

Ethical Update – November 2018

'Helping to promote high standards of conduct'

Welcome to the November 2018 issue of Manchester City Council's Ethical Governance Update

This newsletter contains details of the following:

- Standards in Public Life address
- Freedom of Information Tribunal decision –complaints and councillors personal data
- Councillor cleared of Freedom of Information Act offence
- Councillor pleads guilty to posting offensive messages on social media
- Gifts and Hospitality
- Members Interests

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Committee on Standards in Public Life review of local government ethical standards.

In June 2018, Dr Jane Martin CBE addressed the Lawyers in Local Government Annual Monitoring Officers' conference on the progress of the Committee's review into local government ethical standards. As part of her address, Dr Martin spoke about the current standards framework and some of the views of the current system.

It was felt that the current sanctions are not enough, and that Councils cannot deal with serious and persistent misconduct. As a result of this, the Committee will be looking at the evidence it has received, the wider legal issues involved and what sanctions would be appropriate for Councils to have available.

Dr Martin referred to codes of conduct for local authorities and spoke about the variation in quality, as some codes rely on broad provisions which are difficult to adjudicate on and could easily cause disputes over interpretation. The Committee will,

therefore, be looking at best practice in this area, and any guidance that could be given to councils drawing up codes of conduct, particularly where councillors sit on multiple bodies with different codes.

The Committee will consider whether the role of the Independent Person should be strengthened, and put on a more formal footing, as well providing increased support and protection for Monitoring Officers from undue pressure. The role and influence of political groups will also be examined, and the Committee is gathering evidence on the workings of political groups, the relationship between national parties and local parties, and their role in the standards framework.

As regards councillors declaration of interests, the Committee heard that the current requirements don't match the public's expectations and don't work for councillors either. The evidence gathered by the Committee suggests that greater clarity and tightening up of the system is needed so that councillors and officers are aware of the boundaries and rules around interests, and also to protect the public interest by preventing undue influence.

Dr Martin stated that the focus of the consultation is the behaviour and conduct of councillors; their professional relations with officers and the public, and their decision making when they have executive responsibilities or are serving on a committee.

In her conclusion, Dr Martin highlighted the importance of getting standards right in order to protect an organisation and the individuals within it from conflicts of interest, reputational risks, or legal challenge. Ethical standards should be embedded into the ordinary, day to day interactions which includes maintaining professional conduct and respect for others; standing up against bullying and harassment. Ethical standards are also about having a culture of openness, scrutiny and objective decision making which has the public interest at the centre of a local authorities actions and values.

The transcript of Dr Martin's speech can be accessed here via the web link below:

<https://www.gov.uk/government/speeches/dr-jane-martin-cbe-speech-to-lawyers-in-local-government-annual-monitoring-officers-conference>

Freedom of Information Tribunal decision; Code of Conduct matter

The Appellant made a complaint of misconduct against a local authority councillor in relation to their handling of a planning matter. That complaint was not upheld by the Council.

The Appellant subsequently made a Freedom of Information request to the Council for disclosure of the handling of the complaint including the advice provided by the Independent Officer to the Monitoring Officer in relation to that misconduct complaint.

The Council provided the Appellant with some of the information held within scope of the request, but withheld the advice received from the Independent Person. This included the councillor's comments on the complaint. The Council relied upon the following exemptions under the Freedom of Information Act 2000 (FOIA) to withhold the information:

- third party personal data
- inhibition of free and frank advice
- prejudice to the effective conduct of public affairs.

The Appellant appealed to the Information Commissioner who issued a Decision Notice dismissing the Appellant's complaint. The Information Commissioner concluded that the disclosure of the advice would inhibit the future provision of advice to the Council, which would prejudice the effective conduct of public affairs going forward. The Information Commissioner also stated that the Independent Person had a reasonable expectation under the terms of their employment that the advice would not be disclosed widely. The public interest in the particular information was not significant. The Information Commissioner did not go on to consider the issue of third party personal data.

The Appellant's appeal to the Tribunal relied on grounds related to principles of transparency, accountability and public confidence in the conduct of local government. The Tribunal considered whether the public interest favoured withholding or disclosing the advice of the Independent Person, and whether the information should be withheld from disclosure as it contains the personal data of the councillor who was the subject of the complaint, and also the personal data of the Independent Person, and whether they would both have a legitimate expectation that the Council would treat the withheld information as confidential where the complaint against the councillor had been found to be unsubstantiated. Disclosure of this information would have breached the Data Protection Act's requirement for fair and lawful processing.

The Tribunal's view was that normally the public interest favoured disclosure of the advice given by the Independent Person which was different to the position taken by the Information Commissioner. The Tribunal did however agree with the Council that details of unsubstantiated complaints against councillors ought not generally to be disclosed to the world at large under the provisions of the FOIA. Disclosure of the councillor's name and opinions expressed about them would breach the data protection principles. The personal data exemption did not apply to the name of the Independent Person as their names are already in the public domain, and their views are disclosed if there is a public hearing.

Councillor cleared of Freedom of Information Act offence

A councillor at Thanet District Council has been cleared of offences under the Freedom of Information Act 2000 (FOIA). The Information Commissioner's Office had brought the case against the councillor over alleged offences under section 77 of the FOIA, which makes it an offence for any person to deliberately destroy, alter or conceal a record after it has been requested with the intention of preventing its disclosure.

Councillor pleads guilty to posting offensive messages on social media

A councillor at Rutland County Council has pleaded guilty to posting malicious content on social media. Richard Alderman appeared at Birmingham Magistrates Court at pleaded guilty to four counts of sending by public communication network an offensive, indecent, obscene, menacing message or matter, and is due to be sentenced.

The court heard that Alderman posted a number of comments on Facebook between June and July this year which were reported to the police as being racist and malicious. Rutland County Council said “Councillor Alderman has admitted his wrongdoing and pleaded guilty to all four charges brought against him. Criminal conduct of this kind is totally unacceptable.” It added that, following sentencing, Councillor Alderman’s actions will be the subject of a further investigation by its standards committee and reviewed against the council’s Code of Conduct.

Gifts and Hospitality

Councillors are reminded that Manchester City Council’s Code of Conduct for Members requires members to notify the Monitoring Officer in writing of a personal interest in any business of the Council where the member has received a gift or hospitality with an estimated value of £100 or more.

The Council also requires members to notify the Monitoring Officer of any gifts or hospitality accepted by either themselves or their partner/spouse by or on behalf of the elected member in connection with their appointment as an elected member or representative of the Council with an estimated value of at least £100. Cash or monetary gifts should always be refused without exception, and the Monitoring Officer should be notified. It is recommended that if a member refuses any other gift, or hospitality, offered to them or their partner, the member should notify the Monitoring Officer of the refusal as reasonably practicable.

Members also are reminded that it is a breach of the Code of Conduct for members to conduct themselves in a manner which could reasonably be regarded as bringing their office or the Council into disrepute, or for a member to use or attempt to use their position as a member improperly to confer on or secure for themselves or any other person an advantage or disadvantage. Guidance on gifts and hospitality for members, including examples of when to register or accept a gift or hospitality, can be found at Part 6 Section D of the Council’s Constitution.

The Council’s Constitution can be found at https://secure.manchester.gov.uk/info/100004/the_council_and_democracy/2446/our_constitution/1

Declaration and Registration of Interests

Members are required to notify the Monitoring Officer of any disclosable pecuniary (financial) or personal interests that apply to them or apply to their partner/spouse. The Monitoring Officer must be notified within 28 days of the member being elected. Members are also reminded that it is a criminal offence to fail to notify the Monitoring Officer, within 28 days, a pecuniary interest which has been declared at a meeting which is not on the register of members interests. This includes participating in any discussion or vote on a matter in which you have a disclosable pecuniary interest which has not been declared; knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting. The criminal penalties available to a court are to impose an unlimited fine and disqualification from being a councillor for up to 5 years.

If a member considers that the disclosure of the details of a disclosable pecuniary interest or personal interest could lead to violence or intimidation against them, or to a person connected with them, and the Monitoring Officer agrees, the details of the disclosable interest will be withheld from the public register under section 32(2) of the Localism Act 2011. The public register will simply state that the member has a disclosable pecuniary interest.

Members are reminded that the Register of Interests 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 also misleading.

If any member is unsure if something should be registered then please contact the Democratic Services Legal Team via DemServ@manchester.gov.uk, or 0161 234 3336.

To update your register please contact the Governance and Scrutiny Support team on 0161 234 33034 in the first instance.