Officer, that the relevant circumstances that gave rise to the report are actually correctly reported.

10.5.3 Investigators should also be mindful of the case of *Richardson v Chief Constable West Midlands Police* and the provisions of PACE code G for the necessity of arrest.

11. Disposal

11.1 Once the outcome of an investigation is known, early notification must be made to the IMU and also to the relevant Monitoring Officer who will then consider what if any action will be taken by the Council or Unitary Authority in accordance with their code and arrangements.

11.2 It must be borne in mind by supervisors that the disposal of a Localism Act crime may attract adverse publicity and potentially call into question the reputation of the Force or wider police service in particular were a more substantive crime to be overlooked.

11.3 Closure of the investigation should be reviewed by an officer of at least the rank of Inspector.

11.4 Upon closure of the investigation, the reviewing officer must ensure that the decisions made during the course of the investigation are recorded and justified in accordance with the National Decision Making Model.

11.5 Any internal notifications carried out under section 8 above will also be replicated upon closure of the investigation.

Appendix A

THE SEVEN PRINCIPLES OF PUBLIC LIFE

SELFLESSNESS

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP

Holders of public office should promote and support these principles by leadership and example.

These principles apply to all aspects of public life. The Committee has set them out here for the benefit of all who serve the public in any way.

Appendix B

LOCALISM ACT 2011 Offences

S.34 Pecuniary Interest Disclosure

