

**Committee: STANDARDS**

**Agenda Item**

**Date: 13 October 2014**

**8**

**Title: URGENT BUSINESS – CONSIDERATION OF  
A DRAFT PROTOCOL BETWEEN ESSEX  
POLICE AND DISTRICT COUNCILS**

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Item for decision

### **Summary**

1. This report is to inform members of a draft protocol for cooperation between the police and Monitoring Officers with regard to allegations of improper conduct relating to disclosable pecuniary interests.

### **Recommendations**

2. That members determine whether the council should agree the protocol.

### **Financial Implications**

3. None.

### **Background Papers**

4. The following papers were referred to by the author in the preparation of this report:
  - Draft protocol herewith.

### **Impact**

- 5.

Communication/Consultation	None.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	Under the Act a prosecution can only be brought by or on behalf of the Director of Public Prosecutions. The council has no power to bring proceedings in its own name. Therefore in the absence of a protocol, prosecutions would continue to be

	instigated by the police.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

## Situation

6. The chairman is being asked to take this as a matter of urgent business as a decision is requested by the 14 November. There is no other meeting of the Standards Committee scheduled before that date and it would not be proportionate for an extraordinary meeting to be called for the purpose of considering this report.
7. The Localism Act 2011 imposes certain requirements upon members with regard to disclosable pecuniary interests. These may be summarised as follows:
  - a. Members must register their disclosable pecuniary interest with the Monitoring Officer within 28 days of being elected or appointed.
  - b. Although the Code of Conduct requires members to keep the Register of Interests up dated, this is not a requirement of the legislation. Any change in disclosable pecuniary interests only needs to be notified to the Monitoring Officer under the Act if a matter relating to that interest comes up at a meeting of the council or its committees and the member is present. In that case the member is required to disclose the nature and existence of the interest and to register it with the Monitoring Officer within 28 days of so doing.
  - c. A member with a disclosable pecuniary interest may not speak on the matter unless he holds a dispensation from the council.
  - d. A member with a disclosable pecuniary interest may not vote on a matter relating to that interest unless he holds a dispensation from the council.
  - e. Where a cabinet member has a disclosable pecuniary interest in a matter in respect of which he or she has delegated powers, then the only step the member may take with regard to that interest is to arrange for another member to carry out the function.
8. Breach of any of the above provisions is a criminal offence carrying a fine of up to £5,000 with the possibility of being disqualified as a member for up to five years. A prosecution may only be brought by or on behalf of the Director of Public Prosecutions.
9. Because of the restriction on prosecutions, investigations into misconduct regarding disclosable pecuniary interests will always be carried out by the

police. A view has been expressed in another report before the committee this evening that it is unlikely that any prosecutions for these offences will ever be brought. Certainly none have been brought to date. It is therefore doubtful whether the protocol is necessary. However, I would comment upon the draft provided as follows:-

10. The protocol purports to be between Essex Police and the Monitoring Officers who sign the same. I have grave doubts as to the governance arrangements for this. My view is that this is a function of the council. That function would stand delegated to this committee by virtue of the Scheme of Delegation. If members so resolve, I would then be able to sign the protocol on the council's behalf.
11. I have concerns with regard to paragraph 1 of the Protocol which places a burden on the Monitoring Officer to determine the seriousness of a complaint and whether the same should therefore be reported to the police. On the basis that the local authority has no powers to prosecute itself, my view is that any decision on whether or not a matter should be investigated should rest with the police. In that connection I have serious reservations about the provision that Monitoring Officers need not refer cases to the police where it appears there "may" have been a genuine error or oversight by the member concerned and no advantage has been secured by them.
12. It would be helpful to be notified by the police if any complaints are received by them from members of the public but if the police determine an investigation is appropriate it is difficult to see how they could carry out the investigation without contact with the council.
13. With regards to paragraph 4, the absence of a Protocol would not prevent cooperation between the Police and the council with regard to complaints.
14. I find it interesting that paragraph 4 refers to warnings but not to formal cautions. In my view where there is an offence which does not justify a prosecution in the public interest, a formal caution may well be an appropriate way of disposing of the matter.
15. Finally, I am concerned that the intention is to review the protocol after 2 years. There is a real danger that this would be overlooked in 2 years' time. Bearing in mind that the number of prosecutions will be extremely low if there are any I would have thought it would have been appropriate to review the protocol each time it has been used.

## Risk Analysis

16.

Risk	Likelihood	Impact	Mitigating actions
Uttlesford does not sign up to the	3, given the reservations about the	1, the absence of a protocol does not	Members should only resolve to sign up to a protocol if they are

protocol.	protocol members may well consider it inappropriate for Uttlesford to be a party to it.	prevent information sharing with the police or joint working where appropriate.	satisfied that it is appropriate to do so.
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1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.