

Director of Public Prosecutions  
Crown Prosecution Service  
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London  
SE1 9HS

My Ref: LP/AHR  
Your Ref:  
Please ask for: Councillor L Preece  
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Date: 6 February 2018

Dear Ms Saunders,

**Re: Misconduct in Public Office Offences – Threshold Criteria  
Home Office and Crown Prosecution Service Guidance issued to  
Police Forces**

I am writing to you in my capacity as the Chair of the Audit and Risk Assurance Committee for Sandwell Metropolitan Borough Council.

As part of a series of recent Council internal investigations into the conduct of some Elected Members that potentially disclosed offences of Misconduct in Public Office, the Council referred a number of matters to the Economic Crime Unit of the West Midlands Police. We then worked closely with the Police on these issues. Following a review of the evidence available, the Police then set out the differences in thresholds for criminal conduct and that which falls within the scope of what may be described as misconduct or breaches of the standards of behaviour that are expected of councillors and officers of the council.

The Police explained that when a crime is alleged or reported the expectation is that it will be recorded and investigated in accordance with Home Office Counting Rules and set against the relevant legislation. Also, that allegations are taken at face value unless there is credible evidence to

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suggest what is being reported did not actually occur and that the purpose of any investigation is an impartial search for the truth. When evidence is secured during an investigation that reaches a threshold where it is more likely than not that a prosecution would be successful, then further criminal justice action may be appropriate. If not, then no further action can be taken. Ultimately, the threshold to be reached in determining guilt is that of beyond all reasonable doubt, which is understandably a high threshold. In disciplinary proceedings, the investigative process is the same, in that it is an impartial search for the truth. The burden of proof still lies with the investigating or prosecuting body; however, the threshold is the lesser standard, on a balance of probabilities. In this case, where evidence is secured that suggests that an act is more likely than not to have occurred then appropriate action can be taken in respect of such findings.

The Police informed the Council that the Home Office provides useful guidance to police forces when considering offences against the state. In these cases, for offences against the state, such as Misconduct in Public Office, the points to prove in order to evidence the offence must be clearly made out before a crime is recorded. In essence, this allows the Police to review any material which may support allegations before a crime recording decision is reached. Also, the Crown Prosecution Service provides further guidance when considering a Misconduct in Public Office offence in that it should only be considered in the most serious of cases and where no statutory alternative offence exists. It must also be such a serious abuse of trust that a prosecution is necessary and that the misconduct impugned is calculated to injure public trust so as to call for condemnation and punishment (*R v Dytham* 1979 QB 722). Therefore breaches, which may in themselves lead to a disciplinary process, and even repeated breaches, are not likely to meet the threshold.

In relation to the allegations to be considered within our referrals to the Police there was an implied inference of dishonesty. The Police explained that although, dishonesty is not an essential ingredient of the offence itself, where alleged then the dishonesty must be proven and where it is so proven, then the relevant statutory offence should be considered before any decision to proceed with Misconduct in Public Office offence.

Following a detailed review of the evidence held by the Council, the Police reached a determination that there was insufficient evidence to meet the threshold for recording a crime. However, they stated that this would not prevent the Council pursuing any action that it deemed appropriate if it identified breaches of standards or misconduct.

The Police determination has been reported back to the members of the Council's Audit and Risk Assurance Committee at its meeting on 18 January 2018. At this meeting, the Committee of course accepted the decision of the Police, but were ultimately concerned that there is an extremely high threshold for consideration of Misconduct in Public Office offences which in turn could lead to a lack of public confidence in the process.

The Committee resolved that I write to yourself in order to bring their concerns to your attention in the hope that the relevant guidance issued to police forces in relation to the threshold criteria for such offences could be reviewed. The Committee feel that in cases of multiple serious breaches of the code of conduct, the police should feel more justified to bring charges against elected members to restore and maintain public confidence.

If you would like any further details on the matters referred to above, please let me know.

Thank you

Yours sincerely,

**Councillor Liam Preece**  
**Chair – Audit and Risk Assurance Committee**