

## Standards and Ethics Committee

### 1 July 2015

## 5. CODE OF CONDUCT UPDATE

<b>Recommendation</b>	<p>1. <b>The Head of Legal and Democratic Services recommends that the Committee:</b></p> <ul style="list-style-type: none"><li><b>(a) notes the criminal conviction (in Dorset) for member breach of the Disclosable Pecuniary Interest provisions;</b></li><li><b>(b) notes the outcome of recent formal complaints about member conduct; and</b></li><li><b>(c) considers whether any further guidance to members is needed in the light of the court case or the complaints.</b></li></ul>
<b>DPI conviction in Dorset</b>	<p>2. The former leader of Dorset County Council, a Mr Flower, is thought to have become the first councillor to be convicted of a criminal offence under the Disclosable Pecuniary Interest (DPI) provisions introduced by the Localism Act 2011. The case related to his conduct as a District Councillor when he participated and voted in a meeting about the East Dorset Core Strategy despite having a DPI in the matter though his involvement with a housing charity. As he had a DPI, he could not take part in that meeting. He was given a six-month conditional discharge and ordered to pay £930 costs, but the court did not disqualify him from being an elected member, which it had power to do.</p>
<b>Background Information</b>	<p>3. The councillor was a non-executive director of a Housing charity that existed to provide homes for those in need. Although not paid a salary by the charity, he received annual remuneration of around £5,000, and registered this as a DPI.</p> <p>4. The court noted that he was a man of good character and public service, but he mistakenly believed that the matters before the relevant meeting in relation to the Core Strategy were of a broader nature and did not concern detailed issues of planning and ownership. The court concluded that he should have taken time to consider his position prior to the meeting. It would have been reasonable to have consulted the Monitoring Officer, and he could have sought a dispensation if appropriate. The onus remained on the member to deal with the issue.</p> <p>5. The district council meeting considered the local Core Strategy. The housing charity had responded to the consultation, owned land that was being considered and was part of the details contained in the Core Strategy. Mr Flower had previously attended a meeting of the housing charity where the long-term use of the particular land had been discussed. The DPI was relevant to the Core Strategy and</p>

## Recent Member complaints

matters considered at the meeting, and it was not a reasonable excuse to fail to consider those matters within his knowledge. The councillor was under a positive duty not to participate and not to vote. Although his participation in the meeting could not lead to any direct benefit to him, the councillor failed to satisfy the court that he had a reasonable excuse for his actions.

6. Dorset Police stated that charging Mr Flower was in the public interest as it was important that the public have confidence in local representatives and local politics and can trust that due process takes place. A media report of the case is available here: [http://m.dorsetecho.co.uk/news/11888209.Former\\_council\\_leader\\_Spencer\\_Flower\\_found\\_guilty\\_of\\_voting\\_illegally/?ref=mr](http://m.dorsetecho.co.uk/news/11888209.Former_council_leader_Spencer_Flower_found_guilty_of_voting_illegally/?ref=mr)

7. The case underlines the need for members to give prior thought to potential conflict of interests, take advice where necessary, and avoid even inadvertent breach of the DPI provisions. Convictions of course create a criminal record, and the court can impose a disqualification from being a member.

8. The Committee is asked to consider whether this case should be brought to the attention of the wider membership, and if so, what would be the most effective method of doing so?

9. Since the last report to the Committee in July 2014, the Council has received 5 Formal complaints that a County Councillor has breached the Members' Code of Conduct. No complaints have been received connected with the recent elections.

### Complaint 1

10. A complaint was received by this Council concerning events at another authority. On this being explained by the Monitoring Officer, the complaint was withdrawn and no further action taken.

### Complaint 2

11. A complaint was received that a member had acted dishonestly in email exchanges. Preliminary enquiries by the Monitoring Officer disclosed no basis for the complaint, which was based on a misapprehension. The complainant was completely satisfied with the explanation and amicably withdrew the complaint with apologies, so no further action.

### Complaint 3

12. A complaint was received that a member had made inappropriate comments at a Council event. The matter was informally concluded through a letter of apology and development discussion. No formal investigation or further action was necessary.

#### Complaint 4

13. There were local concerns over alleged anti-social activities connected with a youth club. The councillor thought unfounded allegations victimised the young people in question and said he would refer matters to the police if they continued. The complainant believed this implied local residents were lying and the threat to involve the police was an attempt to intimidate residents from voicing concerns.

14. The Monitoring Officer considered that the complaint did not disclose a potential breach of the Code and no further action should be taken. It was difficult to see a potential referral of alleged criminal activity to the correct agency for investigating it (the police) amounting to a breach of the members' code.

15. There are some wider points worth drawing out. The complaints process is about the **conduct** of councillors, not the merits of a position taken, or whether one agrees or disagrees with comments made (which is more a matter for the ballot box).

16. It is perfectly possible for elected members and their constituents to exchange diametrically opposed points of view, even robustly, without crossing the line into unacceptable conduct. The elected member remains electorally accountable to constituents. This is an important point for freedom of speech and local democracy.

#### Complaint 5

17. A representative of a group seeking funding complained they had received a poor level of service and lack of information in relation to their request for funding from the Councillors' Divisional Fund. The Monitoring Officer made preliminary enquiries and concluded that the complaint did not disclose a breach of the Code and should not be formally investigated.

18. The Divisional Fund Scheme deliberately gives a lot of flexibility and discretion to local members, and the decision whether or not to allocate money to a particular 'good cause' is entirely down to them. It is local members to weigh up, as they think fit, the potential benefit for the well-being of their area against the cash available and any other possible recipients over the year – and to be accountable to the local community for those choices. There is, of course, no entitlement to funding just because a proposal potentially meets the basic criteria for funding – it remains for the local member to weigh up the community benefit for their own Division.

19. There was nothing in the refusal to fund which could amount to a breach of the Code and so no further action was appropriate.

#### Contact Points

#### County Council Contact Points

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## **Background Papers**

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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.