

STANDARDS COMMITTEE

27 MARCH 2017

REPORT OF THE MONITORING OFFICER

A.3 DISCLOSURE OF INFORMATION – NON-PAYMENT OF COUNCIL TAX BY COUNCILLORS

(Report prepared by Lisa Hastings, Monitoring Officer)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

For the Standards Committee to discuss whether it agrees to add the matter of processes and procedures involving Councillors and the payment of Council Tax to its work programme or that a guidance note is issued for Members following on from case-law, concerning the public interest and fairness in disclosing information of non-payment of council tax by councillors.

EXECUTIVE SUMMARY

At the meeting of full Council on 22 November 2016, Councillor Everett asked a supplementary question to the former Portfolio Holder for Finance (minute no. 81) concerning the general matter of processes and procedures involving councillors and the payment of council tax. As the matter falls within the remit of the Standards Committee, the Monitoring Officer agreed to take this matter to the next meeting for a discussion as to whether the Committee wanted to include it within their work programme.

An Upper Tribunal (Administrative Appeals Chamber) decided that it was fair and reasonable to identify a councillor who had defaulted in the payment of council tax, due to being a serious matter of public concern, both as to the ability of the councillor to perform their key functions and in terms of public confidence and accountability.

RECOMMENDATION(S)

It is recommended that the Standards Committee:

Agrees that a Guidance Note should be issued by the Monitoring Officer to all Councillors informing them of the outcome of the Upper Tribunal case and that in response to any Freedom of Information request concerning non-payment of Council Tax, information may be disclosed.

BACKGROUND

In March 2016, the Upper Tribunal (Administrative Appeals Chamber) (“the Tribunal”) decided the names of councillors who had not paid their council tax were not exempt from disclosure and that the information should be provided to a newspaper whom had made the request under the Freedom of Information Act 2000 (FOI Act).

In response to the original request Bolton Council confirmed that six councillors had not paid their council tax and two had been summoned to court. A subsequent request, and the one which was the subject of the appeal to the Upper Tribunal, was made by the newspaper for the names of those two councillors.

One councillor voluntarily disclosed his name when the case first received publicity; however the Council withheld the second name relying on Section 40 of the FOI Act, which provides an exemption for personal data. The exemption is heavily intertwined with the Data Protection Act 1998 and whether it is fair to disclose the personal details of an individual.

Bolton Council argued that the non-payment of the council tax was mostly a private issue. The Tribunal concluded that the matter is partly private, as "it is a matter of a private debt in respect of which the individual incurs a private liability".

However, the Tribunal judgment refers to [section 106 of the Local Government Finance Act 1992](#) which bars a councillor from voting on the Council's budget if they have an outstanding council tax debt of over two months. If a councillor is present at any meeting at which relevant matters are being discussed, they must disclose that section 106 applies.

In the judgement, Judge Markus QC states,

"council tax default strikes at the heart of the performance of a councillor's functions. It is evident that settling the council's budget is one of the most important roles undertaken by councillors" ...

"this adds significant public dimension to the non-payment of council tax"...

"recent failure to pay council tax is likely to impact on public perceptions and confidence in a councillor as a public figure".

These factors were of critical relevance to expectation. If the public are not able to know what councillors were not able to discharge their functions properly then they would be unable to scrutinise the elected official or "whether they can trust a councillor properly".

In the decision over whether it would be fair for a councillor who has been summoned over council tax to be named Judge Markus QC said: "it is not reasonable for a councillor to expect not to be identified". The judgement goes on to say that a councillor should expect to be scrutinised and held accountable for their actions when they are relevant to public office.

The following paragraph is a summary of the whole decision:

"There is a compelling legitimate interest in the public knowing whether a particular councillor has failed to pay the council tax, at least in the circumstances where they have remained in default for over two months with the result that section 106 applies. In most cases this compelling interest will outweigh the councillor's personal privacy. The public interest in knowing the information is central to the proper functioning and transparency of the democratic process. The identification of a defaulting councillor involves an intrusion into his private life but it is an intrusion that a councillor must be taken to have accepted when taking office."

In addition, it is alleged that Leeds City Council are to challenge the Information Commissioner's decision (Reference: FS50635609 **Dated: 3 November 2016**) that it must release the names of four councillors who were in arrears, to a newspaper. The Information Commissioner told the Council to release the names of members who were sent court summons over unpaid council tax to the Yorkshire Post. It is understood that Leeds Council believes there are mitigating circumstances and in all of the cases, one instalment had been accidentally missed and reasonable explanations were given as to why and all outstanding debts were immediately paid.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Any guidance issued builds on the Council's good governance arrangements and reputation.

FINANCE, OTHER RESOURCES AND RISK

Finance and Other Resources

Finance

None associated with the content of this report.

Risk

The Council must ensure that any guidance issued to Councillors and Officers is up to date with current policy, legislation, good practice and national guidance. It is also important to ensure that the contents are clear and concise and easily understood.

LEGAL

Section 1(1) of the Freedom of Information Act 2000 states that:

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.”*

Section 40(2) provides that:

Any information to which a request for information relates is also exempt information if–

- (a) it constitutes personal data which do not fall within subsection (1), and*
- (b) either the first or the second condition ... is satisfied.*

Personal data is defined by **Section 1 of the Data Protection Act 1998** (“the DPA”) as:

...data which relate to a living individual who can be identified–

- (a) from those data, or*
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual...*

In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the Data Protection Act (“the DPA”).

The data protection principles are set out in schedule 1 of the DPA. The first data protection principle is most relevant. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA. Considerations have focused on the issues of fairness in relation to the first principle. In considering fairness, the Tribunal and the Information Commissioner found it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

The view of the Upper Tier Tribunal in *Haslam v Information Commissioner and Bolton Council* [2016] UKUT 0139 (AAC), was that elected officials should have a greater expectation of scrutiny regarding their payment of council tax. The Tribunal observed that “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.” “A councillor is a public official with public responsibilities to which non-payment of council tax is directly and significantly relevant”. “In my view 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.”

Section 106 of the Local Government Finance Act 1992, bars a councillor from voting on the council’s budget if they have an outstanding council tax debt of over 2 months is relevant and will impinge upon a councillor’s public office.

The Tribunal’s position was that whilst “in the case of an ordinary member of the public, the payment or non-payment of council tax is essentially a private matter”, “it is not reasonable for a councillor to expect not to be identified where he is summoned for non-payment of council tax”. The Tribunal acknowledged that whilst “the identification of a defaulting councillor involves an intrusion into his private life...it is an intrusion that a councillor must be taken to have accepted when taking office”.

The Tribunal accepted that there might be exceptional cases in which the personal circumstances of a councillor were “so compelling” that their name should be protected. However, the Tribunal found that even though disclosure might cause some distress to the councillor, and damage to his reputation, this was not sufficient to outweigh the significant legitimate public interest in disclosure. In short, elected officials are not in the same position as other members of the public when it comes to disclosure of their names. They can expect their names to be disclosed in circumstances where ordinary members of the public might expect the opposite.

The Tribunal decision was recently considered by the Information Commissioner (reference FS50635609) concerning disclosure of information relating to non-payment of council tax of councillors at Leeds City Council and the Council has been ordered to release the information. The individual circumstances and how these were different to that in the Haslam case was considered by the Commissioner in detail. Information concerning only two councillors should not be disclosed due to specific mitigating circumstances, being bereavement and arrears due before election to office. In all other cases the Information Commissioner decided the information should be disclosed, demonstrating that in most cases public interest in disclosure outweighs protection of the councillor.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder/Equality and Diversity/Health Inequalities/Area or Ward affected/Consultation/Public Engagement.

Wards Affected: All