

Protocol between Hertfordshire Police and Hertfordshire Monitoring Officers

Purpose of the agreement

Due to the existence of the Localism Act 2011 there are summary offences which relate to elected and co-opted members. These relate to members failure to disclose/register and participate in meetings where they have certain financial interest (which are termed as Disclosable Pecuniary interests). It also applies to spouse and partners living at the same address. The true definition of this term has been placed in the Relevant Authorities Regulations 2012 (DPI). The full description of these offences can be found at the conclusion of this document.

The authorisation of such offences is from the DPP (S34(5)). The Council are the most likely body to receive the initial allegation. It is then investigated by the police. It is necessary that a sharing agreement and protocol is agreed between us. Guidance and agreement has been addressed in this document which will be signed by the police and monitoring officers within each Council.

At this stage it would be prudent to draw correlation between the Council principles and police Code of Ethics. The Council rely on Nolan Principles such as Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership. Police Code of Ethics are Accountability, Fairness, Honesty, Integrity, Leadership, Objectivity, Openness, Respect, Selflessness. Therefore both bodies adhere to similar principles which is at the forefront of any decision making made.

Definitions and description:

Complainant – the individual who submits the written complaint to a Local Authority Monitoring Officer who alleges the breach.

Subject Member – refers to the councillor who is the subject of the complaint.

The DPI offences are summary only but carry a 12 month limit from the date that the evidence was deemed sufficient in the prosecutor's opinion to warrant proceedings came to their knowledge. If the offence is proven - then the accused could face disqualification as a member and a fine.

Should 3 years pass from the commission of the offence or the last date of the offence no proceedings can be brought.

These are summary only offences and require the consent of the DPP to proceed. Therefore these offences do not lend themselves to further police powers such as PACE Section 32, 18 and 8.

Further consideration needs to be made concerning alternative offences which are more substantial – such as Bribery and Corruption 2010, Fraud Act 2006 and Misconduct in a public office.

Threshold test to be applied by monitoring officer

It is possible that the complaint could come from the Monitoring Officer or that the police receive the complaint themselves. In any case the Monitoring Officer should apply these following principles to the initial report before the decision is made that the police will investigate. It should be borne in mind that there may well be a genuine error which should be negated before this is referred as a criminal matter.

These are:

- Was the person a member of the council when the alleged offence took place?
- Did the conduct take place when the member was a member of another authority?
- Are the facts - should they be proved be capable of a breach of Code of Conduct?
- That the complaint is about the conduct of the member and his DPI and not about the dissatisfaction of the Council's decision and rationale.

Once these questions have been answered then the matter can be considered by the police. Council investigation into the matter is paused whilst the police investigation takes place.

The Monitoring Officer should make no comment on the investigation and will have no further input into the matter whilst it is being investigated by the police.

Should the threshold not be met then the matter can be dealt with by the council.

The informant of the complaint

Once with the police the OIC should liaise with the council who can assist in the early capture of evidence.

The OIC will liaise with the Monitoring Officer to gain the following information to establish the facts:

- The subject members register of interest be checked and minutes of the relevant council meetings be made available.
- Check for any background complaints of the Councillor and how these were investigated, by whom and what the outcome was.
- Check for the complainants' background complaints - if there are any.
- Check if the suspect has benefited from the failure to disclose the pecuniary interest and if so - to what end.
- The Monitoring Officer is to be notified of any communications regarding the complaint and to make these communications available to the OIC.

Crime recording

The offence under the S34 Localism Act is not a notifiable one and therefore a crime is not required for National Crime Recording Standards.

Disposal

Once the outcome of an investigation has been established – Monitoring Officer to be informed.

If a prima facie case is established then file to be completed for CPS consideration. Other disposal methods may also be considered proportionate if public interest test is not met.

List of offences and descriptions

Section 30 (1) Failure to notify the Monitoring officer before the end of 28 days beginning with the day on which they become an elected member or co opted member of any pecuniary interest which they have at the time of notification.

Section 31 (2) – Failure to disclose the DPI at council meetings where interest is not entered in the council's registers of member's interest.

Section 31(3) – Failure to notify the Monitoring Officer of a DPI before end of 28 days beginning with the date of disclosure at a Council meeting if the interest is not entered in the councils register of member's interests and is not subject of a pending notification.

Section 31(4) – takes part in a discussion or votes or further discussions or votes at a council meeting on matters in which they have a DPI.

Section 31(7) – Failure to notify the monitoring officer of a DPI before the end of 28 days beginning with the date when they become aware they have an interest in a matter to be dealt with, when acting alone in the course of discharging a council function.

Section 31(8) – takes further steps in relation to a matter being dealt with by him/her acting alone I the course of discharging a council function except a step for the purpose of enabling the matter to be dealt with by him or her.

False/misleading information

Knowingly or recklessly provides false or misleading information – knowingly or recklessly proving false or misleading information in any disclosures or notifications under the above Sections.

Single point of contact for the police is [REMOVED FOR REPORT PURPOSES]

This document has been checked and signed by:

[REMOVED FOR REPORT PURPOSES]

Detective Superintendent

Dated: 26/11/22

Monitoring officer:

Dated: 6.1.23

[names removed in respect of Monitoring Officers]