

Draft Scrutiny Inquiry Final report Employees' Declaration of Interest



Introduction and Scope

Introduction

The issue of Officers' register of Interests is not new. In April 2007 the matter was discussed by the Standards Committee where the following comments were made;

- That the Committee is not seeking to intrude into officers' private lives, but That a balance needs to be made between private life and public interest, and that the Council needs to be more accountable;
- That there is a distinction between officers in general and those officers who are taking delegated decisions, and whether those officers taking delegated decisions are entitled to the same protection regarding their interests;
- That some Local Authorities already have a system in place for Directors and Chief Officers to make their registers publicly accessible on a voluntary basis, and that as Leeds City Council is currently undergoing a reorganisation this may be an opportune time for Leeds City Council to implement a similar system;
- That the Committee has concerns that officers at a senior level were not being monitored properly in terms of their interests;

Unrelated, Scrutiny Board (City Development) on 17th May 2011 considered a report on Officer Registration of Interests. Following this discussion Scrutiny Board (City Development) resolved to refer the matter to this Scrutiny Board asking that it review the effectiveness of the current

arrangements and whether they were fit for purpose.

On 5th September 2011 Scrutiny Board (Resources and Council Services) undertook such a review and have agreed a number of recommendations.

Scope of the Inquiry

The purpose of the Scrutiny review was to;

- a) obtain an understanding of the current arrangements for the collection and recording of employees declarations of interest and determine whether these were fit for purpose, and
- b) to consider the merits of having a publicised register of officers' declarations of interests.

Anticipated Service Impact

The Board is of the view that the implementation of its recommendations would encourage openness and transparency in decision making which reflects our values with regards being "open honest and trusted".



Conclusions and Recommendations

The Current Scheme

Data collection

The requirement for employees to declare certain interests is contained in the Employee Code of Conduct.

Section 9 of the employee code of conduct requires all employees with relevant interests to declare them at least once a year. The responsibility for complying with the Code of Conduct lies with each individual member of staff, and failure to comply can, where appropriate, constitute a disciplinary offence.

To assist employees in complying with their duties under the Code of Conduct, all employees are reminded annually of their duty to declare their interests. A general message is released to all staff, this year this was done via the intranet and the Council's Staff News publication.

Declarations are made to the Business Support Centre (BSC), for administrative reasons, and are forwarded on to relevant directors.

The Business Support Centre maintains an electronic database containing all the register of interest data, and copies of the individual declarations which have been made. This information is shared with Directors and/or relevant Chief Officers. The Director (or his/her nominee) is asked to share the information only as far as is necessary to assess and monitor any conflict of interest. This will normally involve advising the line management chain from the employee in question back to the Director.

"High risk" posts

"High risk" staff are those staff in posts which are politically restricted or are graded at JNC Chief Officer grades (or above) or which have been identified by the director as requiring a declaration of interests to avoid any perception or risk of unfairness.

Staff in "high risk" posts are individually contacted to make a declaration each year.

Directors are responsible for identifying which posts in their areas are "high risk". Guidance is provided in making this assessment by Human Resources. This list is reviewed annually prior to sending out declaration forms to those in "high risk" posts.

The Business Support Centre monitors the annual returns from employees in "high risk" posts and provides one reminder for any that are not returned within two weeks. After a further two weeks Directors are informed of any outstanding returns and asked to take appropriate action.

The current return rate for "high risk" posts.

With the assistance of HR, Directors identified 2135 employees in high risk posts in March 2011. All employees in high risk posts were emailed in April 2011 and were instructed to complete declaration of interests forms. These employees are expected to submit their declarations of interests even if they have nothing to declare.

As of August 2011 declarations have been received back from 2094 "high risk" employees. This equates to a 98% response rate and the remaining 2% are being actively chased. (This 2% being on career breaks, long term sick or maternity leave)



Conclusions and Recommendations

Of the 2094 returns, 1571 (75%) employees reported that they had no interests. This information was provided to Directors in case they were aware of any matters which they would have expected to be declared. In such cases the Director (or their nominee) discusses the matter with the employee.

Where an employee has made a declaration the information is passed to their Director to assess whether that interest represented a current or potential conflict of interest.

In terms of the above administrative system for collecting data we acknowledge that there is a requirement for all employees to make a return, we acknowledge the enhanced process for “high risk” posts and we acknowledge that directors and through them, line managers are made aware of such returns. **Given this we consider the process to be ‘fit for purpose.’**

Our concern however is not about administrative processes but the extent to which the information collected on interests should be made publicly available.

Public register

We recognise that the act of collecting and even publishing interests will not in its self safeguard against any wrong doings. (In the same way as a clean driving licence will not prevent future motoring offences). However it is universally agreed that Members need to register their interests to comply with the law, and so the public, staff and other Members know about interests which may inform their approach to particular issues or give rise to a conflict of interest. The Register is a document that can be consulted when (or before) an issue arises. It encourages openness in Local Government and allows others to consider

whether or not Members may have a conflict of interest.

The Register also protects Members. Members are responsible for deciding whether or not they should declare an interest in a meeting, but can be helpful for them to know early on if others think a conflict may arise. It is also important for public confidence that people know about any interests that a member might have and hear these declared by members.

We are of the view that a similar publication scheme should be required of officers. It is our view that officers' Interests are equally important in an increasingly officer led council. As stated by the Standards Committee in 2007, this is not about prying into officers' private lives but about openness and transparency in decision making which reflects our values with regards being “open honest and trusted”.

We are aware that as things stand the arrangements for the declaration of interests by employees are quite distinct from the position in relation to Members' interests. There is a statutory requirement in the Local Government Act 2000 on the Monitoring Officer to establish and maintain a register of Members' financial and other interests. The Act also provides that copies of the register must be available for inspection by members of the public, at all reasonable hours. These requirements are reflected in the Members' Code of Conduct. The Members' right to have their personal information kept confidential under the Data Protection Act is, therefore, overridden by the statutory requirement to publish their interests.



Conclusions and Recommendations

We are aware that there is currently no statutory requirement for employees to declare interests, apart from pecuniary interests in contracts, in respect of which an officer must give notice in writing to the Council. In addition, there is no statutory requirement for public access to declarations by employees. (the current government has confirmed that there is no intention to proceed with such a code)

We were informed by officers that HR had made a trawl of over 60 websites including all the London boroughs, Core Cities and other Authorities in the Yorkshire & Humber region and only three published officer interests.

Having said that we note that other public bodies have publicised schemes for their most senior employees: Wakefield Council, North Yorkshire Police and Transport for London. In each case around six employees are in scope of the schemes. We are aware that one of the three schemes identified was voluntary.

An often cited reason for not publishing officer interests is that; “the details of interests provided by employees in their declarations is their “personal” data under the Data Protection Act 1998. In some instances, information declared under “close relationships” and “other interests” may also be classed as their “sensitive personal data”. Personal data falls within the protection of the Human Rights Act 1998 and it would be unlawful of the council to act in a way which contravened that legislation, i.e. by publishing employee declarations”.

However a recent decision by the Information Commissioner¹ means that there could now be a case for making

¹ Bolton Council

Registers of Senior Officers' Interests for local authorities available to the public through publication.

The complainant requested a copy of senior council officers' declaration of interests. After the Council refused to provide the Senior Officers' declaration of interests stating that it was exempt under section 40(2) of the Freedom of Information Act (personal data), the Commissioner's ruled that some of the information was exempt from disclosure under section 40(2) of the Act; however other sections were not and should be therefore be disclosed - for those officers – because the public interest test for publication overwhelmed the officers' right to privacy. These were around other business and employment interests.

Whilst acknowledging that this decision is currently under appeal, the Board nevertheless recommends that the Executive Board instructs officers to establish, through negotiating appropriate changes to the Employee Code of Conduct, and having due regard to the legal risks of challenge and the outcome of the current appeal, a publicised officer register of interests, with first publication of the register to take place as soon as possible after the ‘Bolton’ appeal has been determined. Those sections to be publicised, *and the posts to be considered*, should be those identified by the Information Commissioner in the Bolton Council ruling, subject to officers being given the opportunity to explain any particular prejudice they might suffer as a result of publication. We would expect the scheme in time to form part of an employees' contract and terms and conditions.



Conclusions and Recommendations

Recommendation 1

That Executive Board instructs officers to establish, through negotiating appropriate changes to the Employee Code of Conduct, and having due regard to the legal risks of challenge and the outcome of the current appeal, a publicised officer register of interests, with first publication of the register to take place as soon as possible after the 'Bolton' appeal has been determined. Those sections to be publicised, *and the posts to be considered*, should be those identified by the Information Commissioner in the Bolton Council ruling, subject to officers being given the opportunity to explain any particular prejudice they might suffer as a result of publication.

Whilst we would acknowledge that in the first instance the Bolton ruling should determine which posts should be publicised in order for the Council not to risk being challenged and fined, it should be noted that it would be our ambition for the Council to widen the scheme to include those in the "high risk" posts (2135 individuals) and other groups of staff where there is a specific justification for publication based on their particular duties.

Recommendation 2

That subject to agreement to recommendation one, the Executive Board works towards a scheme where "high risk" posts and other groups of staff where there is a specific justification for publication based on their particular duties are included.

Reports

Where an employee's declared interests may conflict with matters on which they offer advice to Members then we were told that the principal responsibility lies with the officer to ensure that they do not place themselves in a position where there could be a perception of a conflict of interests. We acknowledge that this may give rise to an officer excusing themselves from further involvement in the matter. Any officers with pecuniary interests in a delegated decision are not permitted to take that decision; and all Delegated Decision Notification forms require the officer completing the form to declare any interests they may have. We are of the view that this should be extended to officer reports being considered by a committee of Council. Report authors, and those in the name they are writing, should be required to declare any relevant interests they have.

We are also of the view that those officers presenting or commenting on a report in a formal meeting should declare any interests in the same fashion that elected Members do.



Conclusions and Recommendations

Recommendation 3

That the Executive Board instructs officers to ensure that reports to Council Committees require report authors and those in whose name the report is written, declare any interests they may have which may be relevant to the reports subject matter.

Those officers presenting or commenting on a report in a formal meeting should also declare any interests in the same fashion that elected Members do.

Recommendation 4

That internal audit obtains assurances that Directors are managing officer interests appropriately and report back to this Scrutiny Board their findings.

As we have stated earlier in this report, we recognise that the act of collecting and even publishing interests will not in its self safeguard against any wrong doings. Far more important is what Directors do with the information they receive as a result of the data collection exercise. To this end we recommend that internal audit through review receive the necessary assurances that Directors are managing risk appropriately and report back to this Scrutiny Board.



Appendix 1

Monitoring arrangements

Standard arrangements for monitoring the outcome of the Board's recommendations will apply.

The decision-makers to whom the recommendations are addressed will be asked to submit a formal response to the recommendations, including an action plan and timetable, normally within two months.

Following this the Scrutiny Board will determine any further detailed monitoring, over and above the standard quarterly monitoring of all scrutiny recommendations.

Reports and Publications Submitted

- Report of Head of HR 5th September 2011
- Report of Head of HR 17th May 2011

Witnesses Heard

Cllr John Procter

Dave Almond, Head of Human Resources

Neil Hunter, Head of Audit

Mark Turnbull, Head of Property, Finance and Technology

Dates of Scrutiny

5th September 2011

**Scrutiny Board (Resources and Council
Employees' Declaration of
3rd October**

Report author: Peter M

www.scrutiny.unit@lee