

Bath & North East Somerset Council		
MEETING	Standards' Committee	
MEETING	31th January 2019	EXECUTIVE FORWARD PLAN REFERENCE:
TITLE:	Protocol between Bath & North East Somerset Council and Avon and Somerset Constabulary	
WARD:	All	
AN OPEN PUBLIC ITEM		
<p>List of attachments to this report:</p> <p>Appendix 1 – Protocol between the District Council and Avon & Somerset Constabulary</p>		

1 THE ISSUE

- 1.1 The Committee is asked to consider and approve the use of the Protocol (set out in Appendix 1).

2 RECOMMENDATION

That the Committee approve the use of the Protocol.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 None.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 Under section 34 of the Localism Act 2011, any allegations of non-disclosure of Discloseable Pecuniary Interests (DPIs) (as defined in the Relevant Authorities (Discloseable Pecuniary Interests) Regulations 2012, is a potential criminal offence and has to be reported to the police.

5 THE REPORT

5.1 The Standards Committee is requested to consider and agree the Protocol provided by Avon and Somerset Police for the reporting of potential criminal offences concerning the registration and/or non-disclosure of Discloseable Pecuniary Interests. The Standards Committee had proposed a draft Protocol to be agreed with the Constabulary, having been informed that the Constabulary did not have one. The Constabulary have now provided their own agreed Protocol for all district councils in their area.

5.2 The Protocol is comprehensive and sets out the criminal offences under the Localism Act 201; the Nolan principles and the link with other offences. It also sets out a Legal Jurisdiction Criteria test before any referral is accepted and the required collaboration with the Council's Monitoring Officer.

6 RATIONALE

6.1 To update the Standards' Committee on the Protocol and obtain approval.

7 OTHER OPTIONS CONSIDERED

7.1 None.

8 CONSULTATION

8.1 Not applicable.

9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

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Background papers	<i>None.</i>
Please contact the report author if you need to access this report in an alternative format	

Appendix 1

PROTOCOL BETWEEN DISTRICT COUNCIL AND AVON & SOMERSET POLICE

INVESTIGATIONS AND OFFENCES UNDER LOCALISM ACT 2011 SECTION 34

Introduction

1. This protocol applies in the District Council area to the handling and investigation of criminal offences created by Section 34 of the Localism Act 2011, as enacted by Statutory Instrument on 1 July 2012.
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. Evidence which suggests that such offences may have been committed can also be indicative of wider corruption as well as offences under the Bribery Act (which are generally investigated by the Avon and Somerset Investigations department). 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 take place until after the election.

The seven principles of public life

9. It should be noted that the provisions within Section 34 of the 2011 Act effectively criminalise aspects of what was historically a 'code of conduct' for persons in public office. Such persons are deemed to be subject to seven stated "principles of public life".
10. 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.
11. These principles – as set out in the Appendix to this Protocol - are as follows:
 - Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership

Offences – specific considerations

12. 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.

13. 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.

Conflicts of interest and other considerations for officers and staff

14. Any Officer or member of police staff involved in any capacity in an investigation of allegations under Section 34 should be mindful of the principles of public life, and should apply them to their own personal circumstances in relation to the offence being investigated.
15. Officers and staff should also be aware of the relevance of any conflicts of interest which they may hold. There are real and substantial risks of adverse publicity if the investigator, statement taker or reviewing officer does not themselves declare any interest or connection which they may have in association 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 from the Professional Standards Department or Legal Services as a matter of urgency.
16. The investigation for alleged offences will normally sit with the Local Policing Team, but wider advice and support in relation to the investigation can always be sought from Investigations, or Legal Services.
17. Investigators should also be mindful of the need for proportionality in the conduct and resolution of the investigation

Administrative requirements

18. 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 practice for the allegation to still be recorded on the Guardian/Niche system.
19. Suspect interviews should be conducted with a view to the circumstances of the investigation and fully comply with current codes of practice.
20. 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.
21. 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

22. 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 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>

<p>3</p>	<p>Creation of Storm Record</p>	<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?
<p>4</p>	<p>Assessment and Allocation</p>	<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>
<p>5</p>	<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. (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

		<p>available or be sign posted to their whereabouts.</p> <ul style="list-style-type: none"> • 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> <p>These views should be in writing and contain answers to the following questions and are disclosable under Criminal Procedures and Investigations Act 1996 (CPIA).</p> <p>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, in order to provide evidence on the following:</p>
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		<ul style="list-style-type: none"> • What circumstances were reported to the Monitoring Officer/Independent Person regarding this offence? • What complaints have been received against the named suspect to this offence historically and from whom? • If not reported to the police, what was the basis of this decision? Where is this decision and rationale recorded? • What explanation was given in any previous complaint against the suspect by either the suspect themselves or any other person? • What other complaints have been received from or against the complainant in this case and how were these dealt with? • 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 <p>Where not available via other means e.g. on District/Parish Council website request that police are provided with copies of the following:-</p> <ul style="list-style-type: none"> • Register of interests that relate to the matter under investigation. • The suspect's entries on that register both current and historic. • 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. • Where relevant, the minutes of the meetings where the interest was not declared. • Names and contact details and role of persons present at the meeting (s) concerned • 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). • Any publicised minutes or sanctioned record of the meetings concerned.
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The Investigating Officer should request that a search is made of the following communications

		<p>or records and formally request that steps are taken to preserve them for possible review by police:-</p> <ul style="list-style-type: none"> • 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. • Any emails, messages or communications or other correspondence received or sent by the suspect during the relevant period of the offence. • Any emails, messages or communications or other correspondence received or sent by the complainant during the relevant period of the offence. <p>It should be noted that the Localism Act 2011 requires that a ‘sensitive register’ of personal interests is recorded and maintained by the Council. The interpretation of “sensitive” in this regard 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 crime report log.</p> <p style="text-align: center;">Other material to be sought with respect to the disclosable interest</p> <p>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.</p> <p>The actual checks made are different in each circumstance and the following is a guide only.</p> <ul style="list-style-type: none"> • 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).
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- HMRC checks for declared earnings under PAYE VAT return for the relevant period.

		<ul style="list-style-type: none"> • Public, open source (E.g. Google) checks and local media websites and ‘blogs’. • Police data and intelligence sources Including PNC, PND etc. • Council voters checks on appropriate addresses and persons. • Council tax records for occupancy held on appropriate addresses and persons. • Checks via area Financial Investigator on the subject and the disclosable interest under investigation • Any other check that the investigating officer believes is relevant to the investigation.
<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. • There are substantial complicating factors in the investigation that require detailed investigation. <p>Possible examples are as follows:-</p> <ul style="list-style-type: none"> • 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. • 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

		<p>review special procedure material as defined under Schedule 1 PACE (this includes business records held in confidence)</p> <ul style="list-style-type: none">• 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:-<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.
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		<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>
7	Internal notifications	<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>
8	Disposal	<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</p>

		<p>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>
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APPENDIX

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.