

Agenda

Standards and Ethics Committee

Wednesday, 18 October 2017, 10.00 am
County Hall, Worcester

This document can be made available in other formats (large print, audio tape, computer disk and Braille) on request from Democratic Services on telephone number 01905 728713 or by emailing democraticServices@worcestershire.gov.uk

DISCLOSING INTERESTS

There are now 2 types of interests:
'Disclosable pecuniary interests' and **'other disclosable interests'**

WHAT IS A 'DISCLOSABLE PECUNIARY INTEREST' (DPI)?

- Any **employment**, office, trade or vocation carried on for profit or gain
- **Sponsorship** by a 3rd party of your member or election expenses
- Any **contract** for goods, services or works between the Council and you, a firm where you are a partner/director, or company in which you hold shares
- Interests in **land** in Worcestershire (including licence to occupy for a month or longer)
- **Shares** etc (with either a total nominal value above £25,000 or 1% of the total issued share capital) in companies with a place of business or land in Worcestershire.

NB Your DPIs include the interests of your spouse/partner as well as you

WHAT MUST I DO WITH A DPI?

- **Register** it within 28 days and
- **Declare** it where you have a DPI in a matter at a particular meeting
 - you must **not participate** and you **must withdraw**.

NB It is a criminal offence to participate in matters in which you have a DPI

WHAT ABOUT 'OTHER DISCLOSABLE INTERESTS'?

- No need to register them but
- You must **declare** them at a particular meeting where:
You/your family/person or body with whom you are associated have a **pecuniary interest** in or **close connection** with the matter under discussion.

WHAT ABOUT MEMBERSHIP OF ANOTHER AUTHORITY OR PUBLIC BODY?

You will not normally even need to declare this as an interest. The only exception is where the conflict of interest is so significant it is seen as likely to prejudice your judgement of the public interest.

DO I HAVE TO WITHDRAW IF I HAVE A DISCLOSABLE INTEREST WHICH ISN'T A DPI?

Not normally. You must withdraw only if it:

- affects your **pecuniary interests OR** relates to a **planning or regulatory** matter
- **AND** it is seen as likely to **prejudice your judgement** of the public interest.

DON'T FORGET

- If you have a disclosable interest at a meeting you must **disclose both its existence and nature** – 'as noted/recorded' is insufficient
- **Declarations must relate to specific business** on the agenda
 - General scattergun declarations are not needed and achieve little
- Breaches of most of the **DPI provisions** are now **criminal offences** which may be referred to the police which can on conviction by a court lead to fines up to £5,000 and disqualification up to 5 years
- Formal **dispensation** in respect of interests can be sought in appropriate cases.

Standards and Ethics Committee

Wednesday, 18 October 2017, 10.00 am, County Hall, Worcester

Membership: Mr R P Tomlinson (Chairman), Mr R C Adams, Mr R M Bennett, Ms P A Hill, Mr A J Hopkins, Mr S M Mackay, Dr K A Pollock and Mr R M Udall

Independent Members (Non-voting): Dr M Mylechreest, Mr C Slade and Dr P Whiteman

Agenda

Item No	Subject	Page No
1	Apologies and Named Substitutes	
2	Declarations of Interest	
3	Public Participation <i>Members of the public wishing to take part should notify the Head of Legal and Democratic Services in writing or by e-mail indicating both the nature and content of their proposed participation no later than 9.00am on the working day before the meeting (in this case 17 October 2017). Further details are available on the Council's website. Enquiries about this can be made through the telephone number/e-mail address listed below.</i>	
4	Confirmation of Minutes To confirm the Minutes of the meeting held on 27 April 2016. (previously circulated – pink pages)	
5	Councillor Disqualification Criteria - Consultation	1 - 6
6	Code of Conduct and Complaints Update	7 - 8

Agenda produced and published by Simon Mallinson, Head of Legal and Democratic Services, County Hall, Spetchley Road, Worcester WR5 2NP

To obtain further information or a copy of this agenda contact Simon Lewis, Committee Officer on 01905 846621, slewis@worcestershire.gov.uk

All the above reports and supporting information can be accessed via the Council's website at <http://www.worcestershire.gov.uk/cms/democratic-services/minutes-and-agenda.aspx>

Date of Issue: Tuesday, 10 October 2017

This page is intentionally left blank

STANDARDS AND ETHICS COMMITTEE

18 OCTOBER 2017

COUNCILLOR DISQUALIFICATION CRITERIA - CONSULTATION

Recommendation

- 1. The Head of Legal and Democratic Services recommends that the Committee:**
 - (a) notes the report and the attached consultation document; and**
 - (b) considers what, if any, response should be sent to any or all of the questions posed by the consultation.**

Background

2. The Department for Communities and Local Government have issued a consultation regarding expanding the disqualification criteria for local councillors.
3. Members will recall that the standards and ethics legislation no longer permits the suspension or disqualification of councillors as a consequence of a finding that the Code of Conduct has been breached. However, a councillor can be disqualified from holding office by court order upon conviction for breaching the Disclosable Pecuniary Interests provisions.
4. In addition, there remain longstanding general provisions which disqualify persons from being a councillor if they:
 - have been sentenced to prison for three months or more (including suspended sentences) during the last five years
 - have been convicted of a corrupt or illegal practice by an election court
 - are the subject of a bankruptcy restrictions order or interim order.

Proposed Changes

5. The Government is proposing to widen the disqualifications to cover sex offenders and certain anti-social behaviour as set out in the Appendix and summarised below.
6. **Sexual Offences:** The consultation invites opinion on whether anyone subject to sex offender notification requirements (ie on the sex offenders' register) should be barred from standing for election or holding office as a local authority member. The notification requirements accompany cautions and convictions for sexual offences, as well as Sexual Harm Prevention Orders and Notification Orders (for sexual crimes committed overseas) which are civil orders. The notification period (and therefore the proposed disqualification) varies depending on the outcome - eg 2 years when a person has received a caution for a sex offence, for prison sentences of 6-30 months the notification

period is 10 years, and indefinite for prison sentences beyond 30 months. Civil Orders such as Sexual Harm Prevention Orders are accompanied by a notification period of a minimum of 5 years.

7. **Anti-Social Behaviour:** Of the range of anti-social behaviour powers held by the courts, police, councils and social landlords, only the 2 court-issued orders are proposed to act as a disqualification for holding office. Any person issued with a Civil Injunction or a Criminal Behaviour Order would be barred from running for election or holding office for the duration of the order. The consultation question lists these 2 types of orders together; however, while the effects of the orders may be similar, only the Criminal Behaviour Order requires the person to have been convicted of a crime.

- (a) The Criminal Behaviour Order is issued by a criminal court upon conviction of a criminal offence and will last for a minimum of 2 years; and
- (b) A Civil Injunction is a civil order with a lower burden of proof (the balance of probabilities), the term of the order can be for either a fixed or an indefinite period.

8. **No Retrospective application:** the consultation makes clear that the proposed changes would not apply to any sitting councillors subject to sex offender notification requirements, civil injunctions or criminal behaviour orders, although councillors would be prohibited from running for re-election if these orders remained in force at the next election.

Comments

9. The Committee will see that the proposed changes represent a significant departure from the current legislation on disqualification of local councillors by extending disqualification to some non-custodial criminal sentences, cautions and civil orders (as well as criminal convictions resulting in prison sentences of 3 months or more duration).

10. Members may wish to note that the proposals would disqualify eg someone subject to a civil ASB injunction but not (other than sex offenders) in general those convicted of criminal offences (even if imprisoned for just under 3 months) who would remain free to stand or continue as a member.

11. There is no indication in the consultation that the government intends to reinstate any suspension/disqualification powers in relation to member breaches of the Code of Conduct.

Contact Points

County Council Contact Points

County Council: 01905 763763

Worcestershire Hub: 01905 765765

Specific Contact Points for this report

Simon Mallinson, Head of Legal and Democratic Services

Tel: 01905 846670

Email: smallinson@worcestershire.gov.uk

Anna Ost, Graduate Trainee Solicitor
Tel: 01905 846321
AMOst@worcestershire.gov.uk

Supporting Information

- Appendix 1 - Consultation on updating disqualification criteria for local authority members (online only)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/645454/Disqualification_criteria_for_councillors_and_mayors.pdf
- Appendix 2 – consultation questions

Background Papers

In the opinion of the proper officer (in this case the Head of Legal and Democratic Services) there are no background papers relating to the subject matter of this report:

This page is intentionally left blank

Consultation Questions

Q1. Do you agree that an individual who is subject to the notification requirements set out in the Sexual Offences Act 2003 (i.e. is on the sex offenders register) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

Q2. Do you agree that an individual who is subject to a Sexual Risk Order should not be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or the London Mayor?

Q3. Do you agree that an individual who has been issued with a Civil Injunction (made under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014) or a Criminal Behaviour Order (made under section 22 of the Anti-social Behaviour, Crime and Policing Act 2014) should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

Q4. Do you agree that being subject to a Civil Injunction or a Criminal Behaviour Order should be the only anti-social behaviour-related reasons why an individual should be prohibited from standing for election, or holding office, as a member of a local authority, mayor of a combined authority, member of the London Assembly or London Mayor?

Q5. Do you consider that the proposals set out in this consultation paper will have an effect on local authorities discharging their Public Sector Equality Duties under the Equality Act 2010?

Q6. Do you have any further views about the proposals set out in this consultation paper?

This page is intentionally left blank

STANDARDS AND ETHICS COMMITTEE
18 OCTOBER 2017**CODE OF CONDUCT AND COMPLAINTS UPDATE**

Recommendation

- 1. The Head of Legal and Democratic Services recommends that the Committee:**
 - (a) notes the outcomes of recent formal complaints that members have breached the Code of Conduct; and**
 - (b) considers whether any further general guidance to members is needed.**

Background

2. Since the last report to the Committee on the topic (July 2015) there have been 2 formal complaints that a Worcestershire County Councillor has breached the Code of Conduct for members. They have been dealt with on the Committee's behalf as set out in this report. There have been no referrals to the police for breach of the Disclosable Pecuniary Interest (DPI) provisions.

National picture

3. There have been no media reports of further prosecutions nationally for DPI breaches since the Dorset case previously reported to Committee. With the demise of the national Standards Board there are no longer national statistics available in relation to member Code cases.

4. The High Court has confirmed that local authorities do have the power to carry out initial 'pre-formal' investigations into conduct complaints, and can investigate complaints about conduct predating the new standards regime introduced by the Localism Act 2011. In a long-running case relating to serious complaints, a Sandwell councillor's application for judicial review to block the conduct process was rejected and he was ordered to pay the council's legal costs of £55k. The court said there were serious allegations with a powerful public interest in a thorough and fair investigation, and the councillor would have a full and fair chance to put his case forward at a hearing. The matter is now due to proceed to a disciplinary hearing at Sandwell.

5. In an east Devon and Honiton town case, the High Court found that a finding of a serious breach of the code of conduct could justify a training requirement to be imposed on a member, whilst noting there was no sanction if the member refused, other than publicity.

Local complaints

Complaint 1

6. A member of the public complained that a councillor had not replied to 2 emails. Initial enquiries indicated there had been a very rapid reply to the first email from the member, and that officers had attempted to contact the complainant in relation to the substantive issue but were unable to get through on the number provided. By oversight the matter had therefore not been concluded, nor a response given to a chaser.

7. The issue at stake was the resolution of the substantive matter rather than the conduct of the member as such. A formal investigation was not appropriate or necessary and instead a resolution was facilitated by the Head of Legal and Democratic Services as Monitoring Officer (MO) whereby the matter was resolved through a substantive response and apology being provided by officers to the complainant within 14 days of the formal complaint being filed online.

8. This was an example of where the MO looks for a realistic solution to resolve complaints promptly 'at source'.

Complaint 2

9. A complaint was received from an organisation about the actions of a councillor in making public criticisms of their management of a community asset without liaising with them. The Code was engaged, but initial enquiries indicated this was more a breakdown of communication rather than a matter of member conduct. The MO therefore proposed the best way of resolving the situation was by facilitating the two parties meeting in person to address the issues and work out a way forward. This meeting took place, went well, and the complaint was resolved.

Contact Points

County Council Contact Points

County Council: 01905 763763

Worcestershire Hub: 01905 765765

Specific Contact Points for this report

Simon Mallinson, Head of Legal and Democratic Services

Tel: 01905 846670

Email: smallinson@worcestershire.gov.uk

Background Papers

In the opinion of the proper officer (in this case the Head of Legal and Democratic Services) there are no background papers relating to the subject matter of this report.