



Standards Committee
29 June 2017

**Report from the
Chief Legal Officer**

Wards affected: ALL

Update on Standards Matters

1.0 SUMMARY

- 1.1 This report brings to Members' attention recent national standards news items for information.

2.0 RECOMMENDATIONS

- 2.1 To note the content of this report.

3.0 DETAILS

3.1 Release of reports into code of conduct matters

Assessing whether to publish information related to code of conduct matters can be difficult as it requires balancing data protection legislation and the Freedom of Information Act ('the Act') against the public interest. Two recent tribunal rulings provide further guidance on this issue.

Michael Thompson v The Information Commissioner and Cheshire East Council (Freedom of Information Act 2000)

- 3.2 Michael Thompson had been a councillor at Cheshire East Council when he submitted a complaint against a fellow councillor. The complaint was considered and no further action taken. Mr Thompson sought under Freedom of Information legislation the release of the response of the councillor to the complaint and any documents provided in the councillor's defence.
- 3.3 The Council declined to release the information on the grounds the councillor's response was not disclosable as it had been provided in confidence, thereby meeting an exemption under Section 41 of the Act. When an appeal was made to

the Information Commissioner, the Council argued that the documents the councillor had used to support his defence, for example council minutes, were publicly available and thereby exempted under Section 21 (information accessible by other means) of the Act and that his personal response contained personal information making it exempt under Section 40(2) of the Act. The Information Commissioner upheld Cheshire East's decision, leading to an appeal to the First-Tier Tribunal.

- 3.4 In their decision, the Tribunal ruled in favour of the Council and Information Commissioner. They found that the councillor's response was personal information and could not be redacted to prevent identification. Although the information related to the councillor in his formal capacity, because it pertained to an alleged conduct breach, "the information is clearly of personal in nature, in the same way that an individual's annual appraisal report can be considered to be personal data."
- 3.5 Having concluded it was personal data, the Tribunal then assessed whether the appellant had a legitimate interest and disclosure was necessary to meet that legitimate interest. They concluded that it was reasonable for the appellant to want to see the councillor's response in the interests of assessing how the complaint had been dealt with, but also generally in respect of accountability of elected councillors.
- 3.6 However this legitimate interest was found to be outweighed by the councillor's interests, rights and freedoms, rendering disclosure unwarranted when the Council had found the complaint to lack merit. The tribunal noted:
- Information relating to complaints "carries a very strong expectation of privacy," because of the distress and reputational damage arising from complaints. This extends to an unfounded complaint because the existence of a complaint can itself be damaging;
 - There was a legitimate expectation of privacy on the councillor's part because of the personal nature of complaints investigations;
 - The code of conduct complaints process should remain confidential as otherwise "all confidence in the process would be lost" and result in a lack of candour on the part of relevant parties in the complaints process;
 - That the appellant and councillor were no longer in office was irrelevant because they might seek to be again; and
 - A councillor has a legitimate interest in having their personal data withheld from the public sphere.

Janet Dedman v The Information Commissioner

- 3.7 In a separate case the Information Rights Tribunal overturned a decision of the Information Commissioner regarding the release of a draft report on an investigation into a complaint against a councillor.
- 3.8 The complaint concerned the Chair of Hickling Parish Council ('the Chair'), who was accused of making deliberately misleading comment to a local paper regarding a local charity and its protection of a local asset. North Norfolk District Council (NNDC), who as the principal authority were responsible for investigating, appointed an external solicitor to investigate, whose report was submitted after the Chair had lost her seat. As she had lost her seat the NNDC monitoring officer

decided there was no public benefit in pursuing the matter further. It is worth noting that NNDC's complaints procedure sets out that if an investigator concludes there was no breach of the code, then if the monitoring officer agrees, no further action will be taken. It can therefore be inferred that the investigator found there to be a breach in this case, otherwise the monitoring officer would have discontinued the matter on other grounds.

- 3.9 Janet Dedman, a local resident, subsequently requested a copy of the draft investigation report only for NNDC to refuse to release it on the grounds that it contained personal data and was therefore exempt under Section 40(2) of the Act. The Information Commissioner was then engaged, upholding the initial decision, so Mrs Dedman appealed.
- 3.10 In its decision, the Tribunal found that the report contained personal data and there was no feasible way to redact it. The Tribunal then had to consider whether disclosure was reasonable balancing the public interest in disclosure against the rights, freedoms and legitimate interests of nondisclosure of the Chair, with reference to her reasonable expectations in the handling of her personal data.
- 3.11 The Tribunal concluded that there was a strong legitimate interest in the disclosure of the report as it concerned a councillor acting in her formal capacity, with respect to a controversial issue, where she had been accused of misleading many people through the medium of the press. It found that:
- Withholding a draft report prior to its consideration by a standards committee is a legitimate expectation, as public discussion may influence that hearing. Once the monitoring officer had decided to cease the proceedings, that expectation was no longer justified;
 - A councillor would expect a report on their conduct to be released subsequent to a determination by a standards committee;
 - The report being a final draft, subject only to adoption by the Committee, with no qualified opinions or suggestions of further investigation needed was a relevant consideration. In this state it was difficult to see how the Committee could significantly amend the report had it gone to a hearing;
 - In considering the public interest in continuing conduct proceedings once a councillor has ceased to hold office, "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. Such transparency is essential to the maintenance of proper standards in public life, whether or not the subject of the complaint remains in office;"
 - Ruling that loss of office was a major consideration would in effect allow a councillor to resign before disclosure thereby protecting themselves. The public interest was not served by this; and
 - Even though the councillor had lost office that they might seek it again in future was a relevant consideration. They should not be "prejudiced by unjustified suspicions as to [their] past conduct nor, as the case may be, protected from disclosure of a past breach or breaches of the Code of Conduct."
- 3.12 While these two cases have differing conclusions, they are not contradictory because of the very different circumstances of both cases, and they clearly

demonstrate the difficulty in balancing the public interests against a councillor's personal rights.

3.13 The position under Brent's complaints procedure is as follows:

- At Initial Assessment stage, if the Monitoring Officer decides that the complaint is not to progress further, the Monitoring Officer will notify the complainant in writing of that fact and with the reasons. The complainant has a right to seek a review of that decision. The decision in respect of the review is also shared with the complainant and the member concerned.
- If a formal investigation takes place, both the complainant and the member concerned will be given the opportunity to comment on the Investigating Officer's draft report. Subsequently, the Standards Committee will consider the Investigating Officer's final investigation report and a copy of the report will be given to the complainant and the member concerned. Members of the Standards Committee will be advised that the report relates to an individual and will reveal their identity.
- If there is a hearing, the meeting of the Standards Committee will be open to the press and public unless confidential or exempt information under Part VA Local Government Act 1972 is likely to be disclosed.

3.14 **Standards Cases**

Rotherham Borough Council

3.17. A councillor at Rotherham Borough Council has resigned after he was convicted of sexual assault. Councillor Andrew Roddison was found to have inappropriately touched a woman at a council event and having been urged to resign by the Leader of the Council, he duly did so after being sentenced. The judge had issued a six-month community order including a curfew from 7pm to 7am and electronic tagging, as well as an indefinite restraining order.

3.18. It is worth noting that because the sentence was less than a three-month custodial sentence, the councillor was not automatically disqualified. If the matter had been considered by the Standards committee rather than the councillor choosing to resign, the sanctions that could be imposed by Brent's Standards Committee would only, in so far as these might have been appropriate:

- Censure or reprimand the member
- Publish in a local newspaper its findings in respect of the member's conduct
- Report its findings to Council for information
- Recommend that the member apologises
- Recommend that the member undertakes training
- Recommend to the member's Group Leader (or in the case of ungrouped members recommend to Council or to committees) that the member be removed from any or all committees of the council
- Recommend to the Leader that the member be removed from the Cabinet or removed from particular portfolio responsibilities
- Recommend to Council that the member be replaced in any Council appointed

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- Instruct the Monitoring Officer to arrange training for the member
- Recommend to Council removal from all outside appointments to which the member has been appointed or nominated by the authority
- Withdraw facilities provided to the member by the Council
- Exclude the member from the Council's offices or other premises with the exception of meeting rooms as necessary for attending council and committee meetings.

East Riding of Yorkshire

- 3.19. The Committee may be aware of the case of Councillor Dominic Peacock, a councillor at both East Riding of Yorkshire Council and Beverley Town Council, who was suspended by his party after making offensive comments online regarding the late Jo Cox MP. A standards committee hearing at East Riding was held in December 2016 into his conduct.
- 3.20. The standards hearing unsurprisingly found Councillor Peacock, who failed to attend the hearing or comment on the investigation report, to have breached his local code of conduct by failing to treat others with respect and bringing his office or the Council into disrepute. Censure was recommended to both councils as well as a recommendation that both call upon Councillor Peacock to resign. Both councils agreed these recommendations, although a small minority of councillors in East Riding voted against.
- 3.21. This case exemplifies the limited sanctions available to standards committees. Suspended by his party indefinitely, this councillor has already received a far more severe sanction than censure, the highest penalty available. Beverley Town Council decided following this case that all their Members would undergo social media training, their Mayor remarking that this was needed to show that the Council took the issue seriously.
- 3.22. It is worth noting that the investigation report concluded that "the comment was posted on a site campaigning in the EU Referendum and therefore it is considered that the comment made by Councillor Peacock was made in his official capacity as a Councillor campaigning for a particular outcome in the EU Referendum he was campaigning in his official capacity as a councillor and therefore subject to the Code." This point is somewhat arguable, suggesting that councillors cannot campaign on political issues in a personal capacity. Potentially therefore the council could have determined that he was not covered by his local code in this case.

Newcastle City Council

- 3.23. A councillor has been found guilty of breaching his local code of conduct by tweeting confidential information. Councillor Greg Stone tweeted the outcome of a contract tender, which he disagreed with, despite it being made clear that the decision remained confidential. Councillor Stone had deleted the tweet upon him being asked to do so by his group leader, but it was revealed that he had also sent someone involved with the losing contractor a private Facebook message detailing the private contract award.

- 3.24. In mitigation Councillor Stone argued that it was in the public interest to release the information, that no commercially sensitive material had been revealed, and that the issuing of a decision notice, albeit privately, had concluded the tendering process and any need for privacy. The investigator's report carefully considered whether the tweet met any of the exemptions from the local code in respect of the release of confidential information.
- 3.25. In coming to its decision, it was agreed that the tweet concerned council business and the councillor would only have known the information due to his role; therefore the local code of conduct was engaged. This was despite his Twitter account not including his title and stating that tweets were in a personal capacity. The standards committee agreed with the investigator's recommendations that the councillor had breached his local code by bringing his office and the Council into disrepute and by disclosing confidential information. A formal censure was issued and the committee asked the monitoring officer to look into training.
- 3.26. As the Committee is aware social media usage is one of the key areas in which conduct cases are currently arising. The key thing to recognise from this case is that tweeting about council business, and particularly tweeting information which could only have come into your possession through being a councillor is likely to mean the Code applies despite any disclaimers about your social media account being personal.
- 3.27. Social media is a valuable tool but its use carries risks. In Brent members were provided with training in respect of 'Getting the most out of social media' on 10 November 2016 and Social media training was provided specifically for Cabinet Members - 9 March 2017. In addition, a Monitoring Officer Advice Note circulated to members in April this year included a section on **"hidden dangers of the use of social media."**
- 3.28. Brent's Code also sets out that the release of confidential information is not allowed bar in some exceptional circumstances, which are:
- 1) you have the consent of a person authorised to give it; or
 - 2) you are required by law to do so; or
 - 3) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - 4) the disclosure is reasonable in all the circumstances, in the public interest and made in good faith and in compliance with the reasonable requirements of the Council.
- 3.29. Should councillors have any concerns about information being maintained as confidential then they should contact the Chief Legal Officer for advice.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications arising from this report.

5. LEGAL IMPLICATIONS

5.1 These are contained in the body of the report.

6. EQUALITY IMPLICATIONS

6.1 There are no equality implications arising from this report.

7. STAFFING IMPLICATIONS

7.1 There are no staffing implications arising from this report.

8.0 BACKGROUND INFORMATION

8.1 None.

Contact Officers

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