

Public Document Pack

Gareth Owens LL.B Barrister/Bargyfreithiwr
Head of Legal and Democratic Services
Pennaeth Gwasanaethau Cyfreithiol a Democraidaidd



To: Cllr Robin Guest (Chair)

CS/NG

Councillors: Bernie Attridge, Glyn Banks,
Haydn Bateman, Chris Bithell, Clive Carver,
David Cox, Ian Dunbar, Veronica Gay,
George Hardcastle, Christine Jones, Dave Mackie,
Tim Newhouse, Neville Phillips, Aaron Shotton,
Paul Shotton, Nigel Steele-Mortimer,
Owen Thomas, David Williams, David Wisinger
and Arnold Woolley

3 July 2014

Maureen Potter 01352 702322
maureen.potter@flintshire.gov.uk

Dear Sir / Madam

A meeting of the **CONSTITUTION COMMITTEE** will be held in the **DELYN COMMITTEE ROOM, COUNTY HALL, MOLD CH7 6NA** on **WEDNESDAY, 9TH JULY, 2014** at **2.00 PM** to consider the following items.

Yours faithfully

Democracy & Governance Manager

AGENDA

- 1 **APOLOGIES**
- 2 **APPOINTMENT OF VICE-CHAIR**
Nominations will be sought for a Vice-Chair for the Committee.
- 3 **DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)**

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The Council welcomes correspondence in Welsh or English
Mae'r Cyngor yn croesawau gohebiaeth yn y Cymraeg neu'r Saesneg

- 4 **MINUTES** (Pages 1 - 8)
To confirm as a correct record the minutes of the last meeting.
- 5 **WHISTLEBLOWING POLICY** (Pages 9 - 22)
To consider the attached report by the Head of Legal and Democratic Services.
- 6 **OFFICERS' CODE OF CONDUCT** (Pages 23 - 36)
To consider the attached report by the Head of Legal and Democratic Services.
- 7 **STANDING ORDERS ON THE APPOINTMENT & DISMISSAL OF OFFICERS** (Pages 37 - 60)
To consider the attached report of the Head of Legal and Democratic Services.
- 8 **FINAL REPORT FOR THE AUDITOR GENERAL FOR WALES
IMPROVEMENT STUDY: SCRUTINY IN LOCAL GOVERNMENT** (Pages 61 - 66)
To consider the attached report by the Member Engagement Manager.

Agenda Item 4

CONSTITUTION COMMITTEE **26 MARCH 2014**

Minutes of the meeting of the Constitution Committee of Flintshire County Council held in County Hall, Mold, on Wednesday, 26 March 2014.

PRESENT: Councillor Robin Guest (Chairman)

Councillors: Chris Bithell, Clive Carver, David Cox, Ian Dunbar, David Evans, Veronica Gay, Ron Hampson, George Hardcastle, Dave Mackie, Tim Newhouse, Neville Phillips, Owen Thomas and Arnold Woolley

APOLOGIES: Councillors Glenys Diskin, Paul Shotton, and Nigel Steele-Mortimer

SUBSTITUTION: Councillor Glyn Banks for Joe Johnson

IN ATTENDANCE:

Head of Legal and Democratic Services, Head of Finance, Clwyd Pension Fund Manager, Democracy and Governance Manager, Member Engagement Manager, and Committee Officer

29. DECLARATIONS OF INTEREST

Councillor Chris Bithell declared a personal interest in the following item due to the close family associations of an individual who is in receipt of a Clwyd Pension, and an individual who is a member of the Fund and an employee of Wrexham County Borough Council:-

Agenda Item 4 – Clwyd Pension Fund Governance

Councillors David Evans and Dave Mackie declared a personal interest in the following item as they were members of the Clwyd Pension Fund:-

Agenda Item 4 – Clwyd Pension Fund Governance

Councillor George Hardcastle declared a personal interest in the following item due to the close family association of an individual who is in receipt of a Clwyd Pension:-

Agenda Item 4 – Clwyd Pension Fund Governance

30. MINUTES

The minutes of the meeting of the Committee held on 8 January 2014, were submitted.

Matters arising

Planning Committee Quorum

The Democracy and Governance Manager advised that the Constitution had been amended so that the quorum for meetings of the Planning and Development Control Committee would be 50% of its membership.

Family Absence for Members

The Democracy and Governance Manager advised that representations had been made to the Welsh Government (WG) in relation to the views expressed by the Committee on the regulations on Family Absence for Members. Councillor Chris Bithell asked if a response had been received from the Welsh Government. The Democracy and Governance Manager advised that he had received an acknowledgement to his email. Councillor Bithell suggested that a substantive response be sought and this was agreed by Members.

The Democracy and Governance Manager advised that he was in the process of updating the constitution to reflect the other decisions made by the Committee during the meeting and had consulted with Group Leaders who had no objections to the Constitution being amended.

RESOLVED:

- (a) That the minutes be received, approved and signed by the Chairman as a correct record; and
- (b) That the Democracy and Governance Manager seek a substantive response from the Welsh Government on Family Absence for Members.

31. CLWYD PENSION FUND GOVERNANCE

The Head of Finance introduced Mr Philip Latham, Clwyd Pension Fund Manager. She introduced a report to provide Members with a proposal to change the governance arrangements for the Clwyd Pension Fund, and hence, the Council's Constitution, and also to seek agreement for a recommendation to Council for the creation of a newly constituted Clwyd Pension Fund Committee.

The Head of Finance provided background information and context and referred to the key considerations in the report. She expressed her thanks to the Democracy and Governance Manager for his assistance in developing the proposals. She advised that the proposed new structure, which was in line with the Chartered Institute of Public Finance and Accountancy (CIPFA) recommendations, was appended to the report. Under the new arrangements the County Council would delegate, in its constitution, all decisions relating to its statutory duty to administer the Clwyd Pension Fund to the Clwyd Pension Fund Committee, instead of the Head of Finance as at present. The recommended role and function of the Committee was detailed in Appendix 2 to the report.

The Head of Finance advised that Legal and Democratic Services had provided advice and support and would continue to assist with the Terms of

Reference and Scheme of Delegation for the proposed new structure and representation.

Subject to approval by the Committee the new governance structure and representation could be recommended for approval to the Council with the new structure becoming effective at the Annual Meeting of the Council in May 2014.

The Chairman thanked the Head of Finance for her presentation and invited Members to raise questions.

The Chairman asked how the scheme member representative would be selected. The Pensions Fund Manager explained that the representative would be appointed through the joint Trade Unions.

During discussion Officers responded to the concerns and queries raised by Members in relation to the composition of the Clwyd Pension Fund Committee.

Councillor Chris Bithell asked how the representative for the 'other scheduled body', such as from a Town and Community Council would be selected. He also referred to admitted bodies. In his response, the Pensions Fund Manager explained that admitted bodies would not have a representative as they made up a very small proportion of the liabilities of the Clwyd Pension Fund. In terms of Town and Community Councils they would be asked whether they would like to put forward an elected member. There is only one position on the Committee, hence a selection process may be required. As stated in the constitution, paragraph 1.2 (a iv) the appointment procedure would be done in consultation with the members of the Pension Fund Advisory Panel.

Councillor Chris Bithell proposed that the Committee support the recommendation as outlined in the report. This was seconded by Councillor Arnold Woolley

In response to a query from Councillor Owen Thomas concerning the 8 pension funds in Wales, the Head of Finance advised that the Authority was responsible for dealing with the Clwyd Pension Fund. She referred to a report submitted to a meeting of the Cabinet on 18 March 2014 which set out Flintshire's position within the Clwyd Pension Fund as per the last actuarial valuation at March 2013.

Councillor David Evans sought further information on the terms of office for membership of the Pension Fund Committee. The Democracy and Governance Manager explained that the term of office was a single period term of office for no more than 6 years initially, but a representative member could be reappointed for a further term of office. The Pension Fund Manager commented on the need to maintain continuity of membership on the Committee.

Councillor Evans asked if minutes of the meetings of the Clwyd Pension Fund Panel were available and if minutes of meetings of the Clwyd Pension Fund Committee would be provided in the future. The Clwyd Pension Fund Manager explained that information was available in the Clwyd Pension Fund

Annual Report which was in the public domain. Under the proposed arrangements for the future the Committee minutes would be available in the same way as other committee minutes.

In response to a question from Councillor Dave Mackie concerning the composition of the Clwyd Pension Fund Committee, the Pension Fund Manager advised that it still remained a legal responsibility of the Administering Authority to manage the Clwyd Pension Fund and that was why there was a balance of membership in favour of Flintshire on the Committee.

Councillor Clive Carver asked whether there would be any change in the way that the senior salary allowances were made as a result of the proposal to change the governance arrangements for the Clwyd Pension Fund. The Democracy and Governance Manager explained that the members allowance scheme was decided at the Annual Meeting of the Council and it was for Members to decide at that meeting whether the Chair of the Clwyd Pension Fund Committee would be awarded a senior salary.

Councillor Chris Bithell referred to the matter of quorum and asked whether substitutions were allowed at meetings of the Committee. He said that provision for this needed to be included in the Constitution. The Democracy and Governance Manager acknowledged the point made and said there would be a requirement for substitutes to have received training.

Councillor Ian Dunbar sought assurance from the Head of Finance that the Council's Chief Finance (S.151) Officer would remain involved with the work of the Clwyd Pension Fund Committee. The Head of Finance explained that this officer would continue to be involved and be providing advice to Members along with other officers and advisors through the work of the Advisory Panel.

RESOLVED:

That the Committee recommend to County Council changes to its Constitution as outlined in Appendix 2 of the report and to allow substitutions for Flintshire Members provided the substitute has received the appropriate training.

32 POSSIBLE REDUCTION IN SIZE OF DEMOCRATIC SERVICES AND CONSTITUTION COMMITTEES.

The Democracy and Governance Manager introduced a report to consider a reduction in the size of both the Democratic Services and Constitution Committees.

The Chairman referred to discussion which had taken place on this item at the meeting of the Democratic Services Committee which was held prior to the meeting of the Constitution Committee. He advised that Members had decided at that meeting not to reduce the size of the Democratic Services Committee.

Councillor Arnold Woolley proposed that there should be no reduction in the size of the Constitution Committee and Councillor Dave Mackie seconded the proposal.

Councillor Tim Newhouse requested that a recorded vote was taken on the proposal and the requisite number of Members supported this. On being put to the vote the proposal was carried.

For the proposal:-

Councillors: Clive Carver, David Cox, David Evans, Veronica Gay, Dave Mackie, Neville Phillips, Owen Thomas and Arnold Woolley.

Against the proposal:-

Councillors: Glyn Banks, Chris Bithell, Ian Dunbar, Robin Guest, George Hardcastle, and Tim Newhouse.

RESOLVED:

That there be no change in the size of the Constitution Committee

33. SIZE OF THE AUDIT COMMITTEE

The Head of Legal and Democratic Services introduced a report to consider increasing the number of seats for Members on the Audit Committee. He provided background information and advised that the Audit Committee had suggested that its size be increased by one or two places to facilitate a broader political spread and reduce the impact of the occasional absence of Committee members. He referred to the consultation which had taken place with Group Leaders to establish their views on the proposal.

The Head of Legal and Democratic Services commented on the current effective functioning of the Audit Committee, its sufficiency of size, and the high level of Member attendance. He was aware that Members may wish to take into account the political balance of the Committee and advised that by increasing its size the Committee would enable all political groups to be represented. In response to a request from Councillor Clive Carver the Head of Legal and Democratic Services provided clarification around the political balance of the Committee.

Councillor David Evans proposed that the Committee support the recommendation as outlined in 4.02 of the report and this was seconded. When put to the vote this became the resolution of the Committee.

RESOLVED:

That in light of its current effective functioning, sufficiency of size and loyal member attendance, the Committee does not recommend any change in the size of the Audit Committee to the Annual General Meeting.

34. WHISTLEBLOWING POLICY

The Democracy and Governance Manager introduced a report to consider amending the Constitution to reflect updating changes to the Council's Whistleblowing Policy. He advised that at the meeting of the Audit Committee which was held earlier in the day, Members had considered a report which recommended updating changes to the current Policy. As a result of the comments made during the meeting the draft Policy needed to be redrafted.

The Democracy and Governance Manager invited Members of the Committee to send him any comments they wished to be included in the redrafting of the Policy. He advised that a further report would then be submitted to the Audit Committee and Constitution Committee for consideration.

The Chairman asked Members to therefore defer the item until a future meeting of the Committee.

RESOLVED

That the item be deferred to a future meeting of the Committee.

35. UPDATING THE CONSTITUTION

The Democracy and Governance Manager introduced a report to consider updating changes to the Council's Constitution pursuant to the 3 year programme agreed at the Committee's meeting on 24 July 2012. He provided background information and referred to those areas identified for review which had been dealt with and those pending review. He advised that one of the areas identified for the current Council year was part 3 of the Constitution concerning the responsibility for functions and whilst some work had been done it had been put on hold until the new senior management structure of the Council was agreed. The section of Part 3 that could be reviewed was Section B concerning the Leader's Scheme of Delegation of Executive Functions which was appended to the report for Members consideration with recommended changes shown and comments on the proposed changes. The Democracy and Governance Manager advised that the proposed changes followed consultation with the Leader and his agreement to them.

Councillor Chris Bithell referred to the Leader's Scheme of Delegation of Executive Functions which was appended to the report and said there was a typographical error in paragraph 5.12 concerning the spelling of Ysgol Penarlag. He also referred to section 6, Joint Committees, and advised that a report had been submitted to the meeting of Cabinet held on 18 March 2014, on the setting up of a Joint Committee for the Clwydian Area of Outstanding Natural Beauty and reported on a change in membership of the Joint Committee. Councillor Chris Bithell proposed that subject to these points the Committee support the recommendation as outlined in the report.

RESOLVED:

That subject to the two points made by Councillor Bithell the proposed changes to the Leader's Scheme of Delegation of Executive Functions as shown in Appendix 1 be approved.

36. LOCAL CHOICE FUNCTION FOR SCHOOLS

The Head of Legal and Democratic Services introduced a report to update the Constitution to include a new local choice function relating to schools.

The Head of Legal and Democratic Services gave background information and advised that the Welsh Government had recently passed subordinate legislation creating a new local choice function in relation to approvals under Section 51, or a determination under Section 53, of the School Standards Organisation (Wales) Act 2013 (the Act). This related to the new power County Councils had to make decisions about the future of individual schools following public consultation. The Head of Legal and Democratic Services explained until the passing of the Act making a proposal to reorganise a school had been an Executive function, however, if objection was received to the proposal the final decision rested with Ministers. The Act now gave that power to the authority.

In response to a query the Head of Legal and Democratic Services explained that whilst it was proposed that the new power for determination of individual school change proposals should be an Executive function, it was intended to maintain the previous beneficial arrangement of consultation with the Overview and Scrutiny Committee and County Council when similar circumstances arose.

Councillor Chris Bithell proposed that the Committee support the recommendation as outlined in the report and this was seconded by Councillor Arnold Woolley.

RESOLVED:

That the Committee recommends to County Council that the local choice function relating to Sections 51 and 53 of the School Standards and Organisation (Wales) Act 2013 be an Executive function.

37. COUNCIL PROCEDURE RULE 25 - SUBSTITUTIONS

The Democracy and Governance Manager introduced a report to consider amendments to Council Procedure Rule 25 relating to Member substitutions. He provided background information and gave an overview of the main considerations as detailed in the report.

The Democracy and Governance Manager advised that representations had been received from a number of Group Leaders that, as currently worded, Rule 25 prevented notification being given by email and they would like to give notification of substitutions by email. He advised that the legislation did not

require notification in writing. He explained that appended to the report was a suggested rewording of Procedure Rule 25 for consideration by the Committee. He advised that any change agreed at the meeting to the existing wording would be subject to consultation with all Group Leaders and any of them could require the change to be considered by County Council before coming into effect.

Councillor Chris Bithell commented on the need for political balance to be maintained and asked if it could be stipulated that a substitution should be from the same political Group. In his response the Democracy and Governance Manager referred to the legislation around political balance and explained that it was for the individual Group Leader or Deputy to decide who the substitution should be. The legislation allowed a Group Leader to appoint a substitute Member from another political group if they wished.

RESOLVED:

That the amendments to Council Procedure Rule 25 as contained in Appendix 2 to the report be approved.

38. PRESS IN ATTENDANCE

There were no members of the public or press in attendance.

(The meeting commenced at 3.20 pm and finished at 4.30 pm.)

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Chairman

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **CONSTITUTION COMMITTEE**

DATE: **WEDNESDAY, 9 JULY 2014**

REPORT BY: **HEAD OF LEGAL & DEMOCRATIC SERVICES**

SUBJECT: **WHISTLEBLOWING POLICY**

1.00 PURPOSE OF REPORT

1.01 To consider amending the Constitution to reflect the updated Council Whistleblowing Policy.

2.00 BACKGROUND

2.01 The Enterprise and Regulatory Reform Act 2013 introduced changes to the statutory protection given to whistleblowers that needs to be reflected in the Council's policy.

2.02 The Council's Whistleblowing Policy forms part of the Council's Constitution and the committee is in the last year of its 3 year programme to review all parts of the Constitution.

2.03 A report on this matter was presented to the committee's last meeting on the 26 March 2014. Consideration of the item was deferred because the Audit Committee at its meeting on the same day had deferred its consideration to allow points raised at that meeting by the Wales Audit Office to be pursued.

2.04 The points raised by the Wales Audit Office were pursued and a revised Whistleblowing Policy presented to the Audit Committee at its meeting on the 7 May 2014. The committee agreed the revised policy subject to minor amendments which have been incorporated into the proposed policy shown as Appendix 1.

3.00 CONSIDERATIONS

3.01 The Enterprise and Regulatory Reform Act 2013 came into effect in June last year introducing changes to the statutory protection to whistleblowers. These changes have been incorporated into this revised policy. The main changes which come into effect are:-

- For employees to have protection under the Act they need to reasonably believe that they are making disclosures in the public interest. The previous requirement for disclosures to be protected was for them to be made in good faith.

- Greater protection for workers who blow the whistle, particularly against suffering detriment in the work place.

3.02 The Whistleblowing Policy enables employees to raise any concerns that they may have and gives assurances about confidentiality and protection. It details the procedure to be followed in raising a concern either internally or externally. For internal cases it explains how the Council will respond. There are also examples of the types of concerns that can be raised.

4.00 RECOMMENDATIONS

4.01 The committee is requested to consider and approve the updated policy attached as Appendix 1.

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 None as a result of this report.

9.00 PERSONNEL IMPLICATIONS

9.01 None as a result of this report.

10.00 CONSULTATION REQUIRED

10.01 With relevant officers in Legal & Democratic Services, Finance and HR & OD. It has also been considered by the Audit Committee and the Wales Audit Office.

11.00 CONSULTATION UNDERTAKEN

11.01 With relevant officers in Legal & Democratic Services, Finance and HR & OD. It has also been considered by the Audit Committee and the Wales Audit Office.

12.00 APPENDICES

12.01 Appendix 1 – Whistleblowing Policy.

LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985
BACKGROUND DOCUMENTS

None

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FLINTSHIRE COUNTY COUNCIL

REPORT TO: **AUDIT COMMITTEE**
DATE: **WEDNESDAY, 26 MARCH 2014**
REPORT BY: **HEAD OF FINANCE**
SUBJECT: **WHISTLEBLOWING POLICY**

1.00 PURPOSE OF REPORT

1.01 To outline to Members the updated Whistleblowing Policy

2.00 BACKGROUND

2.01 Flintshire County Council has had a whistleblowing policy since 2002, and it was last updated and approved by the Audit Committee in 2010. There is a need to review the policy periodically to ensure that it reflects any changes in working practice, legislation and other regulation.

2.02 The document has been reviewed and updated by Internal Audit in conjunction with the Legal and HR departments.

3.00 CONSIDERATIONS

3.01 The Enterprise and Regulatory Reform Act (June 2013) introduced changes to whistleblowing arrangements. The changes have been incorporated in this revised policy. The main changes which came into effect are

- For employees to have protection under the act they need to reasonably believe that they are making disclosures in the public interest. The previous requirement for disclosures to be protected was for them to be made in good faith.
- Greater protection for workers who blow the whistle, particularly where they may suffer from detriment in the workplace.

3.02 The whistleblowing policy enables employees to raise any concerns that they may have and gives assurances about confidentiality and protection. It gives the procedure to be followed and how the Council will respond, along with examples of the types of concerns that can be raised.

3.03 The policy forms part of the Council's constitution. Following approval by the Audit Committee it will be presented to the Constitution Committee.

Following approval it will be re-launched on the Council's Infonet.

4.00 RECOMMENDATIONS

4.01 The Committee is requested to consider and approve the updated policy.

5.00 FINANCIAL IMPLICATIONS

5.01 None as a direct result of this report.

6.00 ANTI POVERTY IMPACT

6.01 None as a direct result of this report.

7.00 ENVIRONMENTAL IMPACT

7.01 None as a direct result of this report.

8.00 EQUALITIES IMPACT

8.01 None as a direct result of this report.

9.00 PERSONNEL IMPLICATIONS

9.01 None as a direct result of this report.

10.00 CONSULTATION REQUIRED

10.01 Legal and HR departments

11.00 CONSULTATION UNDERTAKEN

11.01 Legal and HR departments

12.00 APPENDICES

12.01 Whistleblowing Policy

LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985 BACKGROUND DOCUMENTS

None.

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APPENDIX 1

**FLINTSHIRE
COUNTY COUNCIL**

**(Excluding staff employed by School Governing
Bodies)**

Whistleblowing Policy

Policy owner for review	Internal Audit Manager & Head of Human Resources and Organisational Development
Date implemented	April 2007
Date last reviewed	October 2010
Date of last amendment	March 2014
Date of next review	

Introduction

Flintshire County Council encourages a free and open culture in dealings between its managers, employees and all people with whom it engages in business and legal relations. In particular, FCC recognises that effective and honest communication is essential if concerns about breaches or failures are to be effectively dealt with and the organisation's success ensured.

FCC aim to create an environment where employees feel able to share their concerns internally in confidence. Employees do not suffer any detriment or victimisation as a result of making a protected disclosure

Aims of the Policy

This policy sets out how to make a disclosure under the Public Interest Disclosure Act 1998. This policy is designed to provide guidance to all those who work with or within Flintshire County Council who may from time to time feel that they need to raise certain issues relating to the organisation with someone in confidence.

This Policy ensures that you receive a response to your concerns and that you are aware of how to pursue them if you are not satisfied.

Scope

This policy applies to all employees of and workers for Flintshire County Council with the exception of teachers and those employed by School Governing Bodies. This policy is commended to schools as good practice.

Definition

Whistleblowing encourages and enables employees to raise serious concerns that are in the public interest **within** the Council rather than overlooking a problem or 'blowing the whistle' outside

Policy

Any issues about malpractice should be raised at an early stage initially with Line Managers, in order for practices to be modified before they reach the point where problems are created or harm is caused. These issues will initially be dealt with informally where possible.

Employees who reasonably believe that the disclosure they are making is in the public interest will be protected from suffering a detriment, bullying or harassment.

This assurance will not be extended to someone who maliciously raises a matter they know is untrue and there are clear procedures in place for dealing with deliberately made false claims.

Confidentiality

We recognise that you may want to raise a concern in confidence under this policy. If you ask us to protect your identity by keeping your confidence, we will not disclose it without your consent (apart from exceptional cases) for example this could be in cases when the person raising the concerns will need to provide a statement and potentially appear as a witness in subsequent legal proceedings, or may be required to give evidence in a disciplinary hearing.

However, this policy encourages you to put your name to your allegation, as concerns expressed anonymously are often much more difficult to investigate. Anonymous allegations will be considered wherever possible at the discretion of the Council.

Third Parties/Contractors

Although the provisions of the Public Interest Disclosure Act 1998 only applies to employees, the Council is committed to ensuring that any third party or contractor who raises a concern under this Policy will not be harassed or victimised as a result. Third parties/contractors should follow Step 3 of the procedure set out below.

Personal Issues

If you have a complaint that relates to personal disputes or your own terms and conditions of employment, this should be raised initially with your line manager and if the issue is not resolved informally with your line manager, the Grievance Policy should be followed.

Protection

Providing that you reasonably believe the disclosure you are making is in the public interest and you follow the procedures outlined in this policy then whistleblowing legislation protects you from detriment. Some examples are; you have a right not to be demoted, suspended, unfairly dismissed or victimised.

Independent Advice and External Contacts

While we hope this policy gives you the reassurance you need to raise such matters internally, we would rather you raised a matter with the appropriate regulator than not at all. Provided you have evidence to back up your concern you can also contact:

- Your Trade Union

- The independent charity Public Concern at Work on 020 7404 6609. Their lawyers can give you free confidential advice at any stage about how to raise a concern about serious malpractice at work.
- The Auditor General Wales can also receive whistleblowing disclosures directly from employees

Auditor General Wales 24 Cathedral Road Cardiff, CF11 9LJ Tel: 029 2032 0500	Health & Safety Executive Information Centre Broad Lane Sheffield S3 7HQ
Information Commissioner Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF Tel: 01625 545700	The Director of the Serious Fraud Office Elm House 10 – 16 Elm Street London WC1X 0BJ
The Environmental Agency Rio House Waterside Drive, Aztec Way Almondsbury Bristol BS12 4UD Tel: 0800 807060	

Monitoring and Evaluation

The policy will be reviewed to ensure compliance with changes in employment legislation or recommended best practice. Any future amendments to the policy may be authorised by the Head of Human Resources and Organisational Development.

Training and Development

Training will be provided to ensure that those with management responsibility for employees are clear about the policy and the procedures contained within it.

In addition to the support provided by your line manager, advice may be sought from a number of other sources such as the Human Resources Department or your Trade Union representative.

Procedure

When raising a concern about malpractice at work, you can: -

1. Raise the issue first with your line manager; this may be done orally or in writing.
2. If you feel unable to raise the matter with your line manager, for whatever reason, please raise the matter with the next immediate line manager whom

you trust, or with someone outside line management within the Directorate. Please say if you want to raise the matter in confidence so that they can make appropriate arrangements.

3. If these channels have been followed and you still have concerns, or if you feel that the matter is so serious that you cannot discuss it with any of the above, please contact one of the following
 - the Internal Audit Manager
 - the Monitoring Officer
 - the Head of Human Resources and Organisational Development, or
 - the Head of Finance

The Council's Response

The Council will assess the concern once it is raised, which may involve an internal inquiry or a more formal investigation. We will tell you who is handling the matter, how you can contact them and whether further assistance may be needed. If you request it, we will write to you summarising your concern and how we propose to handle it. Some concerns may be resolved by agreed action without the need for investigation.

While the purpose of this policy is to enable us to investigate possible malpractice and take appropriate steps to deal with it, we will give you as much feedback as we properly can within an agreed timescale. If requested, we will confirm our response to you in writing. Please note, however, that we may not be able to tell you the precise action we take where this would infringe upon a duty of confidence owed by us to someone else or being in breach of any statutory requirement.

The Authority will ensure that an Officer with knowledge and experience of this procedure will be given the responsibility for obtaining initial information from the referrer. A trained and suitable Officer will also conduct any initial meetings that are required.

At an appropriate stage in any investigation due consideration will need to be given to informing the subject of the concerns raised. It will be necessary to do this to comply with the Council's duties under the Human Rights legislation. However, all efforts will be made to ensure that the source of the concerns remains confidential where possible. The source of the concern will not be disclosed without their consent (apart from exceptional cases) for example this could be in cases when the person raising the concerns will need to provide a statement and potentially appear as a witness in subsequent legal proceedings, or may be required to give evidence in a disciplinary hearing. A central log of concerns reported under this Policy will be kept by Internal Audit.

Appeals

If you are unhappy with our response, remember you can go to the other levels and bodies detailed in this Policy.

Whilst we cannot guarantee that we will respond to all matters in the way that you might wish, we will try to handle the matter fairly and properly. By using this policy

you will help us to achieve this.

Role of the Manager

- To deal with and respond to any complaints raised under this policy
- To ensure employees are protected from suffering a detriment as a result of raising an issue under this policy.

Role of the Employee

- Employees must reasonably believe the disclosure of information is in the public interest.
- Employees must **not** act maliciously or make false allegations.
- Employees must **not** seek any personal gain.

Appendices

Appendix 1 – Examples of concerns which could be raised.

Appendix 1 Examples of Concerns which could be raised

This policy will apply in cases where employees reasonably believe that the disclosure they are making is in the public interest. Examples of this are :-

- a criminal offence has been committed, is being committed or is likely to be committed
- a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject
- a miscarriage of justice has occurred, is occurring or is likely to occur
- the health and safety of any individual has been, is being or is likely to be endangered
- the environment has been, is being or is likely to be damaged
- information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.
- The unauthorised use of public funds.
- Possible fraud and corruption.
- Other unethical conduct.
- Actions which are unprofessional, inappropriate or conflict with a general understanding of what is right and wrong.

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FLINTSHIRE COUNTY COUNCIL

REPORT TO: **CONSTITUTION COMMITTEE**
DATE: **WEDNESDAY, 9 JULY 2014**
REPORT BY: **HEAD OF LEGAL & DEMOCRATIC SERVICES**
SUBJECT: **OFFICERS' CODE OF CONDUCT**

1.00 PURPOSE OF REPORT

1.01 To consider a revised and updated officers' code of conduct as part of the ongoing review of the Council's Constitution.

2.00 BACKGROUND

2.01 Section 37 of the Local Government Act 2000 requires local authorities such as Flintshire to keep up-to-date a Constitution containing information prescribed by the Welsh Government and for that to be available for inspection by members of the public.

2.02 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.

2.03 In reviewing the officers' code there has been consultation with the Chief Executive as Head of the Paid Service, 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 officers' code is also being reported to the Standards Committee meeting on the 7 July 2014 and its views will be reported verbally at the meeting. The draft revised officers' code of conduct is attached as Appendix 1 showing tracked changes from the current wording.

3.00 CONSIDERATIONS

3.01 In undertaking the review of the Constitution the guiding principles have been to update to reflect current arrangements, avoid unnecessary bureaucracy and avoid ambiguity of wording. Consultation with HR & OD identified the last of these as currently being an issue with the existing code.

- 3.02 Parts of the officers' code are statutory provisions automatically incorporated into individual contracts of employment and these are shown in bold in Appendix 1. With the exception of paragraph 3 these statutory provisions remain unchanged. Paragraph 3 has been updated to reflect the change in legislation whereby salary is no longer a category of politically restricted post.
- 3.03 The main changes to the officers' code relate to personal interests, gifts & hospitality and employees outside work (sections 8 to 10 in Appendix 1). These replace paragraphs in section 8 of the existing code that were less clear as to the requirements placed on employees.
- 3.04 The draft revised code includes a new section on the disclosure of information (section 11). Whilst the Constitution contains access to information procedure rules explaining the legislation relating to information rights these requirements had not previously been expressly covered in the officers' code. In view of the importance and volume of information dealt with by officers in the course of their work this is regarded as a significant omission from the current code.
- 3.05 The draft revised code has been updated to reflect the Council's new senior management structure as currently implemented. Further updating changes will be made when the post of Head of Governance has been filled.
- 3.06 In consultation the Trade Unions have welcomed the proposed changes to the officers' code.

4.00 RECOMMENDATIONS

- 4.01 The committee is recommended to approve the draft revised officers' code of conduct shown in Appendix 1.

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 Equality issues 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 - Draft revised officers' code of conduct.

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

Existing Code of Conduct.

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Officers' Code of Conduct

The words in italics comprise the statutory Officers' Code of Conduct which is automatically incorporated into Officers' Contracts of Employment and will prevail in circumstances where there is any contradictory provision elsewhere in the Code.

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General Principles

1. *The public is entitled to expect the highest standards of conduct from all qualifying employees of relevant authorities. The role of such employees is to serve their employing Authority in providing advice, implementing its policies, and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity.*

1.1 Local government employees are expected to give the highest possible standard of service to the public and, where it is part of their duties, to provide appropriate advice to Councillors and fellow employees with impartiality. Flintshire employees are expected to show respect and courtesy in their dealings with the public, Councillors and fellow employees providing them with impartial and appropriate advice.

Deleted: Employees will be expected, through agreed procedures and without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service.

Accountability

2. *Qualifying employees of relevant authorities work for their employing Authority and serve the whole of that Authority. Qualifying employees are defined as all employees of a relevant Authority unless exempted by statutory regulation, e.g. Teachers and Officers of Fire Authorities. They are accountable to, and owe a duty to that Authority. They must act in accordance with the principles set out in this Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.*

2.1 Employees must report any impropriety or breach of procedure to their immediate manager, except where that relates to the conduct of the manager when it must be reported to the manager's manager. Managers should, in turn, report breaches to their manager. The Chief Officer shall notify the Head of Legal & Democratic Services of the occurrence.

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2.2 All employees are required to familiarise themselves with and comply with the Council's Financial Procedure Rules. Any employee who fails to observe Financial Procedure Rules may be subject to disciplinary action.

Deleted: Each Director shall be required to bring the Council's Financial Regulations to the attention of all employees within their directorate.

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2.3 Orders and contracts must be awarded on merit and no special favour should be shown in the procurement process to businesses run by, for example, friends, partners or relatives. No part of the local community should be discriminated against.

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2.4 Employees involved in the procurement process and dealing with Contractors should be clear on the separation of client and Contractor roles within the Authority. Senior employees who have both a client and Contractor responsibility must be aware of the need for accountability.

Deleted: Tendering

2.5 Employees in Contractor or client units must exercise fairness and impartiality when dealing with all customers, suppliers, other Contractors and sub-Contractors.

2.6 Employees who are privy to confidential information on Tenders or costs for either internal or external Contractors must not disclose that information to any unauthorised party or organisation.

2.7 Employees contemplating a management buyout must, as soon as they have formed a definite intent, inform their manager and withdraw from the contract awarding processes.

2.8 Employees must ensure that no special favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

2.9 Employees must be aware that it is a serious criminal offence for them corruptly to receive or give any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or disfavour, to any person in their official capacity. If an allegation is made it is for the employee to demonstrate that any such rewards have not been corruptly obtained.

2.10 Local Government Act 1972 117 - Pecuniary Interests - provides that if officers know that a contract in which they have a pecuniary interest is before the local Authority, they must give notice of their interest to the Authority. This does not, of course, apply to a contract with them in their own name because the Authority will then know of their interest. Section 117(2) forbids any officer "under colour of" their office or employment to accept "any fee or reward" whatsoever other than proper remuneration.

2.11 *The Bribery Act 2010*

The Bribery Act 2010 creates criminal offences for any individual who either offers or receives a financial or other advantage intending the advantage to be rewarded by the improper performance of a function

or activity. The Act also creates an offence of directly or indirectly offering, promising or giving a bribe to a foreign public official so as to influence the actions of the foreign public official. Any individual found guilty of any of these offences is liable to imprisonment for up to a maximum period of 10 years.

2.12 Where an outside organisation wishes to sponsor or is seeking to sponsor a local government activity, whether by invitation, Tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Any offer of sponsorship should only be accepted if the appropriate **Chief Officer** has so decided. Particular care must be taken when dealing with Contractors or potential Contractors.

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2.13 Any offers of sponsorship received by employees should be referred to their **Chief Officer** for decision

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2.14 Where the Authority wishes to sponsor an event or service neither an employee nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to an appropriate manager of any such interest. Similarly, where the Authority through sponsorship, grant aid, financial or other means, gives support in the community, employees must ensure that impartial advice is given and that there is no conflict of interest involved.

Political Neutrality

3. **Qualifying employees of relevant authorities, whether or not politically restricted, must follow every lawfully expressed policy of the Authority and must not allow their own personal or political opinions to interfere with their work. Where qualifying employees are politically restricted (by reason of the post they hold or the nature of the work they do), they must comply with any statutory restrictions on their political activities.**

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3.1 Employees serve the Authority as a whole. It follows they must serve all Councillors and not just those of the controlling group, and must ensure that the individual rights of all Councillors are respected.

3.2 Subject to the Authority's conventions, employees may be required to advise political groups. They must do so in ways which do not compromise their political neutrality.

3.3 Employees, whether or not politically restricted, must follow every lawful expressed policy of the Authority and must not allow their own personal or political opinions to interfere with their work.

3.4 Political assistants appointed on fixed term contracts in accordance with the local Government and Housing Act 1989 are exempt from the standards set in paragraphs 3.1 to 3.3.

3.5 The Local Government and Housing Act 1989, Pt 1 contains provisions to stop 'twin-tracking' (where a senior local Authority employee is also an elected Member of another local Authority) and to restrict the political activity of senior employees. Local Authority employees holding politically restricted posts are disqualified from membership of any local Authority, other than a parish or community Council (sl(1)), from being an MP, AM or MEP and are subject to prescribed restrictions on their political activity (sl(5),(6)).

3.6 The Local Government & Housing Act 1989 requires each Council to maintain a list of its politically restricted posts. These are posts which are:-

(a) specified in the legislation, such as the Head of Paid Service, Chief Officers and their Deputies.

(b) those posts which have delegated powers to make decisions on behalf of the Council.

(c) those posts that regularly provide advice at Council, Cabinet or formal Committee or sub Committee meetings.

(d) those posts that speak on behalf of the authority on a regular basis to journalists and broadcasters.

3.7 The political restrictions are deemed to be incorporated in the contract of employment of every local Authority employee who holds a politically restricted post. If you are uncertain as to whether your post is politically restricted you should seek clarification from your immediate manager and, if uncertainty remains, contact the Democracy and Governance Manager.

Relations with members, the public and other employees

4. **Mutual respect between qualifying employees and members is essential to good local government, and working relationships should be kept on a professional basis.**

5. **Qualifying employees of relevant authorities should deal with the public, members and other employees sympathetically, efficiently, and without bias.**

5.1 Councillors

Employees are responsible to the Authority through its senior managers. For some their role is to give advice to Councillors and senior managers, and all are there to carry out the Authority's work. Mutual respect between employees and Councillors is essential to good local government. Close personal familiarity between employees and individual Councillors can damage the

Deleted: Officers (Political Restriction) Regulations 1990 and the Local Government (Politically Restricted Posts) (No2) Regulations 1990 cover the posts which are politically restricted. These are:

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Deleted: and the Monitoring Officer. Chief Officers and their deputies are restricted without exemption or appeal;¶

Deleted: all posts which reach or exceed a prescribed remuneration ceiling (equivalent to Spinal Column Point 44). These posts are automatically included on a list which employing authorities are under a duty to prepare unless exemption for individuals is granted;

Deleted: all posts which meet the duties-related criteria for determining a 'sensitive' post, irrespective of remuneration level, unless the post holder appeals successfully against determination. These posts are defined as those which (i) give advice on a regular basis to the employing Authority, to any Committee or Sub-Committee or another joint Committee on which the Authority is represented (but excluding purely factual information) or (ii) speak on behalf of the Authority on a regular basis to journalists and broadcasters.

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relationship and prove embarrassing to other employees and Councillors and should therefore be avoided.

5.2 The Local Community and Service Users

Employees should always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the Authority.

5.3 Contractors

Orders and contracts must be awarded on merit, by fair competition, and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the procurement process. No part of the local community should be discriminated against.

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If during the course of your work you are dealing with an external Contractor with whom you have, or have had within the last 12 months, a business or private relationship you must immediately make your manager aware of that relationship.

Equality

6. Qualifying employees of relevant authorities must comply with policies relating to equality issues, as agreed by the Authority, in addition to the requirements of the law.

6.1 All local government employees must ensure that policies relating to equality issues as agreed by the Authority are complied with in addition to the requirements of the law. All members of the local community, customers and other employees have a right to be treated with fairness and equity.

Stewardship

7. Qualifying employees of relevant authorities must ensure that they use public funds entrusted to them in a responsible and lawful manner, and must not utilise property, vehicles or other facilities of the Authority for personal use unless authorised to do so.

7.1 All employees are required to familiarise themselves with the Council's Financial Procedure Rules and Contract Procedure Rules, and know where they can inspect a copy of them. Any doubt concerning Financial Procedure Rules and Contract Procedure Rules, should be raised with your immediate manager and, if the doubt continues, with the Finance Department.

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- 7.2 Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner. They should strive to ensure value for money to the local community and to avoid legal challenge to the Authority.

Personal Interests

8. ***Whilst qualifying employees' private lives are their own concern, they must not allow their private interests to conflict with their public duty. They must not misuse their official position or information acquired in the course of their employment to further their private interests, or the interests of others. In particular, they must comply with:***

- (1) ***any rules of their relevant Authority on the registration and declaration by employees of financial and non - financial interests,***
- (2) ***any rules of their relevant Authority on the declaration by employees of hospitality or gifts offered to or received by them, from any person or organisation doing or seeking to do business, or otherwise benefiting or seeking to benefit from a relationship with the Authority. Qualifying employees must not accept benefits from a third party unless authorised to do so by their relevant Authority.***

8.1 In addition to the criminal offence under Section 117 of the Local Government Act 1972 concerning pecuniary interests (see paragraph 2.10 above) there are the following rules concerning personal interests.

8.2 Employees have a personal interest whenever a reasonable person would perceive a conflict between the employee's private interests and the work the employee does for the authority.

8.3 There would be a personal interest under 8.2 if in the course of the employee's Council work he/she would normally deal with a matter that would affect him/her, their family, a close personal associate, their property, or an organisation they are associated with. For instance, if in the course of the employee's work they would normally deal with a planning application affecting a relative's property or where the employee is involved in processing a payment to an organisation with which the employee is associated.

8.4 Wherever the employee has such a personal interest they should immediately draw it to the attention of their Line Manager who would normally decide that the employee should not be involved in dealing with that matter. This does not mean that the employee can not be

Deleted: Some employees have conditions of service which require them to obtain written consent to take any outside employment. All employees should be clear about their contractual obligations and should not take outside employment which conflicts with the Authority's interests.

Deleted: It is stressed to employees of all grades that they should not undertake outside work if their official duties overlap in some way with their proposed work, if it causes a conflict of interest, or if it makes use of material to which the employee has access by virtue of his or her position (for example, an architect or planner who draws up plans within the Authority for an applicant for planning consent). It is irrelevant whether or not the work is paid.¶

Deleted: Employees' off duty hours are their personal concern but they should not subordinate their duty to their private interests or put themselves in a position where their duty and their private interests conflict.

Deleted: Any additional employment undertaken by employees must not conflict with or react detrimentally to the Authority's interests, or in any way weaken public confidence in the conduct of the Authority's business. Employees above Scale 6 shall devote their whole-time service to the work of the Council and shall not engage in any other business or take up any other additional appointment without the express consent of the Council.¶

trusted but is to protect both the Council's reputation and the employee's reputation against allegations of favouritism. In exceptional circumstances where the employee's skills can not be replicated the Manager may allow the employee to undertake the work but put in place other controls such as being copied into all communications.

8.5 The arrangements must be recorded in writing and communicated to all other employees who need to know what the arrangements are. Each Chief Officer should have a register to record all such declarations of interest and any consequential working arrangements promptly in it. It is the employee's responsibility to ensure their declaration of interest is recorded.

8.6 Intellectual property

Intellectual property is a generic term that includes inventions, creative writings and drawings. If these are created by the employee during the course of employment then, as a general rule, they belong to the employer. However, various Acts of Parliament cover different types of intellectual property.

8.7 Inventions and Patents

Inventions made before 1st June 1978 are the property of the employer if made in the course of that employer's employment. However, the Patents Act 1977 states that after the 1st June 1978 inventions are only the property of the employer if:-

- * they have been made in the course of the employee's normal duties; or
- * they have been made in the course of duties specifically assigned to the employee and where invention might be reasonably expected; or
- * it was made in the course of the employee's duties and at the time the employee had (because of the nature of his or her duties and particular responsibilities arising from them) a special obligation to further the interests of the employer.

Section 9 – Gifts & Hospitality

9.1 In addition to the criminal offences covered by the Bribery Act 2010 referred to in paragraph 2.11 above there are the following rules concerning gifts and hospitality.

9.2 Employees must not retain personal gifts obtained, whether directly or indirectly, as a result of their work for the authority. The only gifts that employees are entitled to retain are insignificant items of token value such as pens and diaries. With any other gifts the employee should draw this to the attention of their Line Manager who may decide that rather than the gift being returned it should be forwarded to the civic office as a donation to the Chair's charity. All offers of gifts should be recorded in the register maintained by the Chief Officers.

Deleted: No outside work of any sort will be undertaken on Council premises, and use of facilities, e.g. telephones, or access to typists is forbidden. Employees are also instructed that correspondence and incoming telephone calls related to outside work are not allowed.¶

Deleted: 8.8 Employees must declare to their manager any non-financial interests that they consider could bring about conflict with the Authority's interests.¶

¶ 8.9 Employees must declare to their manager any financial interests which could conflict with the Authority's interests.¶

¶ 8.10 Managers must in turn report any such declared interests to their manager.¶

¶ 8.11 Employees must declare to the Head of Legal & Democratic Services membership of Freemasonry or of any organisation not open to the public without formal membership and commitment of allegiance and which has secrecy about rules or membership or conduct.¶

¶ 8.12 The Authority will maintain a register of written declarations by employees who are members of Freemasonry or any organisation not open to the public without formal membership and commitment of allegiance and which has secrecy about the rules or membership or conduct. Such a register will be maintained by the Head of Legal & Democratic Services, the register being disclosed to the extent the Head of Legal & Democratic Services believes it to be in the interests of the Council. ¶

¶ 8.13 All employees must disclose any personal interests that they feel conflicts with the Authority's interests (e.g. acting as a school governor within schools maintained by the Authority, involvement with an organisation receiving grant aid from the Authority, membership of a National Health Service Trust Board, involvement with an organisation or pressure group which may seek to influence their Authority's policies.)¶

9.3 Offers of hospitality can only be accepted when authorised by Chief Officers or where covered by paragraph 9.4 below.

9.4 Unless specifically authorised by the Chief Officer hospitality can only be accepted when an employee is attending conferences or courses, launch events, award ceremonies and other events/functions organised by Council, partners or other public bodies at which the Council needs to be represented where it is clear the hospitality is being offered indiscriminately and the value of any such hospitality does not exceed £10.

9.5 When gifts or hospitality are declined those making the offer should be courteous but firmly informed of the procedures and standards operating within the authority that require it to be declined.

9.6 It is the employee's responsibility to ensure that offers of gifts and hospitality are recorded in the appropriate departmental register.

Section 10 – Employees' Outside Work

10.1 All employees have conditions of service which require them to obtain written consent before they take on any outside employment.

10.2 Employees must not undertake outside work if their official work for the authority overlaps in any way with such outside work. It is irrelevant whether or not the outside work is paid for or not.

10.3 No outside work of any sort can be undertaken on Council premises or use Council facilities such as telephones or IT. Incoming correspondence or telephone calls relating to outside work are also not allowed.

10.4 Whilst an employee's right to a private life is respected that does not justify conduct which could reasonably be regarded as bringing the authority into disrepute or significantly and fundamentally affect the employee's ability to work for the Council.

10.5 There would be a breach of paragraph 10.4, for example, if an employee were to act in such a way that when other employees or service users became aware of it they reasonably refuse to work or communicate with the employee concerned.

Section 11 – Disclosure of Information

11.1 Flintshire supports the principles of open government and encourages employees to assist the public in obtaining public documentation in accordance with the rights contained in the Local Government Act

Deleted: 8.14 Acceptance of hospitality must be authorised and recorded by your Director.¶

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8.15 When hospitality has to be declined those making the offer should be courteously but firmly informed of the procedures and standards operating within the Authority.¶

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8.16 Employees must not accept significant personal gifts from Contractors and outside suppliers, but are permitted to keep insignificant items of token value such as pens, diaries, etc.¶

Deleted: 8.17 When receiving authorised hospitality employees should be particularly sensitive as to its timing in relation to decisions which the Authority may be taking affecting those providing the hospitality.¶

¶
8.18 Acceptance by employees of hospitality through attendance at relevant conferences and courses is acceptable where it is clear the hospitality is corporate rather than personal, where the Authority gives consent in advance and where the Authority is satisfied that any purchasing decisions are not compromised. Where visits to inspect equipment, etc. are required, employees should ensure that the Authority meets the cost of such visits to avoid jeopardising the integrity of subsequent purchasing decisions.¶

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8.19 Each Director must record all offers of hospitality together with the decision as to whether they can be accepted or refused. Employees must ensure that offers of hospitality are recorded in the Hospitality Register maintained by their Director.¶

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1972, the Freedom of Information Act 2000 and Environmental Information Regulations 2004.

- 11.2 The Council's Constitution, available on the Infonet, contains Access to Information Procedure Rules explaining the legislation relating to these information rights. If an employee is uncertain as to whether information being sought should be disclosed the employee must seek advice from his/her Manager and, if uncertainty remains, the Manager can seek guidance from the Democracy & Governance Manager.
- 11.3 Only employees with specific delegated authority may disclose to members of the public any information arising, documentation considered or events occurring at a time when a Council, Cabinet, Committee or sub-Committee meeting has decided to exclude the press and public from that part of its meeting.
- 11.4 Employees must not disclose personal information where this is not permitted under the Data Protection Act 1998. If in doubt seek advice from your Manager and explain to the person requesting the information the importance of complying with the Data Protection Act. If the Manager is uncertain, advice is available from the appropriate member of the Council's Data Protection Team.
- 11.5 These rules apply not only to the press and public but also to requests from Councillors and from partner agencies or external bodies.
- 11.6 Where enforcing authorities such as the Police, Wales Audit Office or Health & Safety Executive are seeking information they may be doing so pursuant to statutory powers which they would quote. It is important to ensure that the request is being made by the regulatory body not an impostor. Legitimate bodies accept the need to produce written authority. If in doubt advice is available from the Council's Legal Department. Where such bodies are not using their statutory powers to obtain information then personal information should not be disclosed without ensuring it would not breach the Data Protection Act.
- 11.7 Employees must not use any information obtained in the course of their employment for personal gain or benefit, nor pass it on to others who might use it in such a way. Any particular information received by an employee from a Councillor which is personal to that Councillor and does not belong to the Authority must not be divulged by the employee without the prior approval of that Councillor, except where such disclosure is required or sanctioned by the law.

Whistleblowing

- 12. *In the event that a qualifying employee becomes aware of activities which that employee believes to be illegal, improper, unethical or otherwise inconsistent with this Code, the employee***

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should report the matter, acting in accordance with the employee's rights under the Public Interest Disclosure Act 1998, and with the relevant Authority's confidential reporting procedure, or any other procedure designed for this purpose.

Appointment of Employees

13. **Qualifying employees of relevant authorities involved in the recruitment and appointment of employees must ensure that appointments are made on the basis of merit. In order to avoid any possible accusation of bias, such employees must not be involved in any appointment, or any other decisions relating to discipline, promotion or pay and conditions for any other employee, or prospective employee, to whom they are related, or with whom they have a close personal relationship outside work.**

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13.1 Employees involved in appointments must ensure that these are made on the basis of merit. It would be unlawful for an employee to make an appointment which was based on anything other than the ability of the candidate to undertake the duties of the post. In order to avoid any possible accusation of bias, employees must not be involved in an appointment where they are related to an applicant, or have a close personal relationship outside work with him or her.

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13.2 Similarly, employees must not be involved in decisions relating to discipline, promotion or pay adjustments for any other employee who is a relative, partner or close personal friend.

13.3 All candidates for any appointment under Flintshire County Council shall, when making an application, disclose in writing to the Authority whether to their knowledge they are related to any Member of the Authority or to a holder of any senior office under the Authority. Deliberate omission to make such a disclosure will disqualify the candidate and, if the omission is discovered after appointment, he/she shall be liable to dismissal. Every senior officer of the Authority shall similarly disclose to the Authority any relationship known to him/her to exist between himself/herself and a candidate for an appointment of which he/she is aware. ~~The Chief Executive's office will~~ keep a record of any such disclosure made.

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Investigations by Monitoring Officers

14. Where a Monitoring Officer is undertaking an investigation in accordance with regulations made under section 73(1) of the Local Government Act 2000 a qualifying employee must comply with any requirement made by that Monitoring Officer in connection with such an investigation.

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **CONSTITUTION COMMITTEE**

DATE: **WEDNESDAY, 9 JULY 2014**

REPORT BY: **HEAD OF LEGAL & DEMOCRATIC SERVICES**

SUBJECT: **STANDING ORDERS ON THE APPOINTMENT
AND DISMISSAL OF OFFICERS**

1.00 PURPOSE OF REPORT

1.01 To update the Council's Standing Orders relating to the Appointment and Dismissal of Officers

2.00 BACKGROUND

2.01 Part 4 of the Council's Constitution contains standing orders relating to the appointment and dismissal of officers. The review of this part of the Constitution has been delayed pending legislative changes proposed by the Welsh Government.

2.02 Between March and the end of May last year the Welsh Government consulted on draft regulations to amend the 2006 Regulations requiring Councils to include standing orders governing the appointment and dismissal of senior post holders in the authority. This consultation was considered by the committee at its meeting on the 24 April 2013 and attached as Appendix 1 is a copy of the response to consultation that was sent after that meeting.

2.03 Attached as Appendix 2 is the explanatory memorandum to the Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014 which are in force from the 1 July 2014. Regulation 13 requires the Council to revise its existing standing orders to conform with the amendments made by the regulations within 10 weeks of the 1 July 2014.

2.04 Attached as Appendix 3 to this report are the standing orders relating to the appointment and dismissal of officers which show tracked changes to reflect the requirements of the 2014 regulations.

3.00 CONSIDERATIONS

3.01 The first changes made by the 2014 regulations are to amend the 2006 regulations to delete reference in the earlier regulations to the Mayor and Council Manager executive model and the "alternative arrangements" model both of which were repealed by the 2011

Measure. These changes have little effect on Flintshire's standing orders. There are five significant changes made by the regulations as summarised in the following paragraphs.

- 3.02 The first of these is to give the same status to the Head of Democratic Services as is given to other statutory posts in relation to the process under which disciplinary action can be taken against them. That process involves the establishment of an Investigating Committee which if it feels there is a case to answer can appoint an independent person to investigate an allegation and make a recommendation as to the appropriate course of action for the authority to take. The reason for the addition of this post is given in paragraph 4.3.3 of the explanatory memorandum.
- 3.03 The second significant change is to add the posts of Monitoring Officer and Head of Democratic Services to the list of those posts that are not subject to appointment or dismissal by the Head of Paid Service. Other posts already on this list are the Head of Paid Service; Chief Officers and Deputy Chief Officers. These posts require their appointment or dismissal to be conducted by a committee which must include at least one member of the Cabinet in its membership.
- 3.04 In response to concerns raised with Welsh Government officials the regulations now extend the protections given in relation to disciplinary action to where the officer held one of the protected posts at the time of the alleged misconduct but no longer does so.
- 3.05 The next change made by the regulations is in relation to the recruitment and appointment of Chief Officers. The new regulations require that where an authority proposes to appoint a Chief Officer who is to be paid annual remuneration of £100K or more the post must be publically advertised. The exception to this is where the appointment is to be made for a period of no longer than 12 months in order to cover emergencies or unforeseen departures. The intention behind this is to ensure that able candidates from outside the organisation have the opportunity to gain the position if found to be the most suitable.
- 3.06 The last significant change that is made is to make additional provision concerning the remuneration of Chief Officers. This is to ensure that any decision to determine or vary the remuneration of Chief Officers must be made by full Council rather than it being delegated to a committee.

4.00 RECOMMENDATIONS

- 4.01 The committee is recommended to approve the changes shown in Appendix 3 so as to update the standing orders to reflect the 2014 regulations.

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 None as a result of this report.

9.00 PERSONNEL IMPLICATIONS

9.01 None as a result of this report.

10.00 CONSULTATION REQUIRED

10.01 None as a result of this report.

11.00 CONSULTATION UNDERTAKEN

11.01 None as a result of this report.

12.00 APPENDICES

12.01 Appendix 1 - Response to consultation
Appendix 2 - Explanatory Memorandum
Appendix 3 - Standing Orders relating to the appointment and dismissal of offers

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

The Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2014

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**Draft Response to Consultation on Local Authority's (Standing Order)
(Wales) Regulations 2006 (Amendment) Regulations 2013**

Consultation Questions

1. Do you agree that the Head of Democratic Services should be subject to the same disciplinary procedures as the Head of Paid Service, Monitoring Officer and Chief Finance Officer

Yes.

2. Do you agree that the role of the independent person should be retained in the disciplinary process applying to these officer posts?

Yes.

3. Do you agree that all vacancies at Chief Officer level should be subject to public advertisement?

Yes. As it is believed to be in the public interest and for transparency.

4. Are there any other issues you would like to raise in relation to these proposals, or more generally in this area?

None.

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Explanatory Memorandum to the Local Authorities (Standing Orders) (Wales) Regulations (Amendment) Regulations 2014

This Explanatory Memorandum has been prepared by the Local Government Department of the Welsh Government and is laid before the National Assembly for Wales in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Authorities (Standing Orders) (Wales) Regulations (Amendment) Regulations 2014. I am satisfied that the benefits outweigh any costs.

Lesley Griffiths AM

Minister for Local Government and Government Business, one of the Welsh Ministers

9 June 2014

1. Description

- 1.1 The Local Authorities (Standing Orders) (Amendment) (Wales) Regulations 2014 (“the 2014 Regulations”) make provision to amend the Local Authorities (Standing Orders) (Wales) Regulations 2006 (“the 2006 Regulations”) as a result, among other things, of changes introduced by the Local Government (Wales) Measure 2011 (“the 2011 Measure”).
- 1.2 The 2006 Regulations require Local Authorities to include within their standing orders provisions covering the appointment of Chief Officers, recording of votes and the signing of minutes, provisions related to staff in Local Authorities with different types of executive or alternative arrangements, and disciplinary action against certain senior post holders.
- 1.3 The 2014 Regulations amend the provisions of the 2006 Regulations relating to the process for appointing, dismissing and conducting disciplinary investigations of certain officers of authorities. They impose new requirements for procedures for determining the level of remuneration to be paid to chief officers.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative background

- 3.1 The Local Government and Housing Act 1989 (“the 1989 Act”) contained provisions concerning the appointment and management of certain Local Authority staff and also the adoption of procedural standing orders.
- 3.2 Section 8 of the 1989 Act contains provisions allowing regulations to be made to govern, among other things, whom within a Local Authority is responsible for appointing particular named posts and associated procedures, including those dealing with disciplinary proceedings and dismissals.
- 3.3 The Welsh Ministers have the power to make regulations requiring Local Authorities to include provisions within their standing orders in respect of these matters. This was done through the 2006 Regulations, approved by the National Assembly in May 2006 and brought into force in July of that year. These replaced the Local Authorities (Standing Orders) Regulations 1993 (“the 1993 Regulations”) which had previously applied in England and Wales. The 1993 Regulations still apply in relation to National Park Authorities in Wales.

- 3.4 Section 20 of the 1989 Act enables Welsh Ministers to also make regulations concerning the management of proceedings and business of a Local Authority.
- 3.5 The 2006 Regulations require Local Authorities to include within their standing orders provisions covering:
- the appointment of chief officers
 - the recording of votes and signing of minutes
 - provisions concerning staff in local authorities with different types of executive or operating under alternative arrangements
 - disciplinary action against certain senior post-holders in an authority.
- 3.6 The 2011 Measure, passed by the National Assembly in March 2011 and enacted in May 2011, included provisions intended to strengthen local democracy. Section 8 requires each local authority to designate one of its officers as “Head of Democratic Services”. This post cannot be filled by the Head of Paid Service, Monitoring Officer or Chief Finance Officer.
- 3.7 Section 11 of the 2011 Measure requires Local Authorities to establish a democratic services committee which has the role of carrying out this designation.
- 3.8 The 2011 Measure also removed the Mayor and Council Manager Executive and “alternative arrangements” models as options which could be adopted by Local Authorities.

4. Purpose & intended effect of the legislation

- 4.1 As a result of changes introduced by the 2011 Measure as detailed in section 3.6 to 3.8 of this Explanatory Memorandum, amendments to the 2006 Regulations are required.
- 4.2 In addition, other relevant amendments are required to the 2006 Regulations in response to events that have occurred since they were made.
- 4.3 The resulting proposed amendments to the 2006 Regulations as set out in the 2014 Regulations are as follows:
- 4.3.1 Due to the repeal of the Mayor and Council Manager Executive model by the 2011 Measure an amendment is required to remove all references to that model. This will amend regulations 5 and 9 concerning staff in Local Authorities operating executive arrangements, and remove Part 3 of Schedule 3, which relates to the same issues, from the 2006 Regulations.
- 4.3.2 The 2011 Measure also repealed the “alternative arrangements” model as an option which could be adopted by Local Authorities.

Accordingly, regulation 6 of, and Part 4 of Schedule 3 to, the 2006 Regulations are to be omitted.

- 4.3.3 Under the 2014 Regulations, the role of Head of Democratic Services will be given the same status as the Head of Paid Service, Monitoring Officer and Chief Finance Officer as regards the process under which Local Authorities can take disciplinary action against them and how any allegation of misconduct is to be dealt with. The process will involve the establishment of an investigating committee, which can, if it feels there is a case to answer, appoint an independent person to investigate an allegation and make a recommendation as to the appropriate course of action for the authority to take. The addition of the post of Head of Democratic Services to the list of posts having this protection is important to protect the person holding it in the same way as other posts whose holders might be required to challenge the leadership of their authority in the course of fulfilling their duties.
- 4.3.4 Therefore the addition to regulation 8 of the 2006 Regulations (which lists the posts given this protection) of the post of Head of Democratic Services is required. An amendment would also be needed to regulation 9, which governs the procedure for dealing with allegations of misconduct against the postholders covered by regulation 8. Further amendments are required to Schedule 4 to the 2006 Regulations, which makes provision for disciplinary action against heads of paid services, monitoring officers and chief finance officers.
- 4.3.5 In response to concerns raised with officials, further amendments are made to the 2006 Regulations to extend the protections given by regulations 8 and 9 of the 2006 Regulations to officers in relation to whom disciplinary action is proposed where the officer was, but at the time of the proposed disciplinary action no longer is, an officer with protected status under those regulations and the alleged misconduct, or, as the case may be, the reason for the proposal for dismissal, occurred during the period when the officer was an officer with protected status.
- 4.3.6 The 2006 Regulations make provision relating to the process for recruiting and appointing chief officers. The 2006 Regulations currently enable Local Authorities, should they choose, to avoid the need to advertise a chief officer vacancy publicly if they wish to appoint an internal candidate. Under the 2014 Regulations this would be changed so that, where an authority proposes to appoint a chief officer and it is proposed to pay the chief officer annual remuneration of £100,000 or more, the post must be publicly advertised. The only exception to this requirement for public advertisement where annual remuneration for a chief officer role was £100,000 or more would be if an appointment were to be made for a period of no longer than 12 months. This exception will be useful in

emergencies or if there were unforeseen departures. The requirement for chief officer roles to be publicly advertised is intended to ensure that able candidates from outside the organisation have the opportunity to gain the position if found to be the most suitable. Schedule 1 paragraph 1 of the 2006 Regulations, which provides for the process of advertising and appointing a chief officer, would be replaced to make these changes.

4.3.7 In the 2014 Regulations the posts of Head of Democratic Services and Monitoring Officer are added to the list of those who are not subject to appointment or dismissal by the Head of Paid Service (or another officer designated by them). The posts already on this list are the Head of Paid Service; chief officers and deputy chief officers; assistants for political groups, a mayor's assistant (when there is an elected mayor); and teachers (and other school staff). Amendments to Parts 1 and 2 (paragraph 3) of Schedule 3 are needed to achieve this outcome. Similar protection in relation to dismissal and disciplinary action is extended to officers described in paragraph 4.3.5.

4.3.8 In the 2014 Regulations the posts of Head of Democratic Services and Monitoring Officer are also added to the list of those whose appointment or dismissal should be conducted by a committee, and that any committee or sub-committee of the authority charged with this responsibility must include at least one member of the executive in its membership. The posts already on this list are the Head of Paid Service, and a chief officer or deputy chief officer. Amendments to Parts 1 and 2 (paragraph 4) of Schedule 3 are needed to achieve this outcome. Decisions to dismiss officers described in paragraph 4.3.5 must be conducted by a committee and any committee or sub-committee of the authority charged with this responsibility must include at least one member of the executive in its membership.

4.3.9 The 2014 Regulations make additional provision relating to remuneration of chief officers' pay. This is to ensure any decision to determine or vary the remuneration of chief officers (or those to be appointed as chief officers) must be made by full council, without the possibility of delegating it to a committee of the council. Regulation 7 of the 2006 Regulations will be replaced with a new provision to make the necessary changes.

5. Regulatory Impact Assessment (RIA)

5.1 Options for achieving the policy objectives in relation to the 2006 Regulations, discussed in Section 4, are:

Option 1 – Do nothing and do not amend the 2006 Regulations;

Option 2 – Make the amendments to the 2006 Regulations.

Option 1 – Costs and benefits

- 5.2 There would be no financial costs to the Welsh Government or local authorities as a result of failing to amend the 2006 Regulations. Doing nothing, however, would result in Local Authorities operating under out of date standing orders that are not in line with current legislation – in this case the reforms enacted in the 2011 Measure.

Option 2 - Costs and Benefits

A – Removal of the References to Mayor and Council Manager Executive and “Alternative Arrangements” Models

- 5.3 There would be no financial costs to Local Authorities as a result of removing these models as options which could be adopted by Welsh Local Authorities from the 2006 Regulations as this has already been given legal effect by the 2011 Measure. For the Welsh Government, there will be negligible administration costs in amending the Regulations, and these will be covered within existing budgets.
- 5.4 The benefits of this amendment will be to bring the 2006 Regulations into line with the 2011 Measure.

B – Addition of the Head of Democratic Services Post and certain other officers to those that Require a Committee and Independent Person to Decide on Disciplinary Action and Investigate Allegations of Misconduct

- 5.5 The costs to the Welsh Government for drafting these amendments will be negligible and will be covered within existing budgets. However, the possibility of establishing more committees and designating more independent persons as a result of adding these posts to the posts already covered by these procedures involve more significant costs for Local Authorities. The cost of establishing an investigation would be minimal. Councillors are paid a salary, not an attendance allowance. Further, it is unlikely that a room would need to be hired and the administration costs would form part of the budget for committee secretariats. Each meeting would probably cost an average of around £100 in travel and subsistence payments.
- 5.6 Should a case of disciplinary action against a Head of Democratic Services or an officer described in paragraph 4.3.5 be referred to an independent person for investigation, that would almost certainly take costs into thousands of pounds. The independent person’s fee plus the cost of paying a suspended officer would vary from case to case. Such cases are rarely clean cut and might mean expenditure of tens of thousands of pounds. Such costs would be borne by the local authority concerned, as is now the case with Heads of Paid Service, Chief Finance Officers and Monitoring Officers. Thankfully, such cases are relatively rare.

- 5.7 The post of Head of Democratic Services is a requirement under the 2011 Measure, and the benefits achieved by this amendment to the regulations derive from the security this proposal would give the post holder. It is important to protect this role in the same way as other posts that are required to scrutinise and report to council leaderships on areas internal to each Local Government organisation. For the same reasons, it is also important to extend similar protections to officers falling within the description in paragraph 4.3.5.

C – Public Advertisement of all Chief Officer Posts where Annual Remuneration is £100,000 or Greater

- 5.8 The costs to the Welsh Government for drafting these amendments will be negligible and will be covered within existing budgets.
- 5.9 For Local Authorities there will be cost implications of this provision as it will involve the additional costs of advertising relevant Chief Officer posts publicly which they may not have previously advertised. It cannot be known how often each Authority will be required to advertise these posts because it would be done on an “an as and when” basis. However, an estimated additional cost to an Authority for advertising relevant chief officer posts externally is given below. This estimate of course does not include the processes and costs that would be incurred for advertising posts either internally or externally. The actual cost would vary according to the extent of advertising used and the type of publication in which the advertisement was placed but we are aware that newspaper job advertisements can cost between £10,000 and £25,000.
- 5.10 The benefits of ensuring relevant chief officer posts are advertised publicly, subject to the exceptions referred to above, are that it would provide additional transparency of posts and salaries within Local Government, and also allow other, and possibly more suitable, candidates from outside the organisation to apply and possibly gain appointment to posts for which they would not otherwise have had an opportunity to apply. It will also enable Local Authorities to demonstrate that they are complying with their duty under section 7 of the Local Government and Housing Act 1989 to ensure that appointments are made on merit.
- 5.11 The provision exempting Local Authorities from the requirement to advertise relevant chief officer roles publicly where a person would be appointed to that post for no longer than 12 months would be of benefit as it would enable Local Authorities to fill the posts quickly in the event of an emergency or of unforeseen departures, without having to incur the costs and delays involved in publicly advertising the roles. However, the requirement to advertise publicly when seeking to make a permanent appointment to a chief officer role with annual remuneration of £100,000 or greater could be conducted at a later date, with a larger pool of applicants than if the authority were

permitted to appoint a relevant chief officer without publicly advertising the role.

D – Addition of the Head of Democratic Services and Monitoring Officer Posts to the list of those Not Subject to Appointment or Dismissal by the Head of Paid Services and those Whose Appointment or Dismissal Should be Conducted by Committee

5.12 There will be negligible costs for the Welsh Government for drafting these amendments, which will be covered within existing budgets. However, for Local Authorities there will be more significant costs of the possibility of establishing more committees to look into the appointment and dismissal of staff in these roles in addition to those already covered by these procedures. The same principle applies in relation to the process for dismissing officers falling within the description in paragraph 4.3.5.

5.13 See paragraphs 5.5 to 5.7 (above) for costs.

5.14 The benefits for ensuring these posts are listed as being subject to the requirement that their appointment or dismissal must be conducted by Committee (and not by the Head of Paid Services) derive from the security this proposal would provide to the post holder. It is important to protect this role in the same way as other posts that are required to scrutinise and report to council leaderships on areas internal to each Local Government organisation. Again, the same principle applies in relation to the process for dismissing officers falling within the description in paragraph 4.3.5.

E - Decisions to Determine or Vary the Remuneration of Chief Officers Made by Full Council

5.15 There will be negligible costs for the Welsh Government for drafting these amendments, which will be covered within existing budgets.

5.16 There will be additional costs to Local Authorities for this provision if a full council will be required to be convened for these decisions in addition to those normally convened. That would be unusual. It would be anticipated that this would normally be an agenda item in a routine council meeting and hence not impose an additional cost.

5.17 Requiring decisions concerning the remuneration of Chief Officers to be made by full Council will assist in providing transparency on these matters in the future. It will also support the provisions on chief executive's pay that are within the Local Government (Democracy) (Wales) Act 2013.

6. Consultation

- 6.1 The Welsh Government issued an electronic public consultation on the 2014 Regulations in draft. The consultation ran for 12 weeks from 8 March 2013 to 31 May 2013, and requested views on the content of the draft amendments to the 2006 Regulations.
- 6.2 The consultation was available on the Welsh Government website, and was sent directly to:
- Democratic Services of Welsh Principal Councils
 - Chief Executives of Welsh Principal Councils
 - Lawyers of Local Government
 - Welsh Local Government Association Chief Executive
 - Local Authority Monitoring Officers
 - The Welsh branch of the Society of Local Authority Chief Executives and Senior Managers (SOLACE)
- 6.3 A total of 12 responses were received to the consultation, and although the majority of responses were positive, a number were split between supportive and negative on some of the proposed amendments to the regulations as drafted.

A number of the negative responses related particularly to the proposed provision for local authorities to advertise all of their chief office posts publicly. In response to the comments received, an amendment was made to this proposed provision to provide that if an appointment were to be made for a period not exceeding 12 months, it would not be required to go through the external process. Further, the amendments to the 2014 Regulations made in response to the consultation provide that the requirement to advertise chief officer posts publicly applies only where the annual remuneration for the post is £100,000 or greater.

- 6.4 A published summary report of the consultation responses received is available on the Welsh Government website.

7. Competition Assessment

- 7.1 There are no market implications associated with the making of these Regulations. It has no impact on business, charities or the voluntary sector.

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STANDING ORDERS RELATING TO THE APPOINTMENT AND DISMISSAL OF OFFICERS

A. Interpretation

In these Standing Orders–

"the 1989 Act" means the Local Government and Housing Act 1989;

"the 2000 Act" means the Local Government Act 2000;

"the 2011 Measure" means the Local Government (Wales) Measure 2011;

"the 1993 Regulations" means the Local Authorities (Standing Orders) Regulations 1993;

"the 2006 Regulations" means the Local Authorities (Standing Orders) (Wales) Regulation 2006;

"the 2014 Regulations" means the Local Authorities (Standing Orders) (Wales) Regulation 2014

"Chief Officer" in relation to the Council, means –

- (a) the Head of its Paid Service;
- (b) its Monitoring Officer;
- (c) a statutory Chief Officer mentioned in paragraph (a), (c) or (d) of section 2(6) of the 1989 Act, or
- (d) a non-statutory Chief Officer (within the meaning of section 2(7) of the 1989 Act);

and any reference to an appointment or purported appointment of a Chief Officer includes a reference to the engagement or purported engagement of such an officer under a contract of employment;

"Chief Finance Officer" means the Officer having responsibility, for the purposes of Section 151 of the Local Government Act 1972 (Financial Administration) for the administration of the Council's financial affairs;

"Head of Democratic Services" means the officer designated under Section 8 of the 2011 Measure;

"disciplinary action" in relation to a member of staff of a Council means any action occasioned by alleged misconduct which, if proved, would, according to the usual practice of the Council, be recorded on the member of staff's

personal file, and includes any proposal for dismissal of a member of staff for any reason other than redundancy, permanent ill-health or infirmity of mind or body, but does not include failure to renew a contract of employment for a fixed term unless the Council has undertaken to renew such a contract;

"Cabinet", "Executive arrangements" and "Cabinet Leader" have the same meaning as in Part II of the 2000 Act;

"Head of the Authority's Paid Service" means the Officer designated under Section 4(1) of the 1989 Act (Designation and Reports of Head of Paid Service);

"member of staff" means a person appointed to or holding a paid office or employment under the Council;

"Monitoring Officer" means the officer designated under Section 5(1) of the 1989 Act (Designation and Reports of Monitoring Officer);

"relevant joint committee" in relation to the Council means a joint committee on which the Council is represented; and

Deleted: "Proper Officer" means an Officer appointed by the Council for the purposes of the provisions in these Standing Orders.¶

"remuneration" has the same meaning as in Section 43 (3) of the Localism Act 2011.

"working day" means any day which is not a Saturday, a Sunday, Christmas Eve, Christmas Day, Maundy Thursday, Good Friday, a bank holiday in Wales or a day appointed for public thanksgiving or mourning (and "bank holiday" means a day to be observed as such under Section 1 of and Schedule 1 to the Banking and Financial Dealings Act 1971).

B. Standing Orders relating to the Appointment of Chief Officers

1 The Council must take the steps set out in paragraph 2 below where:

Deleted: 2. STANDING ORDERS RELATING TO CHIEF OFFICERS¶

(a) it proposes to appoint a Chief Officer; and

(b) the remuneration which it proposes to pay to the Chief Officer is a £100K or more per annum;

Deleted: Where the Council proposes to appoint a Chief Officer (within the meaning of the Local Authorities (Standing Orders) (Wales) Regulations 2006), and it is not proposed that the appointment be made exclusively from among its existing officers, it must –

2 The steps are:

(a) draw up a statement specifying–

- (i) the duties of the officer concerned, and
- (ii) any qualifications or qualities to be sought in the person to be appointed;

(b) make arrangements for the post to be publically advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and

- (c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.

3. Where 1 above applies the Council is not required to take the steps set out in 2 above if it proposes to appoint the Chief Officer for a period of no longer than 12 months

4. Where a post has been advertised as provided in paragraph 2(b) above, the relevant Council must –

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- (a) interview all qualified applicants for the post, or
(b) select a short list of such qualified applicants and interview those included on the short list.

5. Where no qualified person has applied, or if the Council decides to re-advertise the appointment, the Council may make further arrangements for advertisement in accordance with paragraph 2(b) above.

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6. (a) the steps taken under paragraph 4 or 5 above may be taken by a committee, sub-committee or Chief Officer of the Council;
(b) any Chief Officer may be appointed by a committee or sub-committee of the Council, or a relevant joint committee.

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7. Where the duties of a Chief Officer include the discharge of functions of two or more Councils in pursuance of Section 101(5) of the Local Government Act 1972 –

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- (a) the steps taken under paragraph 4 or 5 above may be taken by a joint committee of those Councils or a sub-committee of that committee or a Chief Officer of any of the relevant authorities concerned; and

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- (b) any Chief Officer may be appointed by such a joint committee, a sub-committee of that committee or a committee or sub-committee of any of those Councils.

C Standing Orders relating to other Appointments and Dismissals of Officers

8. Any appointment in pursuance of Section 9 of the 1989 Act (Assistants for Political Groups) shall be made in accordance with the wishes of the political group in question.

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9. Subject to paragraphs 10 and 12, the function of appointment and dismissal of, and taking disciplinary action against, an employee of the Council must be discharged, on behalf of the Council, by the officer designated under Section 4(1) of the 1989 Act (Designation and Reports of Head of Paid Service) as the Head of the Council's Paid Service or by an officer

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nominated by the Head of the Council's Paid Service.

~~10.~~ Paragraph ~~9~~ does not apply to the appointment or dismissal of, or disciplinary action against –

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- (a) the Officer designated as the Head of the Council's Paid Service;
- (b) a statutory Chief Officer within the meaning of Section 2(6) of the 1989 Act (Politically Restricted Posts);
- (c) a non-statutory Chief Officer within the meaning of Section 2(7) of the 1989 Act;
- (d) a deputy Chief Officer within the meaning of Section 2(8) of the 1989 Act;
- (e) a person appointed in pursuance of Section 9 of the 1989 Act (Assistants for Political Groups); or
- (f) a person to whom regulations made under Section 35(4) and (5) (provision with respect to the appointment, discipline, suspension and dismissal of teachers and other staff of schools employed by the local education authority) of the Education Act 2002 apply.

~~(g) the Council's Monitoring Officer.~~

~~(h) the Council's Head of Democratic Services.~~

~~11.~~ (1) Where a committee, sub-committee or officer is discharging, on behalf of the Council, the function of the appointment or dismissal of an officer designated as the Head of the Council's Paid Service, the Council must approve that appointment before an offer of appointment is made or, as the case may be, must approve that dismissal before notice of dismissal is given.

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(2) Where a committee or a sub-committee of the Council is discharging, on behalf of the Council, the function of the appointment or dismissal of any officer referred to in sub-paragraph (a), (b), (c) ~~(d), (g) or (h)~~ of paragraph ~~10~~ –

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- (a) at least one member of the Cabinet must be a member of that committee or sub-committee; and
- (b) not more than half of the members of that committee or sub-committee are to be members of the Cabinet of the Council.

~~12.~~ Nothing in paragraph ~~9~~ prevents a person from serving as a member of any committee or sub-committee established by the Council to consider an appeal by –

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- (a) another person against any decision relating to the appointment of that other person as a member of staff of the Council; or
- (b) a member of staff of the Council against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.

13 The power to approve the appointment or dismissal of the Head of the Council's Paid Service must be exercised by the Council itself and accordingly Section 101 of the Local Government Act 1972 (Arrangements for Discharge of Functions by Local Authorities) does not apply to the exercise of that power.

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14 No disciplinary action (other than action to which paragraph 15 applies) in respect of the Head of the Council's Paid Service, its Monitoring Officer, its Chief Finance Officer, its Head of Democratic Services or any officer referred to in paragraph 16 below may be taken by the Council, or by a committee, a sub-committee, a joint committee on which the Council is represented or any other person acting on behalf of the Council, other than in accordance with a recommendation in a report made by a designated independent person under Regulation 9 of the Local Authorities (Standing Orders) (Wales) Regulations 2006 (Investigation of Alleged Misconduct).

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15 The action to which this paragraph applies is suspension of the officer for the purpose of investigating the alleged misconduct occasioning the action; provided such suspension is on full pay and terminates no later than the expiry of two months beginning on the day on which the suspension takes effect.

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16. An officer in relation to whom disciplinary action is proposed where –

- (a) the officer was, but at the time of the proposed disciplinary action no longer is, an officer referred to in paragraph 14 above; and
- (b) the alleged misconduct or, as the case may be, the reason for the proposal for dismissal, occurred during a period when the officer was an officer referred to in paragraph 14.

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17 Investigation of Alleged Misconduct

(1) If it appears to the Council that an allegation of misconduct which may lead to disciplinary action has been made against –

- (a) the Head of the Council's Paid Service;
- (b) its Monitoring Officer; or
- (c) its Chief Finance Officer,

(d) its Head of Democratic Services

(e) an officer who was, but at the time the Investigation Committee

is appointed no longer is, an officer referred to in sub-paragraphs (a) to (d) above where the alleged misconduct occurred during the period when the officer was an officer referred to in those sub-paragraphs.

("the relevant officer"), as the case may be, the Council must appoint a committee ("an investigation committee") to consider the alleged misconduct.

- (2) The investigation committee must:
- (a) consist of a minimum of 3 members of the Council;
 - (b) be politically balanced in accordance with Section 15 of the 1989 Act; and

must, within 1 month of its appointment, consider the allegation of misconduct and decide whether it should be further investigated.

- (3) For the purpose of considering the allegation of misconduct, the investigation committee:
- (a) may make such enquiries of the relevant officer or any other person it considers appropriate;
 - (b) may request the relevant officer or any other person it considers appropriate to provide it with such information, explanation or documents as it considers necessary within a specified time limit; and
 - (c) may receive written or oral representations from the relevant officer or any other person it considers appropriate.

- (4) Where it appears to the investigation committee that an allegation of misconduct by the relevant officer should be further investigated, it must appoint a person ("the designated independent person") for the purposes of paragraph 14.

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- (5) The designated independent person who is appointed –
- (a) must be such person as may be agreed between the Council and the relevant officer within 1 month of the date on which the requirement to appoint the designated independent person arose; or
 - (b) where there is no such agreement, must be such person as is nominated for the purpose by the National Assembly for Wales.

- (6) The designated independent person –

- (a) may direct –
 - (i) that the Council terminate any suspension of the relevant officer;
 - (ii) that any such suspension is to continue after the expiry of the period referred to in paragraph 15;
 - (iii) that the terms on which any such suspension has taken place are to be varied in accordance with the direction; or
 - (iv) that no steps (whether by the Council or any committee, sub-committee or officer acting on behalf of the Council) by way of disciplinary action or further disciplinary action against the relevant officer, other than steps taken in the presence, or with the agreement, of the designated independent person, are to be taken before a report is made under sub-paragraph (d);
- (b) may inspect any documents relating to the conduct of the relevant officer which are in the possession of the Council, or which the Council has power to authorise the designated independent person to inspect;
- (c) may require any member or member of staff of the Council to answer questions concerning the conduct of the relevant officer;
- (d) must make a report to the Council –
 - (i) stating an opinion as to whether (and, if so, the extent to which) the evidence obtained supports any allegation of misconduct against the relevant officer; and
 - (ii) recommending any disciplinary action which appears appropriate for the Council to take against the relevant officer, and
- (e) must no later than the time at which the report is made under sub-paragraph (d), send a copy of the report to the relevant officer.

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- (7) Subject to 17(8) below, the relevant officer and Council must, after consulting the designated independent person, attempt to agree a timetable within which the designated independent person is to undertake the investigation.

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- (8) Where there is no agreement under paragraph 17(7), the designated independent person must set a timetable as that person considers appropriate within which the investigation is to be undertaken.

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(9) The Council must consider the report prepared under paragraph 17(6) (d) above within 1 month of receipt of that report.

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(10) The Council must pay reasonable remuneration to a designated independent person appointed by the investigation committee and any costs incurred by, or in connection with, the discharge of functions under this regulation.

Deleted: (11) This regulation does not apply in relation to the Head of the Council's Paid Service if that person is also the Council manager.

D. Standing Orders relating to Recruitment and Appointment of all Officers

18. (a) Declarations

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1. Recruitment and Appointment¶

i) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor, or officer of the Council; or of the partner of such persons.

ii) No candidate so related to a Councillor or an officer will be appointed without the Authority of the relevant Chief Officer or an officer nominated by him/her.

(b) Seeking support for appointment.

i) Subject to paragraph (iii), the Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.

ii) Subject to paragraph (iii), no Councillor will seek support for any person for any appointment with the Council.

iii) Nothing in paragraphs (i) and (ii) above will preclude a Councillor from giving a written reference for a candidate for submission with an application for appointment.

E. Standing Orders relating to the Remuneration of Chief Officers

19. Any decision to determine or vary the remuneration of Chief Officers (or those to be appointed Chief Officers) must be made by full Council and can not be delegated to a committee of the Council or to an officer.

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **CONSTITUTION COMMITTEE**

DATE: **WEDNESDAY, 9 JULY 2014**

REPORT BY: **MEMBER ENGAGEMENT MANAGER**

SUBJECT: **FINAL REPORT FROM THE AUDITOR GENERAL
FOR WALES IMPROVEMENT STUDY: SCRUTINY IN
LOCAL GOVERNMENT**

1.00 PURPOSE OF REPORT

- 1.01** To apprise the Committee of the final report produced by the Auditor General for Wales arising out of the "Good Scrutiny? Good Question!" Improvement study of local government scrutiny in Wales.

2.00 BACKGROUND

- 2.01** This issue was originally reported to the Committee at its meeting on the 24th of October 2012. As part of a national programme of Wales Audit Office improvement activity, our Overview & Scrutiny function took part in a self evaluation and a peer review process, working with Denbighshire and Wrexham Councils. The Flintshire Peer Learning Evaluation Team (PLET) undertook a peer review of Denbighshire County Council Overview & Scrutiny, whilst the Wrexham PLET visited Flintshire to undertake a similar review.

- 2.02** As advised by the Wales Audit Office, that the PLET should comprise both Cabinet and Overview & Scrutiny Members and Officers, the Flintshire team was:-

Councillor Billy Mullin, Cabinet Member for Corporate Management
Councillor Richard Jones and Councillor Clive Carver (respectively the Chair and Vice Chair of the Corporate Resources Overview & Scrutiny Committee at the inception of the project)
Councillor Dave Mackie
Robert Robins, Member Engagement Manager and
Margaret Parry-Jones, Overview & Scrutiny Facilitator (Team co-ordinator)

During the later stages of the project, Ceri Owen, Overview & Scrutiny Facilitator also became a member of the PLET.

The PLET members took part in a number of activities:-

- The completion of an extensive self assessment tool;
- A Workshop in Llandudno with representatives of the other 5 North Wales Authorities and the Wales Audit Office;

- The Flintshire PLET attended two Denbighshire Overview & Scrutiny Committees where they observed and provided feedback;
- Two Flintshire meetings (Environment and Lifelong Learning) were attended by the Wrexham PLET where the members observed and provided feedback;
- 4 members of the team attended the Regional Workshop held in Colwyn Bay on the 19th of April 2013 which gave the teams across North Wales an opportunity to feedback their findings and views, and share experiences, practice ideas and lessons learned with a view to further improving Scrutiny arrangements.

2.03 The culmination of the review was to have been the Conference in Cardiff on the 28th of November 2013 *Scrutiny in the spotlight; investing to maximise its impact*. At that Conference, Flintshire was represented by the Leader, Councillor Aaron Shotton and Councillor Dave Mackie together with Robert Robins, Margaret Parry-Jones and Ceri Owen from the Overview & Scrutiny team and Vicki Robarts the Performance Team Leader.

2.04 The intention had been that the final report would have been published to coincide with that Conference. However due to delays at the WAO, the final report was not published until the 29th of May 2014, six months afterwards. A copy of that report is available in Members Services. Copies of the WAO final report have been placed into each of the group rooms and personal copies can be provided to Members on request.

3.00 CONSIDERATIONS

3.01 The WAO report makes nine recommendations, as follows.

<p>Recommendation 1:</p> <p>Clarify the role of executive members and senior officers in contributing to scrutiny</p>	<p>FCC response:</p> <p>When we completed the self-evaluation, we were able to evidence that this does not require clarification. We have a protocol which covers attendance at O&S meetings and both Cabinet Members and the appropriate officers attend meeting as contributors whenever invited so to do.</p>
<p>Recommendation 2:</p> <p>Ensure that scrutiny members and specifically scrutiny chair, receive training and support to fully equip them with the skills to undertake effective scrutiny.</p>	<p>FCC response:</p> <p>We have provided regular O&S training sessions for Members, which includes Chairing skills as well as topic workshops to ensure that our Members are familiar with the details of issues under scrutiny. We also</p>

	support each Chair- they are advised at formal committee meetings by either one of the Overview & Scrutiny Facilitators or the Member Engagement Manager.
<p>Recommendation 3:</p> <p>Further develop scrutiny forward programming to:</p> <ul style="list-style-type: none"> • provide a clear rationale for topic selection; • be more outcome focussed; • ensure that the method of scrutiny is best suited to the topic area and the outcome desired: and • align scrutiny programmes with the council's performance management, self-evaluation and improvement arrangements 	<p>FCC response:</p> <p>Our forward work planning already reflects the first three bullet points. We have recently changed how we report performance and improvement arrangements and this new approach is being monitored.</p>
<p>Recommendation 4:</p> <p>Ensure that scrutiny draws effectively on the work of audit, inspection and regulation and that its activities are complementary with the work of external review bodies</p>	<p>FCC response:</p> <p>We already use audit, inspection and regulation work as part of our approach. We have also initiated regular meetings between O&S chairs and Audit committee members.</p>
<p>Recommendation 5:</p> <p>Ensure that external review bodies take account of scrutiny work programmes and the outputs of scrutiny activity, where appropriate, in planning and delivering their work</p>	<p>FCC response:</p> <p>FCC O&S work programmes are published on our website and external regulators are welcome to discuss these with us.</p>
<p>Recommendation 6:</p> <p>Ensure that the impact of scrutiny is properly evaluated and acted upon to improve the function's effectiveness; including following up on proposed actions and</p>	<p>FCC response:</p> <p>Whilst formal evaluation of the impact of scrutiny has not been carried out (and the measurement thereof would be subjective), recommendations which have been made out of O&S</p>

examining outcomes	reviews are revisited periodically and where necessary re-examined. This is an area for development through the steering group of O&S Chairs and Vice-chairs.
Recommendation 7: Undertake regular self-evaluation of scrutiny utilising the 'outcomes and characteristics of effective local government overview and scrutiny' developed by the Wales Scrutiny Officers' Network	FCC response: The Constitution Committee has already agreed to overview & scrutiny self-evaluation, following an interim report on the study (16/10/13). At that time, the outcomes and characteristics had not been finalised. We will work with the O&S Chairs and vice chair steering group to develop the most effective O&S self-evaluation approach for Flintshire.
Recommendation 8: Implement scrutiny improvement action plans developed from the Wales Audit Office improvement study.	FCC response: An action plan has already been developed and now that the WAO have published their final report, a meeting of the steering group can be convened.
Recommendation 9: Adopt Participation Cymru's 10 Principles for Public Engagement in improving the way scrutiny engages with the public and stakeholders.	FCC response: The Principles for Public Engagement will inform the emerging FCC O&S Public Engagement Strategy which will be discussed with the steering group.

- 3.02** The WAO final report did not contain any surprises for Flintshire, as evinced from the responses which have been made to the recommendations set out in 3.01, above.
- 3.03** The most significant aspect of the WAO's approach has been through the shared learning journey, which has offered the opportunity to study at first hand how one of our peers (Denbighshire) carry out Overview & Scrutiny. Similarly, we have benefited from our colleagues from Wrexham observing at two of our meetings and then providing feedback.
- 3.04** It has also been beneficial to compare our approach to O&S with that of the other 21 Welsh councils: Flintshire has always had a commitment to Overview & Scrutiny which has been characterised by a willingness to put resources into its development. That, however, does not mean that we are

complacent and have always been keen to learn from our colleagues both in Wales and across the United Kingdom, through the work of the Centre for Public Scrutiny.

4.00 RECOMMENDATIONS

(1) That the committee consider and comment on the WAO recommendations and the Flintshire responses to them (3.01, above);

(2) That the recommendations and responses be approved and commended to the Steering Group for implementation.

5.00 FINANCIAL IMPLICATIONS

5.01 None arising directly from this report

6.00 ANTI POVERTY IMPACT

6.01 None arising directly from this report

7.00 ENVIRONMENTAL IMPACT

7.01 None arising directly from this report

8.00 EQUALITIES IMPACT

8.01 None arising directly from this report

9.00 PERSONNEL IMPLICATIONS

9.01 None arising directly from this report

10.00 CONSULTATION REQUIRED

10.01 Publication of this report constitutes consultation

11.00 CONSULTATION UNDERTAKEN

11.01 Publication of this report constitutes consultation

12.00 APPENDICES

LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985 BACKGROUND DOCUMENTS

Wales Audit Office Report

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