

Bath & North East Somerset Council

MEETING	Standards Committee	
MEETING DATE	17 October 2023	EXECUTIVE FORWARD PLAN REFERENCE: <i>[Cabinet reports only]</i>
		E 9999
TITLE:	Retaining Registers of Interest of former councillors	
WARD:	All	
AN OPEN PUBLIC ITEM/		
List of attachments to this report: Appendix 1 Statement of Alex Hansen		

1 THE ISSUE

- 1.1 At its meeting on the 4 July 2023 a member of the public requested that the committee decide whether it should recommend to Council a change in the way that the Council retains copies of the Register of Interests of former councillors. The committee decided that it would request the Monitoring Officer to bring a report to the next committee meeting setting out the relevant issues to enable it to make an informed decision in respect of the request.

2 RECOMMENDATION

The Committee is asked to;

- 2.1 Reject the proposal that Council retains in perpetuity the register entries of former councillors.

3 THE REPORT

- 3.1 A copy of the statement of Mr Alex Hansen setting out the reasons for retaining in perpetuity the Registers of Interests of former Councillors is appended to this report at **Appendix 1**.

3.2 Mr Hansen's statement draws a distinction in relation to the Gifts and Hospitality entries (G&H entries) that are recorded in the Registers of interests of councillors serving consecutive terms of office and councillors that return to office following a break in service.

3.3 The Local Government Act 1972 provides for elections of Councillors once every 4 years (Term).

3.4 The Localism Act 2011 provides at section 29 (3) as follows:

- 29 Register of interests
- (1) The monitoring officer of a relevant authority must establish and maintain a register of interests of members and co-opted members of the authority.
 - (2) Subject to the provisions of this Chapter, it is for a relevant authority to determine what is to be entered in the authority's register.
 - (3) Nothing in this Chapter requires an entry to be retained in a relevant authority's register once the person concerned—
 - (a) no longer has the interest, or
 - (b) is (otherwise than transitorily on re-election or re-appointment) neither a member nor a co-opted member of the authority.

3.5 The Localism Act 2011 (Act) and regulations made pursuant to it set out the interests that a councillor must register in their register of interest and these are known as Discloseable Pecuniary Interests (items 1 to 7 in Appendix 2).

3.6 Section 35 of the Act provides that failure to record (within 28 days of election) or declare such an interest and taking part in any debate or vote in relation to any decision relating to such an interest, is a criminal offence. Any complaint to the Council relating to DPs that could give rise to a potential criminal offence under S.35 of the Act must be communicated to the Police in compliance with a Protocol in place between the Council and the Avon and Somerset Constabulary.

3.7 The B&NES code of conduct (Code) also requires that Councillors register any Other Registerable Interest (item 8 in Appendix 2) and any Gift and Hospitality received by a councillor (item 9 in Appendix 2). Failure to record such an interest or declare such an interest and taking part in any debate or vote in relation to any decision relating to such an interest are not criminal offences but could give rise to a complaint of breach of the Code.

3.8 Councillors re-elected or reappointed after each Term are required to complete a new register of interests but their previous G&H entries are carried forward from their previous register. In respect of those councillors that are not re-elected or reappointed their register entries are deleted. This happens in practice because the councillor elected to the ward of a councillor that stood for election and who were not re-elected or who did not stand for re-election is overwritten by entering the details of the new incoming councillor. In addition, any paper record, if held, is destroyed in compliance with Data Protection requirements of not retaining information for longer than is required. The Council's practice is expressly permitted by S.29 (3) of the Act and in particular section 29 (3) (b) i.e., they are no longer a member of the authority.

3.9 Mr Hansen's request of the committee is that councillor's item 9, G&H entries are retained in perpetuity. It is argued that failure to do so produces an anomaly between those councillors serving consecutive terms and those who do not.

3.10 The Council's code provides that it only applies when a member is acting as a councillor or giving the impression of acting as a councillor. Consequently, the code no longer applies once a Councillor is not re-elected or does not stand for election. In addition the Council's procedure for dealing with code of conduct complaints is found [HERE](#) paragraphs 5.4 & 5.5 provide that a complaint against a former councillor or more than 6 months old will not be investigated. Consequently, retaining G&H entries for former councillors serves no useful purpose. Deleting those entries complies with the Data Protection Act duty not to retain information for longer than is necessary and is permissible under S.29 (3) (b) of the Localism Act.

3.11 It could be argued that an historic G&H entry for a councillor should be retained because it might still be relevant after a break in service. However, it is, a very tenuous argument that the Council should retain data for the unusual occurrence, that a councillor is re-elected after an absence of a Term (4 years). That would not outweigh the legitimate expectation, of a former councillor, that their G&H entries would be deleted following their departure from office. The Council would find it extremely hard to justify Mr Hansen's proposed retention in perpetuity in the event of a complaint to the Information Commissioner. To do so would expose the Council to challenge and the potential for payment of compensation.

3.12 The Standards Committee cannot make a decision to comply with Mr Hansen's proposal itself. Council is responsible for the Code of Conduct and its procedure. If the committee is minded to support the request then it must set out its reasons for doing so and a report would then be made to enable Council to decide the issue.

4 STATUTORY CONSIDERATIONS

4.1 The body of the report sets out the legislative considerations and rationale for the recommendation.

5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

5.1 Storing data for an indefinite period either physically or electronically commits the Council to expend resource and energy. To do so requires a legitimate reason to address a legitimate concern.

6 RISK MANAGEMENT

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

7 EQUALITIES

7.1 A retiring or departing councillor has a right to a private and family life. However, it is legitimate to interfere with such a right provided it is proportionate and in the public interest.

8 CLIMATE CHANGE

8.1 See 5.1 above.

9 OTHER OPTIONS CONSIDERED

9.1 None.

10 CONSULTATION

10.1 None.

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Background papers	None
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