

STANDARDS AND ETHICS COMMITTEE: 30th September 2020

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. The information can be found on the Council's Register page of its Website: <https://www.cardiff.gov.uk/ENG/Your-Council/Councillors-and-meetings/registers/Pages/default.aspx>
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 exercise 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.

7. A further report was brought to Committee on 11th December 2019 by the Deputy Monitoring Officer who recommended that the Committee make no changes to the current disclosure requirements for Senior Officers' Personal Interests on employment law and data protection grounds.
8. The Committee accepted this recommendation, and suggested instead, that the information contained in The Senior Officers' Personal Interests Declaration Form (**Appendix A**), save for information relating to a Senior Officer's Trade Union membership status and home address – should be brought to the Committee annually for them to review.
9. It was agreed that the Deputy Monitoring Officer would consult with the Senior Management Team on this proposal and that the Committee should receive a further report in this regard.

Issues

10. 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

11. The Council's Policy on Officers' Personal Interests and Secondary Employment (**Appendix B**) 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.
12. 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 Information Commissioner's Office 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.

13. The Senior Officers' Personal Interests Declaration Forms are held by the Monitoring Officer and officers are asked to update their declarations annually.
14. 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

15. The rules governing officers' personal interests are set out above and reflected in the Council's current Policy, as noted in paragraphs 12 and 14, above.

Employment issues

16. Senior Officers have been consulted, through discussions at Senior Management Team, about the information contained in The Senior Officers' Personal Interests Declaration Form being made available to the Committee.
17. Senior Officers have raised no objections on the basis that Officer's home address and information relating to their trade union membership status be excluded from the information provided to the Committee.

Data protection / privacy issues

18. 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.

19. 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.

Legal Implications

20. 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.
21. Whilst there is no legal requirement for Senior Officer's to disclose their interests to anyone other than the Monitoring Officer in accordance with the Policy outlined in paragraph 12; the Deputy Monitoring Officer has advised that the Senior Management Team have been consulted, and are in agreement with the proposal that the information contained in The Senior Officers' Personal Interests Declaration Form (save for information relating to Trade Union membership status and officer home address) be brought to the Committee on an annual basis.
22. The information contained within The Senior Officers' Personal Interests Declaration Form is 'exempt information' as defined by Paragraph 12 of Schedule 12A, Part 4 of the Local Government Act 1972, i.e. 'information relating to a particular individual.' Given that the Council's Policy already provides for the scrutiny of Senior Officer's interests by the Monitoring Officer who has a statutory duty to uphold the standards of officers, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The Deputy Monitoring Officer therefore advises that the public should be excluded when this information is brought to Committee.
23. 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.
24. Other relevant legal provisions are set out in the body of the report.

Financial Implications

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

RECOMMENDATIONS

The Committee is recommended to:

1. Agree to recommend that the information contained in the The Senior Officers' Personal Interests Declaration Form, except for information relating to Trade Union membership status and the officer's home address, is brought to the Committee to review on an annual basis as an exempt report.
2. Note that minor amendments to the Policy may be agreed by the Monitoring Officer, but any substantive amendments will require consultation with staff and Trade Unions, and approval by Cabinet.

James Williams

Operational Manager, Litigation & Deputy Monitoring Officer

24th September 2020

Appendices

Appendix A Senior Officers Personal Interests Declaration Form

Appendix B Officers' Personal Interests and Secondary Employment Policy

Background Papers

1. Standards and Ethics Committee report 'Officers' Personal Interests and Secondary Employment Policy', March 2019
2. Standards and Ethics Committee report 'Senior Officers' Personal Interests, December 2019