

Croydon Council
For General Release

REPORT TO:	ETHICS COMMITTEE 29 June 2015
AGENDA ITEM NO:	7
SUBJECT:	UPDATE ON RECENT PROSECUTION OF COUNCILLOR UNDER THE LOCALISM ACT 2011
LEAD OFFICER:	BOROUGH SOLICITOR, DIRECTOR OF LEGAL AND DEMOCRATIC
CABINET MEMBER:	COUNCILLOR SIMON HALL
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT: The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics and to consider and recommend revisions to the Code of Conduct.	
FINANCIAL IMPACT Implementation of the recommendations contained in this report shall be contained within existing budgets	
FORWARD PLAN KEY DECISION REFERENCE NO.: N/A	

<p>1. RECOMMENDATIONS</p> <p>The Committee is asked to:</p> <p>1.1 Note the recent prosecution of a Councillor and update Members on the learning arising from the prosecution.</p>
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2. EXECUTIVE SUMMARY

2.1 This report provides details of the first conviction of a councillor under the ethics provisions of the Localism Act 2011.

3. DETAIL

3.1 Fundamental changes to the regulation of standards of conduct for elected and co-opted local government members were introduced in 2012 by the Localism Act 2011. These included a requirement for local government members to register pecuniary and other interests and the creation of a new criminal offence of failing to register relevant interests.

- 3.2 Although the criminal sanction provisions came into force almost three years ago, Councillor from Dorset is thought to have recently become the first member to be found guilty of an offence under the pecuniary provisions of section 31 of the Localism Act 2011 (“LA 2011”)– namely that he had a disclosable pecuniary interest in a matter considered at a meeting and participated in that meeting.
- 3.3 The CPS authorised instituting proceedings against the former Councillor for three offences under section 31 and 34 of the Localism Act 2011, which respectively impose a duty on members of a local authority to disclose certain pecuniary interests and to refrain from participating in council business which will affect these interests unless the appropriate dispensation is in place.
- 3.4 It has been reported, although the court record is not readily available as the hearing took place in the Bournemouth Magistrates’ Court , that the charge brought against the individual, a serving member at East Dorset district council, was that on 25 February 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 section 30 of the LA 2011, he had listed that interest in pecuniary interest forms submitted to the district council and the County Council in 2012.
- 3.5 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 ownerships. However, the district judge concluded that before the meeting the defendant member should have taken time to consider his position. The LA 2011 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.
- 3.6 He could have obtained a dispensation from section 31(4) by virtue of section 33 of the LA 2011. As Members will be aware, this section empowers an authority, upon receipt of a written request, to grant dispensations for up to four years for 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.

- 3.7 Secondly, it would not have unreasonable for the defendant member to have consulted with the monitoring officer to obtain advice on the issue, particularly given that the onus is on the local authority member to deal with such matters.
- 3.8 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 2011 from taking part in the meeting on the 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. 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.
- 3.9 Members will recall that a Member is required to declare any employment, office, trade, profession or vocation carried on for profit or gain. In this instance, whilst the member did not receive a salary, he clearly received a gain from the appointment and had declared the interest accordingly.
- 3.10 Section 31(4) of the LA 2011 imposed a positive duty on the Member 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 2011 made it clear that he should not have taken part or voted at that meeting.
- 3.11 Section 34 of the LA 2011 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 but he was not suspended or removed from office as an elected member.
- 3.12 This is an interesting case given that it appears to be the first of its kind that has gone to trial. It is likely to serve as a reminder for Members of the importance of declaring pecuniary interests and ensuring that they do not participate in meetings where those interests may be a matter for discussion. In addition, the case highlights options such as applying for a dispensation where relevant or seeking advice from the Monitoring Officer which could have been employed by the Member in these circumstances. Although the prosecution in this case was successfully taken to trial, strict tests are required to warrant a criminal prosecution and prosecution may not be always appropriate. It will, however, ultimately be a decision for the CPS as to whether prosecution for such matters is pursued.

3.13 Members may wish to consider whether it is deemed appropriate for the Chair to write to all Councillors to provide an update of the outcome of this matter from an ethics perspective to highlight the need to ensure non-participation where a pecuniary interest is declared and to set out the options including dispensations and seeking appropriate advice from the Monitoring Officer.

4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

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

5. LEGAL IMPLICATIONS

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

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BACKGROUND DOCUMENTS:

None