

## Wiltshire Council

### Standards Committee

26 June 2019

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#### Publication of Code of Conduct Decision Notices

##### Purpose of Report

1. The purpose of this report is to consider the adoption of arrangements for publicising Code of Conduct Decision Notices, following a determination that no further action is to be taken on a complaint.

##### Background

2. At present, the Council has no policy on whether or not Code of Conduct Decision Notices will be made public, following the completion of an initial assessment ( either by the Monitoring Officer or following a Standards Review Sub-Committee), or following an investigation, where it is determined that no further action is to be taken. The current arrangements provide that all matters relating to a Code of Conduct complaint are to be kept confidential until determined otherwise by the Monitoring Officer, Review Sub-committee or Hearing Sub-Committee.
3. This issue has arisen following requests by some Subject Members that the outcomes be made public and in light of the recent First Tier Tribunal Information Rights decision in the case of [Cyril Bennis v ICO and Stratford-on-Avon District Council 2018](#).
4. The [Bennis](#) case involved a request from a code of conduct complainant for all correspondence relating to his complaint against a member of Stratford-on-Avon DC, which had not been upheld by the Monitoring Officer. The Tribunal determined that it would not be appropriate to disclose details of unsubstantiated code of conduct complaints, as it was necessary to consider the rights of the subject member as a data subject. The Tribunal concluded that the Council could not disclose the councillor's personal data in this case, without breaching the data protection principles. The Tribunal did not, unfortunately, go on to explain why they felt that disclosure of the assessment report would be a breach of those principles.
5. This appeal was determined at a time when the Data Protection Act 1998 was still in force. The relevant requirements of the 1998 Act provided that personal data should not be processed (including by way of publication) unless that processing was 'fair and lawful' and that the data subject had either given consent to the processing or that the processing was necessary for the purposes of the legitimate interests of the Council as data controller, unless that would prejudice the legitimate interests or rights of the data subject
6. There is an argument that such disclosure would be fair and that it was necessary for the purposes of the legitimate interests of the Council in showing transparency in its standards processes. However, the Information Commissioner has generally

interpreted the term 'necessary' fairly restrictively and disclosure would only meet this test if there were no other way of achieving the outcome sought.

7. The DPA 1998 has now been replaced by the GDPR and the DPA 2018. Although different wording is used in relation to the principles, the same general approach is taken, in terms of fairness and lawfulness.

### **Main Considerations**

8. The initial assessment decision notices prepared on behalf of the Monitoring Officer include personal data relating to both the Complainant and the Subject Member. Depending on the nature of the complaint, the Notice may set out details of correspondence between the two parties and also information about other third parties which may be relevant to the issues or events that form the basis of the complaint. It is therefore appropriate to consider the data protection issues for the various parties in turn.

### The Complainant

9. The current complaint form asks for certain personal data about the Complainant (name and address etc.) and states that the Subject Member will be made aware of the Complainant's identity, in the interests of fairness for the Subject Member. The Complainant is given the opportunity to say whether they wish their details to be withheld from the Subject Member. This only occurs in a very few cases. In most cases the Subject Member is sent a copy of the complaint form, with the Complainant's contact details redacted, but with their name included.
10. The complaint form needs to be updated and revised to include a privacy notice setting out how any personal data will be processed. If it is intended that the assessment decision notice will ultimately be published with the name of the Complainant, then this needs to be made clear at the outset on the form.
11. In addition to amendments to the complaint form, there are two options to be considered in respect of the Complainant, in addressing the question of publication of the decision notices. The first is to seek views from the Complainant once the Notice has been finalised and issued to the parties. The Monitoring Officer can then consider any objections that the Complainant may have to publication and determine whether it is fair to publish the Notice. This may include redaction of some personal data from the published notice, or the publication of a summary of the decision.
12. The second option is to exclude the Complainant's details from the published notices as a matter of course. Depending on the nature of the complaint, this may well not be sufficient to prevent identification of the Complainant. In that case, consideration would need to be given to producing and publishing a summary version of the decision notice, excluding any identifying information.

13. It is not considered that it would be sufficient just to seek consent from the Complainant to publication of their details in the eventual decision notice, as part of the complaint form. Clearly, at the time that the complaint is made, the Complainant will have no idea what the decision notice will eventually say about him/her, so they would not really be in a position to give informed consent, or would at least be very wary about such consent.

#### Subject Member

14. Where a complaint has not been upheld, it is likely that, in some cases, the Subject Member would be quite happy for that decision to be made public as it would show that they had been exonerated by the assessment process. The last two queries about publication were made by Subject Members wanting to be able to publicise the assessment decision to show that the complaints against them ( which were known about locally) had been dismissed and the reasons for that.

15. In any event, there may be more justification in publicising the name of the Subject Member than the name of the Complainant. Firstly, consideration would only be given to publicising the outcome of a complaint once it had been concluded. At that time it would have been determined either that there had been no breach of the Code (in which case it may well be to the Subject Member's benefit for that to be made public) or that there had been a breach, in which case there would generally have been a public hearing and a public decision or censure. Other than that, the same principles apply as with the Complainant's details.

#### **Safeguarding Implication**

16. There are no safeguarding issues arising from this report

#### **Equalities Impact of the Proposal**

17. There are no equalities issues arising from this report

#### **Risk Assessment**

18. There would be a risk of a complaint to the Information Commissioner in the event that persona data was disclosed in beach of the requirements of the Data Protection legislation.

#### **Financial Implications**

19. There are no financial implication arising from this report

#### **Legal Implications**

20. These are addressed in the report

#### **Public Health Impact of the Proposals**

21. There are no public health impacts arising from this report

## **Environmental Impact of the Proposals**

22. There are no environmental impacts arising from this report

### **Recommendation**

23. The Committee is recommended to consider the adoption of the following approach to the publication of Code of Conduct Decision Notices:
- a. That on completion of the code of conduct process (where the matter does not lead to a hearing) once the parties have seen the final decision notice, they are informed that the notice will be published on the Council's website and are given an opportunity to make representations as to why their personal details should be excluded
  - b. If representations are made, consideration is given by the Monitoring Officer to redacting the published decision notice, or publishing a summary of the decision.
  - c. That an appropriate data protection privacy notice is included on the complaint form

**Ian Gibbons, Director of Legal, Electoral and Registration Services (and Monitoring Officer)**

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### **Appendices**

None

### **Background Papers**

[Cyril Bennis v ICO and Stratford-on-Avon District Council 2018.](#)