

**REPORT TO:** Business Efficiency Board

**DATE:** 3<sup>rd</sup> June 2009

**REPORTING OFFICER:** Strategic Director Corporate and Policy

**SUBJECT:** Declarations of Interest by Officers

**WARDS:** all

## **1.0 PURPOSE OF THE REPORT**

- 1.1 To provide the Board with information about the declaration of interest arrangements that apply to **all officers in order to maintain the values of good governance and ethical behaviour.**

## **2.0 RECOMMENDATION: That the Board notes the Report.**

## **3.0 SUPPORTING INFORMATION**

- 3.1 Members are very familiar with the arrangements for declaring their own interests at both formal and informal meetings and the law surrounding those duties. The same underlying reasons that form the basis for the legal duties on Members also apply to officers but the rules are different.
- 3.2 While the law makes it clear that Members must declare any personal and/or prejudicial interests at meetings there is no such detailed statutory requirement on officers or consultants. That said contractual arrangements with consultants and the duty of officers under the Local Government Act 1972 provide related but not identical duties.
- 3.3 The specific duty under section 117 of the 1972 Act is: if it comes to the knowledge of an officer employed by a local authority that a contract in which he has any financial interest, whether direct or indirect, has been, or is proposed to be, entered into by the authority he must as soon as practicable give notice in writing to the authority of the fact. The maximum fine on conviction is £2500.
- 3.4 Officers must not, under colour of office or employment, accept any fee or reward at all other than proper remuneration. The maximum fine on conviction is £2500.
- 3.5 There are detailed provisions about officers (employees) and their personal interests in the Officer Code of Conduct which forms part of the Constitution. These are set out in the Appendix to this Report.
- 3.6 The need to secure public confidence in local government is emphasised in the Code as is the personal responsibilities of officers. These are further reinforced in the Conditions of Service where corruption is listed as an example of gross misconduct.

- 3.7 The only exceptions to the general rule about officers not accepting gifts or hospitality relate to small gifts of nominal value: given by way of trade advertisements to a wide range of people, e.g. inexpensive calendars, diaries, tape measures and similar articles for use at work and on the conclusion of a courtesy visit, for example to a factory or other premises. Any hospitality given or received by officers must be justified as in the public interest. The hospitality given should be on a scale appropriate to the occasion.
- 3.8 Offers of hospitality must be refused where a suggestion of improper influence is possible. Special care must be taken where hospitality is offered by a person having or seeking business with, or a decision from, the Council. Each officer who is offered a gift or hospitality shall, before any action is taken, discuss the offer with his/her line manager, except in the case of gifts or hospitality of a nominal value. In the case of the Chief Executive, before any action is taken, he will discuss the offer with the Strategic Director – Corporate and Policy and in his absence with the Monitoring Officer.
- 3.9 Each Chief Officer is required to maintain a gift and hospitality register. This register records what gift/hospitality was offered and to whom; by whom it was offered; when and with whom the offer was discussed; the decision whether or not to accept the gift/hospitality.
- 3.10 In the event that it is decided it would be inappropriate to accept the gift/hospitality, the officer to whom it was offered will inform the offeror accordingly, explaining the reasons for refusal.
- 3.11 It is standard practice and a requirement of Procurement Standing orders that a clause is included in Council contracts with a value over £1M to allow the Council to cancel the contract and recover from the contractor the amount of any loss resulting from cancellation if the contractor or its employees has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward in relation to the contract or any other contract with the Council or has offered a fee or reward in breach of the LGA 1972.
- 3.12 Quite apart from this contractual provision the Prevention of Corruption Acts 1889-1916 make it a criminal offence to give money, or a gift or consideration to any officer by a person trying to obtain a public contract and this is deemed to have been given corruptly unless the recipient proves to the contrary. It is also an offence to receive it or request it.
- 3.13 In relation to particular major contracts where the issue is sensed as one of potential concern a clause is included in the contract to prevent the Contractor from employing any Council officer who has been involved in preparing, commissioning or administering within two years of the date of this contract, except with the prior written consent of the Authority,.

- 3.14 Officers are employees of the Council. Members are not employees. All employees owe an implied duty of trust and confidence to their employer. These duties are supplemented by obligations imposed on some Council employees who are members of professional bodies. The codes and rules of professional bodies (eg Law Society, CIPFA, RICS and others) create duties to the professional body and in extreme cases breach of those rules may result in the individual losing the right to practise as a solicitor, accountant, surveyor, and architect. This in turn might well create a capability dismissal as the individual might be unable to continue to function in their employment with the council. This will not apply in every case as some officers may not need a professional qualification they happen to hold to carry out their employed duties.
- 3.15 There are detailed duties for officers under the Financial Standing Orders in relation to officers involved in Procurement activities as part of their employed duties. These include duties to declare any links or personal interests that they have with purchasers, suppliers and contractors if they are engaged in contractual or purchasing decisions on behalf of the Council. Orders must not be placed with firms providing promotional offers which constitute inducements to staff unless such offers are converted into discounts for the benefits of the Council.
- 3.16 In the officer code of conduct at part 5(c) all relationships with contractors or potential contractors must be made known to the appropriate Manager. Employees who engage or supervise contractors or have an official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity, must declare that relationship to the appropriate manager.
- 3.17 Volunteers and contractors/consultants/agency workers are not subject to the same detailed controls as apply to employees. In the case of contractors providing major frontline services on behalf of the Council the requirements in relation to integrity and not accepting fees or rewards are often introduced as duties in the contract.
- 3.18 These arrangements are consistent with the Statutory Principles of Public Life:

**Selflessness** – members should serve only the public interest and should never

improperly confer an advantage or disadvantage on any person.

**Honesty and integrity** – members should not place themselves in situations where

their honesty and integrity may be questioned, should not behave improperly, and

should on all occasions avoid the appearance of such behaviour.

**Objectivity** – members should make decisions on merit, including when making

appointments, awarding contracts, or recommending individuals for rewards or

benefits.

**Accountability** – members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with any scrutiny appropriate to their particular office.

**Openness** – members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

**Personal judgment** – members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

**Respect for others** – members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority’s statutory officers and its other employees.

**Duty to uphold the law** – members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

**Stewardship** – members should do whatever they are able to do to ensure that their authorities use their resources prudently, and in accordance with the law.

**Leadership** – members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

3.19 The officer registers of Hospitality and Gifts are held in each of the Council’s strategic directorates. The officers responsible for their maintenance are set out in the table below. However that they are completed is a duty of the individual officer. It should be noted that offers of hospitality are also required to be entered in the register.

Department	Maintaining Officer
Corporate and Policy	Committee Services Manager
Environment	Dave Tollitt, Central Administration Manager
Health and Community	Jayne Cumpfer, Finance & Support Services Manager
Children and Young People	Margaret Musson, Senior Planning & Communications Manager.

#### 4.0 POLICY IMPLICATIONS

There are none

#### 5.0 RISK ANALYSIS

Failure to comply with the principles outlined in this report could result in officers being in breach of the Code and/ or their contracts of employment and may amount to a criminal offence.

## **6.0 OTHER IMPLICATIONS**

None

## **7.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

None

## **8.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

**Place of Inspection  
Website**

**Contact Officer  
Robert Barnett**

### **APP ENDIX**

#### **Relevant extracts From the Officer Code of Conduct (part of the Constitution)**

1. (b) The public is entitled to expect the highest standards of conduct from all employees who work for local government and to expect that their conduct should never be influenced by improper motives.
2. 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 other employees and Members with impartiality.
- 3 (c) Employees must not use any information obtained in the course of their employment for personal gain or benefit, or pass it onto others who might use it in such a way.
- 5 (c) All relationships with contractors or potential contractors must be made known to the appropriate Manager. Orders and contracts must be awarded in line with the Council's financial regulations. Employees who engage or supervise contractors or have an official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity, must declare that relationship to the appropriate manager.
6. Outside Commitments
  - (a) An employee's off-duty hours are their personal concern but they must not place themselves in a position where their employment and private interests conflict. The Council would not wish to preclude employees unreasonably from undertaking additional work unless that work conflicts with or detrimentally affects the Council's interests or in any way weakens public confidence in the conduct of the Council's

business, or in any way affects the ability to fulfil the Contract of Employment.

- (b) However, officers above scale 6 are expected to devote the whole of their paid employment work to the Council and must not engage in any other business or take up any other additional appointment for financial gain without the agreement in advance of their Chief Officer.
- (c) If agreement is given employees must be made aware that no outside work of any sort should be undertaken in the workplace and use of facilities, e.g. telephones, photocopying is forbidden. Breach of this provision may result in a disciplinary offence.

## 9. Separation of Role During Tendering

- (a) Employees should be clear on the separation of client and contractor roles within the Council. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.
- (b) Employees in contractor or provider units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.
- (c) 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.
- (d) 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.

## 12. Gifts and Hospitality

- (a) The Local Government Act 1972 forbids acceptance by any local government officer of any fee or reward other than proper remuneration and contravention of this provision is a criminal offence.
- (b) Officers should be aware of the Prevention of Corruption Act 1916 which states that the giving of any money, gift or consideration to any officer by a person trying to obtain a public contract is deemed to have been given corruptly unless the recipient proves to the contrary.
- (c) The offers of gifts to officers from persons who have or may seek to have dealings with the authority should be viewed with extreme caution. Officers should consider how the acceptance of such a gift would be viewed by a member of the public. Officers are personally liable for all decisions connected with the acceptance of gifts or

hospitality and for avoiding the risk of damage to public confidence in local government.

- (d) The only exceptions to this rule are small gifts of nominal value:-
- given by way of trade advertisements to a wide range of people, e.g. inexpensive calendars, diaries, tape measures and similar articles for use at work.
  - on the conclusion of a courtesy visit, for example to a factory or other premises.
- (e) Any hospitality given or received by officers should be justified as in the public interest. The hospitality given should be on a scale appropriate to the occasion.
- (f) Offers of hospitality must be refused where a suggestion of improper influence is possible. Special care must be taken where hospitality is offered by a person having or seeking business with, or a decision from, the Council.
- (g) Each officer who is offered a gift or hospitality shall, before any action is taken, discuss the offer with his/her line manager, except in the case of gifts or hospitality of a nominal value.
- (h) In the case of the Chief Executive, before any action is taken, he will discuss the offer with the Strategic Director – Corporate and Policy and in his absence with the Monitoring Officer.
- (i) Each Chief Officer shall maintain a gift and hospitality register. This register shall record:-
- what gift/hospitality was offered and to whom;
  - by whom it was offered;
  - when and with whom the offer was discussed;
  - the decision whether or not to accept the gift/hospitality.
- (j) In the event that it is decided it would be inappropriate to accept the gift/hospitality, the officer to whom it was offered will inform the offeror accordingly, explaining the reasons for refusal.

13. Use of services, etc. of firms dealing with the Council

- (a) If any officer has good reason to believe that any offer of preferential terms is designed to promote a firm's interest in its dealings with the Council, then the offer should be refused and the matter treated as if a gift had been offered. The above Standing Orders would then apply.
- (b) Caution should be exercised by officers using services offered by firms which they know have dealings with the Council. Officers must ensure

that goods or services bought from such firms are at a price readily available to the public.

14. Sponsorship - Giving and Receiving

- (a) Where an outside organisation wishes to sponsor or is sought to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
- (b) 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 Council 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.

**Extract from The Council's Anti-Fraud and Anti-Corruption Strategy:-**

- 3.1 The Council is determined that the culture of the organisation is one which promotes honesty and opposition to fraud and corruption, and does not permit fraud or corruption to be tolerated or perpetuated.
- 3.2 The Council expects Members and employees to lead by example in ensuring opposition to fraud and corruption by ensuring adherence to all Council regulations, procedures, practices and Codes of Conduct. The Council also expects individuals and organisations with whom it deals in any capacity to act with integrity and without intent to commit fraud or corruption.
- 4.1 (iv) All Members and employees are required to declare any offer or receipt of gifts or hospitality which are in any way related to their employment by or membership of the Council. A register is maintained of all declarations.