

 Employment Committee 16th June 2011		Agenda Item No. 9
Title	Staff use of Warwick District Council facilities – Cultural Services	
For further information about this report please contact	Rose Winship 01926 456223 Rose.winship@warwickdc.gov.uk	
Service Area	Cultural Services	
Wards of the District directly affected	None	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006	No	
Date and meeting when issue was last considered and relevant minute number	N/A	
Background Papers		

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	N/A

Officer/Councillor Approval		
With regard to officer approval all reports <i>must</i> be approved by the report authors relevant director, Finance, Legal Services and the relevant Portfolio Holder(s).		
Officer Approval	Date	Name
Deputy Chief Executive	31 st May 2011	Andrew Jones
Chief Executive		Chris Elliott
CMT		
Section 151 Officer		Mike Snow
Legal		
Finance		Mike Snow
Portfolio Holder(s)		Cllr Gallagher
Consultation Undertaken		
Other local authorities Leisure Services		
Final Decision?	Yes	
Suggested next steps (if not final decision please set out below)		

1. SUMMARY

- 1.1 In recent months a number of issues have come to light at the leisure centres that have highlighted a degree of confusion about staff based at the centres using facilities at no charge.
- 1.2 The report outlines a new policy which is considered necessary to provide clarity and transparency on the entitlement of specific groups of Warwick District Council staff to use certain facilities operated by the Council free of charge.

2. RECOMMENDATION

- 2.1 Members are asked to approve the attached policy.

3. Reason for the Recommendation

- 3.1 For many years there has been an unwritten agreement that members of Warwick District Council staff, working in leisure centres, swimming pools, and the Royal Spa Centre are entitled to use the facilities in those venues free of charge. This arrangement was supported by Managers in these services in order that staff involved in service delivery could get a full understanding of the services, experience them from a customer perspective, interact with customers using the facilities, and in the case of the leisure centres maintain a healthy and active lifestyle which is necessary for them to carry out their duties. Without this arrangement there could be the situation where poolside staff and gym staff would have to pay to use facilities in order to retain their levels of fitness that are a requirement of them doing their duties.
- 3.2 In the case of the Royal Spa Centre there is also the situation that occurs from time to time when a promoter of a show asks the venue Manager to ensure that the venue is as full as possible by offering free tickets. This would not compromise the financial return of the show to the Council, but is often preferred by the promoter in order to create the right atmosphere for a show and therefore leave the audience with a good experience and encourage them to return. In such cases, offering late availability tickets to staff, staff family members, community groups is common practice in the industry.
- 3.3 The current arrangements are underpinned by the principle that staff could only use the facilities if there was no loss of income to the Council and no increased cost incurred to the Council by them doing so. So in theory, if staff wished to attend a show at the Spa Centre that was a sell out, they would have to pay the normal ticket price; in the same way a member of staff wishing to attend a fitness class that was popular and always fully booked, would be expected to pay the normal price on booking their place. If on the other hand they were prepared to turn up and only attend the show or the class if there was a free place, then they could do so without payment. The Policy looks to continue this principle in the future, but provides a clearer definition of which activities are included and which are not.

- 3.4 Advice has been taken from the Payments Manager on the tax implications of offering such a scheme to members of staff. Her interpretation and HMRC advice is as that as a general rule providing the Council are not making a loss and there is no additional cost to the authority it is not classed as a benefit. The Tax office would generally be looking for evidence to support this position, in particular to demonstrate that:
- There is no additional cost to the authority in providing the facility.
 - There is enough capacity to allow staff and members of the public to use the facility.
 - That the authority would not lose any revenue by providing this to employees for example if any employee joins a class, but a member of the public could not join as the class was full, then in effect we would be losing revenue.
- 3.5 The Policy includes clear definitions of who is entitled to what, crucially how the policy is monitored and managed including audit trails and record keeping. The Policy will ensure consistency across sites, and provides managers with a clear set of guidelines to implement at their sites. It is essential that the Policy is transparent and not open to abuse in order to protect the Council, elected members, line managers and individual members of staff against allegations of inappropriate actions.
- 3.6 Investigations have been undertaken into the approach adopted in other local authorities on this issue. As would be expected there is a range of approaches taken, from a blanket policy on no free use by staff, to free use only at off peak times, and to schemes where staff, partner and family are all entitled to free use. The proposals being made in respect of Warwick District Council leisure centres is typical of a large number of local authorities who operate their facilities in house and is the general rule across the industry for the reasons outlined in the report. Investigations have shown that there is no typical approach in the private sector, some have a blanket ban on any free use, whilst others extend the offer to family members.

4. Alternative Option considered

- 4.1 Officers have considered withdrawing all free use of facilities for staff.
- 4.2 Advice has been taken from HR on what implications this could have from an employment perspective. It is believed that if we were to do so we would need to consider whether the arrangements were contractual or not. We could take the stance that it is discretionary and as such can be removed. However if perks or bonuses are regularly provided on an ongoing basis, and employees can point to a legitimate expectation to receive them over a period of time, then it might be argued that such benefits have become contractual over time and so retracting them unilaterally is unlawful. If we withdraw the arrangements unilaterally there could be substance to claims of breach of trust and confidence although it

is the view of HR that the breach is not substantial enough to warrant constructive dismissal claims.

4.3 Furthermore unilaterally withdrawing such a benefit could be seen as a breach of an employer's implied duty of trust and confidence, entitling an employee to resign and claim constructive dismissal. If prior warning and consultation is afforded to the affected employees and the perks are withdrawn after a period of notice then it is far more likely there will be no breach of trust and confidence.

4.4 It would appear therefore that we could be confident that with prior warning and consultation, we could cease the current arrangements for staff members and require them to pay standard rates. It is felt however that the benefits of formalising the arrangements, providing a more robust and transparent procedure for management of the scheme, and informing all staff of the new arrangements, would lead to a more motivated workforce, leading healthier lives, and contributing to ongoing service improvement.

5. **BUDGETARY FRAMEWORK**

5.1 There is considered to be no additional cost to the authority in adopting this policy in respect of members of staff as described in Appendix 1

6. **POLICY FRAMEWORK**

6.1 **Policy Framework** This report is not in conflict with any of the following policies:

- Development Plan Documents
- Fit for the Future
- Food Law Enforcement Service Plan
- The plan and strategy which comprise the Housing Investment Programme

4.2 **Fit for the Future** – the adoption of the policy will encourage staff to become involved in service improvement as explained in paragraphs 3.1 and 3.2 leading to the improvement of the range of cultural facilities available to residents and visitors to the district.