



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

GOVERNANCE ETHICS AND STANDARDS COMMITTEE

7 March 2024

**Report of the Director of Legal & Democratic Services and Monitoring
Officer**

Officers' Declaration of Interests Policy

1. Purpose

1.1 The purpose of the report is to: -

- (i) To provide an update in relation to the Officers' Declaration of Interests work which has been undertaken.
- (ii) For Governance Ethics and Standards Committee to recommend that the Appointments and Conditions of Service Committee approve the Officers' Declaration of Interests Policy for inclusion in the Employee Code of Conduct.

2. Information and Analysis

2.1 A report was prepared by Audit Services in October 2020 which considered the requirement for Officers to disclose interests which could potentially impact on their primary role with the Council or could be perceived to do so. The report followed an investigation regarding director checks and compliance with the then Council's Code of Conduct for Employees. An updated code of conduct for Derbyshire County Council employees came into force in July 2023 and references an Officers' Declaration of Interests Policy which requires completion and insertion into the Code of Conduct to complete the document.

- 2.2 In accordance with the Code of Conduct, employees are required to declare in writing to their Director/Strategic Director any: -
- Financial or non-financial interests which could conflict with the Council's interests.
 - Interest in an existing or proposed contract with the Council.
 - Membership of any organisation that could conflict with the Council's interests.
- 2.3 The Audit report found that the approach across the Council to declaring and recording officer interests was inconsistent. It was identified that a number of officers had not recorded interests as required and further, some were not aware of the requirement to do so. Additionally, it was found that departments did not have practices in place to formally record and interests registered.
- 2.4 The report also highlighted that the current system does not protect employees as it is not clear what interests are to be disclosed or how the information is to be held. The absence of a clear procedure and expectations results in difficulties in taking action against employees for failing to disclose personal interests. Section 117(1) of the Local Government Act 1972 requires employees to notify the Council in writing of any direct or indirect pecuniary interests which they have in any Council contracts, or proposed contracts, of which they become aware. Breach of section 117 is a criminal offence subject to a fine. The lack of clarity within the Council's current arrangements does not assist employees in adhering to this requirement.
- 2.5 Therefore, Audit Services recommended that the adequacy and effectiveness of the current arrangements in relation to the declaration of officers' interests be reviewed. In particular, Audit colleagues recommended that consideration should be given to the following:-
- All staff should be required to complete an annual Declaration of Interests Form.
 - All those with an active company directorship should be required to complete a Declaration of Interests Form;
 - Staff should be reminded to formally declare business interests held by partners or relatives;
 - Rather than being held departmentally, all records should be held centrally.
- 2.6 Enquiries were made through discussions at departmental management team meetings and senior management team meetings regarding the

current awareness and practices of departments regarding the recording of officer interests, together with their views on reviewing the current system considering the Audit recommendations.

- 2.7 All departments reported having an ad-hoc system and expressed concerns about the understanding of staff and managers in managing the system. In general, the suggestion of a centralised system was welcomed. However, should the system become centralised, there were concerns to ensure links to departments be maintained and that any electronic system needed to be easy to use, with staff and managers having a clear understanding of the expectations and obligations.
- 2.8 Additional safeguards are in place within Procurement in that officers involved in any procurement project are required to complete a declaration of interests form, over and above those required by the Council generally, which does mitigate the risk in that area.
- 2.9 There are further requirements for disclosure from senior officers in accordance with the Code of Practice on Local Authority Accounting, which defines proper accounting practices for local authorities. Within its Statement of Accounts, the Council is required to disclose material transactions with related parties, i.e. bodies or individuals that have the potential to control or influence the Council, or be influenced by the Council. Disclosure of these transactions allows readers of the accounts to assess the extent to which the Council might have been constrained in its ability to operate independently or might have secured the means to limit another party's ability to bargain freely with the Council. As senior officers have the potential to significantly influence the policies of the Council, they are required to disclose related party transactions. Finance have measures in place to seek completion of the necessary forms from relevant officers. However, there are similar concerns to those outlined above regarding the understanding of information to be disclosed and the reasons why, resulting in difficulties in the Council being satisfied that the information is sufficient and correct.
- 2.10 A working group formed of officers from Legal, HR, Audit, IT and Finance considered how to progress the introduction of a centralised system and one of the actions the group was tasked with by CMT was to develop a specific policy regarding the recording of officers' interests which clearly specified and detailed requirements and obligations, particularly in relation to declarations concerning family members,
- 2.11 The policy proposes the requirements to be placed on officers to

disclose interests and the circumstances in which interests of a partner or spouse also require disclosure. Following consideration by the Working Group as to the appropriate level of Officer to be covered by this requirement it is recommended that this should apply to Officers remunerated at Grade 14 and above.

- 2.12 It is proposed that the Officer's Declaration of Interests Policy should be recommended to Appointments and Conditions of Service Committee for inclusion in the current Employee Code of Conduct document. The Employee Code of Conduct has now been removed from the Constitution following the Council meeting in September 2023 and as a result revisions (such as the inclusion of the Officer Declaration of Interests Policy) can be undertaken promptly following approval by Appointments and Conditions of Service Committee.

3. Consultation

- 3.1 The Union representatives were invited to attend a meeting to consider the policy and declined to do so. They have been made aware of the proposals.

4. Alternative Options Considered

- 4.1 **Do nothing** – this would not address the concerns raised by Audit colleagues during the course of their audit and would not provide an effective framework for Officers to disclose any interests they may have.
- 4.2 Expand the range of colleagues required to declare an interest of a spouse or partner. This obligation has placed on those employees of Grade 14 and above as this is considered to be a proportionate response to the concerns raised. Employees of this grade and above are anticipated to have decision making functions and a degree of autonomy which requires the accountability proposed.

5. Implications

- 5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

6. Background Papers

- 6.1 None

7. Appendices

- 7.1 Appendix 1 – Implications.
Appendix 2 – Proposed Officers' Declaration of Interests Policy.

8. Recommendation(s)

That Committee recommends that that Appointments and Conditions of Service Committee approve the Officers' Declaration of Interests Policy for inclusion in the Employee Code of Conduct.

9. Reasons for Recommendation(s)

- 9.1 To ensure transparent decision making and accountability and to protect Officers by providing a framework in which to disclose interests.
- 9.2 To enable the recommendations from the Audit report considering this issue to be implemented.

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Implications

Financial

- 1.1 This relates to the development of a policy and so there are no direct financial implications. However, the development of the policy may result in amendments being required to other Council policies such as those within Governance Framework and would require the development of a centralised system. Therefore, further consideration to these specific implications will be given regarding the process and implementation, should the policy in principle be approved.

Legal

- 2.1 The Governance, Ethics and Standards Committee recommended the removal of the Employee Code of Conduct from the Derbyshire County Council Constitution on 13 July 2024 and this was approved by Full Council in September 2023. The proposed Officers' Declaration of Interests Policy will not therefore require an amendment to the constitution.
- 2.2 The proposed Officer's Interests Policy related to the ethical undertaking of good governance and therefore falls within the terms of reference of the Governance, Ethics and Standards Committee.
- 2.3 A Data Protection Impact Assessment Screening has been undertaken and it was concluded that a full DPIA is not required in relation to the introduction of the policy. An Equalities Impact Assessment should be undertaken to enable Appointments and Conditions of Service Committee to consider whether the proposed policy could have an adverse impact on persons with protected characteristics.

Human Resources

- 3.1 The proposed regime provides an appropriate and transparent mechanism for Officers to disclose interests they hold.

Information Technology

- 4.1 None

Equalities Impact

5.1 An Equalities Impact Assessment should be undertaken to enable Appointments and Conditions of Service Committee to consider whether the proposed policy could have an adverse impact on persons with protected characteristics.

Corporate objectives and priorities for change

6.1 None

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 None

Proposed Officers' Declaration of Interests Policy for Inclusion in the Employee Code of Conduct

Officers' Declaration of Interests Policy

Introduction

Everyone who uses Council services is entitled to expect the highest standards of conduct from Council employees and we are all responsible for improving life for local people by delivering high quality services. The public must be confident that decisions made by employees are made for proper reasons and are not influenced inappropriately by the interests of individual employees, their relatives or friends.

Scope

The code applies to all employees and workers of the Council and is recommended to those schools where the governing body performs the function of the employer. The Code also applies to contractors and agency staff.

Purpose

The purpose of this policy is to protect the Council and its employees, workers and contractors against conflicts of interest and allegations of impropriety.

Legislative context

The Bribery Act 2010 makes it an offence to seek, accept or agree to accept a financial or other advantage as an inducement or reward to perform a function improperly. In simple terms, it is a criminal offence for employees to seek or accept a financial or other advantage in return for making a decision, granting an award or performing any other public function, regardless of what decision is made. The maximum sentence for a bribery offence is 10 years imprisonment. The Bribery Act 2010 also makes it an offence for the Council to offer or pay bribes and both the individual and the organisation may be prosecuted.

Section 117 (1) of the Local Government Act 1972 requires employees to notify the Council in writing of any direct or indirect pecuniary interests which they have in any Council contracts, or proposed contracts, of which they become aware. Breach of Section 117 is a criminal offence subject to a fine.

Related Party Transactions

The Code of Practice on Local Authority Accounting in the United Kingdom (the Code) defines proper accounting practices for local authorities.

In accordance with the Code and accounting standard IAS24, the Council is required to disclose in its Statement of Accounts material transactions with related parties, ie. bodies or individuals that have the potential to control or influence the Council, or be influenced by the Council. Disclosure of these transactions allows readers of the accounts to assess the extent to which the Council might have been constrained in its ability to operate independently, or might have secured the means to limit another party's ability to bargain freely with the Council. In view of the fact that Officers on the Council's Senior Leadership Team (SLT), Heads of Service and the closest members of their families, have the potential to significantly influence the policies of the Council, all permanent or temporary managers upon appointment or promotion to a grade covered by the JNC for Chief Officers are required to disclose related party transactions.

Conflict of Interest

A conflict of interest is a conflict between the public duty and the private interest of an individual in which that individual private interest could improperly influence the performance of the Council duties and responsibilities.

Employees may hold interests for which they cannot see obvious potential conflict. However, caution is always advisable because others may see it differently. Therefore, in disclosing interests, it is appropriate to consider whether the interest might lead a member of the public to question the fairness or impartiality of someone in that role. It will be important to exercise judgement and to declare such interests where there is otherwise a risk of imputation of improper conduct. The perception of an interest can be as damaging as an actual conflict of interest.

Procedure for making a declaration

Declarations should be made in writing. The Council has an electronic system which should be used to make declarations as follows:

- New starters through the induction process
- As any new interests arise, the form should be updated
- On an annual basis for as part of the 'related parties' statement of accounts process for officers on a grade covered by the Joint Negotiating Committee for Chief Officers
- On an annual basis for other officers who work individually or as a team in a service which procures/commissions goods/services on behalf of the Council
- Annual reminder to all employees to prompt any updates and meet any requirement for annual updates for those employees who have a significant involvement in the management of contracts, employees, agency workers or policy decisions that relate to contract matters; or significant discretion concerning council spend and procurement.

Confidentiality

Information gathered through this process is for use by the Council only and as such, will not be made public unless there is an overriding legal obligation for disclosure.

The Register of Officers' Interests will be held within the SAP system by HR and will be accessible by an employee's line, project and senior managers.

Interests to be declared

Interests detailed in Annex 1 must be declared.

Contracts

It is important that the council is aware of all relationships of a business or private nature with external contractors, or potential contractors. Orders and contracts must be awarded on merit, by fair competition against other quotes or tenders and no special favour should be shown to businesses run by, for example, friends, partners or relatives in the tendering process.

Therefore you must disclose:

- Any interest in any company, business or organisation which the Council contracts with, including any personal relationship with anyone involved in such a business, company or organisation
- Any interest in any company, business or organisation which the Council may contract with, including any personal relationship with anyone involve in such a business, company or organisation

Secondary employment

Employees must declare as an interest any outside employment which they undertake. Employees should not undertake outside work if it causes or has the potential to cause a conflict of interest, or if it makes use of material to which the employee has access by virtue of his or her position. It is irrelevant whether the work is paid, unpaid or voluntary and includes any job with any employer or any type of self-employment. The carrying out of public duties does not count as secondary employment.

For further information on secondary employment, please refer to Appendix B of the Code of Conduct.

Personal/Non-Pecuniary Interests

It is important that the Council is aware of personal interests of employees which may conflict with the Council's interests. Therefore, you must disclose:

- Any personal relationship which is likely to cause a conflict of interest
- Involvement with an organisation receiving grant aid, or which may apply for grant aid, from the Council
- Involvement with an organisation seeking or receiving other support from the Council
- Involvement with an organisation or pressure group which may seek to influence the Council's policies or decisions

Assessing Interests, including Secondary Employment

When a declaration of interests is submitted, the Head of Service/Assistant Director will look at the duties of the post, and the interests declared and assess whether there is an actual conflict or potential for a conflict of interests. They will also assess whether there is potential for any perception of a conflict of interests.

If there is any risk of a conflict or perception of a conflict of interests, then the Director will decide how serious that risk is. The Director may decide to make changes to the employee's role or oversight of their work in order to avoid or minimise the risk such as:

- Reassigning part of the role to another person
- Requiring that specific decision (or types of decision) made by the employees must be reviewed or approved by someone else
- Directing that the employee must have no involvement in a decision or project.

Any issues which cannot be satisfactorily agreed or give cause for concern will be escalated to the Monitoring Officer to determine.

Roles and responsibilities

All Employees

All employees must:

- Declare any pecuniary interests as defined in Annex 1 on commencement of employment with the Council and as they arise;
- Declare any personal/non-pecuniary interests as defined in Annex 1 on commencement of employment with the Council and as they arise;
- Not engage or be engaged in other work whilst an employee of the council where that other work would or would have the potential to impact on the Council as described in Appendix B of the Code of Conduct
- Declare the fact that you undertake other work as defined in Annex 1, and provide details of that work as required by Appendix B to the Code of Conduct on commencement of employment with the Council
- Declare any contractual interest
- Ensure that details of their interests are kept up to date and provide notification in writing within 14 days of becoming aware of any change in respect of interests declared, including any new interests which have arisen within 14 days of the change or acquisition of the new interest.
- Not make, or become involved with any decisions about matters in which they have an interest listed in Annex 1
- Comply with any actions to mitigate any conflict of interest

Additional responsibilities of JNC Chief Officers

All permanent or temporary managers upon appointment or promotion to a grade covered by the JNC for Chief Officers must also:

- Declare any pecuniary interest or non-pecuniary interest on commencement of employment with the Council as part of the induction process
- Complete an annual declaration of interests
- Declare related party transactions on an annual basis

Additional responsibilities of Managers/ Heads of Service/Senior Leadership Team

All Managers/Heads of Service/Senior Leadership Team or officers to whom this responsibility is delegated must:

- Promote this Policy and ensure compliance in their teams/service areas
- Identify where a potential conflict of interest arises as a result of a declaration by an employee, and assess any risk to the Council and the employee
- A conflict of interest arises where an interest or secondary employment is declared which directly relates to the Council's business and an employee must not be involved in any work or project on behalf of the Council in relation to that business.
- A conflict of interest also arises where an interest or secondary employment is declared by an employee and that interest or secondary employment is affected by the Council's business. In such circumstances, managers, heads of service or the senior leadership team must consider:
 - whether the employee's interest or secondary employment is affected to a greater extent than it affects other employees affected by the decision; and
 - whether a reasonable member of the public knowing all the facts would believe that it would affect the employee's view of the Council's business.
- Where a conflict of interest is identified, work with the employee to agree any mitigation (of conflict risks) actions or strategy and ensure a record is made in writing
- Escalate to the Monitoring Officer any issues that cannot be satisfactorily agreed
- Lead on any disciplinary action that may be necessary where an employee has failed to comply with this Policy

Additional responsibilities of the Chief Financial Officer

The Chief Financial Officer will:

- Securely store and maintain a register of the related party transactions declared.
- Ensure that the related party transactions declared are included in the Council's Statement of Accounts.

Additional roles and responsibilities of the Monitoring Officer

The Monitoring Officer will:

- Advise on appropriate mitigation (of conflict risks) actions or strategy where a potential conflict of interest is declared by an employee.
- Determine appropriate mitigation (of conflict risks) actions or strategy where a potential conflict of interest and issues cannot be satisfactorily agreed between the Director and employee.
- Review the register of interests at least annually
- Prepare an annual report to the Audit Committee summarising the declarations of interest.

Failure to comply with this Policy

All employees have a responsibility to act in accordance with this policy. Failure to comply with this policy will always be investigated under the Council's Disciplinary Procedure and may result in disciplinary action. If a potential offence has been committed, the matter may also be referred to the police for criminal investigation.

Annex 1

Interests

Pecuniary interests

1. Other paid employment (this includes both long-term jobs, self-employment, consultancy work, one-off work such as writing articles or speaking at conferences and unpaid or voluntary work)
2. Director of a business, whether it is paid or unpaid
3. Partner in a business
4. Engaged on a retainer basis by a business
5. Trustee or board member (whether paid or not) of a charity or business
6. Hold shares in a business (other than banks and building societies) if the holding exceeds £25,000 or more than 1/100th of the nominal value of the issued share capital, whichever is less
7. Any interests of:
 - a. your spouse or civil partner;
 - b. person with whom you are living as husband or wife; or
 - c. person with whom you are living as civil partners; and you are aware that the other person has that interest which would fall within categories 1-6 above

Point 7 above applies to any officer employed in a post of **grade 14** or above.

Non-pecuniary interests

Any organisation, including those not open to the public, of which you are a member and in a position of management or control which may or may not have dealings with the Council

Contractual Interests

Any direct or indirect financial interest the employee or their spouse has in any contracts with the Council or proposed contracts.

Related party transactions

1. A controlling interest (directorship etc) held by the employee in any company, trust, or other entity that has at any time during the relevant financial year had commercial operations with Derbyshire County Council.
2. A controlling interest (directorship etc) held by a close member of the employee's family, anyone else in their household, or any close friend, in any company, trust, or other entity that has at any time during the relevant financial year had commercial operations with Derbyshire County Council.
3. Any connection the employee has to any other body subject to central government control that may be empowered to transact with the Derbyshire County Council on non-commercial terms.
4. Any connection a member of the employee's family, anyone else in their household, or any close friend has to any other body subject to central government control that may be empowered to transact with Derbyshire County Council on non-commercial terms.
5. Any connection the employee has to any assisted body that may receive funds from, or make payments to, Derbyshire County Council. (This covers voluntary organisations etc).
6. Any connection a member of the employee's family, anyone else in their household, or any close friend has to any assisted body that may receive funds from, or make payments to, Derbyshire County Council.

Definitions

Organisation: include clubs, associations, societies, voluntary organisations, religious bodies and sects, political and quasi-political organisations.

Dealings: includes:

- doing work for the council or providing work to the council
- giving or receiving grants or sponsorship
- any arrangements which involve sharing or exchanging staff
- any formal collaboration or contracts with the council
- any investment into the organisation from the council, or investment from the organisation into the council

Organisation or association not open to the public: Any lodge, chapter, society, trust or regular gathering or meeting (other than a professional association), which:-

1. is not open to members of the public who are not members of that lodge, chapter, society or trust; or

2. includes in the grant of membership an obligation on the part of the member a requirement to make a commitment (whether by oath or otherwise) of allegiance to the lodge, chapter, society or gathering or meeting; or
3. includes, whether initially or subsequently, a commitment (whether by oath or otherwise) of secrecy about the rules, membership or conduct of the lodge, chapter, society, trust, gathering or meeting.