

Report of the Director of Resources

Report to the Scrutiny Board (Resources and Council Services)

Date: 24 November 2014

Subject: External publication of employee interests for High Risk posts

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): n/a	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: n/a Appendix number: n/a	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

Corporate Governance and Audit Committee of 19 September 2014 have requested that the Scrutiny Board (Resources and Council Services) seek assurances around the implementation of the Board's recommendations to the Executive Board on officers interests.

Public access and access by Members to the declared interests of officers in high risk posts has been discussed at a number of Scrutiny Boards, and was referred to the Executive Board in 17 July 2013.

The Executive Board agreed proposals and recommendations on how these assurances could be met. This report expresses how these recommendations have been implemented and considers how we can provide a greater level of assurance that employees are declaring relevant interests and that Directors are reviewing and taking appropriate action as the need arises.

Recommendations

It is recommended that the Scrutiny Board note the contents of this report, and in particular that the information about officers' interests is available to members and can be requested

It is recommended that members are reminded of this process and also the additional safeguards which have been put in place for planning officers to declare interests whenever planning decisions are made.

Purpose of this report

- 1.1 This report responds to the Corporate Governance and Audit Committee of 19 September 2014 request that the Scrutiny Board (Resources and Council Services) seek assurances around the Boards recommendations to the Executive on officers interests.
- 1.2 The report also considers the arrangements that the Council could consider putting in place to make certain interests of officers accessible to the public, where officers have relevant interests relating to their decision making or advisory role.
- 1.3 The report also shows how we provide a greater level of assurance that employees are declaring relevant interests and that Directors are reviewing and taking appropriate action as the need arises. Specifically in light of Corporate Governance and Audit discussions, concerns were raised about how processes interface with planning decisions.

2 Background information

- 2.1 A person in public office, or employment, should expect their public actions and work duties to be subject to greater scrutiny than their private lives. However the individual's reasonable expectations as to privacy must be considered, and in considering whether expectations are reasonable, they must be seen within this context.
- 2.2 A decision by the First Tier Tribunal (Information Rights) in relation to Bolton MBC provided a landmark judgement on which information on officers should be made publicly available. Following this a register of business interests declared by senior officers has been compiled and published externally.
- 2.3 These business interests for senior officers (defined as Chief Officer level and above), are now published on open data, which means the information is available to both Members and to members of the public without having to make a request.
- 2.4 In addition to this the Council holds information on a wider range of interests declared by employees deemed to occupy 'high risk posts' in terms of their role in the council and their influence on decisions, on property and contracts for example.
- 2.5 It is for officers and directors to use information judiciously to ensure that interests are recognised and appropriate action taken where there is a view that there is a conflict of interest or perceived conflict of interest.
- 2.6 Requests from Members for access to this information were considered and, subject to legal advice, a series of proposals were put forward to facilitate access to officer interests.

2.7 The Executive Board in 17 July 2013 agreed the following proposals regarding access to officers' declaration of interests:

- The introduction of a process in relation to Members' access, acknowledging they may wish to access employee interests in certain circumstances. The constitution provides a mechanism for gaining information through directors and using this enables access while minimising risks on releasing information.
- The Council will publicise the fact that it holds a register of interests for officers who hold posts deemed as 'high risk'. Access to this for members of the public would be through the normal Freedom of Information legislation.
- In dealing with any such FOI requests in relation to the above, advice will be taken regarding whether personal information can be released. In all cases caution must be applied due to the need to protect the privacy of individuals and the risks of fines to which the council would be exposed.
- Specific agreed processes should be put in place for planners because of their delegated powers, that Planning Officers should declare no interest on planning applications. It was agreed that in addition to the annual declaration of interests that Planning Officers make, the decision notice accompanying a planning application will also append a declaration of no interest. This would be signed by the case officer and the Principal Planning Officer responsible for signing off the Delegated Decision.

3 Main Issues

- 3.1 Accessing records of officers' declarations of interest through the Access to Information Procedure Rules outlined in the constitution, provides a balance between transparency in decision making and respect of individual privacy, and contains sufficient safeguards in releasing the information.
- 3.2 The procedure has now been in place since August 2013, however there have been no requests for access to date.
- 3.3 Since the Executive Board decision, the list of High Risk posts has been reviewed, and each person on the High Risk register was asked to complete a new declaration in autumn of 2013
- 3.4 Directors reported back on response rates, and on any actions taken on each declaration of interest by individual officers.
- 3.5 The review of high risk posts has included extending the number of employees who work in Planning who will be required to declare their interest, to recognise that it is not grade, but role that will dictate whether there is a need to know information on interests which could conflict, or be perceived to conflict with their role.
- 3.6 The Chief Planning Officer has now introduced the procedure of declaring interest in the planning application process. When the proposed procedure at para 2.7 final

bullet point was discussed with staff there were concerns from Trade Unions on the process and on the views of planning officers.

- 3.7 The position which was reached with Unions, Chief Planning Officer and the Deputy Leader was that officers would not make a declaration on every decision but delegated officers at PO4 and above would make an annual declaration of interests and then would declare particular interests on applications as and when they apply and let the Head of Service and Case Planning Officer know and take no active part in them.
- 3.8 On the last exercise for register of interests there were 7 declarations of interests from planning officers in high risk posts, one of which was concerning ownership of property.
- 3.9 Leeds council already have robust governance arrangements in the annual review of information on 'high risk' officer interests, noting receipt of any declarations and taking appropriate action when a declaration is made. Other city councils do not have a review process for conflict of interest and put the onus on the individual to notify any changes or new interests. Examples are as follows:
- Manchester City Council do not review arrangements after an officer declares other than a reminder to officers (including planners) of their duty to declare.
 - Bradford Council do not review the declaration and leave it to the individual to notify any new interests
 - Bristol Council do not review the declarations once made, and have a paragraph in the code of conduct and in the Constitution specifically about planners to remind them that they must not be involved in planning decisions if they have an interest.
 - Birmingham Council do not have an annual review or register, but they do have a Planning Code of Conduct for officers and Members which covers declarations of interests and a committee process for any planning applications received from planners or members.

4 Consultation and Engagement

- 4.1 The procedure for collecting data is explained in the code of conduct and therefore there is no need for consultation. Engagement in the process is managed through Business Support Centre and local HR officers in ensuring the exercise is completed.

5 Equality and Diversity / Cohesion and Integration

- 5.1 There are no significant issues.

6 Council policies and City Priorities

- 6.1 The policy of data collection of officer interest and publication of senior officer interest is outlined in the existing policy as part of the officer code of conduct.

7 Resources and value for money

- 7.1 There are resource issues in relation to the time involved in keeping the register and in ensuring appropriate access to the register by Members, and in relation to ensuring appropriate wider publication of this information. .

8 Legal Implications, Access to Information and Call In

- 8.1 The report highlights the possible legal implications of accessing information and specifically data protection and human rights risks.
- 8.2 The Information Commission does not require councils to publish data including registers, only to publicise what registers it holds and how the information can be made available to the public. This is outlined in the Definition Document for Local Authorities.

9 Risk Management

- 9.1 If there was access to officer interest which was not subject to a need to know process as in Access of Information Procedure rules, or if there was a general publication of all interests declared by all officers in “high risk” posts, there would be a breach of the principles of the Data Protection Act. There would also be breaches of the Human Rights Act. In relation to serious breaches of the data protection principles the Information Commissioner can impose a monetary penalty on the Council up to £500k.

10 Conclusions

- 10.1 It is acknowledged that Members have a legitimate need to know about information on employee interests in certain circumstances. A process is now in place which can enable this while minimising risks on releasing information.
- 10.2 All directors now hold a copy of the register of interests for the relevant officers in their directorate.
- 10.3 Accessing these records through the Access to Information Procedure Rules, provides a balance between transparency in decision making and respect of individual privacy, and contains sufficient safeguards in releasing the information.
- 10.4 The Chief Planning Officer has implemented the Scrutiny Board recommendation that planning officers should declare no interest in specific planning applications.
- 10.5 A further review and collection of data will take place early in 2015

11 Recommendations

- 11.1 It is recommended that the Scrutiny Board note the contents of this report, and in particular that the information about officers’ interests is available to members and can be requested

11.2 It is recommended that members are reminded of this process and also the additional safeguards which have been put in place for planning officers to declare interests whenever planning decisions are made.

12 Background documents¹

None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.