

## INTERPRETATION OF DISCLOSABLE PECUNIARY INTERESTS

Standards Committee - 9 February 2016

Report of                      Monitoring Officer

Status:                        For consideration

Key Decision:                No

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**Executive Summary:** This report provides details of the first conviction of a councillor under the ethics provisions of the Localism Act 2011 and examines lessons that may be learnt as a result.

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This report supports the Key Aim of effective management of Council resources.

**Contact Officer**        Mrs Christine Nuttall - Chief Officer Legal and Governance

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### **Recommendation to the Standards Committee:**

That the information and advice set out in this report be noted.

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**Reason for recommendation:** To ensure good governance within the Council.

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### **Introduction and Background**

- 1        Fundamental changes to the regulation of standards of conduct for elected and co-opted Members were introduced in 2012 by the Localism Act 2011 (the LA). These included a requirement for local government members to register disclosable pecuniary interests and non pecuniary interests and the creation of a new criminal offence of failing to register relevant interests.
- 2        In relation to a criminal prosecution, the Crown Prosecution Service must be satisfied that there is sufficient evidence for a realistic prospect of conviction and that it is in the public interest to prosecute.
- 3        Although the criminal sanction provisions came into force over three years ago, a former leader of Dorset County Council is the first member to be found guilty of an offence under the Disclosable Pecuniary Interest provisions of s.31 of the LA., that is having a Disclosable Pecuniary Interest in a matter considered at a meeting.
- 4        According to various reports, the charge brought against the individual, a serving member of East Dorset District Council, that on 25 January 2013 he was present at a meeting about the East Dorset Core Strategy and, despite having a Disclosable Pecuniary Interest in a matter that was considered at

that meeting and without reasonable excuse, he participated in the vote taken at the meeting. At that time, he was a non-executive director of a housing charity and although he was not in receipt of a salary, he had received various remuneration payments for the years 2010 to 2013 totalling some £29,920. In accordance with s.30 of the LA, he had listed that interest in the Disclosable Pecuniary Interest forms submitted to the District and the County Council in 2012.

## **Judgement**

- 5 In relation to the charge against the member he had pleaded not guilty. At the hearing of the case, the district judge noted that the defendant member was of good character and that, in the member's view, the matters that were considered at the meeting on 25 February 2013 in relation to the East Dorset Core Strategy were broad in nature and did not concern detailed issues of planning and ownership. However, the district judge concluded that before the meeting the defendant member should have taken time to consider his position. The LA was clear that, having declared his interest as a non-executive director of the housing charity, he could not take part in that meeting. As the district judge pointed out, the defendant member could have done one of two things.

## **What the Member Could Have Done**

- 6 The member could have obtained a dispensation by virtue of s.33 of the LA. This section empowers an authority, upon receipt of a written request, to grant dispensations for up to four years from a member to be able to participate in or vote at meetings where they have a Disclosable Pecuniary Interest if, having regard to all relevant circumstances, the authority considers that:
- Not granting the dispensation is likely to impede the particular business transaction.
  - Without the dispensation, the representation of different political groups on the body would be so upset as to alter the outcome of any vote on the matter.
  - The granting of the dispensation is in the interests of individuals living in the authority's area.
  - It is otherwise appropriate to grant a dispensation.
- 7 Secondly, it would not have been unreasonable for the defendant member to have consulted with the Monitoring Officer to obtain his advice on the issue, particularly given that the onus is on the local authority member to deal with such matters.
- 8 However, the defendant member had not sought a dispensation or obtained advice on his position from the Monitoring Officer. On the evidence, the district judge found that the defendant was prevented by the LA from taking

part in the meeting on 25 February 2013 and, without a dispensation, he could not take part. At that meeting, the East Dorset Core Strategy had been considered. The housing charity, for which the member was a non-executive director, had responded to the consultation about the Core Strategy, owned land that was being considered and was part of the details contained in the Core Strategy, and indeed the defendant member had previously attended a meeting of the charity at which its long-term use of the land was discussed.

- 9 The district judge was clear that it was not a reasonable excuse to effectively fail to consider those matters in the defendant member's knowledge and it was incorrect to assert, as he had, that the Core Strategy had no relevance to the pecuniary matters considered at a meeting.
- 10 The LA imposed a positive duty on him not to participate and vote. Although there was no evidence before the court, that the defendant member's participation in the meeting resulted in any direct benefit to him, the provisions of the LA made it clear that he should not have taken part or voted at that meeting.

### **Outcome**

- 11 The LA creates a criminal offence where a member fails, without reasonable excuse to comply with the requirements to declare Disclosable Pecuniary Interests or takes part in council business at meetings. The district judge indicated that the defendant member had failed to satisfy the court that what he did amounted to a reasonable excuse. He was therefore given a six-month conditional discharge and was ordered to pay £930 in costs (the lowest penalty that the court could impose) and he was allowed to remain an elected member.
- 12 This case is the first that has gone to trial. The publicity that the case has generated is likely to serve as a timely reminder for local authority members of the importance of declaring Disclosable Pecuniary Interests and ensuring that they do not participate in meetings where those interests may be a matter for discussion.
- 13 However, it is important to bear in mind that, although the prosecution in this case was successfully taken, strict tests are required to warrant a criminal prosecution and prosecution may not be always appropriate for many breaches of conduct.

### **Wider Implications**

- 14 Monitoring Officers across Kent have now voiced concerns in relation to how they should advise Members on the interpretation of Disclosable Pecuniary Interests following the outcome of this case. Before this case the advice was that a Disclosable Pecuniary Interest, would only apply if the interest directly affected the property owned by the Member, and the effect of such interest had direct financial repercussions for the Member. The circumstances of this case could suggest that a Disclosable Pecuniary Interest

can exist even if the Member's property is not directly affected and even if the Member may not be financially affected by the decision. However, despite the uncertainty created by the circumstances of this case, the government's view has not changed, in that, their advise is that a Disclosable Pecuniary Interest should still be interpreted as only applying if a Member's property is directly affected and the Member is financially affected by the decision.

## **Key Implications**

### Financial

14 There are no direct financial implications arising from this report.

### Legal Implications and Risk Assessment Statement

15 There are no direct legal consequences arising from the contents of this report beyond those set out in the body of the report.

### Equality Assessment

16 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

## **Conclusions**

17 The reports of the conviction show that the Councillor had not sought advice from the Monitoring Officer. There was also a focus on the fact that the Councillor had not sought a dispensation. The district judge indicated that the Defendant Member had failed to satisfy the court that what he did amounted to a reasonable excuse.

18 The conviction should serve as a timely reminder for Members of the importance of declaring Disclosable Pecuniary Interests and ensuring that a Member should not participate in meetings where those interests may be a matter for discussion.

### **Background Papers:**

[Practical Law - Public Sector Blog 10/04/2015](#)

[Local Government Lawyer - The Localism Act - Two Years On - 1/1/2015.](#)

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