

APPENDIX 1

PROTOCOL BETWEEN THE MONITORING OFFICER OF SOUTH SOMERSET DISTRICT COUNCIL AND THE AVON AND SOMERSET CONSTABULARY

Purpose

To agree a protocol for the reporting of potential criminal offences arising from the failure to register or declare disclosable pecuniary interests or from speaking and voting where a member has a disclosable pecuniary interest and has not first sought a dispensation.

References to the Monitoring Officer also include the Deputy Monitoring Officer where appropriate and references to the Independent Persons mean either or both as appropriate.

Introduction

Section 34 of The Localism Act 2011 created a criminal offence where a Member or co-opted Member fails, without reasonable excuse, to comply with the requirements of the Act to register or declare disclosable pecuniary interests (DPIs) or takes part in council business at meetings or when acting alone when prevented from doing so. If found guilty of such an offence the penalty can be a fine (under the current levels) of up to £5,000 and a disqualification from holding office for up to 5 years.

The Code of Conduct

South Somerset District Council adopted a new Code of Conduct at full council on 19th July 2012. The Code incorporates the legislation, contains details of what amounts to a DPI, the requirement to obtain a dispensation to participate and vote where a member has a DPI and provides, at Appendix 3, that it is a criminal offence to;

- Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election,
- Fail to disclose a pecuniary interest at a meeting if it is not on the Register,
- Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed at a meeting,
- Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest,
- As an Executive member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer of the disclosable pecuniary interest within 28 days of the interest,
- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting.

The Process

If the Monitoring Officer becomes aware, either via a complaint made under the council's existing complaints procedure, or via any other means he/she will first gather together all relevant documentation for consideration. He/She will then ascertain whether any

dispensations have been granted and the extent of any which have. The Monitoring Officer will not carry out any investigation beyond information gathering and if he/she is of the opinion that there is prima facie evidence of such a breach of the Code relating to DPs he/she will then discuss the case with the Independent Persons (IP) confidentially and seek their views. At this stage no contact will be made with the subject member against whom the complaint is made as this may prejudice any investigation the Police may wish to undertake or subsequent prosecution. In addition the Monitoring Officer and the IP will be unable to assist or advise the subject member against whom the complaint is made should the Police become involved.

If the Monitoring Officer concludes that there is evidence of a breach he/she must report the matter to the police and send all relevant documentation to them. At this stage the Monitoring Officer does not have any discretion and it will be for the Police to conduct whatever investigation they consider appropriate. The Monitoring Officer may initially contact the Police Liaison Officer by telephone to inform him/her of the situation before sending the documentation. The nominated point of contact is the Somerset Areas Commander - TBC

Similarly if the police receive a complaint from a member of the public they will inform the Monitoring Officer of the receipt of that complaint. The Monitoring Officer, currently Ian Clarke, should be contacted on 01935 462184 or at ian.clarke@southsomerset.gov.uk.

The Monitoring Officer and/or the IP will make themselves available for interview as witnesses in any subsequent court processes should this be required by the Police or Crown Prosecution Service (CPS).

The Monitoring Officer will maintain regular contact with the Liaison Officer or his/her office to obtain updates on the progress of their investigation.

The Monitoring Officer will report the matter and any progress in the investigation confidentially to the Standards Committee, unless the matter concerns a member of that Committee when only the Chair will be informed. If the matter concerns the Chair of that Committee no report will be made until after the police have interviewed the Chair and the CPS have agreed for the matter to be disclosed.

Once the police have completed their investigation and a decision has been made by the CPS the process will be as follows;

- If a prosecution proceeds the Monitoring Officer will take no further action apart from updating the Standards Committee on its progress,
 - If the CPS decides not to proceed with a prosecution then the Monitoring Officer will decide whether it is appropriate to process the complaint through the Council's internal arrangements for dealing with such complaints. It is accepted that the CPS require a higher standard of proof (beyond reasonable doubt) for a criminal prosecution whereas the Monitoring Officer/Standards Committee will need only to consider the balance of probabilities. Therefore whilst a criminal offence may not have been committed, there still may be sufficient evidence that a breach of the Code of Conduct has occurred. However the Monitoring Officer will take into consideration the fact that a Police investigation has taken place and the outcome from it in determining whether it is appropriate and proportionate to now consider a further investigation under the code of conduct or whether some other action would be more appropriate.
 - In the event that the Council pursues the matter further in terms of a Code of Conduct breach, it will inform the Police of their decision.
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