

LONDON BOROUGH OF CROYDON

REPORT:	ETHICS COMMITTEE	
DATE OF DECISION	8 FEBRUARY 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 decisions of the High Court in the case involving South Somerset and the Local Government and Social Care Ombudsman (LGSCO) in the case involving Teignbridge District Council and both relating to the Members Code of Conduct. Also, the Committee on Standards in Public Life recent publication 'Leading in Practice' that encourages public sector leaders to take active steps to embed the Seven Principles of Public Life into their organisation fabric.

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

- 4.1 The report brings to the attention of the Committee the following recent High Court and Local Government Ombudsman cases relating to the Member Code of Conduct.

R. (on the application of CPRE (Somerset)) v South Somerset DC [2022] EWHC 2817 (Admin), 2022 WL:

- 4.2 In the South Somerset case (available here [CPRE \(Somerset\), R \(On the Application Of\) v South Somerset District Council \[2022\] EWHC 2817 \(Admin\) \(08 November 2022\) \(bailii.org\)](#)), on 8 November 2022, the High Court quashed the decision of the planning committee on the grounds that it was tainted by apparent bias due to the Chair and Vice-Chair having incorrectly declared personal rather than prejudicial interests and participating in the decision making.
- 4.3 The claimant sought judicial review of the grant of planning permission by the defendant local authority to the first interested party (the town council) for the erection of five self-contained buildings to store and facilitate the construction of carnival floats.
- 4.4 The vice-chair of the planning committee was a member of the town council which had made the planning application. The chair was a member of the carnival committee, in which capacity he supported the application. He was also a close affiliate of another committee which had acted as agent for the town council in making the application.
- 4.5 The claimant had advised the local authority's monitoring officer that 6 of the 11 planning committee members had personal interests in the application and requested that its consideration be deferred. The chair and vice-chair declared a "personal interest" under the local authority's Code of Conduct but, on the monitoring officer's advice, decided that they did not have a "prejudicial interest" on a proper interpretation of para.2.9 of the Code which applied to them at the time. They participated in the meeting and decision, voting in favour of granting planning permission. A third member did the same but voted against granting permission. The other three members declared a personal interest and did not participate in the meeting or decision-making process. The committee voted 6-5 to grant planning permission.
- 4.6 The claimant argued that the decision was unlawful because it was tainted by apparent bias on the part of the planning committee's chair and vice-chair, who had approached the application with closed minds so that the grant of permission was pre-determined.
- 4.7 **Apparent bias and predetermination** – The Court held that the test for deciding whether a planning committee's decision was vitiated by bias was whether the fair-minded and informed observer, having considered the facts, would conclude that there

was a real possibility that the committee was biased. The fair-minded observer had full knowledge of the facts and was neither complacent nor unduly suspicious.

- 4.8** Predetermination was a different, though related concept. The Court held that a decision could be vitiated by predetermination where there was a real risk that minds were closed, but in assessing that question in the planning context, the court had to recognise that councillors were not in a judicial or quasi-judicial position but were elected to provide and pursue policies and would be entitled, and indeed expected, to have and to have expressed views on planning issues.
- 4.9** **Code of conduct** – The Court held that compliance with the Code could not be determinative of whether the apparent bias test was met, but it was a matter which the fair-minded observer would consider in deciding whether there was a real possibility of bias. Providing that the definition of "prejudicial interest" was reasonable, and other things being equal, a fair-minded observer would consider that a member who had no prejudicial interest was less likely to be biased and vice versa.
- 4.10** In respect of the Vice-chair – the Court found that as the business being discussed at the meeting involved determining a permission relating to the town council (a significant person), the vice-chair automatically had a prejudicial interest under the Code and therefore was disqualified from voting. Whilst the vice-chair had not himself promoted the planning application, or voted to make it, he was nonetheless a member of a relatively small public body whose application he had been asked to consider.
- 4.11** In respect of the Chair - The chair had a longstanding association with the carnival committee and the carnival club. He was pictured in the application documents among a group of individuals appearing to support the committee acting as agent for the application. The fair-minded observer would clearly conclude that there was a real possibility of bias (paragraph 53 of the judgement).

Monitoring Officer comment.

- 4.12** The case is of interest to Members because it deals both with apparent bias and predetermination and their interplay with duties of Councillors under the Code of Conduct. Members must not only comply with the Code of Conduct but also the common law principles of bias and predetermination. The Council's Member Code of Conduct (available here [Members' Code of Conduct | Croydon Council](#)) includes detailed provision on registering, disclosing and non-participation in meeting in the event of a disclosable pecuniary interest (DPI), other registerable interest (ORI) or non-registerable interest (NRI). The supporting Guidance to the Code (available here [Member code of conduct guidance \(croydon.gov.uk\)](#)) 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 and in effect addresses the issues raised in the South Somerset case.

LGSCO investigation: Teignbridge District Council

- 4.13** The Local Government and Social Care Ombudsman has found that Teignbridge District Council's investigation into a member's conduct was flawed. The decision is available here [21 004 645 - Local Government and Social Care Ombudsman](#).
- 4.14** Teignbridge investigated the actions of a councillor, after it alleged, he had acted 'contrary to its Code of Conduct'.
- 4.15** The Councillor complained to the Ombudsman that the council failed to follow due process when investigating him, leading to him being "unfairly sanctioned" with damage to his "personal and professional reputation". He indicated that the council:
- initiated an investigation without receiving any complaint about his conduct which is contrary to the law and its own policy;
 - misled him into believing such a complaint had been made;
 - did not disclose details of any such complaint as might have been made; and
 - did not carry out due diligence of an independent investigator appointed to investigate the complaint.
- 4.16** The Ombudsman found fault with a "number of aspects" of the council's investigation. It concluded that the investigation was not prompted by a formal written complaint, contrary to the law. The Ombudsman considered the Localism Act 2011, which says: "to trigger any investigation of an alleged breach, the Council must receive details of that allegation in writing".
- 4.17** The Ombudsman revealed that during its investigation, the council said that "it is apparent that no formal complaint was received with regards to the conduct of [the] Councillor ". But that its monitoring officer did receive "written complaints/concerns/allegations" about the councillor which they "considered were written allegations".
- 4.18** The council also did not give the councillor enough information about his alleged breaches of its Code, the Ombudsman suggested. In addition, Teignbridge introduced new allegations during the process, but the independent investigator appointed to look at the case did not make it clear to the Councillor whether these were part of the investigation, the report noted.
- 4.19** The Ombudsman also found that the inquiry into the Councillors' conduct was conflated with accusations levelled at another councillor who was also being investigated at the same time.
- 4.20** The report revealed that the council failed to reflect on the investigation and consider whether due process had been followed after the Councillor raised legitimate concerns about the way the investigation was being carried out.
- 4.21** Lastly, the council failed to consider the Councillors' enhanced right to free speech as an elected representative, which was relevant when the council considered his

justification for certain comments, he acknowledged making or posted on social media, the Ombudsman said.

4.22 The Ombudsman made several recommendations to improve the council's processes following the investigation. To remedy the injustice caused, the Ombudsman recommended the council, among other things that it:

- apologise to Councillor, accepting the findings of this investigation.
- rescind its decision notice upholding the complaint that the Councillor breached the Code and ensure this is no longer available on its website. In its place it should provide a statement saying the notice has been withdrawn following the LGSCO investigation and provide a link to the LGSCO report.
- ensuring the Council has a record of complaints being made in writing.
- ensures it has a written procedure for officers and independent investigators asked to consider standards complaints.
- ensures that where an investigation expands to consider further allegations arising during the investigation, it keeps a clear written record of that and a record that this has been explained to the Councillor complained about
- In all appropriate cases, considers the rights of the councillor complained about to free expression under Article 10 of the Human Rights Act, as part of any investigation report and subsequent committee decision making.

4.23 Commenting on the matter, Local Government and Social Care Ombudsman indicated that local councillors have a key role in scrutinising their authorities' actions and have an enhanced right of free speech to ask what might at times appear to be uncomfortable questions. Councils need to bear this in mind when deciding what constitutes a breach of their Code of Conduct. While both officers and members have a right to be treated with dignity and respect at work, and Councils' desire to do more to protect them from poor treatment is to be encouraged, they still need to carry out investigations into councillor standards fairly and properly.

Monitoring Officer comment.

4.24 The above investigation and subsequent commentary by the LGSCO indicate a clear need to ensure that processes and procedures adopted by the Council are followed and executed fairly and that such processes accord with legal requirements. It also serves as a timely reminder that the Member Code of Conduct complaint process is within the purview of LGSCO and the pitfalls of maladministration¹ must be avoided when handling complaints. There is a Local Government Association Guidance on Complaints Handling (available here [Guidance on Member Model Code of Conduct](#)

¹ i.e., delays, incorrect action or failure to take any action, failure to follow procedures or the law, failure to provide information, inadequate record-keeping, failure to investigate, failure to reply, misleading or inaccurate statements, inadequate liaison, inadequate consultation, broken promises etc

[Complaints Handling | Local Government Association](#)) which is a helpful resource on the standards expected when managing complaints under the Code.

Committee on Standards in Public Life Report - Leading in Practice

- 4.25** The Committee on Standards in Public Life (CSPL) has issued a report titled “Leading in Practice” that encourages public sector leaders to take active steps to embed the Seven Principles of Public Life² in their organisational fabric. The report available <https://www.gov.uk/government/news/the-committee-on-standards-in-public-life-publishes-new-report-leading-in-practice> is divided into six chapters and shares examples and case studies gathered from public and private sector organisations on maintaining ethical organisational practices.
- 4.26** In Chapter 1: Values and the public sector – encourages organisations to regularly create opportunities to help their employees understand the relationship between the different values that they are expected to demonstrate.
- 4.27** Chapter 2: Communicating expected behaviours and leading by example - how senior leaders set the tone for their organisation and have a responsibility to communicate how they expect their workforce to behave. Leaders must exhibit their organisation's values regardless of the context and the pressure they may be under and be willing to address behaviour that is not consistent with the values of the organisation.
- 4.28** Chapter 3: Encouraging a ‘speak up’ culture – creating a range of platforms for employees to speak up and safeguards for those who choose to raise concerns.
- 4.29** Chapter 4: Training, discussion, and decision-making – “Regular training is integral to embedding high standards”. Scenario based training is recommended and discussing ethical dilemmas increases ethical sensitivity and enhances decision-making skills. “We heard how organisations have created specific safe spaces to discuss ethical issues, including ethics committees, staff forums and counsellors,”.

² The Seven Principles of Public Life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office including local government.

Selflessness - Holders of public office should act solely in terms of the public interest.

Integrity - Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability - Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty - Holders of public office should be truthful.

Leadership - Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

- 4.30** Chapter 5: Governance – The importance of Boards in promoting ethical conduct and ensuring that an organisation is living up to its values. “Boards should be concerned with how departments ensure that the Principles of Public Life are understood, internalised, and translated into behaviours and decisions.”
- 4.31** Chapter 6: Recruitment and performance management – “We would encourage public sector organisations to consider incorporating an assessment of how candidates’ personal values align with the Principles of Public Life within their recruitment and selection processes, particularly for senior leadership positions.” “Ensuring that the values are assessed as part of the performance management process both incentivises behaviour that is aligned with the Principles and ensures that the commitment of leaders to high standards is reflected through into the decisions they make about the people they manage.”

Monitoring Officer comment.

- 4.32** The Council’s Members and Officers Codes of Conduct includes the values and behaviours ascribed in the Seven Principles of Public Life. But the CSPL report is asking public sector leaders to take more active steps to further embed these Principles and an ethical culture in their organisations. The report was only published on 24th January 2023 and public sector organisations including the Council will need time to digest and decide how to respond.

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 existing budgets.

8.1.2 Comments approved by Nish Papat, Interim Head of Corporate Finance on behalf of the Director of Finance (Date 25/01/23).

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 26/01/2023)

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 Denise McCausland, the Equalities Programme Manager. (Date 25/01/2023)

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.