

TITLE OF REPORT: MANAGING ORGANISATIONAL CONFLICTS IN COUNCIL ROLES AND DUTIES – DRAFT GUIDANCE

REPORT OF THE ACTING SENIOR LAWYER

1. SUMMARY

- 1.1 The purpose of the report is to provide the Finance, Audit & Risk Committee ('FARC') Members with an opportunity to comment on the attached draft Guidance 'Managing Organisational Conflicts in Council roles & duties' prior to consideration by Cabinet on 29 September 2015.

2. RECOMMENDATIONS

- 2.1 That FARC recommend to Cabinet that the draft Guidance (Appendix A) be approved (subject to any suggested amendments deemed appropriate).

3. REASONS FOR RECOMMENDATIONS

- 3.1 The Guidance is to promote and ensure good governance within the Council. Its production follows the publication of the National Audit Office's ('NAO') report on 'Conflicts of interest'¹. Having Guidance helps to provide an assurance framework for identifying, managing and monitoring organisational conflict situations. It is a recommended good practice approach² to ethical standards, transparency and effective decision-making.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Consideration has been given on whether to provide specific organisational conflict Guidance. The alternatives are to rely on current Policies/ Codes (which in the main deal with personal conflicts of interest) and not issue any Guidance; or amend the Policies/ Codes to include provisions relating to organisational conflicts.
- 4.2 However, the conclusion reached, in the light of the recent NAO report, was that new guidance should be provided. Updating current Policies/ Codes with this information could lead to confusion and therefore the most appropriate course of action is seen to be separate organisational conflicts Guidance.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND RELEVANT MEMBERS

- 5.1 Consultation has been undertaken with the Senior Management Team, the Trade Union, the Staff Consultation Forum and Political Liaison Board. Comments received have been incorporated in the draft Guidance appended at Appendix A.

¹ National Audit Office, Report of the Comptroller and Auditor General, Cross-government "Conflicts of interest" 27 January 2015

² *ibid*

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 The NAO produced a report on “Conflicts of interest” in the public sector in January 2015. It set out what a conflict was, what risks were attached to conflicts, how and when they occur in public life. The report covered the wider issues of direct, indirect, financial, non-financial, personal - as well as organisational conflicts. It nevertheless identified over-arching good practice recommendations – which, in the NAO’s terminology should be in place for prevention, detection and response.
- 7.2 As a minimum the NAO recommendation is that there should be a “**system to identify and manage conflicts of interest rather than to eliminate them.. Rules should be clear and robust but not overly prescriptive or complex**”. As there is currently no formal approach as to how the Council manages the issue of organisational conflict, some (hopefully) straightforward Guidance has been provided to address the NAO’s recommendations. At the present time identifying organisational conflicts of interest relies upon an individual recognising the potential issue and then ensuring an appropriate response is put in place. The project team structures applied to Council projects such as Churchgate and the District Wide Museum have ensured separation of Officer responsibilities for landowner/Planning Authority and Council/Charitable Trust. Some professional Officers (for example lawyers and surveyors) have their own duties in respect of conflicts of interest which are requirements of their professional regulatory bodies. These Officers are more conscious of the conflict issues that could arise, however, the current system does not provide information on what managers need to consider, or indeed general guidance to employees and Members on the issue.
- 7.3 The aim of the appended Guidance is therefore to assist in identifying conflicts in the Council’s organisational roles and duties, offers tools to manage them when they arise – as well as instigating methods to monitor the issue. It sets out a simple approach to identify, discuss, deal with and document the process. The emphasis is an initial manager controlled / Member identification stage. The Monitoring Officer / Risk Manager may be involved if required. Issues can then be discussed and proportionate management tools used if a conflict has arisen. It should be stressed that the “**Deal with it**” options under 4.1 are just that and it is not advocated that all or any of them are implemented if there is a conflict situation. Managers/ Lead officers may chose what is appropriate to the task at hand.
- 7.4 Furthermore, measures will now also be put in place to monitor organisational conflicts to enable any issues to be reported as part of the risk management and Annual Governance assurance arrangements.
- 7.5 In presenting the Guidance in this way, there is recognition of the changes in local government and how this has/ will impact on working practice. The trend has been (and continues to be) increasing rationalisation of the workforce – with flatter organisational structures, shared services and different models/ vehicles for delivering Council services. This can and has led to Officers and Members dealing with multiple - sometime conflicting roles where responsibility and accountability are not always clear-cut. The variety of arrangements in local government means there is no current “one

size fits all” model Guidance or Code to follow for such organisational conflict situations. The Guidance appended is therefore not based on any particular model – but on an amalgamation of good practice approaches in both private and government practice as adapted to NHDC.

8. ISSUES

- 8.1 This Guidance has already been adapted following the consultation outlined in 5.1. FARC Member in-put is now required from a governance, internal control and risk perspective, prior to consideration by Cabinet.

9. LEGAL IMPLICATIONS

- 9.1 The Council is not legally required to have a Code/ Polices or Guidance on organisational conflicts. The proposed Guidance will, however, assist the Council in meeting the NAO good practice recommendations and assists the Council to fulfil its statutory duty to promote and maintain high standards of conduct for both Members and Officers.

- 9.2 The FARC terms of reference include at paragraph 10.1.5(t) “*to monitor the effective development and operation of risk management and corporate governance, agree actions (where appropriate) and make recommendations to Cabinet*”. Cabinet’s terms of reference include at paragraph 5.6.1 “to prepare and agree to implement policies and strategies other than those reserved to Council”. The report and Guidance are therefore appropriate areas of consideration for the Committee and Cabinet.

10. FINANCIAL IMPLICATIONS

- 10.1 There are no capital or revenue implications arising from the content of this report.

11. RISK IMPLICATIONS

- 11.1 Appropriate policy frameworks help to ensure good governance of the Council and therefore reduce risk of poor practice or unsafe decision making.

12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of ‘social value’ as required by the Public Services (Social Value) Act

2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at Paragraph 12.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 General awareness training will be provided to the senior managers group and there will be communication to both staff and Members as part of the roll out of the new Guidance. General awareness can be included as part of wider Governance training to Members, with more specific guidance provided to individual Members in the event that a conflict situation has arisen. These will be met from within existing resources.

15. APPENDICES

- 15.1 Appendix A – Proposed Guidance Managing Organisational Conflicts in Council roles & duties.

16. CONTACT OFFICERS

- 16.1 Jeanette Thompson, Senior Lawyer and Deputy Monitoring Officer
jeanette.thompson@north-herts.gov.uk; ext 4370
- 16.2 Anthony Roche, Acting Corporate Legal Manager and Monitoring Officer
anthony.roche@north-herts.gov.uk; ext 4588

17. BACKGROUND PAPERS

- 17.1 National Audit Office, Report of the Comptroller and Auditor General, Cross-government “Conflicts of interest” 27 January 2015.