

LONDON BOROUGH OF CROYDON

REPORT:	ETHICS COMMITTEE	
DATE OF DECISION	29 JULY 2024	
REPORT TITLE:	RECENT DEVELOPMENTS IN ETHICAL STANDARDS	
CORPORATE DIRECTOR / DIRECTOR:	DIRECTOR OF LEGAL SERVICES AND MONITORING OFFICER	
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CONTAINS EXEMPT INFORMATION?	NO	Public
WARDS AFFECTED:	ALL	

1 SUMMARY OF REPORT

- 1.1** This report highlights the recent court decision to convict a councillor of using threatening and abusive language with the intent to cause distress, and details of the outcome of an investigation into comments made by three Warwickshire County Councillors comments during a scrutiny meeting. Finally the report provided details of recent guidance issued by the Equality and Human Rights commission which was specifically tailored towards the parliamentary election but contains useful detail about Freedom of expression and respectful discourse which apply equally outside of election times.

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 raise awareness on member conduct and complaint related issues that are of relevance to the Committee function and responsibility.

4 BACKGROUND AND DETAILS

Councillor conviction for threatening and abusive behaviour during an election:

- 4.1 A Cheshire West and Chester Council member has been found guilty of using threatening and abusive language with intent to cause distress after rowing with a fellow councillor in the street. Further detail is set out in a news [Report](#) of the outcome.
- 4.2 Cllr Simon Boone was also accused of assault but was found not guilty by South Cheshire Magistrates Court.
- 4.3 The incident occurred ahead of the local elections in May 2023.
- 4.4 Cllr Boone, who is an independent councillor, had claimed Cllr Stuart Bingham was distributing leaflets designed to "smear" him.
- 4.5 In a statement, Cllr Boone said he confronted Cllr Bingham in the street after being told the Labour councillor had been spotted out leafletting.
- 4.6 Cllr Boone said he "used slang words to describe my opinion of him," called Cllr Bingham a "scumbag," and shouted "elections over d*****" before leaving.
- 4.7 Cllr Bingham later accused Cllr Boone of assault, claiming that he had been shoved.
- 4.8 The police charged Cllr Boone with assault by beating and use of threatening and or abusive language with intent to cause distress.
- 4.9 Commenting on the Magistrates' decision, Sergeant Paul Cundy of Northwich Local Policing Unit, said: " We hope that this result demonstrates to others that nobody is above the law."
- 4.10 The magistrates' also ordered Cllr Boone pay a £415 fine, plus costs.

Monitoring Officer Comment:

- 4.11 Whilst this was a criminal prosecution of the councillor in question, Members will be aware that the [Code of Conduct](#) also places requirements on councillors as to their expected behaviour and conduct and there are [Arrangements](#) in place for complaints to be made under the Code of conduct that members have, for example, failed to treat others with respect or brought the Council or the office of councillor into disrepute.
- 4.12 The relevant provisions of the Code provide as follows:

"1. Respect

As a councillor:

1.1 I treat other councillors and members of the public with respect.

1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.”

5. Disrepute

As a councillor:

5.1 I do not bring my role or local authority into disrepute.”

- 4.13** The Code of Conduct applies to members as soon as the declaration of acceptance of the office of councillor is signed or from the first meeting attendance by a co-opted member and continues to apply until the member ceases to be a councillor. The Code of Conduct applies to members when they are acting in their capacity as a councillor which may include when: actions would give the impression to a reasonable member of the public with knowledge of all the facts that they are acting as a councillor; even where a member misuses their position as a councillor. The Code applies to all forms of communication and interaction, including at face-to-face meetings, at online or telephone meetings, in written communication, in verbal communication, in non-verbal communication, in electronic and social media communication, posts, statements and comments.

Warwickshire Councillors found not to have breached the Code of Conduct:

- 4.14** An investigation into comments made by three Warwickshire councillors about children with special educational needs during a council meeting has concluded there was no breach of the code of conduct. The [outcome](#) has been published on the Council's website.
- 4.15** The independent investigation was launched in response to complaints made about the nature of the remarks made by the three councillors.
- 4.16** At a meeting of the council's Children and Young People Overview and Scrutiny Committee on 25 January 2024, Cllr Brian Hammersley asked: "Why are there so many people now jumping out with these needs? Where were they in the past when I was at school?"
- 4.17** Cllr Jeff Morgan questioned whether some children put forward for assessments were "just really badly behaved" and in need of "some form of strict correction", and Cllr Clare Golby referred to social media pages where "families are swapping tips on how to get their children diagnosed".
- 4.18** All three councillors subsequently apologised personally for their comments.

- 4.19** The investigation found there was “no breach of the code of conduct” in respect of each of the three councillors. Whilst the investigating officer found that in respect of certain wording used by two of the councillors (Hammersley and Morgan) these were “disrespectful” and “showed a lack of care and sensitivity”, the comments made during the debate did not constitute a breach of the Councillor Code of Conduct. In both cases the finding of no breach was “by virtue of the enhanced protections afforded by Article 10 of the European Convention on Human Rights (right to freedom of speech) during political debate”.
- 4.20** In respect of the third councillor (Golby), the investigator was satisfied that there was “insufficient evidence” to justify a finding of breach of Standard 3c of Warwickshire’s code of conduct: (I will not bully, harass, or unlawfully discriminate against anyone). The investigator concluded that the enhanced protections of Article 10 would have been afforded to Cllr Golby had the findings been different.

Monitoring Officer comment.

- 4.21** The case is of interest to Members because it acts as a reminder as to the care with which Councillors should address their minds and their comments during political debate but reinforces the greater degree of latitude which is given to political debate as category of freedom of expression (Article 10) under the Human Rights Act 1998.
- 4.22** In this regard, members attention is specifically drawn to the provisions of this Council’s [guidance](#) on the Code of Conduct, which provides, in summary, as follows:
- 4.23** The requirement to treat others with respect must be balanced with the right to Freedom of expression. Article 10 of the European Convention on Human Rights protects your right to hold your own opinions and to express them freely without government interference. This includes the right to express your views aloud or in writing, such as in published articles or leaflets or on the internet and social media. Protection under Article 10 extends to the expression of views that may shock, disturb, or offend the deeply-held beliefs of others.
- 4.24** However, Article 10 is not an absolute but a qualified right which means that the rights of the individual must be balanced against the interests of society. Whether a restriction on freedom of expression is justified is likely to depend on a number of factors, including the identity of the speaker, the context of the speech and its purpose, as well as the actual words spoken or written.
- 4.25** A balance must still be struck between the right of individuals to express points of view which others may find offensive or insulting, and the rights of others to be protected from hatred and discrimination. Freedom of expression is protected more strongly in some contexts than others. In particular, a wide degree of tolerance is accorded to political speech, and this enhanced protection applies to all levels of politics, including local government. Article 10 protects the right to make incorrect but honestly made statements in a political context but it does not protect statements which the publisher knows to be false.

- 4.26 Political expression is a broad concept and is not limited to expressions of or criticism of political views but extends to all matters of public administration including comments about the performance of public duties by others. However, gratuitous personal comments do not fall within the definition of political expression.

Freedom of expression and respectful discourse: Guidance for political candidates and parties

- 4.27 The Equality and Human Rights Commission issued [guidance](#) in the run up to the Parliamentary elections which have just taken place. was specifically tailored towards the parliamentary election but contains useful detail about Freedom of expression and respectful discourse which apply equally outside of election times. The guidance provides recommendations and principles for respectful discourse and fostering good relations but also sets out legal considerations and limits to freedom of expression in law.
- 4.28 In regard to respectful discourse the guidance suggests, among other things, the following:

“When you are convening discussions or engaging in political debate and discourse, both in-person and in online forums such as social media, you should consider steps you can take to create an environment where people who disagree with each other feel comfortable and confident to exercise their right to freedom of expression without fear of hostility, harassment or abuse.

You should be aware that the use of alarming, distressing and/or threatening conduct including abusive or insulting language can be a criminal offence. Conduct which does not meet the criminal threshold may still have an impact on individuals’ ability to exercise their right to freedom of expression.

You should carefully consider the potential impacts of referring to groups of people who share a protected characteristic, such as those of a particular race or disabled people, in a way which is derogatory.

We strongly recommend that you avoid, wherever possible, stating or implying that people who share a protected characteristic also share a particular negative trait, or are collectively to blame for a specific social problem. This can lead to stereotyping of certain groups and we have seen some evidence that political events such as the European Union (EU) referendum can lead to spikes in racially or religiously motivated offences. It can also have a ‘chilling effect’, where people from these groups feel afraid to engage in debate.

We also recommend that you do not denigrate opponents based on their protected characteristics. MPs and elected officials already suffer unacceptable levels of harassment and abuse, particularly online. Focusing on their protected characteristics, rather than their political views and positions, can exacerbate this. This harassment and abuse can deter people from standing for office or expressing sincerely held views.”

4.29 In respect of legal implications, the guidance suggests that awareness of the following areas is useful:

- *Freedom of expression is a qualified right. This means that there are certain very specific reasons or circumstances where limitations on speech can be made by law, for example for the prevention of disorder or crime, or for the protection of the reputation or rights of others.*
- **Criminal law:** *Both individuals and political parties are subject to the criminal law in respect of incitement to racial or religious violence or hatred, verbal assault, and other unlawful conduct.*
- **'Hate speech':** *'Hate speech' is described by the UN as "communication [...], that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent [or] gender". This is not a term defined in law in the UK. However, some behaviour which may be understood or described as 'hate speech' is likely to be unlawful. This includes forms of expression which encourage or incite violence, hatred or discrimination against other persons and groups, particularly by reference to their:*
 - *ethnicity*
 - *religious belief*
 - *gender or sexual orientation*
 - *language or national origin*
 - *immigration status*
- *If a crime is perceived to be motivated by prejudice or hostility based on a person's disability, this could exacerbate the seriousness of the offence.*
- *Like the right to freedom of expression, the right of each person to be protected from discrimination and violence are fundamental human rights. You are likely to be breaking the law if your expression seeks to incite violence, hatred or discrimination against others."*

Monitoring Officers Comment:

4.30 As detailed in paragraphs 4.22 – 4.26 above, the Council has issued guidance to its members on the application of the Code, which deal with relevant considerations, including in relation to freedom of expression and the impact this has on Members when acting in the role of councillor.

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.