

LONDON BOROUGH OF CROYDON

REPORT:	ETHICS COMMITTEE	
DATE OF DECISION	15 NOVEMBER 2023	
REPORT TITLE:	RECENT DEVELOPMENTS IN ETHICAL STANDARDS	
CORPORATE DIRECTOR / DIRECTOR:	DIRECTOR OF LEGAL SERVICES AND MONITORING OFFICER	
LEAD OFFICER:	STEPHEN LAWRENCE- ORUMWENSE Email: Stephen.Lawrence-Orumwense@croydon.gov.uk Telephone:27443	
AUTHORITY TO TAKE DECISION:	Part 3 of the Constitution: It is a function of Ethics Committee, among other matters to support the statutory role of the Monitoring Officer as set out in Article 9 of the Constitution, including the promotion of high standards of Member conduct and receiving reports from the Monitoring Officer on matters of probity and ethics.	
KEY DECISION?	No	REASON: N/A
CONTAINS EXEMPT INFORMATION?	NO	Public
WARDS AFFECTED:	N/A	

1 SUMMARY OF REPORT

- 1.1 This report highlights the recent decision of the Crown Prosecution Service (CPS) not to proceed with the prosecution of a former directly elected mayor of Middlesborough for alleged failures to declare pecuniary interests and details of a Hearings Sub-Committee decision under the Ethics Complaints Process in West Northamptonshire relating to a Councillors pre-determination and related conduct at a planning Committee.

2 RECOMMENDATIONS

- 2.1 The Committee is asked to note the report.

3 REASONS FOR RECOMMENDATIONS

- 3.1 The function of the Committee includes promoting and maintain high standards of Members conduct and hearing complaints of breaches of the Member Code of Conduct. This report on recent developments serves to raises awareness on member conduct and complaint related issues that are of relevance to the Committee function and responsibility.

4 BACKGROUND AND DETAILS

CPS decision: Middlesbrough former Directly elected Mayor Prosecution

- 4.1 Middlesbrough's former Independent elected mayor Andy Preston, had been accused of failing to declare pecuniary interests in executive meetings relating to property, breaching sections 31(4) and 34(1)(b) and (3) of the Localism Act 2011 and had been due to appear at Teesside Magistrates Court on 21 August.
- 4.2 Complaints about his conduct were first made to Middlesbrough Council in 2021 but their report concluded no rules or laws had been broken. The complaint was then passed on to Cleveland Police who conducted an investigation which led to charges being brought in August 2023.
- 4.3 Section 31(4) of the Localism Act 2011, which relates to circumstances in which a Member has a pecuniary interest in a matter under consideration, provide that the member or co-opted member may not—
- (a) participate, or participate further, in any discussion of the matter at the meeting, or
- (b) participate in any vote, or further vote, taken on the matter at the meeting, but this is subject to section 33 (which makes provision, in certain circumstances for a dispensation to be granted).
- 4.4 Section 34 (1)(b) provides that a person commits an offence if, without reasonable excuse, the person—participates in any discussion or vote in contravention of section 31(4). A person who is guilty of an offence under section 34 of the 2011 Act is liable on summary conviction to a fine not exceeding level 5 on the standard scale. (Level 5 is currently an unlimited sum). A court dealing with a Member for an offence under section 34 may (in addition to any other power exercisable in the member's case) by order disqualify the person, for a period not exceeding five years, for being or becoming (by election or otherwise) a member or co-opted member of the relevant authority in question or any other relevant authority. (Section 34(4)).
- 4.5 A CPS spokesperson said: *"After the charges had been brought in this case, the Crown Prosecution Service received additional relevant information from those representing Mr Preston."*

"We conducted a further review of the case with the inclusion of this material and found insufficient evidence to support any criminal charges. We then took the appropriate decision to discontinue the case against Mr Preston."

“In all criminal cases it is the duty of prosecutors to continuously review all available evidence. At each stage, any case must be supported by sufficient evidence to provide a realistic prospect of conviction, and it must also be in the public interest to proceed with a prosecution.”

Monitoring Officer Comment:

4.6 Members will be aware that the matters which constitute disclosable pecuniary interests (DPI's) are set out in statute and as is demonstrated by this case, have potentially criminal sanctions associated with failures to properly declare interests or to participate or seek to vote in circumstances where there are disclosable pecuniary interests. Conviction of such offences could lead to the imposition of an unlimited fine and disqualification from being a Member for up to 5 years. For members ease of reference, disclosable pecuniary interests are set out the [Members' Code of Conduct](#) which reproduce the statutory requirements set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. The categories of DPI are set out below:

Subject	Description
Employment, office, trade, profession or Vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract made between the councillor or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council: (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land and Property	Any beneficial interest in land which is within the area of the council. 'Land' excludes an easement, servitude, interest or right in or over land which does

	not give the councillor or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income.
Licenses	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer.
Corporate tenancies	Any tenancy where (to the councillor's knowledge)— (a) the landlord is the council; and (b) the tenant is a body that the councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.
Securities	Any beneficial interest in securities* of a body where— (a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; and (b) either— (i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners have a beneficial interest exceeds one hundredth of the total issued share capital of that class.
<p>* 'director' includes a member of the committee of management of an industrial and provident society.</p> <p>* 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.</p>	

West Northamptonshire Code of Conduct Decision:

- 4.7 On 22 November 2022, the Monitoring Officer at West Northamptonshire Council ('the Council') received a Code of Conduct complaint in which it was alleged that a Councillor had failed to comply with the Council's Code of Conduct. The allegations

concerned the conduct during Daventry Area Planning Committee's meeting of 2 November 2022.

- 4.8** It was alleged that during the Committee's consideration of an application for the construction of forty-five dwellings in Flore, the Councillor conducted himself in a disrespectful and aggressive manner towards the Senior Planning Officer presenting the application. It also alleged that the Councillor used his position as a councillor improperly to cause others a disadvantage, by both speaking and voting against the application despite being clearly predetermined.
- 4.9** Investigators appointed by the Monitoring Officer to investigate the complaint recommended that the Councillor be found to have failed to comply with paragraph 3.1 (treat others with respect) of the Code, on the basis that he did not treat the Senior Planning Officer with respect during the Planning Committee meeting of 2 November 2022.
- 4.10** The investigators also considered that the Councillor involved himself as a committee member in both the discussion and decision to reject the aforementioned planning application despite having predetermined his position on it. The investigators also recommended that the Councillor be found to have failed to comply with paragraphs 3.8 (disrepute) and 3.12 (improper use of position) of the Code, on the basis that he used his position improperly to disadvantage the applicant and brought his office and authority into disrepute by undermining the integrity of the Council's planning service.
- 4.11** The Councillor was not a member or registered substitute member for the Planning Committee, but the chair allowed him to act as a substitute as he had received the necessary training in planning through his roles on other committees. Representatives present at the meeting in question from the Planning Advisory Service, who were undertaking a peer review of the Council's planning function at the time, expressed concern that the Councillor had arrived with a prepared speech which he read out at the outset making it clear that he disagreed with the officer recommendation but then took part "despite having made his position clear before the item was presented". They also noted that this was significant as the application was decided by the casting vote of the chair and therefore had the Councillor been prevented from taking part, the decision would have gone the other way. Finally, they indicated that based on the evidence that they had seen, they were of the view that the Councillor was not genuinely seeking to understand the reasons behind the senior planning officer's recommendations but was instead grandstanding to those in the public gallery while challenging the officer in a manner that he knew would call the officers' competence into question so as to denigrate the officers' report.
- 4.12** The councillor told the investigators he had prepared a speech ahead of the meeting, ready to speak as a Long Buckby councillor. But the investigators found if that was the case he "should not have involved himself so directly in the decision-making process" and considered that the content of the Councillors speech "strongly supported the allegation that he attended the committee meeting on 2 November 2022 having already predetermined the matter"

- 4.13** Following the investigation, the matter was considered by the Council's Democracy and Standards sub-committee acting as a hearings committee under the arrangements adopted for consideration of such matters. The Sub-Committee agreed that the Councillor had predetermined the matter and therefore brought the council into disrepute and used his position as a councillor to disadvantage the applicant.
- 4.14** The Sanctions imposed following the hearing were as follows:
- (a) Findings in respect of the Member's conduct be published;
 - (b) Recommend to the Member's Group Leader that Councillor be suspended as a member of the Strategic Planning Committee and Planning Policy Committee for a period of three months from 1 June 2023.
 - (c) Instruct the Monitoring Officer to arrange individual training for the Member to take place during the 3-month Committee suspension period. used his position as a councillor to disadvantage the applicant".

Monitoring Officer comment.

- 4.15** The case is of interest to Members because of the implications which can arise in relation to Council decision making where the councillors making the relevant decisions do not approach decision making with an open mind. Whilst it is perfectly permissible for a Member to be pre-disposed towards an outcome, predetermination (having a closed mind to the outcome before hearing all the relevant facts) will invalidate the decision and lead to successful challenges to council decision making. This principle applies to all council decision making but is particularly pertinent in relation to decision makers acting in the sphere of planning and licensing where the decisions are regulatory ones.
- 4.16** It should be noted that a legal finding of predetermination can only be properly made in the Courts. The investigators and sub-committee in this matter used the term predetermination to indicate their finding, made on the balance of probabilities, that the Councillor had made up his mind about the application prior to the decision-making meeting and therefore that his part in the decision was a foregone conclusion.
- 4.17** Croydon's Code of conduct contains similar provisions to those of West Northamptonshire's in relation to respect, disrepute and improper use of position. The supporting Guidance to Croydon's Code (available here [Member code of conduct guidance \(croydon.gov.uk\)](https://www.croydon.gov.uk/Member-code-of-conduct-guidance)) includes helpful provisions on bias and pre-determination. The Council also has a Planning Code of Good Practice (available here : [Planning Code of Good Practice](#)) that advises Members of the Planning Committee to comply not just with the Members Code of Conduct but also the rules on predetermination and bias. The Council's Planning Code of Good Practice also makes clear that where a Councillor wishes to speak as ward councillor on an application, as was the case in West Northamptonshire, that they cannot be a decision maker in respect of that matter and makes recommendations of how a Croydon Councillor in such a position should avoid tainting the decision making by being involved in a matter in which they have an interest, are representing interested parties or have a predetermined view.

5 ALTERNATIVE OPTIONS CONSIDERED

5.1 This is not applicable. The recommendations are for noting only.

6 CONSULTATION

6.1 This is not applicable. The recommendations are for noting only.

7. CONTRIBUTION TO COUNCIL PRIORITIES

7.1 It is a function of the Ethics Committee to support the statutory role of the Monitoring Officer as set out in Article 9 of the Constitution, including the promotion of high standards of Member conduct. In addition, it is a function of this committee to receive reports from the Monitoring Officer on matters of probity and ethics.

7.2 The Mayor's Business Plan objectives includes ensuring good governance is embedded and adopt best practice. This report serves to promote good ethical governance arrangements.

8. IMPLICATIONS

8.1 FINANCIAL IMPLICATIONS

8.1.1 There are no direct financial implications arising from this report and all costs to date are covered within exiting budgets.

8.1.2 Comments approved by Lesley Shields, Head of Finance for Assistant Chief Executive and Resources on behalf of the Director of Finance. 23/10/23

8.2 LEGAL IMPLICATIONS

8.2.1 There are no additional legal implications arising beyond those set out in the body of the report.

8.2.2 Comments approved by Director of Legal Services and Monitoring Officer. (Date 02/11/2023)

8.3 EQUALITIES IMPLICATIONS

8.3.1 The Council should pay due regard to section 149 of the Equality Act 2010 when exercising their functions. This includes having due regard to the Public Sector Equality Duty as detailed:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act. (Section 149(1)(a))
- Advance equality of opportunity between people who share a protected characteristic and those who do not. (Section 149(1)(b))
- Foster good relations between people who share a protected characteristic and those who do not. (Section 149(1)(c))

8.3.2 The Equalities Strategy 2020 -2024 states that 100% of Councillors and new starters should complete equality training including unconscious bias and this should be refreshed on a regular basis. This objective will be amended to read that training should be undertaken every two years in the Equality Strategy Refresh in 2023.

8.3.2 There are no breaches of this duty or further equalities impacts arising from the recommendations in this report.

8.3.3 Comments approved by Naseer Ahmad for the Equalities Programme Manager. (Date 23/10/2023)

OTHER IMPLICATIONS

8.4 This report is for noting only. There are no Data Protection, Human Resources, Crime and Disorder, Procurement, Health, Environmental, Corporate Resources, ICT, Property and asset management or risk implications as a result of the recommendations in this report.

9. APPENDICES

9.1 None

10. BACKGROUND DOCUMENTS

10.1 None

11. URGENCY

11.1 Not applicable.