

## Police Protocol

### Application

1. This policy applies to Guildford Borough Council and to the Police in the handling and investigation of alleged criminal offences created by Section 34 of the Localism Act 2011 and specifically related to Disclosable Pecuniary Interests (DPIs). However, there may be other wider or more substantial criminal activity identified in any complaint as referred to in paragraphs 16 17 and 18 of this Protocol which the Police may need to investigate and as a result the principles of this Protocol will also be mirrored in any such investigation regarding wider or more substantial criminal activity.
2. DPI offences apply to elected members (Councillors) and voting co-opted members of Guildford Borough Council and Parish Councils within the Borough and also encompasses those interests of their spouses or partners living at the same address.

### Purpose

3. The purpose of this policy is to:
  - (a) Provide guidance and clarify the role of the Monitoring Officer and the Police in the handling of complaints relating to DPIs;
  - (b) Provide guidance on the initial investigation and handling by the Police, of alleged criminal offences relating to DPIs;
  - (c) Assist Police officers and staff in identifying and correctly categorising alleged DPI offences;
  - (d) Avoid prejudicing any prosecution and/or continuing investigation into alleged DPI offences.

### Localism Act 2011 Offences – definition and description

4. Section 34 of the Localism Act creates DPI offences that are as follows:

If, without reasonable excuse, a Member:

- (a) **Sections 30(1)** – Fails to notify the Monitoring Officer before the end of 28 days beginning with the day on which he/she becomes and elected member or voting co-opted member, of any DPI which he/she has at the time when the notification is given.
- (b) **Section 31(2)** – Fails to disclose the DPI at Council meetings where the interest is not entered in the Council's register of Members' Interests.
- (c) **Section 31(3)** – Fails to notify the Monitoring Officer of a DPI before the end of 28 days beginning with the date of disclosure at a Council meeting, if the interest is not entered in the Council's register of Members' Interests and is not the subject of a pending notification.
- (d) **Section 31(4)** – Takes part in the discussion or votes, or further discussions or votes, at a Council meeting on matters which are being considered at the meeting in which he/she has a DPI.
- (e) **Section 31(7)** – Fails to notify the Monitoring Officer of a disclosable pecuniary interest before the end of 28 days beginning with the date when he/she becomes

aware that he/she has such an interest in a matter to be dealt with, or being dealt with, by him/her acting alone in the course of discharging a Council function.

**False or misleading information** – it is also a criminal offence to knowingly or recklessly provide false or misleading information in any of the disclosures or notifications under Sections 30(1), 31(2), 31(3) or 31(7).

5. All the offences are summary only (brought within a period of 12 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge and if proven, could result in the disqualification of the person concerned as well as the imposition of a fine.
6. Investigators should note that whilst these are summary only offences, they require the consent of the Director Public Prosecutions to proceed. There is therefore a level of seriousness attached to these offences but, conversely, they do not allow a specific power of search.
7. As DPI offences apply to and can only be committed by members (Councillors and voting co-opted members of Guildford Borough Council and Parish Councils within the Borough, police officers should be mindful of the need for impartiality to political parties and the potential for media impact on the issues surrounding such offences. An example would be a Council's planning committee dealing with a planning application where there is intense local interest in the outcome.
8. Officers should also be mindful of both local and national elections being held around the dates of the DPI complaints. Although the complaint may be recorded and investigated in the normal manner care should be exercised when approaching any witnesses or suspect about the matter as this could be interpreted as favouring one party or candidate over another.

### **Classes of persons reporting to the Police**

9. It is expected that alleged DPI offences may be reported to the Police from on the following classes of persons, though this list is not exhaustive:
  - (a) Political rival or associate of the named suspect;
  - (b) Council ex-employee;
  - (c) Council's Monitoring Officer;
  - (d) Member of the public;
  - (e) Members of the press;
  - (f) Persons who feel aggrieved at a recent decision of the Council or Subject Member.

Such reports may present as verbal reports, via e-mail or letter, telephone call, local authority complaint form. 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.

### **Legal Jurisdiction Criteria Test**

10. If the complaint has been made directly to the Council, the Monitoring officer will ensure that legal jurisdiction has been evaluated prior to referring the complaint to the Police.

11. If the complaint has been made directly to the Police, the Police will request that the Monitoring Officer assures them that the following applies prior to further Police involvement:
  - (a) The alleged conduct took place after the commencement of section 34 of the Localism Act 2011.
  - (b) The Subject Member was a member of the Council at the time of the alleged conduct.
  - (c) The Subject Member was acting in an official capacity as a councillor at the time of the alleged conduct.
  - (d) The Subject Member was not acting as a member of another authority at the time of the alleged conduct.
  - (e) If the facts are capable of establishment as a matter of evidence, the alleged conduct could be capable of a breach of the Code of Conduct.
  - (f) That the complaint is not about dissatisfaction with the Council's decisions, policies and priorities.

In the event that the Police receives the assurances set out above then a criminal investigation will be commenced by the Police in line with this protocol and established police procedures. The Subject Member will be put on notice when invited by the Investigating Office to interview under PACE.

In the case that the alleged conduct was committed before the commencement of the Localism Act 2011 or is an expression of dissatisfaction with the Council's decisions or the matter is in relation to a different authority then the complainant should be informed and the matter referred either to the Council's Monitoring Officer or to the other authority.

#### **Allocation to and appointment of Investigating Officer**

12. On recording a DPI complaint as an alleged crime, it should be assessed in accordance with Police Policy and allocated to a person of the rank of, no less than, Detective Sergeant, preferably based in a different Division to the area where the alleged offence was committed. This is to minimise the risk of the Investigating Officer and the Subject Member being known to each other in a personal or professional capacity. If the Subject Member is a Police Officer or member of Police staff, the investigation will be referred to the Force Professional Standards Department.
13. Prior to acceptance of the criminal investigation by the Police, the Police will make contact with the Council's Monitoring Officer in order to obtain confirmation that there is legal jurisdiction before the allegation is recorded as a crime and for a Police Investigating Officer to be appointed.

#### **Initial Investigation Review by the Investigating Officer**

14. The Investigating Officer must make early contact with the Council Monitoring Officer outlining the nature of the allegation and this should be done as soon as practicable as there are time limits on the prosecution of these offences. The Council's Monitoring Officer will provide assistance with regard to evidential capture. The Monitoring Officer will also determine who within the Council to notify.
15. In liaising with the Monitoring Officer, the Investigating Officer should:

- (a) Request the Subject Member's register of interests be checked and minutes of relevant Council meetings be made available or be sign posted to their whereabouts;
- (b) Inquire whether the Subject Member has been the subject of similar complaints in the past;
- (c) Inquire whether the complainant has made similar complaints in the past;
- (d) Ask for any other relevant material or intelligence on the alleged offence, those persons and witnesses involved or the circumstances surrounding the alleged offence;
- (e) Ask for any other information relating to the DPI complaint that is held by the Council;
- (f) Ascertain whether it is possible through the circumstances complained of, that the Subject Member or another party has benefited by the failure to disclose the DPI;

N.B The Localism Act 2011 requires Monitoring Officer to establish and maintain a register of interests of elected members and voting co-opted members. Sensitive interests (whether or not DPIs) are separately recorded by Monitoring Officers. These are interests where the nature of the interest is such that the member or co-opted member and the Monitoring Officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation. As a result the register made available for inspection and any published version of the register must not include details of the interest and the member or co-opted member does not have to disclose the interest but merely the fact that the member or co-opted member has a DPI in the matter concerned.

### **Circumstances may indicate wider or more substantial criminal activity**

- 16. The circumstances of the complaint may also be indicative of a wider, more substantive criminal act.
- 17. The circumstances of the allegation may constitute a substantial crime of:-
  - (a) Bribery as defined by the Bribery Act 2010;
  - (b) Misconduct in public office at common law;
  - (c) Fraud by abuse of position of trust contrary to the Fraud Act 2006;or
  - (e)(d) Other Serious Crime.
- 18. Referral of a complaint as a Serious Crime 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 any Police Investigation.

### **Conflict of Interest**

- 19. Any Officer or member of Police staff who investigates DPI allegations should be mindful of the conflict of interest principles and apply them to their own personal circumstances in relation to the alleged offence being investigated.
- 20. There are real and substantial risks of adverse publicity if the Investigating Officer, statement taker or reviewing officer does not themselves declare any interest

associated with the investigation of the alleged 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 Police Professional Standards Department or Legal Department.

### **Crime Recording**

21. Offences under s.34 Localism Act 2011 are not notifiable, that is a crime report is not required for Home Office National Crime Recording Standards purposes.
22. However, where an investigating officer identifies a more serious notifiable offence a crime report will be created, for example, fraud offences.

### **Powers to obtain evidence and proportionality**

23. It should be noted that DPI offences under the Localism Act 2011 are summary only offences and therefore, the power to obtain warrants under Section 8 of Police and Criminal Evidence Act is not available to Police Officers.
24. The Investigating Officer should also be mindful of proportionality in the investigation and the need to resolve these alleged DPI offences expeditiously.

### **Suspect Interviews**

25. These should be conducted with a view to the circumstances of the investigation and fully comply with current codes of practice.
26. The Investigating Officer should bear in mind that a lot of investigative work can be avoided by an early account from the suspect of these alleged offences and in early liaison with the Council's Monitoring Officer, that the relevant circumstance that gave rise to the complaint, are actually correctly reported.

### **Disposal**

27. The Police will liaise regularly with the Monitoring Office in confidence to discuss progress of any investigation whether this relates to an alleged DPI offence or other wider or substantial criminal activity arising from a code of conduct complaint and seek to resolve any conflicts.

~~27.~~28. Where the investigation reveals prima facie evidence of a DPI offence having been committed, then this should be pursued and investigated, and the case file submitted to the Crown Prosecution Service for consideration under the Code for Crown Prosecutors (realistic possibility of conviction in the public interest to prosecute).

~~28.~~29. If the matter proceeds to prosecution, the Monitoring Officer and the complainant will be notified accordingly. No further action will be taken by the Monitoring Officer. The results of the prosecution will be notified to the Monitoring Officer and the complainant.

~~29.~~30. If the matter does not proceed to prosecution, the Monitoring Officer and complainant will be notified accordingly. The Monitoring Officer may, on the basis of the Investigating Officer's report, consider what, if any action, to take under the Council's Code of Conduct and arrangements.

~~30-31.~~ It must be borne in mind by supervisors that the disposal of a DPI complaint may attract adverse publicity and potentially call into question the reputation of the Police Force, were a more substantive crime to be overlooked.

~~31-32.~~ Closure of the investigation should be reviewed by an officer of at least the rank of Inspector.

### **Freedom of Information Requests**

~~32-33.~~ The Freedom of Information Act (FOI) imposes a duty on public bodies to 'confirm or deny' whether information is held and to communicate the information if it is held. Where information falls within one of the exemptions, public bodies are not obliged to comply with that duty, however, they may choose to do so in the interests of transparency.

~~33-34.~~ Information held by a public authority for the purpose of investigations is exempt under s.30. Such information held at any time for such purposes is exempt although the public interest in maintaining the exemption must outweigh that in disclosure.

~~34-35.~~ Information which is not exempt under s.30 but relates to law enforcement is covered by the exemption at s.31. Section 31 is prejudice based which means to be engaged, the prejudice to the specified purpose(s) by disclosure must be demonstrated. Again, there is a requirement to conduct a public interest test.

~~35-36.~~ Any information relating to an investigation under this policy need not be disclosed, however, the Reviewing Officer should consider appropriate releases of information and conduct a public interest review with regard to all the circumstances of each case.

~~36-37.~~ No data should be released that would prejudice any persons right to a fair trial at court.