

# LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>ETHICS COMMITTEE</b>	
<b>DATE OF DECISION</b>	<b>17 DECEMBER 2024</b>	
<b>REPORT TITLE:</b>	<b>RECENT DEVELOPMENTS IN ETHICAL STANDARDS</b>	
<b>CORPORATE DIRECTOR / DIRECTOR:</b>	<b>DIRECTOR OF LEGAL SERVICES AND MONITORING OFFICER</b>	
<b>LEAD OFFICER:</b>	<b>STEPHEN LAWRENCE- ORUMWENSE</b> Email: Stephen.Lawrence-Orumwense@croydon.gov.uk Telephone:27443	
<b>AUTHORITY TO TAKE DECISION:</b>	<b>Part 3 of the Constitution:</b> 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.	
<b>KEY DECISION?</b>	<b>No</b>	REASON: N/A
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>NO</b>	Public
<b>WARDS AFFECTED:</b>	N/A	

## 1 SUMMARY OF REPORT

- 1.1** This report highlights the recent judicial review decision of the High Court in relation to a planning decision by Isle of Wight Council which the Claimant said was vitiated (rendered ineffective or void) by virtue of procedural irregularities, bias and predetermination. The report also provides an update to members on an announcement by the Government on consultation on revising the ethical standards regime to make provision for suspension of Councillors following a finding of a breach of the Code of Conduct. Finally, the report provides an update on the outcome of the LGA survey sent to all councillors in England and Wales in August 2024 to investigate the extent to which they had experienced abuse or intimidation due to their councillor role.

## 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

### **R. (on the application of Greenfields (IOW) Ltd) v Isle of Wight Council [2024] EWHC 2107 (Admin)**

- 4.1 The factual background for the case was a grant of conditional planning permission for the development of agricultural land, granted by the Isle of Wight Council (the local planning authority). The Claimant sought to bring a Judicial Review of the decision. At a rolled-up hearing in August of this year, HHJ Jarman KC refused the Claimant's application. The full judgement can be viewed [here](#).
- 4.2 The judge recited extracts from the July 2021 meeting but commented that "this cannot convey the tenor of the meeting". Councillors are recorded as calling each other's conduct "scandalous", "dismissive", "intimidating", "humiliating" and "belittling". A large proportion of this appears to have been directed at the chair of the meeting, who had – improperly, it was alleged – excluded from the meeting a number of councillors who seemed likely to vote against the application. It appears that a large number of the councillors were predisposed against the application, while the Chair of the meeting was in favour of it.
- 4.3 The Judicial Review was brought on a number of grounds, but the two most relevant for the committee's purposes were: firstly, that the original meeting of July 2021 which initially resolved to grant planning permission had been procedurally improper and/or unfair, which vitiated the grant of planning permission; and, secondly that the chair of that meeting was biased and/or exercised his functions for an improper purpose, which likewise vitiated the planning permission.
- 4.4 In relation to ground 1 on procedural irregularities, the judge held that while the chair's advice to certain councillors not to attend the meeting did not actually exclude them, the chair's decision to explicitly prohibit one specific councillor from the meeting on the factually and procedurally flawed basis that he had missed too much of the site visit did amount to a procedural irregularity. However, the procedural irregularity and other viable "criticisms" of the procedure at the July 2021 meeting had been "overtaken by events" – the proposal had been reconsidered at a further meeting of April 2023, at

which conditional permission was granted following a proper debate and vote, of which no criticism was made. As such, the procedural irregularities at the July 2021 meeting did not vitiate the eventual grant of conditional planning permission.

- 4.5** In relation to bias (ground 2), the judge reinforced the clear distinction in the caselaw between predisposition and predetermination. The judge noted the case of *R (Lewis) v Redcar and Cleveland Borough Council [2008] EWCA Civ 746*, at which Pill LJ said at [63]:
- 4.6** *“Councillors are elected to implement, amongst other things, planning policies. They can properly take part in the debates which lead to planning applications made by the Council itself. It is common ground that in the case of some applications they are likely to have, and are entitled to have, a disposition in favour of granting permission. It is possible to infer a closed mind, or the real risk a mind was closed, from the circumstances and evidence. Given the role of Councillors, clear pointers are, in my view, required if that state of mind is to be held to have become a closed, or apparently closed, mind at the time of decision.”*
- 4.7** The judge summarised that “The test for apparent bias is whether the relevant circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the decision-maker was biased”, but that “Bias is a different, although related, concept to predetermination.” He found that the Chair did indeed seem to have been “predisposed in favour of the application, but in my mind there is no clear indication that he had predetermined it, and such indications as there are suggest otherwise.”
- 4.8** Further, the Chair and planning officers had stressed that “if the application was going to be refused then it should be refused on planning grounds. To the extent that those members who were predisposed against the application found it humiliating to be reminded of this principle then that is a consequence of the tension which sometimes arises between the democratic process and the obligation on councillors to implement planning policies”.
- 4.9** In conclusion, the planning process in this case had been controversial and discordant, but the resultant procedural irregularities and biases of the councillors involved did not go so far as to vitiate the grant of planning permission itself.

**Monitoring Officer Comment:**

- 4.10** Whilst the Judicial review claim was not successful here, the case is nevertheless a reminder of the ever-present tensions between local politics and proper planning procedure and the risk which improper conduct could have on successful decision making by a local authority.
- 4.11** Members will also be aware that there is specific [Planning Code of Good Practice](#) for Croydon councillors which forms part 5D of the Constitution, and which sets out guidance on interests and on predisposition, predetermination and bias and how consideration should be given to these matters when they arise. Members are also

invited to discuss such matters with the Monitoring Officer in advance of any meetings should they require clarification on any such matters.

**Proposals to update the Ethical Standards Regime to permit suspension of Councillors where breaches of the Code of Conduct are found.**

- 4.12** In 2019, the Independent Committee on Standards in Public Life published a report focussing on Ethical Standards in Local Government: [Local Government Ethical Standards](#). This Committee has previously received reports on this matter detailing the full remit of the associated recommendations. The Independent Committee on Standards in Public Life is responsible for advising the Prime Minister on arrangements for upholding ethical standards of conduct across public life in England. They are not a regulator, but their reports are persuasive and are used to guide good practice.
- 4.13** In particular, the report noted, in relation to sanctions, that the credibility of any ethical standards regime is undermined without the option to resort to sanction when needed. Sanctions help to maintain public confidence that something can be done when things go badly wrong. When used correctly, the application of appropriate sanctions give reassurance that the expectations of the public of high standards of conduct are being observed, and that wrongdoing is taken seriously. Public confidence will, however, only be maintained if sanctions are sufficient to deter and prevent further wrongdoing and are imposed fairly and in a timely way.
- 4.14** The Localism Act 2011 removed the ability for councillors to be suspended or disqualified in relation to breaches of the Code of Conduct. Sanctions used by local authorities include censure, apology and training, as well as the removal from committee responsibilities by a party and in some cases, the withdrawal of access to facilities and resources (for example laptops or unescorted building passes). However, sanctions which ban members from council premises usually require cross-party support and are typically only considered appropriate in response to threatening behaviour such as bullying council officers.
- 4.15** The evidence received by the Independent Committee on Standards in Public Life suggests that the lack of serious sanctions, such as suspension:
- prevents local authorities from enforcing lower level sanctions, such as training or apology. When councillors refuse to apologise or to undergo training, the only route open to councils is to publicise the breach and the refusal.
  - damages the public credibility of the standards system. Members of the public who make code of conduct complaints but do not see a significant outcome even where a breach is found would be justifiably frustrated that the ethical standards system is not dealing with misconduct in a robust or effective way.
  - makes the cost and resources of undertaking an investigation disproportionate in relation to sanctions available. The Independent Committee also heard some evidence that members of the public do not make formal complaints as they do not consider the effort worthwhile given the limited outcomes available.

- gives local authorities no effective means of containing reputational damage or preventing recurrence, for example, in the case of disclosure of confidential information or bullying of officials.

**4.16** The report also detailed the use of sanctions by devolved ethical standards bodies which retained the powers of suspension when these were removed in England. The sanctions available to the devolved standards bodies in Wales, Scotland and Northern Ireland, which were also available to the Adjudication Panel in England before its abolition, are suspension for up to one year and disqualification for up to five years. The report found that devolved standards bodies have used the most serious sanctions available to them sparingly.

- In 2017/18, the Standards Commission for Scotland has only once suspended a councillor for more than six months (although a number of cases involved a councillor who stood down, where the Commission indicated it would have imposed suspension if it were available).
- In 2016/17, the Northern Ireland Local Government Commissioner for Standards disqualified one councillor for three years, and suspended one councillor for three months.<sup>85</sup>
- In 2016/17, the Adjudication Panel for Wales suspended four councillors, all for fewer than six months.<sup>86</sup> However, it should be noted that almost 20% of references and appeals to the Adjudication Panel since 2012 have resulted in disqualification.

**4.17** Following on from the report by the Independent Committee, one of the main recommendations to the Government was that: Local authorities should be given the power to suspend councillors, without allowances, for up to six months. The implementation of this recommendation would however require new legislation to bring it into force.

**4.18** In March 2022 the Conservative Government rejected the recommendation by the Committee on Standards in Public Life in its 2019 Local Government Ethical Standards report that local authorities should be able to suspend councillors without allowances for up to six months for breaches of the code of conduct; however the government has announced its intention to consult on proposals to re-introduce the power of suspension.

#### **Monitoring Officer comment.**

**4.19** Currently, the potential sanctions available to the Council in the event of a breach of the Code of Conduct are set out in the statutory [Arrangements](#) which the Council has adopted under the Localism Act 2011 for dealing with complaints made under the Members' Code of Conduct. These are:

- Publish its findings in respect of the Member's conduct;
- Report its findings to Council for information;
- Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;

- Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Recommend to full Council or the Leader of the Council as the case may be that the Member be removed from outside appointments to which he/she has been appointed or nominated by the Council;
- Withdraw facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access;
- Exclude the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Cabinet, Committee and Sub-Committee meetings; or
- Request that the Monitoring Officer arrange training for the Member.

The Ethics Committee or sub-committee of the Ethics Committee has no power to suspend or disqualify the Member or to withdraw the Member's basic or special responsibility allowances.

- 4.20** Any proposed changes to the regime for ethical standards to introduce a power for Council's to suspend Councillors would require new legislation to implement.

**LGA survey of Councillors on their experience of abuse or intimidation due to their councillor role**

- 4.21** In August 2024, the Local Government Association (LGA) sent an online survey to all councillors in England and Wales to investigate the extent to which they had experienced abuse or intimidation due to their councillor role. This survey expanded on the 2023 Debate Not Hate survey, which explored how abuse and intimidation of councillors has changed compared to the 2022 Councillors' Census. A total of 1734 councillors responded to the 2024 survey – a response rate of 10 per cent – which was higher than the 5 per cent response rate in 2023. The responding councillors represented a wide cross-section of political affiliations and levels of experience. A copy of the full report into the survey can be found [here](#).

- 4.22** The Survey found that just less than half of respondents (49%) said they felt the abuse had got worse over the past 12 months, and 73% of councillors experienced abuse or intimidation in their role in the past year.

The survey also found that:

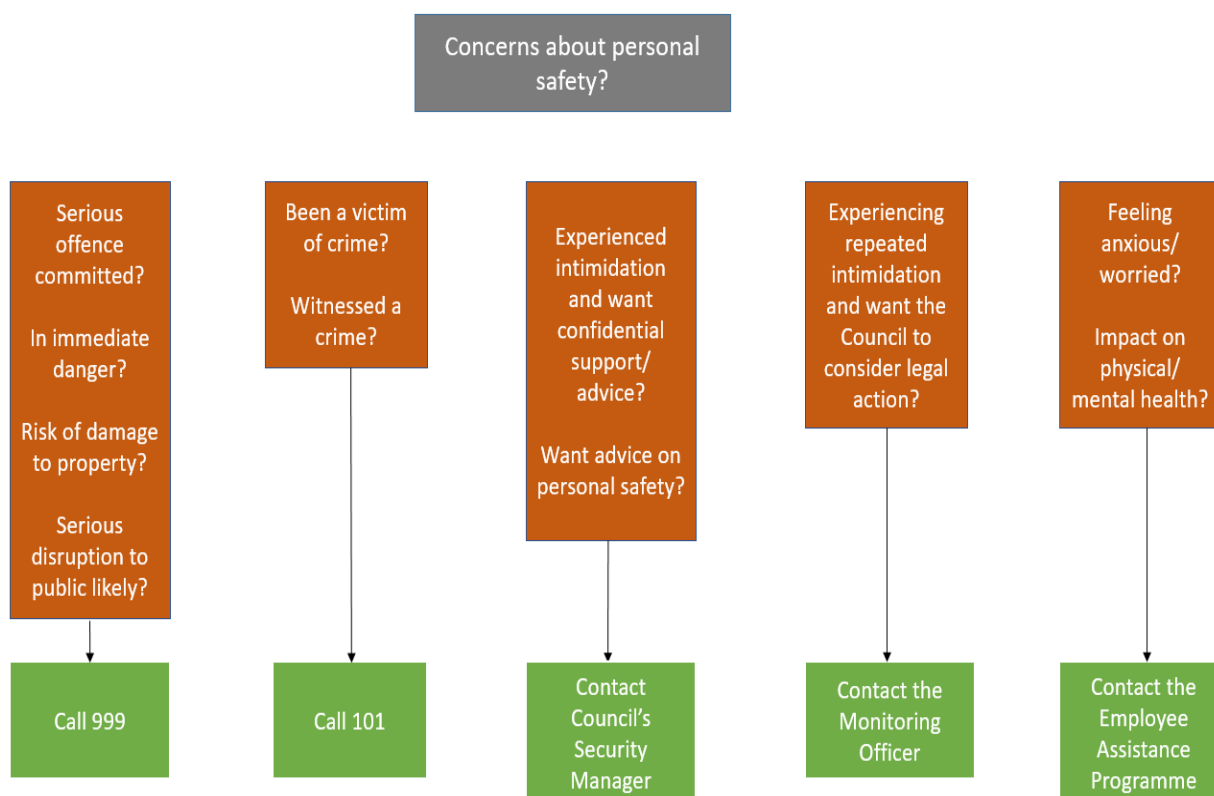
- One in 10 councillors had someone attend their home in a way that they considered intimidating or inappropriate, and 43% had requested to withhold their home address from the public due to safety concerns.
- 10% had experienced a threat of damage to their property, and 5% had experienced actual damage to property. 11% considered that they needed modifications to their home security but had been unable to make them for financial or personal reasons.
- 19% of respondents had experienced abuse or intimidation relating to a protected characteristic. Sex was the most commonly cited characteristic for which respondents had suffered abuse or intimidation.

- More than a fifth (22%) of councillors have received a death threat or a threat of violence due to their role, whilst 23% of councillors have suffered abuse serious enough to report it to the police
- 57% of respondents reported that their authority’s arrangements for protecting councillors were very or fairly effective.
- Respondents to the survey highlighted that high levels of abuse, threats and misinformation online put them off using social media or engaging with debate online.
- However, whilst the proportion of respondents who felt at risk in their role is similar to 2022 (73%), it has dropped since last year, when the figure stood at 82%.

**Monitoring Officers Comment:**

**4.23** As members will be aware, the Council produces a Members’ Handbook for Councillors which contains advice and relevant contacts relating to Members keeping and feeling safe. This guidance has been developed for Croydon Members, based on a resource developed by the Local Government Association, which was in turn informed by organisations such as the Suzy Lamplugh Trust. This guide is not intended to alarm, but to suggest some steps Members can undertake to protect themselves as a person in a public position, and how to respond if an incident occurs. There is legislation designed to protect not only Members of the Council but the general public as a whole, and this guide provides some advice on it.

**4.24** By way of example, the below is a short table extracted from the guidance with some quick reference steps for members, should they need it:



## **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 This report is for noting only. There are no direct Finance, Equalities, 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.