

STANDARDS AND ETHICS COMMITTEE: 11th DECEMBER 2019

REPORT OF THE DEPUTY MONITORING OFFICER

SENIOR OFFICERS' PERSONAL INTERESTS

Reason for this Report

1. To enable the Committee to review the Council's arrangements in relation to Senior Officers' personal interests disclosures.

Background

2. All Council employees are obliged, under the Employees' Code of Conduct, to ensure that their private interests do not conflict with their public duties, and to comply with the Council's rules on the registration and declaration of financial and non-financial interests (paragraph 8(1) of the Code).
3. The Standards and Ethics Committee has responsibility to advise the Council on this issue, pursuant to paragraph (c) of its approved terms of reference:

“(c) To advise the Council on the effective implementation of [its Ethical] Code including such matters as the training of Members and employees on the Code's application.”
4. The Council's policy on Officers' Personal Interests and Secondary Employment (“the Policy”), adopted in February 2015, says the Monitoring Officer is responsible for reviewing the policy, in consultation with the Standards and Ethics Committee, to ensure it is effective.
5. At its meeting in March 2019, the Committee reviewed the Council's rules and resolved to recommend publication of a Register of Senior Officers' Outside Business Interests with effect from April 2019. This recommendation has been implemented.
6. Members of the Committee also expressed the view that Senior Officers should be subject to the same disclosure requirements that apply to elected Members, as they exercised significant decision making powers. Specifically, Senior Officers should be required to publicly disclose Trade Union membership and home addresses and this information should be published on the Council's website. It was agreed that the Committee should receive a further report in this regard.

Issues

7. The Council should not interfere unnecessarily with the private lives of its staff, but it needs to have effective arrangements in place to ensure Council staff carry out their duties in a fair and unbiased way, without being influenced by their own personal interests.

Current disclosure requirements

8. The Council's Policy on Officers' Personal Interests and Secondary Employment (**Appendix A**) aims to provide rules and guidance to help protect the Council and its staff from criticism, misunderstanding and allegations of impropriety; and to ensure that any conflicts of interest are managed effectively and transparently.
9. Under the Policy, Senior Officers (defined as Chief Officers, Assistant Directors and above, in keeping with the definition of Chief Officers under the Localism Act 2011 and reflected in the Council's Pay Policy) are subject to additional disclosure requirements in the interests of transparency and accountability. They are required to disclose any:
 - a) Outside business interests – this requirement is imposed in employment contracts and, in accordance with the ICO's model Publication Scheme, a register of such interests is published on the Council's website;
 - b) Conflicts of interest between their personal interests and duties to the Council – this duty is imposed in the statutory Employees Code of Conduct (paragraph 8);
 - c) Financial interests in a Council contract (existing or proposed) – this is a statutory requirement imposed by section 117 of the Local Government Act 1972; and
 - d) Details of any company or body owned or controlled by the Senior Officer or their spouse or partner or any of their children or dependents (this is an audit requirement) in relation to 'related party' disclosures for the Council's Statement of Accounts, imposed by the CIPFA Code of Practice and section 21(2) of the Local Government Act 2003.
10. The Senior Officers' Personal Interests Declaration Form is attached – **Appendix B**. The forms are held by the Monitoring Officer and officers are asked to update their declarations annually.
11. The Council's Policy provides detailed guidance on what constitutes a conflict of interest and which must be avoided or disclosed. This includes the requirement for Officers to:
 - i. Disclose any apparent conflicts as well as actual conflicts of interest.
 - ii. Seek advice from their line manager in the case of any doubt about a possible conflict of interest.
 - iii. Include the personal interests of close family and friends when considering if they have a potential conflict of interests
 - iv. Disclose any links with (i) Council suppliers or contractors (or those tendering for a Council contract); (ii) any organisations which campaign, lobby or seek to influence the Council's policies; and (iii) any

organisation applying for Council grants, if the officer is involved in the grant allocation process.

- v. Disclose any personal interest in a matter being dealt with at the Council (eg. regulatory applications) by anyone with whom the Officer has any connection or personal relationship.

The Law

12. The rules governing officers' personal interests are set out above and reflected in the Council's current Policy, as noted in paragraph 9 above.
13. It should be noted that elected Members are governed by different statutory requirements, under the statutory Members' Code of Conduct, which sets out detailed requirements about the types of personal interests which Members must declare and register (including all business, property and financial interests, and membership of any bodies, organisations or clubs operating in the area). The legal requirements applying to Members are reflected in the Members' Register of Interests Form, which the Council has a legal duty to publish on its website.
14. There is no legal requirement or guidance recommending that Senior Officers should be subject to similar disclosure requirements to Members.

Senior Officers' Roles and Accountabilities

15. Senior Officers are appointed by Members to implement the policy decisions taken by Members and provide professional advice and support to Members in relation to the discharge of the Council's functions. Members are elected to make the policy and strategy decisions required to discharge the statutory functions of the Council. The Head of Paid Service has statutory responsibility for the overall management of all Council officers, whereas elected Members are accountable to the electorate. The roles and accountabilities of Senior Officers are fundamentally different to those of elected Members.

Audit review

16. The Council's Internal Audit team has carried out a review of the Council's arrangements for managing personal interests for both officers and Members. The review has concluded that the Council's arrangements are 'effective with opportunity for improvement'. The review recommended that the Council invest in a digital mechanism to record employees' declarations of interest and secondary employment and initiate regular reminders in order to improve compliance in relation to secondary employment declarations. Discussions are already underway with a digital solution provider in this regard, with a view to launching a new staff application early next year.
17. A desktop review of comparative local authority approaches was included as part of the audit review. This identified only one other local authority (Essex) which published any information about Senior Officers' personal interests, and this was restricted to business interests. No other authorities published Senior Officers' home addresses, Trade Union membership, or any other personal interests.

However, it was noted the Standards & Ethics Committee were considering Senior Officers' disclosures, and recommended that 'consideration should be given to requesting land ownership information and membership of voluntary bodies from Senior Officers for internal monitoring and avoidance of conflict, with careful consideration given to the level of information published online.'

Employment issues

18. The Council owes its employees a duty of care, both in statute and common law, to ensure so far as is reasonably practicable, that the health, safety and welfare of employees are protected.
19. The Council also has a duty to consult Senior Officers and Trade Unions about any proposed changes to the current rules regarding disclosure of personal interests.
20. Senior Officers have been informally consulted, through discussion at Senior Management Team, about publication of their home addresses on the Council's website. A number of Senior Officers have reported specific and credible security threats pertaining to their personal safety.

Trade Union Membership

21. Membership of a trade union constitutes a private employment right for officers. A senior manager's Trade Union membership will not, of itself, create a conflict of interest affecting an officer's discharge of their duties to the Council. However, the public disclosure of the Trade Union membership of senior staff would create significant operational difficulties, specifically in respect of industrial relations within the Council. It is important that Senior Officers are able to negotiate equally with all Trade Unions in relation to staffing issues, without reference being made to their own personal trade union membership.
22. The relationship between Trade Unions and Senior Officers is fundamentally different to that between Trade Unions and elected Members. Members are often supported politically by Trade Unions, and Members' election campaigns may be supported financially by the unions. Disclosing a Member's trade union support, as required under the statutory regime, is important for public transparency and accountability.
23. Senior Officers have been informally consulted about public disclosure of their Trade Union membership through discussion at Senior Management Team. Serious concerns have been expressed that this would make negotiating with Unions very difficult and would compromise their ability to negotiate effectively on behalf of the Council. For this reason, Directors have indicated they would not consent to this.

Data protection / privacy issues

24. Data Protection laws (the General Data Protection Regulation 2016, 'GDPR', and Data Protection Act 2018) control the use of personal information (any information about living identifiable individuals). Information about officers' home addresses and membership of other organisations is 'personal data' – meaning it may only be processed, for specified purposes, if there is a lawful basis for the Council to do so.
25. Where there is a statutory requirement for officers to disclose certain personal interests (eg. interests in Council contracts and 'related party disclosures' required under audit rules), the legal obligation provides the GDPR lawful basis for the Council's processing of this information. GDPR also allows the Council to process certain personal information about its staff (home address, next of kin, bank details etc) in order to discharge its employment rights and duties under its contracts of employment. However, this information may not be used for other purposes unless the Council can demonstrate it has a lawful basis to do so.
26. Trade Union membership is classed as 'Special Category Data', subject to increased protection, meaning that explicit consent is required (unless another specified condition applies) before this type of information may be lawfully processed.

Legal Implications

27. As the Monitoring Officer is one of the Council's Senior Officers, she has a conflict of interest in this matter, so this report and the legal advice have been provided by the Deputy Monitoring Officer.
28. The Deputy Monitoring Officer has advised that, in his view, the duty to protect employees outweighs any potential public interest arguments for the disclosure of Senior Officers' home addresses. This is particularly the case given there are mechanisms whereby any Member who is concerned about the misuse of delegated powers may raise a complaint to the Monitoring Officer, who holds Senior Officers' Personal Interests Declarations and has access to other employee records in order to investigate any allegations.
29. As noted in paragraph 26 above, Trade Union membership is 'Special Category Data' under the GDPR, subject to increased protection, meaning that (in the absence of any other lawful basis) this information cannot be lawfully processed without Officers' explicit consent. Such consent has not been granted.
30. Members may wish to note that the Monitoring Officer is authorised to make minor amendments to ensure the effectiveness of the Policy, but any substantive changes would require further consultation with staff and Trade Unions and then a report to Cabinet for approval.
31. Other relevant legal provisions are set out in the body of the report.

Financial Implications

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

RECOMMENDATION

The Committee is recommended to make no changes to the current disclosure requirements for Senior Officers' Personal Interests.

James Williams

Operational Manager, Litigation & Deputy Monitoring Officer

25th November 2019

Appendices

Appendix A Officers' Personal Interests and Secondary Employment Policy

Appendix B Senior Officers Personal Interests Declaration Form

Background Papers

Standards and Ethics Committee report 'Officers' Personal Interests and Secondary Employment Policy', March 2019