

**Report of Chief Officer (Welfare & Benefits)**

**Report to Assistant Chief Executive (Citizens & Communities)**

**Date: 25<sup>th</sup> January 2017**

**Subject: Annual publication of elected members Council Tax position**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

1. The issue of elected-members who have been issued with a summons for non-payment of Council Tax has been subject to Freedom of Information requests in Leeds and elsewhere.
2. Following an Upper Tribunal hearing involving Bolton Metropolitan Council, correspondence with the Information Commissioner, and a Decision Notice issued by the Commissioner, the Council disclosed the names of elected members who had been issued with a summons for non-payment of Council Tax and also the value of the summons.
3. In the interests of openness, it is proposed that the Council publishes annually information about elected members who have been issued with a summons for non-payment. The information would be published following a process that would also recognise elected members rights under the Data Protection Act.

**Recommendations:**

4. That the Assistant Chief Executive (Citizens & Communities):
  - 4.1. agrees to publish annually the names of elected members issued with a summons for non-payment of Council Tax and the value of the summons in line with the process set out in paragraph 3.2 of this report;

- 4.2. agrees to consider and decide upon representations made by elected members in relation to compelling personal reasons why information should not be published;
- 4.3. informs the relevant party whips of elected members whose details will be published.
- 4.4. provides the necessary “fair processing” notices to every elected member, under the Data Protection Act.

## **1 Purpose of this report**

- 1.1 The report seeks approval to make an annual publication showing whether any elected members were issued with a summons for non-payment of Council Tax. In the event that an elected member had been issued with a summons for non-payment, the name of the elected member and the value of the summons would be published.

## **2 Background information**

- 2.1 In the last year there has been considerable interest, nationally, in information about elected members who have been summonsed for non-payment of Council Tax. This interest followed an Upper Tribunal appeal around Bolton Metropolitan Council’s refusal to disclose details of an elected member who had been summonsed for non-payment of Council Tax. Bolton Metropolitan Council had been the subject of a Freedom of Information request and the Upper Tribunal decided that the information should be published.
- 2.1 Leeds was also subject to a Freedom of Information request in relation to elected members who had been summonsed for non-payment of Council Tax. The Council ultimately published details of elected members who had been summonsed in December 2016. The decision to publish the information followed correspondence with the Information Commissioner and a Decision Notice by the Commissioner which went a long way to clarifying the extent to which elected members personal Council Tax details should be made public. This decision confirmed that the name of the Councillor and the value summonsed should be provided in the following circumstances:
  - Where an elected member has been issued with a summons for non-payment of Council Tax and a liability order is granted by the court;
  - Where an elected member has been issued with a summons for non-payment of Council Tax even where that summons has subsequently been withdrawn following a payment or a payment arrangements that brings the account up to date; and
  - Where an elected member has been issued with a summons for non-payment of Council Tax and the summons is in joint names with a member of the

public (in these cases no information about the member of the public would be provided).

- 2.2 Both the Upper Tribunal and Information Commissioner decisions confirmed that there may be compelling personal reasons that mean the information should not be published. However, the fact that publication may cause embarrassment or that the summons was subsequently withdrawn are not compelling reasons in their own right.

### **3 Main issues**

- 3.1 In the interests of openness, it is proposed that the Council makes an annual publication with the relevant details of elected members who have been summonsed for non-payment of Council Tax. The publication would name elected members summonsed for non-payment of Council Tax and provide information on the value of the summons. It is proposed to publish the data annually on the Opendata Pages of the Leeds City Council website alongside information on councillors' allowances. The information would normally be published in late July or early August each year. In doing this, we will also follow the established protocol for communicating with the media in relation to matters that are likely to be subject to Freedom of Information requests.
- 3.2 In proposing that the Council publishes this information, there is a need to also ensure that elected members rights under the Data Protection Act are also taken into account. With this in mind, it is proposed that that the Council adopts the following process:
- The annual publication will take place alongside the publication of other councillor related information (e.g. allowances and expenses) in July or August in each year (or the earliest opportunity thereafter).
  - Where an elected member (or members) has been issued with a summons for non-payment of Council Tax, the Assistant Chief Executive (Citizens & Communities) will inform the relevant member that details of the summons will be published and will invite the elected member to make representations if they believe there are compelling personal reasons why the information should not be published. The Assistant Chief Executive (Citizens & Communities) will if the member so requests carry out a detailed analysis of the reasons for the summons and any other relevant information, and will then decide whether the representations constitute compelling personal reasons, taking advice where necessary, and in consultation with the Chief Executive, and will notify the elected member of the outcome.
  - Once a decision has been made to publish details of elected members who have been issued with a summons for non-payment of Council Tax, the Assistant Chief Executive will also inform the relevant party whips. Where information has been withheld, this will be made clear in the annual publication, without referencing the individual members concerned or the reasons for such information being withheld.

3.3 In approving an annual publication as set out in this report, this will help with future Freedom of Information requests on this issue. However, it would not prevent an FOI applicant challenging a decision to withhold publication of an elected member's details because of compelling personal reasons. .

#### **4 Corporate considerations**

##### **4.4 Consultation and engagement**

4.4.3 The report does not relate to matters requiring consultation with the public.

##### **4.5 Equality and diversity / cohesion and integration**

4.5.1 Not applicable.

##### **4.6 Council policies and best council plan**

4.6.1 The issues within this report do not directly impact Council policies or the best council plan. However, being an open Council will help maintain public trust in the Council and those elected to represent the interests of the public.

##### **4.7 Resources and value for money**

4.7.1 The report itself does not require any resource allocation.

##### **4.8 Legal Implications, access to information and call In**

4.8.1 The Council is obliged by the Data Protection Act to process the "personal data" of elected members fairly and lawfully, and therefore the "processing" of data about which members have received a summons, and the amount of the summons as proposed in this report, must comply with a fair processing condition in the Act, and the Council must give the necessary fair processing notices to all members.

4.8.2 The relevant fair processing condition in these circumstances is that the processing is necessary for legitimate interests pursued by the Council as data controller, or by those to whom the data is disclosed, namely the public interest in members of the public knowing that their elected members are able to carry out the full range of their duties as members, and in members of the public having full confidence in their elected representatives.

4.8.3 However, processing is not permitted by this condition where this is unwarranted in any particular case by reason of prejudice to the privacy rights of the individual concerned. Therefore, the Upper Tribunal decision, and the decision by the ICO acknowledge that if there are compelling personal reasons why a member has received a summons etc. then in exceptional cases members' privacy rights might outweigh the public interest reasons for disclosure.

4.9 In a similar way, in order to be lawful, processing must not breach a member's right to respect for their private and family life under Article 8, and therefore processing must be "necessary" and "proportionate" and must be justified by a "pressing social need". Therefore again, members' privacy rights must be

balanced against the public interest reasons for disclosing this information, and in some instances it will not be “proportionate” to make these disclosures.

### **Risk management**

- 4.9.1 The report balances the need to be open and transparent with the need to protect the rights of elected members under the Data Protection Act. The annual publication of this information will help in dealing with Freedom of Information requests and will demonstrate an open approach by the Council. However, where information has been withheld because of representations about compelling personal reasons, the Council may still be challenged by the requester.
- 4.9.2 There is also a risk that individual elected members may make objections to the publication of their details. This risk should be minimised by providing members with a fair processing notice so that they are all aware of the proposals in this report, and by the adoption of a process that enables elected members to make representation ahead of a decision on whether to publish.
- 4.9.3 Finally, the published information will cover elected members’ home addresses and any addresses recorded on elected Members’ Register of Interests where the member concerned is liable for the payment of council tax. There is clearly a requirement for elected members to keep their Register of Interest up to date. The Monitoring Officer supports members of the authority in meeting their obligations to notify any disclosable pecuniary interest within 28 days of either their election or of a change in the circumstances relating to such interests. Quarterly reminders are issued to elected members to review their registers of interests.

## **5 Recommendations**

- 5.1 That the Assistant Chief Executive (Citizens & Communities):
- agrees to publish annually the names of elected members issued with a summons for non-payment of Council Tax and the value of the summons in line with the process set out in paragraph 3.2 of this report;
  - agrees to consider and decide upon representations made by elected members in relation to compelling personal reasons why information should not be published;
  - informs the relevant party whips of elected members whose details will be published.
  - provides the necessary “fair processing” notices to every elected member, under the Data Protection Act.

## **6 Background documents**

- 7.1 None