

PROTOCOL BETWEEN THE MID DEVON DISTRICT COUNCIL AND THE DEVON AND CORNWALL POLICE

INVESTIGATIONS AND OFFENCES UNDER LOCALISM ACT 2011 SECTION 34

Introduction

1. This protocol applies in the Mid Devon District Council area to the handling and investigation of criminal offences created by Section 34 of the Localism Act 2011.
2. The purposes of this protocol are:
 - to assist the initial investigation and handling of criminal offences connected with the Localism Act 2011,
 - to assist officers and staff in identifying and correctly categorising such offences and
 - to provide guidance as to their handling and initial investigation.
3. If such offences are not investigated correctly, there is a clear risk of adverse publicity for both the police and the local authority concerned. It is important that supervising staff who have the responsibility of reviewing the reports and investigation logs relating to such offences under the 2011 Act are aware of the potential for adverse publicity within these reports and undertake any review with this aspect in mind.

Offences – general considerations

4. Offences under Section 34 are relevant to Members of Councils who are elected, or have a vote on any Committee or Sub-Committee which exercises any function or decision making power on behalf of the Council. Section 34 applies to Members of County Councils, Fire and rescue authorities, District and Borough Councils, and local parish councils.
5. Section 34 lists a number of different offences relating to the disclosure of relevant interests in such Committees and extend to those interests held by family members living at the same address.
6. Investigators should note that whilst offences under Section 34 are summary only offences, the consent of the Director of Public Prosecutions is required in order for a prosecution to proceed. Accordingly there is a level of seriousness attached to these offences.
7. All officers should note that these offences relate to persons who are elected in their role in Councils and should therefore be mindful of the need for impartiality in the political context, and also the potential for adverse publicity and possible media attention in relation to the issues surrounding such offences. For

example, Planning Committees in local councils can deal with issues in which there is intense local interest.

8. Officers should also be wary in situations in which an investigation may need to be conducted in the period immediately prior to the holding of local or national elections. If pre-election purdah has commenced and an allegation has been made in relation to an offence contrary to the Localism Act against an existing member who is also a candidate in any forthcoming election, then it will be necessary for the matter to be recorded and investigated in due course. However, no investigation shall normally take place until after the election.

Offences – specific considerations

9. The offences under Section 34 are as follows:
 - **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.
 - **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.
 - **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.
 - **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.
 - **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.
 - **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)

- **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.
 - **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.
 - **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.
 - **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.
10. The Localism Act should not be used as a basis for investigation and possible prosecution where there are more serious and substantial offences involved, for example, misconduct in public office, or offences under the Fraud Act 2006 or Bribery Act 2010. Such offences will be recorded and dealt with in accordance with established processes in relation to such matters, and with reference to the relevant force policy and the Investigations Department.

Administrative requirements

11. Offences under Section 34 are not notifiable and therefore a crime report is not required for [Home Office] National Crime Recording Standards purposes. As with other non-notifiable offences however, it is best practise for the allegation to still be recorded on the Guardian/Niche system.
12. Suspect interviews should be conducted with a view to the circumstances of the investigation and fully comply with current codes of practice.
13. 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.

14. 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.

The process

15. A statement and analysis of the reporting and investigative process is set out below.

No.	Step	Notes
1	Receipt of report of possible offence	<p>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:-</p> <ul style="list-style-type: none"> • 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, as nominated under the Localism Act with 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 the Police Media office. • Person who feels aggrieved at a recent decision of the council or councillor concerned. <p>Such reports be received in writing, via email, via telephone or as verbal reports. 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.</p> <p>Not all members of the public or members of councils will recognise a Localism Act offence and so they may report the crime as one of the</p>

		<p>following types:-</p> <ul style="list-style-type: none"> • Corruption. • Fraud by abuse of position of Trust. • Bribery. • Misconduct in Public Office. • Breach of codes of conduct (in public office). <p>The Monitoring Officer at the Council should be notified as soon as any complaint is received (except where notification of the complaint has been received from the Monitoring Officer)</p>
<p>2</p>	<p>Legal jurisdiction criteria test</p>	<p>The application of these criteria represents a test of relevance.</p> <p>If the report has been made directly to the Council the Monitoring Officer should have ensured that these criteria are met prior to any reporting to Police.</p> <p>Conversely, if the report has been made directly to Police, the Local Neighbourhood Manager will request that the Monitoring Officer undertakes this test prior to further police involvement.</p> <p>The criteria are:</p> <ul style="list-style-type: none"> (a) Did the alleged conduct occur before the adoption of the Code of Conduct? (b) Was the person who is the subject of the complaint 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 District or Parish Council's decisions, policies and priorities

		<p>Prior to acceptance of the criminal investigation by police, the Neighbourhood Manager will make contact with the Council Monitoring Officer and request that they assess the complaint against the above criteria and confirm that the criteria are satisfied.</p> <p>Provided the criteria are all met, the allegation will be recorded as a crime and a police investigator will be appointed.</p>
3	Creation of Storm Record	<p>In all cases a storm record should be created that records the details of the allegations as follows:-</p> <ul style="list-style-type: none"> • 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?
4	Assessment and Allocation	<p>Following the recording of a complaint as a crime it will be assessed by the Incident Assessment Unit and allocated accordingly.</p> <p>The officer to whom the case is allocated should be the Local Beat Manager unless the matter is serious or complex in which case advice from Investigations should be sought.</p> <p>If the suspect is a member of police staff the investigation will be referred to the Force Professional Standards Department.</p>
5	<p>Investigating Officer contacts Monitoring Officer</p> <p>Initial investigative review by Crime Supervisor/Investigative Officer</p>	<p>The Investigating Officer must make early contact with the relevant Council's Monitoring Officer outlining the nature of the allegation.</p> <p>The Council's Monitoring Officer will provide advice and assistance with regard to evidential capture. S/he 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.</p> <p>(The Council's Monitoring Officer will already have undertaken the Legal Jurisdiction Test).</p>

		<p>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.</p> <p><u>In liaising with the Monitoring Officer, the Investigating Officer should:</u></p> <ul style="list-style-type: none"> • 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 crime e.g. Bribery Act, Misconduct in public office at common law, Fraud by abuse of position of trust. If the circumstances of the complaint indicate a wider, more substantive criminal act, this will be referred to the Investigations department. <p><u>Material to be requested from the Monitoring Officer</u></p> <p>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.</p>
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<p>6.</p>	<p>Response to potential evidence of wider criminal activity</p>	<p>Where the reviewing officer believes that the following factors may be present then the matter should be reported to the Investigations department as appropriate:-</p> <ul style="list-style-type: none"> • 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.

		<ul style="list-style-type: none"> • There are substantial complicating factors in the investigation that require detailed investigation. <p>Possible examples are as follows:- The whistle-blower in the council who has reported the complaint is now being subject to pressure form the suspect in terms of employment or capability to continue in their role.</p> <ul style="list-style-type: none"> • 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. • 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 • The circumstances of the allegation constitute a substantial crime of:- <ul style="list-style-type: none"> ○ 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 that the matter be dealt with by the Investigations department. Examples include, but are not limited to:-
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		<ul style="list-style-type: none"> ○ 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. <p>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.</p> <p>Where an investigating officer identifies a more serious notifiable offence (e.g. pecuniary advantage) a crime report for this crime will be created in consultation with the Investigations Department. [note: fraud offences will be recorded by Action Fraud]</p> <p>Where a more substantive crime is alleged/recognised. (e.g. Fraud by abuse of position of trust) then a crime report for this crime will be generated, and Investigations notified prior to allocation.</p> <p>Where an alleged offence is deemed sensitive then an Investigations Detective Inspector must be notified.</p>
<p>7</p>	<p>Internal notifications</p>	<p>The investigating officer will expeditiously notify the relevant LPA Commander or in their absence the District Superintendent.</p> <p>If the matter is out of hours then the Duty Superintendent will be notified if appropriate to the circumstances.</p>

		<p>Any of these individuals will then consider whether the matter should be brought to the attention of the Force Gold Commander.</p> <p>The investigating officer will also notify the Council/Force media officer.</p>
<p>8</p>	<p>Disposal</p>	<p>Once the outcome of an investigation is known, early notification must be made to the Incident Assessment Unit and also to the relevant Monitoring Officer who will then consider what if any action will be taken by the Council in accordance with their code and arrangements.</p> <p>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.</p> <p>Closure of the investigation should be reviewed by an officer of at least the rank of Inspector.</p> <p>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.</p> <p>Any internal notifications carried out as set out above will also be replicated upon closure of the investigation.</p>