

## End Conflict of Interest in Local Authority

Y Pwyllgor Deisebau | 19 Mawrth 2019

Petitions Committee | 19 March 2019

### Research Briefing:

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Petition number: **Petition P-05-845**

Petition title: **End Conflict of Interest in Local Authority**

Text of petition: We, the undersigned, call on the Welsh Government to enforce better code of conduct policies for employees in local authorities. Currently, planning authority officers are able to run private planning consultancy companies at the same time as maintaining their public roles. There is no available resource to invest in policing these private firms, where declared in the necessary forms, to ensure the prevention of fraud and corruption. In the example of planning officers, running private consultancies 'on the side' could potentially facilitate corruption, of which there are many types, generally relating to the abuse of office. This practice needs to be stopped immediately and the constitutions amended to no longer allow this conduct. We demand greater accountability and transparency from our local authorities and standards of conduct in such public roles need to be set higher than the private sector, where this is highly unacceptable.

### Background

As part of a discussion of the above petition at the Petitions meeting on 11 December 2018, Committee Members sought further clarification on the following:

- whether the restrictions referred to by the RTPI relate to the whole of a local authority area or just to specific area committees within authorities;
- whether there are any restrictions based upon seniority;
- whether each local authority has its own set of rules.

## Whether the restrictions referred to by the RTPI relate to the whole of a local authority area or just to specific area committees within authorities?

The RTPI in their response to the Committee dated 18 January 2019 note the following:

We would advise members not to act in the circumstances described i.e. where there is subdivision into area committees. One of the challenges we post to members is the perception of their action and would advise them to also take all steps to limit the perception of conflicts of interest.

The RTPI also note in their response that in both 2016 and 2017, of the cases decided, there were 2 possible cases of conflict of interest in each year, but that none were found to have breached the code.

In their previous correspondence, the RTPI had also noted the following in terms of the guidelines for their members:

“Members must take all reasonable precautions to ensure that no conflict of duty arises between the interests of one employer, client or business associate and the interests of another.” Our Practice advice clearly states: “You should not undertake any private planning work in the area where you are in the position to recommend the making of any decision materially affecting the development or use of land.”

The RTPI’s advice note to members on [Ethics and Professional Standards](#) also notes the following (p.9) in relation taking on private consultancy work:

RTPI Members undertaking any private consultancy work in addition to their primary (e.g. local authority) employment should obtain the **written agreement of their employer** before taking a commission. This also applies to staff working on a part time or contract basis. You **should not undertake any private planning work in the area where you are in the position to recommend the making of any decision materially affecting the development or use of land**. Exceptions to this include your own residence or where you are giving free planning advice to the public as part of your employment.[My emphasis]

As an additional note, having spoken to officials at a sample of local authorities in Wales, it would appear that most authorities no longer work on an ‘Area Committee’ basis, with all planning matters discussed at a single Planning Committee. Some authorities however may divide their areas into Service Area Teams, such as in [Neath Port Talbot](#).

## Whether there are any restrictions based upon seniority?

There are no restrictions based upon seniority, because codes of conduct (both local authority and professional body) generally do not differentiate between employees based on grade.

So, as an example, Section 9 (p.33) of [Neath Port Talbot CBC’s Employee Code of Conduct](#) relates to *Personal and Other Interests/Involvements*. It sets out what interests outside of the workplace might constitute a conflict of interest, including ‘work done for any person or

organisation other than as an employee of the Council'. The following extract is taken from this section:

If any employee has a personal interest in any matter which arises at any meeting where the employee is reporting or advising (or might be called upon to advise, or otherwise be able to influence) any Councillor(s) of the Council, or any third party, the employee must declare the interest, and take no part in the consideration or determination of the matter.

Section 10 of the Employee Code of Conduct sets out parameters for taking on *Additional Employment/Work*. In this section, it states:

For all additional employment or private work, outside of the work done as an employee of the Council, employees must obtain the written permission of the Council. **Appendix C** can be used to make a relevant declaration.

Employees should be clear about their contractual obligations to the Council and must not undertake additional employment, or involvement, which may conflict with or detract from the interests of the Council.

Section 16 of the Code states that:

Any contravention of this Code of Conduct could result (or be taken into account) in disciplinary proceedings.

Should there be a need to undertake an investigation into an employee's standard of behaviour it will be necessary to examine the Registers, attached in **Appendix 'A', 'B' and 'C'**, and any evidence obtained from these sources may, together with any other information, be used to assist with the investigation.

In some instances, declarations or failure to declare, may need to be reported to the police

Section 17 of the Code notes that while the Code embodies general standards of conduct for all employees, there might be a need for some Directorates to make arrangements to address specific circumstances. However, standard forms (Appendix B and C) provide the basis for declaring any personal interests or additional employment. In these forms, it clearly asks officers to state whether they envisage a conflict of interest between the additional employment and their role with the council.

Officers wishing to take on additional employment outside of their existing role are required to ask permission from the council through set procedures. Declarations of interests, which include additional employment requires authorisation from a senior officer, and are set out as follows:

- Chief Executive to have his/hers authorised by the DOFCS/Monitoring Officer. CEX secretary to maintain the file.
- Directors to have theirs authorised by the CEX. Their secretaries to maintain the files.
- HOS (Heads of Service) to have theirs authorised by the Directors. Directors' secretaries to maintain their files.

- Accountable managers to have theirs authorised by HOS. Directors' secretaries to maintain their files.
- All other staff to have theirs authorised by HOS. Directors' secretaries to maintain their files.

### Whether each local authority has its own set of rules?

Section 37 of the [Local Government Act 2000](#) requires local authorities in Wales to prepare and keep up-to-date a written constitution containing such information as Welsh Ministers may direct, a copy of the authority's standing orders, a copy of the authority's code of conduct for Members and employees, and any other information the authority considers appropriate

Each local authority has its **own individual constitution** to reflect that authority's particular circumstances. Each Council will also have differences as to the documents it believes appropriate to include in its constitution. The Welsh Government published [Guidance for County and County Borough Councils in Wales on Executive and Alternative Arrangements 2006](#) on the content and operation of an authority's constitution.

It would seem that most local authorities include as part of their constitution specific documents on planning matters. Part 5.2 of Carmarthenshire County Council's constitution for example relates to the [Code of Conduct for Councillors and Officers in Planning Matters](#). Section 2.10 sets out the duties placed on officers:

*In considering applications and in advising Members and the public on planning policy, the determination of planning applications, enforcement and other planning matters, officers must:*

- Act fairly and openly
- Avoid any actions, which would give rise to an impression of bias.
- Avoid inappropriate social contact with applicants and their agents, objectors and other interested parties

Neath Port Talbot County Borough Council also include a *Planning Protocol* (p.57) within their [constitution](#). Paragraph 11.3 of the *Planning Protocol* states:

Councillors should recognise and respect the fact that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

Every effort is made to ensure that the information contained in this briefing is correct at the time of publication. Readers should be aware that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.