

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **FLINTSHIRE COUNTY COUNCIL**

DATE: **TUESDAY, 14 APRIL 2015**

REPORT BY: **CHIEF OFFICER (GOVERNANCE)**

SUBJECT: **OFFICERS' CODE OF CONDUCT**

1.00 **PURPOSE OF REPORT**

1.01 To consider a recommendation from the Constitution Committee to adopt a revised Officers' Code of Conduct.

2.00 **BACKGROUND**

2.01 At its meeting on the 24th July 2012 the Constitution Committee considered a report recommending a programmed review of the Constitution over a three year period and resolved to endorse that programmed review. The third year of that programme includes reviewing the Officers' Code of Conduct.

2.02 In reviewing the existing Officers' Code there has been consultation with the Human Resources team and with Trade Union representatives, including a report to the Flintshire Joint Trade Union Committee meeting of the 29th May 2014. The draft revised Code was also considered at a meeting of the Standards Committee on the 7th July 2014. It was then considered at a meeting of the Constitution Committee on the 9th July 2014 and given further consideration at the Committee's meeting of the 28th January 2015. A copy of the revised Code as approved by the Constitution Committee 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, which Human Resources team identified the last of these as currently being an issue with the existing Code.

3.02 Parts of the Officers' Code, as statutory provisions, are automatically incorporated into individual contracts of employment and these are shown in bold in Appendix 1. With the exception of Paragraph 3 the statutory provisions remain unchanged. Paragraph 3 has been updated to reflect the change in legislation whereby salary is no longer a category of political restricted posts.

3.03 The statutory parts of the Officers' Code include the following provisions:-

- A prohibition on the use of Council property for personal use unless authorised to do so
- Preventing the misuse of a Officers' position to further private interests
- Prohibiting the acceptance of any benefits from third parties unless authorised to do so
- A requirement to declare personal interests

There are also statutory provisions that apply to Council Officers in addition to provisions in the Officers' Code. Section 117 of the Local Government Act 1972 requires the disclosure of Contracts in which an Officer has a pecuniary interest. It also forbids an Officer accepting any fee or reward other than their remuneration. Breach of either provision is a criminal offence.

3.04 The main changes to the Officers' Code relate to personal interests, gifts and hospitality and employees outside work (Section 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.

3.05 The draft revised Code also 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. The proposed changes to the Officers' Code have been welcomed by the Trade Unions.

3.06 At its meeting on the 9th July the committee decided that it wished to retain the two paragraphs in the current Code concerning a requirement on employees to disclose membership of Freemasonry (paragraphs 8.8 and 8.9 in Appendix 1). Enquiries were then made of other Welsh authorities to ascertain their practice. The response was mixed with some having similar provisions but others having received advice that such provisions were contrary to the Human Rights legislation and unlawful.

3.07 In order to clarify the legal position, advice was sought from Counsel on both maintaining the current provisions in the officers' code and on introducing a voluntary register. In his advice Counsel pointed to a decision of the European Court of Human Rights which held that an obligation to declare membership of the Freemasons was unlawful and an interference with the right of freedom of association under Article 11 of the European Convention on Human Rights. That

decision is binding on UK Courts. His opinion concluded that a compulsory register of membership of such organisations would be unlawful. He was also of the opinion that asking officers to make voluntary registrations would be susceptible to challenge as being in effect a disguised requirement, although the risk of challenge to a voluntary register was much smaller.

- 3.08 The Monitoring and Deputy Monitoring Officers support the wishes of the Committee but consider that in the light of decided cases and Counsel's advice it would be unlawful to implement the committee's previous decision to retain clauses 8.11 and 8.12 of the Officers' Code, and due to their unlawful nature the requirements themselves would be unenforceable.

It is however important that the Council's Senior Officers (Chief Officers, those Managers reporting directly to them and officers with delegated powers) voluntarily disclose their membership not just of closed societies but of any societies and clubs in the interests of transparency in relation to the advice given to Members or decisions taken under delegated powers. The Chief Executive is very clear that he expects this and actively encourages such transparency in his role as Head of Paid Service.

- 3.09 Consultation was undertaken with politically restricted post holders to obtain their views on the Council introducing a voluntary register to disclose membership of organisations. The reasons for considering such a voluntary register being threefold. Firstly, that the Chief Executive and Councillors should expect from its senior officers the highest level of conduct in being open and transparent. Secondly, to protect senior officers from suspicion that decisions they make or advice they give Members are influenced by membership of any club, society or organisation. Thirdly, a mandatory register limited to freemasonry would be both narrower than the voluntary register and unenforceable. The consultation revealed no concern about introducing such a voluntary register.

- 3.10 The following further suggestions were made to the Constitution Committee at its January meeting to reduce the risk of legal challenge:-

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

- 3.11 Following debate the Constitution Committee decided that the existing clauses relating to Freemasonry should be retained in the revised Code and these appear as 8.8 and 8.9 in Appendix 1. The Monitoring and Deputy Monitoring Officers remain of the view that to adopt as

mandatory a provision that can not lawfully be enforced would undermine the aims which members are seeking to achieve.

3.12 Instead of paragraphs 8.11 and 8.12 officers would recommend that Council adopts the following:-

“Chief Officers, those Managers reporting directly to them and employees with delegated powers will be asked to voluntarily register their membership of all clubs, societies and organisations”.

3.13 The Chief Executive has already asked Chief Officers to make such a declaration using the form at Appendix 2. All Chief Officers have completed the form and have confirmed that they have made full disclosure.

3.14 Councillors are required to register such interests and might reasonably expect senior officers to do the same. Unfortunately there is a small but significant difference in the legislation on the Officers' Code of Conduct that prevents mandatory registration. Officers therefore recommend that WG be asked to amend the legislation to impose a similar obligation on senior officers.

4.00 RECOMMENDATIONS

4.01 That Council notes that the Chief Executive Office, as Head of Paid Service, expects and encourages all senior officers to make full disclosure in line with the intention of the Committee as one of his expectations of them in the interests of the highest standards of conduct in office

4.02 That Council endorses the revised Officers' Code of Conduct in Appendix 1 with the exception of the mandatory register contained within Clauses 8.11 and 8.12, which would not be enforceable.

4.03 That a voluntary register be introduced for Chief Officers, those Managers reporting to them and Officers having delegated powers to register their membership of all Clubs, societies and organisations as set out in paragraph 3.12 above.

4.04 That the WG be asked to amend the mandatory provisions of the Officers' Code to require senior officers to register (as well as declare) their interests.

5.00 FINANCIAL IMPLICATIONS

5.01 None as a result of this report.

6.00 ANTI POVERTY IMPACT

6.01 None as a result of this report.

7.00 ENVIRONMENTAL IMPACT

7.01 None as a result of this report.

8.00 EQUALITIES IMPACT

8.01 Equalities have been considered in reviewing the code.

9.00 PERSONNEL IMPLICATIONS

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

10.00 CONSULTATION REQUIRED

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

11.00 CONSULTATION UNDERTAKEN

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

12.00 APPENDICES

12.01 Appendix 1 – Officers' Code of Conduct.
Appendix 2 – Voluntary registration form

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

None

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