

Robert Connelly

Subject:

FW: FW: Birmingham City Council - Title of Honorary Alderman

From: Robert Connelly <Robert.Connelly@birmingham.gov.uk>

Sent: Friday, June 2, 2023 4:31 PM

To: Consultants-Osmans Solicitors <consultants.osmansolicitors@gmail.com>

Cc: [REDACTED]

Subject: RE: FW: Birmingham City Council - Title of Honorary Alderman

Dear Sirs

I have now had the opportunity to fully consider your representations.

Dealing firstly with your proposition that the motion is illegal and ultra vires.

The Council's constitution, as set out in Part B (which I have already forwarded to you) sets out the procedure in which an extraordinary meeting may be requested. It is our view that the meeting has been correctly called but I would also draw your attention to schedule 12 of the Local Government Act 1972 which provides that such a meeting may be called at any time by the Chairman of the Council. As such it seems highly unlikely that any court considering the matter would conclude that the meeting has not been properly called. As you will appreciate the meeting has been called by Councillors themselves who wish to debate the matter.

In terms of your proposition that there is no express provision within s249 to withdraw an honorary title that is something we agree with.

Nevertheless we would refer you to *R v Bristol ex parte Everett* [1999] 1 WLR 92 where Richards J held that there was to be implied a power to withdraw an abatement notice, although the legislation made no such express provision. On appeal the Court of Appeal said the judge was clearly right: [1999] 1WLR 1170. That being so I consider that the analogy given by this case provides powerful support for the proposition that an honorific alderman can have that honour withdrawn.

Furthermore, the law does not compel the impossible: see *Winchester College v Hampshire County Council* [2008] EWCA Civ 431. If your argument is correct it would mean that someone who is subsequently discovered to have committed the most heinous of crimes cannot have the honorary title withdrawal which cannot be right.

The approach to the petition received calling for your client's title to be withdrawn is not without precedent. As you have set out in your representations s249 applies not only to the title of honorary alderman but also to title of honorary freemen or freewoman. As you are no doubt aware, the Duke of York used to hold the honorary title of Freeman of the City of York but this was subsequently removed in April 2022. The circumstances relating to the Duke of York are well known but it is worth highlighting that, as far as I am aware, no judicial findings have been made against him.

The same cannot be said of your client where it has been judicially held that he persisted with an election petition on the basis of evidence he must have known to be false. Indeed the Election Commissioner has sent his judgment to the Director of Public Prosecutions to consider further action.

In addition East Devon District Council in September 2021 took a similar approach when removing the honorary title of alderman from a former Councillor.

If your client would sought to challenge the legality of the Council's approach, presumably by way of Judicial Review, I am satisfied that Council would be successful in defending any such claim.

In terms of your second ground that other honorary alderman may have criminal convictions but have still retained their title. Whilst we note that you alleged that your client is being discriminated and victimised, the reality of the situation is simply that the Council has not previously received any petitions that such titles be withdrawn.

I also consider that this proposition is without merit as if your argument is correct the basis that if one person escapes attention then that must mean it absolves all. In my view that must be plainly wrong. I am aware that concerns have been raised by elected members that your client's conduct (as set out in the Elections Court judgment) strikes at the heart of a democratic council, which I assume is one of the reasons why the petition was submitted.

Finally, in terms of fairness, we are satisfied that your client has been given considerable time to make representation and such representations can be still be received at any time before the Council determines the motion before it.

To summarise I am satisfied that e Council's approach is legal and should your client wish to challenge that, then he is of course entitled to do so. In light of this please take this as formal notice that we will be re-scheduling the extraordinary meeting on a date to be confirmed following consultation with the Group Leaders.

Regards

Robert Connelly
Assistant Director Governance & Deputy Monitoring Officer
Birmingham City Council
Council House, Victoria Square, Birmingham, B1 1BB
Tel: 0121 303 2443
Mobile: 07979 517985
Fax: 0121 212 1065

PA Janet Lescott:
janet_lescott@birmingham.gov.uk

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From: Consultants-Osmans Solicitors <consultants.osmansolicitors@gmail.com>
Sent: Thursday, May 11, 2023 1:38 PM
To: Robert Connelly <Robert.Connelly@birmingham.gov.uk>; [REDACTED]
Subject: Re: FW: Birmingham City Council - Title of Honorary Alderman

Dear Robert,

We write further to our client's instructions. We herein below submit brief objections :

1. We believe the motion is illegal and ultra vires because section 249 of the Local Government Act 1972 does not give power to the Birmingham City Council to remove Honorary Title from our client. The same title Honorary title was given with respect to the rendered eminent services to the council as past member of that council.

2. Section 249 states as follows: 249[F1Honorary titles].

(1) A principal council may, by a resolution passed by not less than two-thirds of the members voting thereon at a meeting of the council specially convened for the purpose with notice of the object, confer the title of honorary aldermen [F2or honorary alderwomen] on persons who have, in the opinion of the council, rendered eminent services to the council as past members of that council, but who are not then [F3members] of the council.

(2) No honorary alderman [F4or honorary alderwoman] shall, while serving as a [F5member] of the council, be entitled to be addressed as alderman [F6or alderwoman] or to attend or take part in any civic ceremonies of the council as an alderman [F7or alderwoman].

(3) Services rendered to the council of an existing county, county borough, borough or urban or rural district the area of which becomes wholly or partly included in a new county or district shall be treated for the purposes of subsection (1) above as services rendered to the council of the new county or district, as the case may be.

(4) An honorary alderman [F8or honorary alderwoman] of a principal council may attend and take part in such civic ceremonies as the council may from time to time decide, but shall not, as such, have the right—

(a) to attend meetings of the council or a committee of the council (including a joint committee upon which they are represented); or

(b) to receive any such allowances or other payments as are payable under sections 173 to 176 above [F9or Part 8 of the Local Government (Wales) Measure 2011].

[F10(4A) A principal council may spend such reasonable sum as they think fit for the purpose of presenting an address, or a casket containing an address, to a person on whom they have conferred the title of honorary alderman or honorary alderwoman.]

[F11(5) Subject as follows, a relevant authority may admit to be honorary freemen or honorary freewomen of the place or area for which it is the authority—

(a) persons of distinction, and

(b) persons who have, in the opinion of the authority, rendered eminent services to that place or area.

(6) In this section "relevant authority" means—

(a) a principal council;

(b) a parish or community council;

(c) charter trustees in England constituted—

(i) under section 246 of the Local Government Act 1972,

(ii) by the Charter Trustees Regulations 1996 (SI 1996/263), or

(iii) under Part 1 of the Local Government and Public Involvement in Health Act 2007.

(7) The power in subsection (5) above is exercisable by resolution of the relevant authority.

(8) A resolution under subsection (7) above must be passed—

(a) at a meeting of the relevant authority which is specially convened for the purpose and where notice of the object of the meeting has been given; and

(b) by not less than two-thirds of the members of the relevant authority (or, in the case of charter trustees, of the trustees) who vote on it.

(9) A relevant authority may spend such reasonable sum as it thinks fit for the purpose of presenting an address or a casket containing an address to a person on whom the authority has conferred the title of honorary freeman or honorary freewoman under subsection (5) above.

(10) The admission of a person as honorary freeman or honorary freewoman does not confer on that person any of the rights referred to in section 248(4) above.]

1. The council's interpretation of the section 249 is flawed. The council does not have power to bring any motion to take away title which has already been given to our client for eminent services to the council as past member of that council. It does not deal, with future conduct. Nor give powers to remove Honorary titles or bring motion on that basis. The council's position rests on a misunderstanding of section 249, but it is also internally inconsistent and incompatible with council's obligations under the ECHR with *AM (Ethiopia) v SSHD* [2010] 1 WLR 48 at §10]; *Assange v Swedish Prosecution Authority* [2012] 2 AC 471 at §§10, 98, 112, 122

2. If the motion goes ahead we would submit that the council will be acting beyond its power.

3. The procedure adopted by the council is obviously unfit and is clearly unlawful for the reasons set out in relation to each of the submissions.

4. As per our client's instructions, we submit that our client is being discriminated due to his age as he is an old person and is being singled out due to his age and race.

5. Secondly we also submit that there are other Honorary Alderman who have criminal convictions and still retain the title of Honorary Alderman. There are counsellors, former Lord mayors and already Aldermen who have or may have convictions, but no action has been taken against them. The reason for that is section 249 does not stipulate to take away title for any future actions/conduct. There are no statutory provisions for that. This is a case where our client is being discriminated and victimised.

6. With respect to not providing an opportunity to submit representations, we submit that it is a fundamental principle of common law that fairness very often requires those who may be adversely affected by decisions to have the opportunity to make representations in order to influence them in their favour. The extent of that opportunity will vary according to the context, but since the right to make representations must be effective, individuals must ordinarily be informed of the factors which weigh against their interests: *R v SSHD ex parte Doody* [1994] 1 AC 531 at 560D-G (**'Doody'**).

7. The more significant the rights or interests at stake, the greater the opportunity that must be given. Decision-making powers which have "*enormous consequences*" for individuals, or which "*gravely affect*" a person's future, such as whether to demolish a person's house (*Cooper v Wandsworth* (1863) 143 ER 414 at 417 or what the length of a custodial sentence should be (*Doody* at 551), will require notice, an opportunity to be heard in advance of the decision, and "*an explicit disclosure of the substance of the matters on which the decision-maker intends to proceed*" As for human rights decisions, where "*the right to be heard may literally be a matter of life and death*" (*FP (Iran) v SSHD* [2007] EWCA Civ 13 at §43), these are "*of such moment that only the highest standards of fairness will suffice*": *R v SSHD ex parte Thirukumar* [1989] Imm AR at 414 (**'Thirukumar'**).

8. The Birmingham City council's decisions as to whether to remove the Honorary title from our client indisputably have grave consequences for our client. The decisions concern a wide range of his fundamental rights arising out of the provisions of the European Convention on Human Rights ('ECHR'). They also involve BCC's exercise of statutory powers to exclude individuals from the Honorary Title.

Scope of common law obligation of procedural fairness

9. As explained above, a long line of jurisprudence, re-stated in *Ridge v Baldwin* [1964] AC 40 at 64-73, and re-iterated ever since, makes plain that if a decision which may adversely determine an individual's rights or interests is to be taken, the individual must ordinarily be given an opportunity to make representations in advance with a view to obtaining a favourable result, or afterwards with a view to procuring its modification: *Doody* at 560D-G and *Thirukumar* at 409, 414. In order to realistically, achieve this they must be furnished with the information about the case against them which would allow the representations to be worthwhile: *Doody* at 560D-G; *Thirukumar* at 414; and *Ridge v Baldwin* at 79, 129. In this case, our client has not been given the copies of the evidence which is the basis to bring a motion against him.

10. These obligations are imposed on decision-makers both so as to secure better decisions, and to respect the dignity of the individual: *Osborn* at §§67-69; *Pathan* at §52]; Paul Craig, *Administrative Law* (2021, 9th ed.) at §12.002 The obligations can apply even where the representations would make no difference to the outcome: *Pathan* at §126.

11. The obligations of procedural fairness are particularly stringent in the human rights context.

(1) While many decisions will turn on personal facts or allegations (e.g. *Kanda v Malaya* [1962] AC 332 at 337, that is not always the case. The principle remains the same: In *Doody* a life prisoner "whose future depends vitally on the decision of the Home Secretary as to the penal element" was entitled to "know what factors the Home Secretary will take into account ... for without it there is a risk that some supposed fact which he could controvert, some opinion which he could challenge, some policy which he could argue against, might wrongly go unanswered" (563H) Fairness required disclosure of information about relevant facts, policies and/or opinions, and the opportunity to make representations on

them, even though the penal element of a sentence being fixed comprised both retributive and deterrent elements, the latter of which had little to do with him.

(2) In *Edwards v Environment Agency* [2007] Env LR 9 in the statutory planning context, where common law rights of procedural fairness are ordinarily met by public consultation (see *Ridge v Baldwin* at 65, 71-2, 75-6 and *Bushell v Secretary of the Environment* [1981] AC 75 at 94-7, 107, 119, 121, 283, 285), failure to disclose a critical internal report on dust emissions nonetheless breached the Environment Agency's obligations of common law fairness to members of the public (see §§103-6

12. The right to make representations must be effective or "worthwhile" (see *Doody* at 560D-G). It is not a right to simply supply relevant facts to a decision-maker.

13. We request the Council to reject this Motion based on the representations, it serves no purpose or function to the Council or the citizens of Birmingham; except validating Mr. Ayoub Khan's own political agenda of discrediting my extensive, committed and distinguished Council service and reputation. We submit the Procedure is procedurally unfair and illegal.

We submit that the actions by the Birmingham City council are irrational, illegal, unreasonable and disproportionate. We also seek full disclosure of all the documents which will be the basis of bringing a motion against our client. We submit we will exercise our right to submit detailed objections upon receipt of full disclosure.

If the council decide to proceed with the motion, we will have no option but to issue legal proceedings against the council.

We submit that we will refer to these correspondence on the issue of costs. If we can assist any further please do not hesitate to contact us.

We look forward to your response as a matter of urgency.

Yours sincerely,

**Osman Solicitors
42 Lampton Rd,
Hounslow TW3 1JH,
United Kingdom**

**(Tel: 0845-230-3355 0208 538 7666)
E Fax: 0208 538 7777**

+DX: 3507 Hounslow

Email: soliosman@osmansolicitors.co.uk;

consultants.osmanssolicitors@gmail.com

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