
**Manchester City Council
Report for Resolution**

Report to: Standards Committee – 15 June 2017
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 for June 2017.

Recommendation

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

Wards Affected:

All

Financial consequences for Revenue and Capital budgets

None directly.

Implications for:

Antipoverty	Equal Opportunities	Environment	Employment
No	No	No	No

Contact Officers:

Name: Liz Treacy
Position: City Solicitor
Telephone: 0161 234 3087
E-mail: l.treacy@manchester.gov.uk

Name: Ian Mark
Position: Senior Lawyer
Telephone: 0161 234 5378
E-mail: i.mark@manchester.gov.uk

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 November 2016. At its meeting on 3 November 2016 the Standards Committee agreed that going forward updates would be produced on a six monthly basis providing there is sufficient newsworthy items upon which Members' need to be briefed. The Members Update now forms part of the Standards Committee Work Programme.

- 1.3 A draft of the Members' Update for June 2017 is set out in the appendix 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 the appendix for circulation to all members.

Members' Update – June 2017

'Helping to promote high standards of conduct'

Welcome to the June 2017 issue of Manchester City Council's Ethical Governance Update

This newsletter contains details of the following:-

- A recent First tier Tribunal decision in relation to a Freedom of Information request for a copy of a response made by a Councillor to a complaint brought against them.
- A First tier Tribunal decision that a draft report into the conduct of a councillor should be disclosed in response to a Freedom of Information request.
- Details of a case where judicial review proceedings have been brought based on an allegation that a councillor failed to declare an interest.
- Recent Code of Conduct Decisions and News Stories.
- The Annual Report of the Council's Standards Committee.
- The Revised Use of Council Resources Guidance for Members, the revised Gifts and Hospitality Guidance for Members and the revised Member Officer Protocol.
- The Revised Social Media Guidance for Members.
- The Revised Arrangements for dealing with Allegations of Breaches of the Council's Code of Conduct for Members.

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.

Tribunal rejects Freedom of Information ('FOIA') request over code of conduct complaints process

Members will be aware that the council's Arrangements for dealing with Member Complaints give the member who is the subject of the complaint the opportunity to make representations in response to the allegation/s made about them.

The First-tier Tribunal ('the FTT') has considered an appeal over the refusal of a freedom of information request where the requester asked for a copy of the representations submitted by a member. In rejecting the appeal the FTT said it is important that a council's code of conduct complaints process remains confidential.

In Michael Thompson v Information Commissioner & Cheshire East Council the appellant, a town councillor at the time, had complained to the local authority about another councillor.

Cheshire East considered the complaint under a 'Members Code of Conduct Complaint Process', and decided to take no further action.

The appellant subsequently requested from the council in March 2015 "a copy of [named councillor's] response to my formal complaint made in August 2014, as despite being found in breach of the Code of Conduct, I am dissatisfied with the outcome".

Cheshire East responded shortly after and noted that the councillor had not been found to have breached the code of conduct. It said it would need to contact 'the relevant people' for their 'consent'.

The appellant then broadened his request, saying it was "necessary to have copies of all the evidence supplied in support of [named councillor's] defence against my complaint, as such evidence may have been influential in causing a miscarriage of justice".

In August 2015 Cheshire East refused to disclose the information relying on s. 41 (information provided in confidence) of FOIA. It pointed out that the complaints process noted that written replies by a respondent were provided in confidence and there was no expectation of release of the information following an FOI request. It also said the councillor in question had not consented to its release.

With the appellant progressing the matter and complaining to the Information Commissioner ('the IC'), the council sought additionally to rely on s. 40(2) (personal information) of FOIA.

The Information Commissioner concluded that Cheshire East had correctly relied on s. 40(2) on the basis that disclosure of the information would be unfair, and therefore in breach of the first data protection principle.

Factors he considered included: a general expectation of privacy for conduct investigations; there was a legitimate expectation of privacy; disclosure would cause unwarranted damage or distress to the councillor; and it was not within the remit of the IC to consider the merits of the complaint (the appellant feeling that his complaint had not been handled properly).

The appellant appealed to the FTT. His grounds included that the councillor was the only person who feared disclosure, and that he would like to see what the councillor wrote because he believed that if he claimed something had occurred which had not, the council's decision would be flawed.

The FTT said s. 40(2) was appropriately relied on so as to withhold the requested information. Its reasons included that:

- The requested information was clearly personal data.
- Even though the material related to the individual's work rather than personal activities, it related to a complaint made against the councillor's behaviour and the council considered whether the behaviour contravened its code of conduct. As such, the information was clearly personal in nature, "in the same way that an individual's annual appraisal report can be considered to be personal data".
- Disclosure was unwarranted. "Notwithstanding that the councillor held a public office and the withheld information related to the councillor's public function rather than private life, we

accept that information relating to complaints against individuals carries a very strong general expectation of privacy. This is due to the likelihood that disclosure could cause the individual distress and potential damage to future prospects and general reputation.”

- The FTT accepted that the councillor would have had a legitimate expectation of privacy based on the Tribunal’s finding that material provided in relation to an investigation into conduct is “inherently highly personal in nature and the councillor’s rights and interests in the privacy of his data need to be respected”.
- It was not relevant that neither the requester nor the councillor were no longer in office, “since they might seek to be in future”.
- The councillor had a legitimate interest and right to have his personal data withheld from the public because the subject matters attracted a right to privacy.
- The collective weight of interest in disclosure was “vastly outweighed by the councillor’s rights and freedoms or legitimate interest in...not disclosing to the world at large material related to a complaint about his conduct where the council did not find the complaint to be merited”.

In relation to the s. 41 exemption, the council did not make extensive submissions. The FTT did not consider this further, as it had found that the information was rightly withheld on the basis of other exemptions.

The FTT did, however, conclude: “The Code of Conduct Complaints process provides that respondents are entitled to rebut complaints made against them. This process is undertaken in confidence.

“If for any reason the full details of member complaints and the consequential rebuttals are released to the world in response to requests for information, all confidence in the process would be lost. The process and regime would be undermined by a resultant lack of candour in complained about members’ responses to complaints and, potentially, in the detail and context of complaints made against them. Therefore it is important that this process remains confidential.”

Tribunal tells district council to publish report into conduct of former parish council chair - *Janet Dedman v IC*

In contrast to the above decision where a request for disclosure of a councillor’s individual written response to a complaint made against them was refused, in a different case North Norfolk District Council (‘NNDC’) were ordered to publish a draft report which it prepared into the conduct of the former chair of a parish council.

NNDC had argued disclosure of the report would be unfair as it related to the chair’s personal data. Whilst the Tribunal accepted that the draft report did relate to the chair’s personal data it concluded that, because of the particular background circumstances of the case, the public interest in disclosure was greater and there would be no unwarranted prejudice to the councillor’s rights, freedoms or legitimate interests if the draft report was released.

The background was that a dispute among residents had broken out in the parish of Hickling in 2014 over whether the Hickling Playing Field or Recreational Ground Charity needed to change its constitution to increase the degree of protection from development given to a historic barn.

'C', then chair of Hickling Parish Council, was quoted in a local newspaper as saying the charity had shown no desire to negotiate a new constitution and "they don't want to make changes to the constitution to protect the village asset and it's very sad".

A resident then complained to North Norfolk's monitoring officer that C had made factually inaccurate comments and deliberately misled readers, amounting to a breach or breaches of the Councillors' Code of Conduct.

North Norfolk's monitoring officer appointed an external solicitor to investigate the complaint. She submitted a draft final report for North Norfolk's standards committee after C had ceased to be a councillor, the chair having lost her seat in the election of May 2015.

The monitoring officer decided that there was "no public benefit" in taking the matter further because C was no longer a serving councillor.

When another resident requested a copy of the draft report, North Norfolk refused – relying on s. 40(2) FOIA – on the grounds that the draft contained personal data about C who no longer held a public position.

The dispute then reached the Information Commissioner's Office, which accepted C would have had a legitimate expectation that the details of the investigation would remain confidential, North Norfolk's policy was that draft standards investigation reports were not shared with persons who were not parties to the complaint, and the prejudice to C's interests outweighed any legitimate public interest in disclosure.

The complainant then appealed to the Information Rights Tribunal, which said that there was no doubt that the report contained the personal data of C and that there was no practical possibility of editing it so as to avoid the disclosure of such data.

However, the tribunal added: "There is plainly a strong public interest in the disclosure of findings as to the conduct of the chair of a parish council when performing her public duties.

"That is especially the case where a complaint has been made that she misled a newspaper and its readers, including her local parishioners, as to important matters relating to a controversial local issue. There is a danger that the withholding of a report may encourage the suspicion that its findings are adverse to the subject, whether or not that is, in fact, the case."

It was hard to see how or in what substantial respects, the report's findings of fact or its final conclusions could properly have been altered by the standards committee, had it been submitted to them, the tribunal said.

The tribunal said the Information Commissioner's decision notice had treated a draft report, simply because it was a draft, as a quite different creature from a final report without apparent consideration of the practical differences that might have existed in this case. It said "of course, if the draft awaited further assessment by a fact finder or a senior solicitor, the difference might be substantial. Here, we assess that it would have been minimal. Given that there never will be a final report that is a significant finding."

It also suggested that the public interest in disclosure was “affected minimally, if at all,” by C losing her seat.

“The public is entitled to know whether a serious complaint as to the conduct of an elected representative was found to be justified, regardless of her status when the report is disclosed,” the tribunal said.

“Such transparency is essential to the maintenance of proper standards in public life, whether or not the subject of the complaint remains in office.”

It pointed out that were this not so “a delinquent public officer, faced with a draft report containing serious criticism of his/her conduct, could simply prevent disclosure by timely resignation”.

The tribunal said there was a realistic possibility that C would again seek election to the parish council or another public authority in the future. “That being so, the electorate should be apprised of the findings of the draft report, whether favourable or adverse to C. In seeking election in the future, she should neither be prejudiced by unjustified suspicions as to her past conduct nor, as the case may be, protected from disclosure of a past breach or breaches of the Code of Conduct.”

The tribunal found that the public, especially the local community, had a powerful legitimate interest in disclosure of the requested information and that C could have no reasonable expectation that it would not be disclosed in the circumstances that arose.

“ That it was a draft report and marked “confidential” when received was no obstacle to disclosure nor was the fact that C was no longer in office. The Tribunal said that Mrs. Dedman had a legitimate interest in knowing the findings of the draft report which could only be satisfied by its disclosure.” This legitimate interest permitted NNDC to disclose the report despite the fact it contained C’s personal data without NNDC breaching its obligations under the Data Protection Act 1998.

“For the reasons already discussed, disclosure was not unwarranted by reason of prejudice to C’s rights, freedoms or legitimate interests. If there was such prejudice, it was clearly justified in this case, given the public role undertaken by C and what she might reasonably expect as to publicity for the findings of such a report.”

The tribunal concluded that accordingly disclosure was not unfair and North Norfolk was not entitled to rely on the s.40 (2) exemption.

Developer launches Judicial Review over councillor's interest in planning

As stated in the November 2016 Update 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.

A recent instance relating to Cornwall Council highlights the potential consequences which can arise for a council when one of its councillor's fails to declare an interest or is perceived to have failed to declare an interest.

A developer commenced legal action against Cornwall Council over a case where it claims a councillor failed to declare an interest in a planning decision on which he voted.

Westcountry Land (Falmouth) lodged a claim for judicial review following the removal of the Menehay site from Cornwall's site allocations development plan document.

It said a councillor for Falmouth Boslowick did not declare interests relating to the site, or remove himself from making the decision.

The company said the councillor owned a chalet and camping park whose main competitor stood to benefit financially were planning permission granted at Menehay, as a covenant that prevented expansion would be lifted allowing his rival to extend his business.

Westcountry Land said: "We wish to ensure that the proper process for making crucial planning decisions is followed.

"We have reluctantly had to resort to legal action to ask the court to scrutinise that process and the concerns raised. It's in the public interest to ensure that the process is transparent and the interests of those making these decisions is properly declared."

A council statement said Menehay was excluded from the allocations document "for a number of reasons, one of which being that it was felt that an alternative disused brownfield site should be prioritised over the greenfield Menehay site".

The council denied that there was any unlawfulness in the decision to not include the Menehay site within the allocations development plan document and it would robustly defend any challenge on this basis.

Recent Code of Conduct Decisions and News Stories

Unfortunately a few councillor conduct stories have again made the headlines over the last few months. Raising awareness of those matters is important to highlight the potential consequences councillors may face where the conduct amounts to a breach of their authority's Members Code of Conduct.

The Acting Monitoring Officer at Coventry City Council ('the City Council') carried out an investigation into the remarks alleged to have been made about immigration issues by a councillor to the Coventry Telegraph in July 2016 in relation to a private Whatsapp conversation in May 2016.

On 14 July 2016 the Coventry Telegraph published a story about the conversation having first asked the councillor for their response. On 15 July the councillor was interviewed on the BBC Coventry and Warwickshire Radio Breakfast Show in relation to the story.

What is interesting is that the Acting Monitoring Officer did not receive a complaint in respect of the comments reported in the media. However, there was some negative publicity regarding the comments. The City Council, along with all other local authorities, has a statutory duty to promote and maintain high standards of conduct by members. The City Council therefore considered it appropriate (despite the lack of complaint) to investigate the comments made to establish whether they amounted to a breach of its Code of Conduct.

Following an investigation into the incident, the Acting Monitoring Officer concluded that:-

- (a) The councillor was not acting in their official capacity during the Whatsapp conversation and so the Code of Conduct did not apply on that occasion.
- (b) The councillor was acting in their official capacity when they spoke to the Coventry Telegraph journalist and when they were interviewed on BBC Coventry and Warwickshire Radio and so was bound by the Code of Conduct on those occasions.
- (c) The councillor's comments made about immigration issues amounted to a breach of the City Council's Code of Conduct. The paragraphs of the Code that the Acting Monitoring Officer considered to have been breached were:

- *To behave in accordance with all my legal obligations, alongside any requirements contained within the Council's policies, protocols and procedures including the use of Council resources;*
- *Always treat people with respect, including the organisation and public I engage with and those I work alongside;*
- *Provide leadership through behaving in accordance with these principles when championing the interests of the communities with other organisations as well as within the Council.*

On 9 December 2016 the City Council's Ethics Committee decided to impose the following sanctions against the councillor:

- (a) A letter of censure to be sent from the Committee to the councillor;
- (b) The councillor was recommended to undertake further training on equality and diversity and dealing with the media (including social media);
- (c) The Committee's findings to be published on the City Council's website; and
- (d) The councillor was recommended to continue to try to engage with different sections of the community in Coventry.

A councillor at Stoke on Trent City Council ('the City Council') was reprimanded for drinking brandy in an alcohol restriction zone during a Christmas lights switch-on event in their ward in November 2015 and also making 'sexual remarks' about two women.

In April 2017 a cross-party panel at the City Council found that the councillor's behaviour was in breach of its Members Code of Conduct. The panel ruled that the councillor had failed to treat others with respect, and had acted in a way that brought the City Council into disrepute.

The panel decided to formally censure the councillor and ordered them to undertake additional training.

Finally, again at Coventry City Council on 17 March 2017 its Ethics Committee found that a councillor had made “racially abusive” comments towards a Sri Lankan shopkeeper. Two independent reports also found that the councillor had breached the City Council’s Code of Conduct in relation to the incident.

After the Ethics Committee hearing the councillor was formally censured by the City Council and instructed to undergo “suitable training”.

The Ethics Committee also recommended that the councillor be removed from their position as shadow member for policing and equalities and the councillor resigned from that position shortly after the findings. On a separate note the councillor was also suspended from their party.

Standards Committee – Annual Report

The Annual Report of the Standards Committee was presented to members of the Committee on 3 November 2016. The report set out a summary of the key matters that had been within the remit of the Committee in the previous 12 months. As well as setting out the Committee’s role, and the responsibilities of the Monitoring Officer, the report looked at the operation of the Member’s Code of Conduct and the complaints which had been submitted against councillors. Of the seven complaints outlined in the report, six related to postings that councillors had made on social media. It was reported that all six complaints had been rejected as the members had not been acting in an official capacity at the time the social media postings were made.

The Committee discussed how best to address the need for members to have training in social media use and in its potential hazards. It was agreed that as well as offering training on the social media guidance for current members training on the guidance should become part of the new-councillor induction training arranged and offered to newly-elected councillors after the local elections. In preparation for that training, the City Solicitor was asked to review the guidance provided to members on the use of social media. Arrangements are being put in place for this to be implemented.

The report can be viewed via the following link (see item 5):

http://www.manchester.gov.uk/meetings/meeting/2654/standards_committee

Revised Use of Council Resources Guidance for Members, Gifts and Hospitality Guidance for Members and Member Officer Protocol

The guidance and protocol have been revised as requested by the Standards Committee on 16 March 2017 which can be viewed via the following link:

http://www.manchester.gov.uk/meetings/meeting/2652/standards_committee

All three documents can be found in Part 6 of the Constitution which again can be accessed via the following link:-

http://www.manchester.gov.uk/downloads/download/4030/the_constitution

Revised Social Media Guidance for Members

This guidance has been revised as requested by the Standards Committee on 16 March which can be viewed via the following link:

http://www.manchester.gov.uk/meetings/meeting/2652/standards_committee

It is available on the Members intranet page.

Revision of Councils Code of Conduct Arrangements

The Arrangements for dealing with Allegations of Breaches of the Council's Code of Conduct for Members have been revised and can be found via the following link:-

http://www.manchester.gov.uk/info/997/committee_membership/2846/standards_committee/2