

North East Derbyshire District Council

Standards Committee

20 April 2016

Policy Updates

Report No ADGMO/32/15-16/SS of the Assistant Director – Governance and Monitoring Officer

This report is public

Purpose of the Report

- To advise members of the latest policy announcements and developments affecting ethical standards.

1 Report Details

Review of disqualification rules

- 1.1 Ministers have indicated that they will consult on the law regarding disqualification of local authority members.
- 1.2 This comes after a parish councillor on Saddleworth Parish Council refused to resign after having been convicted of downloading child pornography but having been given a non-custodial sentence.
- 1.3 Currently members are disqualified for having a sentence of imprisonment passed on them (whether suspended or not) for a period of not less than three months without the option of a fine. There is no provision under the code of conduct for disqualifying members.
- 1.4 It is the intention to launch the consultation later this year.

Consultation on Misconduct in Public Office

- 1.5 The Law Commission is consulting on the law of misconduct in public office, highlighting problems that arise through areas of uncertainty as well as gaps and overlaps with alternative offences.
- 1.6 Misconduct in public office is a common law offence and is not defined in statute. It carries a maximum sentence of life imprisonment. The offence requires that: a public officer acting as such wilfully neglects to perform his duty and/or wilfully misconducts himself to such a degree as to amount to an abuse of the public's trust in the office holder, without reasonable excuse or justification.

- 1.7 Historically the offence held public officers to account for their misconduct, where there were no other adequate ways of doing so. Nowadays such misconduct will usually amount to another, narrower and better defined, criminal offence. The offence is widely considered to be ill-defined and has been subject to recent criticism by the Government, the Court of Appeal, the press and legal academics.

A number of problems have been identified with the offence:

1. "Public office" lacks clear definition yet is a critical element of the offence. This ambiguity generates significant difficulties in interpreting and applying the offence.
 2. The types of duty that may qualify someone to be a public office holder are ill-defined. Whether it is essential to prove a breach of those particular duties is also unclear from the case law.
 3. An "abuse of the public's trust" is crucial in acting as a threshold element of the offence, but is so vague that it is difficult for investigators, prosecutors and juries to apply.
 4. The fault element that must be proved for the offence differs depending on the circumstances.
 5. Although "without reasonable excuse or justification" appears as an element of the offence, it is unclear whether it operates as a free standing defence or as a definitional element of the offence.
- 1.8 The next phase of the consultation will begin in summer 2016 with the publication of a paper exploring options for reform. A final paper will be published in 2017.

Guidance for directors of companies fully or partly owned by the public sector

- 1.9 The Government has issued a short guidance note for directors of companies owned by the public sector to help them understand their duties and responsibilities. It includes information on:
- The duties of directors under the Companies Act 2006.
 - Conflicts of interest.
 - Liabilities and indemnity protection.
 - Details of other resources.
- 1.10 It may be found online at the Government's gov.uk website.

Freedom of Information case on Councillors who have failed to pay Council Tax

- 1.11 A newspaper has won an appeal to the Upper Tribunal over whether Bolton MBC should be required to reveal the name of a councillor who failed to pay Council Tax on time. The newspaper had unsuccessfully appealed to the authority, the Information Commissioner's Office and the First Tier Tribunal before Judge Kate Markus QC ruled in their favour, stating that "disclosure of the identity of the councillor is necessary to achieve the objectives of transparency and accountability."

Guidance on Ethical Standards for Public Service Providers

- 1.12 In 2014, the Committee considered a report on ethical standards for providers of public services. It was acknowledged that many services are now provided by third parties on behalf of councils and it was important for these providers to adhere to the same principles required by local authorities. The report made a number of recommendations to Government to ensure that proportionate ethical standards were being made in commissioning and contracting.
- 1.13 The purpose of this latest report is to provide a short practical guide on building and embedding ethical standards in an organisation and in setting ethical expectations for the delivery of services and ensuring they are met. Included are some examples used by commissioners to build high standards. The guidance is available on the Government's gov.uk website.

2 Conclusions and Reasons for Recommendation

- 2.1 This report is for information.

3 Consultation and Equality Impact

- 3.1 None.

4 Alternative Options and Reasons for Rejection

- 4.1 N/A

5 Implications

- 5.1 N/A

6 Recommendations

- 6.1 To note the recent policy announcements and developments affecting ethical standards.
- 6.2 That Rykneld Homes be advised of the Government guidance for directors of companies fully or partly owned by the public sector and requested to circulate to their Board members.

7 Decision Information

Is the decision a Key Decision? (A Key Decision is one which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	No
District Wards Affected	None.

Links to Corporate Plan priorities or Policy Framework	None.
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8 Document Information

Appendix No	Title
None	
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
None	
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