
**Manchester City Council
Report for Resolution**

Report to: Standards Committee – 3 November 2016
Subject: Members' Update on Ethical Governance
Report of: City Solicitor

Purpose of the Report

To seek the Standards Committee's comments on and approval of the draft Members' Update November 2016.

Recommendation

To approve the content of the draft Members' Update set out in Appendix 1 for circulation to all members.

Wards Affected: All

Financial Consequences for Revenue Budget

None directly.

Financial Consequences for the Capital Budget

None directly.

Implications for:

Antipoverty	Equal Opportunities	Environment	Employment
No	No	No	No

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Background documents (available for public inspection):

None

1.0 Background

- 1.1 The Council's Annual Governance Statement includes reference to the Members' Update on Ethical Governance ('the Members' Update') within its governance framework section. The Members' Update is used as an example of how the Council develops the capability of people with governance responsibilities and the organisations understanding of governance.
- 1.2 The last Members' Update was disseminated in January 2014. However the general feeling is that reviving the Updates would be beneficial and going forward Updates will now be produced on a six monthly basis providing there is sufficient newsworthy items upon which Members' need to be briefed.
- 1.3 A draft of the Members' Update for November 2016 is set out in Appendix 1 to this report. Members are asked to provide comments on the draft and to approve its content for circulation to all members by e-mail. A paper copy will be available on request.

Recommendation

To approve the content of the draft Members' Update set out in Appendix 1 for circulation to all members.

Members' Update – November 2016

'Helping to promote high standards of conduct'

Welcome to the November 2016 issue of Manchester City Council's Ethical Governance Update

This newsletter contains details of the following:-

- The first case of a councillor who has been convicted of the offence of failing to disclose a discloseable pecuniary interest.
- A recent Upper Tribunal decision over whether the names of councillors who failed to pay council tax should be disclosed in response to a Freedom of Information request.
- Recent Code of Conduct of Decisions and News Stories.
- Refresher training available on the Council's Members' Code of Conduct.
- The Revised Use of Council Resources Guidance for Members.
- Social Media Guidance for Members.
- A reminder that all Councillors should keep their Register of Interests up to date.

To save paper this newsletter is distributed via e-mail, if you would like a hard copy or want further information about any of the issues raised please contact the Democratic Legal Services team on 0161 234 5378 or 35378.

First councillor to be convicted of offence of failing to declare Discloseable Pecuniary Interest

Members' will be aware that if they have a Discloseable Pecuniary Interest ('DPI') it is a criminal offence to do any of the following:

- fail to disclose it or to notify the Monitoring Officer of it; or
- discuss/vote in the matter to which the DPI relates; or
- provide false or misleading information about a DPI or be reckless as to the accuracy of the information about it.

In March 2015 a former leader of Dorset County Council is thought to have become the first councillor to be found guilty of an offence under the above provisions. Members therefore need to take note that the requirements surrounding DPIs are far from just being theoretical!

The charge against the Councillor was that on 25 February 2013 he was present at a 'high level' meeting about the East Dorset Core Strategy and had a DPI in a matter considered at that meeting but still participated in the vote which was taken.

At that time the Councillor was a non-executive director of Synergy Housing, a charity that exists to provide homes to those in the area in need. He held that role from 2004 until 24 September 2013. Although not paid a salary, the Councillor did receive payments of £29,920 for the years 2010 to 2013. He had listed the fact he was a non-executive director of Synergy Housing as a DPI.

The Councillor was charged with committing an offence under the Localism Act 2011 and pleaded not guilty. His view was that the matters at the relevant meeting in relation to the Core Strategy were of a broader nature and did not concern detailed issues of planning and ownership.

The judge at Bournemouth Magistrates' Court nevertheless concluded that having declared his interest in Synergy the Councillor should not have taken part in the meeting. The judge added that the Councillor could have requested and obtained a dispensation to take part from the Council's Monitoring Officer but as he failed to do so he could not take part. Equally he could have consulted his Monitoring Officer on a more general basis.

In addition the judge noted that the meeting on 25 February 2013 was to consider the Core Strategy. Synergy Housing had responded to the consultation, owned land that was being considered and was part of the details contained in the Core Strategy. Finally the judge concluded that as the Councillor had previously attended a meeting of Synergy Housing where the long term use of the land owned by them and forming part of the Core Strategy was discussed he ought to have considered this as part of determining his position on the matter.

The Councillor was found guilty and given a six month conditional discharge and ordered to pay £930 in costs.

Upper Tribunal decision over whether the names of councillors who failed to pay council tax should be disclosed in response to a Freedom of Information request

The Upper Tribunal has recently considered an appeal over whether the names of councillors who failed to pay council tax should be disclosed.

The outcome of the case was that the Council (Bolton) were ordered to disclose the requested information, which was information concerning councillors who had received reminders for non-payment of council tax. The requester had asked for information including the names of individual councillors. Bolton Council provided evidence of mitigating circumstances in relation to the reasons for non payment in respect of 5 councillors which they said would make disclosure unfair and in breach

of the data protection principles, meaning that the section 40(2) exemption in the Freedom of Information Act 2000, covering personal data, applied. The Upper Tribunal disagreed, and held that the information should be disclosed. The following paragraphs from the Upper Tribunal judgment summarise neatly the relationship between the non-payment of council tax and the councillor's public functions.

"40 A councillor is a public official with public responsibilities to which non-payment of council tax is directly and significantly relevant...In particular, section 106 of the Local Government Finance Act 1992 bars a councillor from voting on the Council's budget if he or she has an outstanding council tax debt of over two months. If a councillor is present at any meeting at which relevant matters are discussed, he or she must disclose that section 106 applies and may not vote. Failure to comply is a criminal offence. Thus council tax default strikes at the heart of the performance of a councillor's functions. It is evident that setting the Council's budget is one of the most important roles undertaken by councillors. The loss of one vote could make a fundamental difference to the outcome. This adds a significant public dimension to the non-payment of council tax. The very fact that Parliament has legislated in this way reflects the connection between non-payment and the councillor's public functions...recent failure to pay council tax is likely to impact on public perceptions and confidence in a councillor as a public figure.

41 These factors are of critical relevance to expectation...those who have taken public office should expect to be subject to a higher degree of scrutiny and that information which impinges on their public office might be disclosed. More specifically, unless the local electorate know the identity of a councillor to whom section 106 applies, they cannot discover that that councillor is failing to fulfil his functions. Nor can they know that the process of declarations under section 106 is being adhered to. In addition the electorate may wish to know whether they can trust a councillor properly to discharge his functions if he stands for office again."

The Upper Tribunal concluded that it is not reasonable for a councillor to expect not to be identified where he is summoned for non-payment of council tax. At paragraph 53 of the judgement, the judge states: *"I have already set out the powerful factors as to why a councillor's default in paying council tax is a serious matter of public concern, both as to the ability of the councillor to perform his key functions and in terms of public confidence and accountability. As well as the impact of section 106, non-payment of council tax puts the councillor in conflict with the obligations of his office, including to protect the council's resources, to act in accordance with the law, and to act in accordance with the trust the public has placed in him. In my judgment a councillor should expect to be scrutinised as to, and accountable for, his actions in so far as they are relevant to his public office."*

The judgment does note that there may be exceptional cases in which the personal circumstances of the councillor (re the reasons for non-payment and the impact of disclosure) would be so compelling that they should be protected from exposure, however in the case considered by the Upper Tribunal the judge did not accept that to be the case despite disclosure being likely to cause some distress and damage to reputation. It is difficult to say what an "exceptional case" might mean, because the Tribunal did not make any reference to the particular personal circumstances or explanation for non-payment that were discussed in the particular case.

Recent Code of Conduct Decisions and News Stories

A breach of the Members' Code of Conduct will almost certainly cause reputational damage both for the councillor in question personally as well as to the Council itself. Breaches of the Code are therefore to be avoided at all cost.

Unfortunately a few councillor conduct stories have made the headlines over the last few months. Raising awareness of those breaches is important to highlight the potential consequences councillors may face.

A member at Tendring District Council swore at a political activist as he filmed him outside Clacton Town Hall. The outburst was put on You Tube and received nationwide publicity. "Come and have a go if you think you're hard enough," was among the phrases recorded. The Council received three complaints about the incident. They came from the man who was the subject of the tirade; plus two members of the public. The councillor subsequently apologised for his behaviour, admitting he did breach the council's code of conduct, but claiming he was provoked. The report from the Monitoring Officer concluded that the councillor's actions did breach various elements of the Council's Code of Conduct on the basis that the language used and the offer of violence towards a member of the public questioning the councillor's elected position brought the Council into disrepute. The report did acknowledge there has been "some history" between the councillor and the political activist but went on to say members are "expected to promote high standards of conduct and not disrespect others based on their behaviour and views." Following a recommendation from the Council's Standards Committee the councillor was removed from his Cabinet post and any external posts he held with organisations in connection with the Council. The councillor was also interviewed by Essex Police over the incident, for which he received a caution.

A member of East Riding of Yorkshire Council who posted an offensive message mocking the fundraising effort in memory of the late MP Jo Cox was cautioned by the police under section 5 of the Public Order Act 1986. The comment was made on the Vote Leave Beverley & Holdness, Haltemprice & Howden Facebook page. Soon after making the remark the councillor deleted it and apologised. The councillor was later expelled by the Conservative Party and the Leader of East Riding Council also described the post as "inappropriate and offensive".

A member of South Derbyshire District Council was found to have breached the council's code of conduct while trying to stop a firm turning a historic pub into a funeral parlour. The council's standards sub-committee ruled that the councillor had failed to treat others with respect and also brought his office and authority into disrepute. It found that a Tweet sent by the councillor saying, "Smiling Assassins. The face of the enemy" along with a photo of the members of the firm was 'offensive and disrespectful'. It also found a Facebook post 'liked' by the councillor which accused the firm of stealing or removing protest posters was 'disrespectful'. In addition the councillor sent an email to the firm saying the (Facebook) group (opposing the firm's plans) weren't going away so please do the right thing and sell

the pub and leave Findern alone with its local pub again. The standards sub-committee recommended that the councillor be censured and face (along with all members of the council) extra training.

Refresher Code of Conduct Training

On 9 May 2016 the Democratic Services Legal team provided training on the Council's Members' Code of Conduct to newly elected councillors as part of the Members Induction Programme.

The Democratic Services Legal team would be happy to provide refresher training to other members who may have last undertaken training on the Code of Conduct some time ago now. Members will be acutely aware from what has been outlined in the first two sections of this Update that compliance with the Code is essential if they are to avoid breaching its provisions and the damaging consequences which can follow on.

Should any members wish to attend some refresher training then in the first instance please contact the Head of Member Services.

Revised Use of Council Resources Guidance for Members

This can be found at Part 6, Section C of the Council's Constitution.
http://www.manchester.gov.uk/downloads/download/4030/the_constitution

By way of background, paragraphs 6(b) and (c) of Part 1 of the current Members' Code of Conduct covers the use of Council resources by members and states that councillors:

(b) must when using or authorising the use by others of the resources of your authority:

- (i) act in accordance with the Council's reasonable requirements; and*
- (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and*

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

The revised Guidance was produced to update what was already in place and to incorporate advice that was provided to the Council by the former Standards for England.

The main changes which have been made to the revised Guidance are as follows:

Section 2 (Resources general provisions) now:

- includes a list of generally prohibited uses of Council resources (e.g. for the publication of material which is defamatory or libellous).
- includes specific provisions in relation to volume mailings and the booking and use of Council accommodation.
- Reminds members that, in representing their constituents, members are separate data controllers under the Data Protection Act 1998.

Section 3 (Publicity) – reflects the introduction by the Government of a new Code of Recommended Practice on Local Authority Publicity and sets out the key principles of the new Code.

Section 4 (Personal Use) – clarifies the position in relation to limited personal use by members of the Council's internet and e-mail systems where there is no additional cost to the Council.

Section 5 – (Information Communication Technology):

- has been updated to reflect the ICT equipment which is currently offered to members to assist them in carrying out Council business; and
- clarifies the position in relation to Council ICT equipment (and personal data stored on Council ICT equipment) where a member ceases to be a councillor.

Section 6.1 (The Internet) – the previous guidance on the use by members of the council's internet system has been condensed. In addition to the unacceptable uses of all Council resources set out in section 2 of the Revised Guidance, section 6.1.2 lists unacceptable uses that are specific to the Council's intranet system.

Section 6.2 (E-mail) – the previous guidance on the use by Members of the Council's e-mail system has also been condensed. Members are reminded of the need to ensure that they distinguish between e-mails sent in their capacity as an elected councillor and e-mails sent or received by them in their personal capacity. Section 6.2.2 advises members that any personal or sensitive e-mail they wish to send out of the MCC internal network should be sent securely via the Council's e-mail encryption solution.

Section 7 (Information Security) – was introduced to provide members with guidance on the importance of the security of the Council's networks and the various measures that need to be taken by Members to protect those networks.

Section 8 (Monitoring) – has been expanded to explain the circumstances under which Council IT equipment used by a member may be inspected and monitored. All requests to access data held in ICT equipment allocated to a member must be approved by the Monitoring Officer or the Chief Executive and must also demonstrate why the access is necessary, how it is relevant and the time period in relation to which the access is required.

Social Media Guidance for Members

This has been put on the Members Intranet page together with a summary of the guidance.

The Council recognises that social media is a key communication channel. With the increasing popularity and widespread use of social media tools such as Facebook, Twitter and blogging (web journals) the Council introduced a Social Media Policy and Code of Practice for all Council employees, contractors and agency workers which outlines the responsibilities and standards expected when using social media both inside and outside of work.

As members may also use social media in their roles both as councillors and as individuals this guidance has been provided on the effective use of social media to minimise the risks and pitfalls which accompany such use.

The Guidance attempts to define social media at paragraph 2 but there are other examples not included in the definition and members will be aware that the medium is constantly changing so should follow the Guidance in relation to any social media tools or products that they use.

The Guidance assumes that most use of social media by members will not involve the use of Council resources but where such resources are used then members should comply with the Use of Council Resources Guidance for Members mentioned above.

Other key aspects of the Guidance are:-

Section 3.2 – members are advised to choose appropriate privacy settings to restrict press or public access to their social media and to exercise caution about accepting members of the public as ‘friends’ on social media sites.

Section 3.3 – members should have a clear policy in relation to the comments that other people make on their social media sites and think about moderating comments made on blogs.

Section 3.4 – members must abide by the Code of Conduct for Members when acting as a member of the Council. The Guidance highlights the issue of ‘blurred identities’ where a member may have a social media account where they comment both as a councillor and an individual.

Section 4 – suggests five guiding principles in approaching social media activities.

Section 5 (Responsibilities of Members) – there is a legal and ethical context to the use of social media and members are reminded that publishing to the web is still

publishing and may be permanent. This section includes a reminder to members about the issues of libel, copyright, data protection and confidentiality in publishing material through social media tools or products. There is also a reminder about avoiding the impression of bias and pre-determination if a member is involved in determining, for example, planning or licensing applications.

Section 6 – contains guidelines to assist members to minimise the risks presented by online criminal activity and malware (threats to computer safety such as viruses).

Register of Interests – keeping it up to date

Members ordinarily complete this within the designated 28 day period of being elected.

However members are reminded that this is a 'live' document and therefore needs to be reviewed regularly to ensure it is up to date. Failure to keep your register of interests up to date could lead to a complaint being received that it is not accurate and misleading.

If any member is unsure if something should be registered then please contact the Democratic Services Legal Team on 0161 234 5378 or 35378 who will be able to assist. To update your register please contact the Governance and Scrutiny Support team on 0161 234 3034 or 33034.