

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **CONSTITUTION COMMITTEE**

DATE: **WEDNESDAY, 28 JANUARY 2015**

REPORT BY: **CHIEF OFFICER, GOVERNANCE**

SUBJECT: **OFFICERS' CODE OF CONDUCT**

1.00 **PURPOSE OF REPORT**

1.01 To give further consideration to the review of the officers' code of conduct as part of the ongoing review of the Council's Constitution.

2.00 **BACKGROUND**

2.01 At its meeting on the 24 July 2012 the committee considered a report recommending a programmed review of the Constitution over a 3 year period and resolved to endorse that programmed review. The third year of that programme includes reviewing the officers' code of conduct.

2.02 In reviewing that officers' code there has been consultation with the HR & OD department and with Trade Union representatives, including a report to the Flintshire Joint Trade Union Committee meeting of the 29 May 2014. The draft revised code was also considered at a meeting of the Standards Committee on the 7 July 2014. It was then considered at a meeting of the Constitution Committee on the 9 July 2014. The draft revised officers' code considered at that meeting is attached as Appendix 1 showing tracked changes from the current wording. The tracked changes were agreed subject to the retention of paragraphs 8.11 and 8.12. A copy of the minutes of that meeting are attached as Appendix 2.

3.00 **CONSIDERATIONS**

3.01 The provisions in paragraphs 8.11 and 8.12 need to be considered in the wider context of the other requirements placed on officers by legislation and the statutory parts of the officers' code. Section 117 of the Local Government Act 1972 requires the disclosure of contracts in which an officer has a pecuniary interest. It also forbids an officer accepting any fee or reward other than their remuneration. Breach of either provision is a criminal offence. The statutory parts of the officers' code are automatically incorporated into officers' contracts of employment. They include the following provisions:-

- A prohibition on the use of Council property for personal use unless authorised to do so.
- Preventing the misuse of an officer's position to further private interests.
- Prohibiting the acceptance of any benefits from third parties unless authorised to do so.
- Declaring personal interests.

This wider context provides a considerable level of assurance irrespective of the provisions in paragraphs 8.11 and 8.12.

- 3.02 Following the decision of the Constitution Committee enquiries were made of other Welsh authorities to ascertain their practice in relation to declarations of membership of such bodies as Freemasonry. The response was mixed with some having similar provisions to paragraphs 8.11 and 8.12 but others having obtained advice that such provisions were contrary to the Human Rights legislation and unlawful.
- 3.03 Following discussion with the Chief Executive, consultation was undertaken with politically restricted post holders to obtain their views on the Council introducing a voluntary register to disclose membership of organisations, such as Freemasonry. The reasons for considering such a voluntary register being twofold. Firstly, that that the Council should expect from its senior officers the highest level of conduct in being open and transparent. Secondly, to protect senior officers from suspicion that decisions they make or advice they give Members are influenced by membership of any such type of organisation. The consultation revealed no concern about introducing such a voluntary register.
- 3.04 In order to clarify the legal position, advice was sought from Counsel on both maintaining the current provisions in the officers' code and on introducing a voluntary register. In his advice Counsel drew attention to a decision of the European Court of Human Rights which held that an obligation to declare membership of the Freemasons was an unlawful interference with the right of freedom of association given by Article 11 of the European Convention on Human Rights. His opinion concluded that a compulsory register of membership of such organisations would be unlawful. He was also of the opinion that asking officers to make voluntary registrations would be susceptible to challenge as being in effect a disguised requirement.
- 3.05 Officers consider that in the light of decided cases and Counsel's advice it would be unlawful to implement the committee's previous decision to retain clauses 8.11 and 8.12 of the officers' code. It is however considered important that the Council's Senior Officers (Chief Officers, those Managers reporting directly to them and officers with delegated powers) voluntarily disclose their membership of societies and clubs in the interests of transparency in relation to the advice given to Members or decisions taken under delegated powers.

3.06 The following are suggested to further reduce the risk of legal challenge which is already considered low taking account of the results of the officer consultation:

- (i) The requirements would apply to only senior officers where the need for transparency is greatest;
- (ii) The obligation would be voluntary;
- (iii) The obligations would relate to all clubs and societies and would not “single out” any one organisation:

4.00 RECOMMENDATIONS

4.01 That paragraphs 8.11 and 8.12 be deleted from the officers’ code of conduct.

4.02 That a voluntary register be introduced for Chief Officers, those Managers reporting to them and officers having delegated powers to disclose membership of all societies and clubs such officers are members of.

4.03 That the revised officers’ code of conduct be recommended to County Council.

5.00 FINANCIAL IMPLICATIONS

5.01 None as a result of this report.

6.00 ANTI POVERTY IMPACT

6.01 None as a result of this report.

7.00 ENVIRONMENTAL IMPACT

7.01 None as a result of this report.

8.00 EQUALITIES IMPACT

8.01 Equalities have been considered in reviewing the code.

9.00 PERSONNEL IMPLICATIONS

9.01 The proposed revisions to the code will not increase officer workload.

10.00 CONSULTATION REQUIRED

10.01 With the Chief Executive, HR & OD department and recognised Trade Unions.

11.00 CONSULTATION UNDERTAKEN

11.01 With the Chief Executive, HR & OD department and recognised Trade Unions.

12.00 APPENDICES

12.01 Appendix 1 – Officers’ Code of Conduct.
Appendix 2 – Minutes of the Constitution Committee of the 9 July ‘14

**LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985
BACKGROUND DOCUMENTS**

None

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