

 Brent	Audit and Standards Advisory Committee 26 July 2021
	Report from: Director of Legal, HR, Audit & Investigations
Standards Report (including quarterly update on Gifts & Hospitality and mandatory training)	

Wards Affected:	All
Key or Non-Key Decision:	N/A
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	None
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Debra Norman, Director of Legal, HR, Audit & Investigations Tel: 020 8937 1578 Email: debra.norman@brent.gov.uk Biancia Robinson, Senior Constitutional & Governance Lawyer Tel: 020 8937 1544 Email: Biancia.robinson@brent.gov.uk

1.0 Purpose of the Report

- 1.1 The purpose of this report is to update the Audit and Standards Advisory Committee on gifts and hospitality registered by Members, and the attendance record for Members in relation to mandatory training sessions.
- 1.2 The report also provides a summary of a recent case involving the Freedom of Information Act and Independent Persons.

2.0 Recommendations

2.1 That the Committee note the contents of the report.

3.0 Detail

Gifts & Hospitality

3.1 Members are required to register gifts and hospitality received in an official capacity worth an estimated value of at least £50. This includes a series of gifts and hospitality from the same person that add up to an estimated value of at least £50 in a municipal year.

3.2 Gifts and hospitality received by Members are published on the Council's website and open to inspection at the Brent Civic Centre.

3.3 During the first quarter (April – June 2021) no gift and hospitality has been recorded.

Member Training Attendance

3.4 The Committee will be pleased to note that all Members have undertaken and completed all mandatory training with exception of Data Protection/GDPR training.

3.5 The next period in which Members will have to undertake the mandatory training including the usual committee training, is after the 2022 local elections.

3.6 The following members are yet to complete e-learning Data Protection/GDPR course:

Data Protection for elected members

Councillor Rita Conneely
Councillor Harbi Farah
Councillor Erica Gbajumo
Councillor Gwen Grahl
Councillor Daniel Kennelly
Councillor Arshad Mahmood
Councillor Roxanne Mashari
Councillor Lloyd McLeish
Councillor Kana Naheerathan
Councillor Neil Nerva
Councillor Keith Perrin
Councillor Eleanor Southwood

- 3.7 The First-Tier Tribunal (FTT) has dismissed a legal challenge to a district council's decision to refuse, in response to a freedom of information request, to provide the views of two independent persons on a complaint about the conduct of a councillor. The Committee may recall that this case was first considered by it, at its meeting in 2018. At that time the appeal was considered by a differently constituted Tribunal and the decision promulgated on the 18.05.2018. The decision was set aside by the Upper Tribunal and the matter remitted for fresh consideration.

The Facts

- 3.8 Mr Bennis (the appellant) made an unsuccessful complaint of misconduct against a councillor in relation to their handling of a planning matter. The complaint was considered by Stratford's Monitoring Officer, who sought the views of the two IPs appointed under the Localism Act 2012. On 13 January 2017 the monitoring officer informed the appellant by letter that his complaint would not be investigated any further.
- 3.9 The appellant then submitted a Freedom of Information Act 2000 (FOIA) request to the Council for disclosure of all correspondence relating to his complaint, including the advice it had received from one of its Independent Persons (IPs). The council provided all relevant information but withheld disclosure of the IP's advice relying on s.36 (36(2) (b) (i) - inhibition of free and frank advice and 36(2) (c) prejudice to the effective conduct of public affairs) and s40 (2) (personal data) of the FOIA 2000. On 4 September 2017 the Information Commissioner upheld the council's decision in relation to ss. 36(2) (b) and 36(2) (c).
- 3.10 The Commissioner concluded that it was reasonable for the Stratford Monitoring Officer to have withheld information comprising the IPs' views on the complaint, on the basis that publication would be likely to inhibit the free and frank provision of future advice, and would be likely to be otherwise prejudicial to the effective conduct of public affairs. The Commissioner went on to apply the public interest test set out in s.2 (2) FOIA and decided that the public interest in the withheld information being disclosed was outweighed by the public interest in the exemption being maintained. Mr Bennis appealed but this has now been rejected by the FTT.

It was further satisfied that:

- a) the council's usual practice, was that IPs' opinions would generally be treated as confidential and would only be published when a complaint proceeds to a public hearing. "We find that, in the context of this case, the IPs provided their opinions on the merit of the complaint with a reasonable expectation that these views would not be made public," the FTT said.
- b) there was a significant risk that the candour, and therefore the quality, of the IPs' advice to the council would be diminished were it to become more

likely that it would be made public. “This is because we accept the Respondents’ submissions as to the risk of self-censorship were an IP to become concerned that their views are likely to be made public. We find in addition that this risk is particularly acute in the context of local democratic activities, where the IPs are named and are members of the local community.”

- c) it was satisfied that the ability of the IPs to provide candid and uncensored advice to the monitoring officer was an important part of the council’s complaint system. “We find that any inhibition of the IP’s advice is likely to reduce the effectiveness of the complaints system overall and to have a negative impact on the quality of decisions taken.
- d) “We find in addition that there is a strong public interest in avoiding detriment to the Council’s process for dealing with complaints made against elected officials.”

3.11 Having considered all of these factors, the FTT concluded that the public interests of transparency, openness and accountability were outweighed in this case by the significant public interest in avoiding the risk of inhibition of the IPs’ candid advice, and in maintaining the effectiveness of the council’s complaint process that might otherwise be undermined.

3.12 On s.40(2) the tribunal considered that both Councillor A and the IPs had a legitimate expectation of privacy in relation to the withheld material. It also found that the appellant had failed to identify any consideration in favour of publication that amounted to a “pressing social need” or any other reason capable of overriding Councillor A’s right to respect for her private life.

3.13 The FTT was satisfied that publication would be unfair to Councillor A. “We find in addition that publication of an unsubstantiated complaint against an elected official gives rise to a risk of reputational damage.”

3.14 The tribunal dismissed that appeal and upheld the decision notice of 4 September 2017.

4.0 Financial Implications

4.1 There are no financial implications arising out of this report.

5.0 Legal Implications

5.1 The Council, individual Members and co-opted Members are required to promote and maintain high standards of conduct in accordance with s27 of the Localism Act 2011. The attendance at mandatory training sessions is a means to achieve this and a requirement pursuant to the Brent Members’ Code of Conduct as set out in Part 5, of the council’s Constitution.

6.0 Equality Implications

6.1 There are no equality implications arising out of this report.

7.0 Consultation with Ward Members and Stakeholders

7.1 Not applicable.

8.0 Human Resources/Property Implications (if appropriate)

8.1 Not applicable.

Report sign off:

Debra Norman

Director of Legal, HR, Audit & Investigations