

Report of the Assistant Director Corporate Services (City Solicitor) to the meeting of Standards Committee to be held on 13 August 2009.

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Subject:

Adjudication Panel for England decisions.

Summary statement:

Members are invited to consider summaries of the recent decisions made by the Adjudication Panel for England regarding allegations of misconduct against members.

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1. Summary

- 1.1 Members are invited to consider summaries of the recent decisions made by the Adjudication Panel for England regarding allegations of misconduct against members.

2. Background

- 2.1 Members will be aware that the adjudication Panel for England is an independent tribunal originally established by the Local Government Act 2000 as a disciplinary body to hear and determine references concerning the conduct of Local Authority Councillors. Subsequent regulations allow the adjudication panel to act as an appellant body to determine appeals against the decisions of local Standards Committees.
- 2.2 Hearings are convened in respect of cases and appeals referred to the Adjudication Panel for England. Their hearings are held in public unless the President or Chairman has received and agreed to a request for them to be held in private. It is therefore possible for members of Standards Committee to attend Adjudication Panel hearings as observers if they are to be held in public. Further details of specific cases are available at www.adjudicationpanel.co.uk.
- 2.3 The most recent decisions are summarised below to provide members of the committee with information about the types of cases dealt with at this level and the issues that are considered.

3. Case Details

Gosport Borough Council

- 3.1 This case concerned an allegation that Councillor C failed to comply with the Code of Conduct when he failed to declare a personal and prejudicial interest in matters relating to the Stokes Bay Music Festival at a Full Council Meeting held on 14 July 2008. The Councillor had accepted the findings of fact set out in the Ethical Standards Officers (ESO) report and also accepted that he had breached the Code of Conduct.
- 3.2 Details of the allegation were as follows:
 - On 14 January 2008 Councillor C wrote to the council, in his private capacity, to apply for permission to stage a music festival at Stokes Bay.
 - On 18 February 2008 the Council's Emergency Sub-board met and gave their approval, in principle, for Councillor C to use Stokes Bay for the purpose of holding a music festival.
 - On 20 February 2008 Councillor C provided the council with an updated register of his financial and other interests. In his register he

recorded his employment by and directorship of Wickham Festival Limited.

- On 24 June 2008 the Council's Licensing Sub-board met to consider an application from the Council for a premises licence for the land covered by the proposed festival. The Sub-board granted the Council a premises licence with a number of conditions attached.
- On 14 July 2008 the full council met to consider a motion relating to the Stokes Bay music festival.
- Councillor C did not declare any interest when the first motion was being considered nor did he withdraw from the room and voted against it.
- The motion was defeated by a single vote.
- On 25 July 2008 Councillor C signed the land licence between himself, as the festival organiser, and the Council.

3.3 The ESO was satisfied that Councillor C's circumstances were such that he was under an obligation to declare a personal interest. Failure to declare a personal interest constituted a failure to comply with Paragraph 9 of the Council's Code of Conduct.

3.4 The ESO also considered that a reasonable member of the public, with knowledge of the facts would have been likely to think that the personal interest was so significant that it was likely that his judgment of the public interest would be prejudiced. In coming to this conclusion the ESO took into account the fact that Councillor C as an employee, sole director and owner of Wickham Festivals Limited, would have been affected by the item of business under consideration. Any decision taken by the council in consequence of the motion, which resulted in the possibility of the festival being postponed, cancelled or moved to another location at very short notice, even if it resulted in no personal financial loss to the Councillor C (as he had claimed) could potentially still have impacted upon the commercial success of any future events staged by Wickham Festivals Limited. Therefore Councillor C's circumstances were such that he was under an obligation to declare a prejudicial interest in respect of the motion. By failing to declare his prejudicial interest and withdraw from the Council Chamber at the point when consideration of the motion was to be voted on, the Respondent failed to comply with paragraph 12 of the Council's Code of Conduct.

3.5 In addition the ESO also considered whether the Respondent failed to comply with paragraph 5 of the Council's Code of Conduct. Paragraph 5 required that members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute. The ESO considered a notional reasonable member of the public would conclude that Councillor C's conduct at the Council Meeting brought discredit to the office of Councillor or caused the office of Councillor to be held in lower esteem. A member's conduct will bring that member's authority into disrepute if it could reasonably be regarded as reducing public confidence in the authority being able to fulfil its functions and duties.

- 3.6 The ESO considered occasions where a member chooses to enter into a commercial relationship with the authority of which they are a member, that member must take responsibility for not only acting ethically but being seen to act ethically in respect of all matters relating to this relationship. To maintain public confidence in such arrangements members must be alive to the appearance of conflicts of interests and impropriety and act accordingly. Members should not place themselves in situations where their honesty and integrity may be questioned.
- 3.7 The ESO also noted that the vote in question was lost by a single vote had added to the sense of frustration and anger expressed by those who subsequently contacted the Chief Executive to complain about the Councillor C's conduct. The ESO also took into account the fact that this incident was widely reported in the local press and took account of the Chief Executive's view that Councillor C's conduct had damaged the reputation of the authority.

The ESO concluded that a reasonable member of the public would consider that Councillor C's conduct to have lowered the reputation of the authority by diminishing public confidence in the Council's ability to carry out its functions in an ethical manner and was therefore in breach of Paragraph 5 of the Council's Code of Conduct, in that he brought his office and authority into disrepute.

- 3.8 The Case Tribunal took the view that this was an extremely serious case which went to the very heart of the ethical framework within which local government must operate. The underlying principals behind the legislation are to encourage and impose certain minimum standards of behaviour in respect of local government Councillors.
- 3.9 The Case Tribunal took the view that the facts in this case clearly indicated that Councillor C took a deliberate decision not to declare a personal and prejudicial interest in the motion relating to the Stokes Bay music festival at the Council meeting on 14th July 2008 and voted to defeat it. It was also clear that he had a financial interest relating to this commercial enterprise. The Case Tribunal found that this was a blatant and deliberate disregard for the Code of Conduct which would have undermined the confidence that members of the public had in the integrity of the council, particularly as this conduct came from someone with such seniority and experience.
- 3.10 The Case Tribunal took into account Councillor C's record of good service, that he had recognised that there had been a failure on his part to comply with the Code of Conduct and had issued a public apology to his electorate and had stood down from his posts as Deputy Leader and Chairman of the Council's Community & Environment Board as a result. However, the Case Tribunal also took the view that these breaches were of such a serious nature, in that Councillor C had deliberately sought to misuse his position and had deliberately failed to abide by the Code, that, notwithstanding the Respondent's recent re-election to Hampshire County Council, it was considered that the most severe of sanctions, being disqualification was appropriate and proportionate.

- 3.11 The Case Tribunal considered the Guidance on decisions to be made by a Case Tribunal, provided by the President of the Adjudication Panel for England. Having given Councillor C full credit for all the issues mentioned in mitigation and balancing those with the need to maintain public trust and confidence in the local democratic process, the Case Tribunal were of the view that a period of two years disqualification was the minimum which could properly meet the gravity of this breach.

Members should note that this decision has been appealed to the High Court the result of which is awaited. The President has agreed to suspend the effect of the sanction pending the High Court's decision from 29 July 2009.

London Borough of Hillingdon

- 3.12 In this case the Councillor appealed against the decision of the Hearing Sub-Committee of the London Borough of Hillingdon's Standards Committee that he had failed to follow paragraphs 3(1) and 5 of the Code of Conduct when he used the word 'corrupt' against Conservative members at a full council meeting on 17 January 2008.

- 3.13 Paragraph 3(1) of the Code provides:

"You must treat others with respect."

Paragraph 5 of the Code provides:

"You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute."

- 3.14 The allegation was that during contribution to a council debate on 17th January 2008 it was alleged that Councillor C referred to the ruling Conservative group on the Council as corrupt. The Tribunal heard evidence from Councillors as well as an Officer and the public.
- 3.15 In his evidence Councillor C stated that it was his custom to prepare a written statement and deliver it as his contribution to debate. In the written statement he referred to a "corrupt system of democracy". Councillor C believes that the Conservative Group acted corruptly in its approval of changes to the governance arrangements for the Council. A number of witnesses gave evidence that they could not recall him using the word corrupt. Others had heard it. In particular Councillor L recalled the comment "You're all corrupt" being made by Councillor C as a throwaway remark as he was being heckled. The Interim Head of Democratic Services recalled Councillor C describing Conservative councillors as corrupt.
- 3.16 The Appeals Tribunal were satisfied that all the witnesses who gave evidence were giving their honest recollections of a fleeting event which happened over a year ago. No one was trying to mislead the Tribunal. However in considering the evidence the Tribunal has had to weigh competing recollections of the events in the light of the quality of the evidence. The Appeals Tribunal found the evidence of the Interim Head of Democratic Services impartial, credible and compelling. They were satisfied on the balance of probabilities that Councillor C under the pressure of

barracking and his own strong feelings about the behaviour of the majority group, inadvertently referred to that group as corrupt.

3.17 The Appeals Tribunal was satisfied that this was a throwaway remark made without malicious intent. However it was said in a Full Council Meeting at which Councillors, Council Officers and members of the public were present. By making that comment Councillor C failed to treat his fellow councillors with respect. By making such a claim without justification he brought his own office into disrepute. By making an unjustified claim that the majority group of the Council was corrupt he brought the authority itself into disrepute.

3.18 The Appeals Tribunal therefore upheld the finding of the Standards Committee that there was a breach of the Code of Conduct. The Standards Committee had concluded that in all the circumstances it was appropriate to impose no sanction with respect to this conduct. The Appeals Tribunal shared that view.

4. Financial and resource appraisal

4.1 There are no financial and resource implications in this report.

5. Legal appraisal

5.1 It is important that the Standards Committee has an overview of appropriate decisions and sanctions. This report is designed to provide Standards Committee Members with a wider range of information to achieve this position.

6. Other Implications

6.1 There are no Equal Rights, Sustainability, Community Safety, Human Rights Act, Trade Union Implications arising from this report.

7. Not for Publication documents

7.1 None.

8. Recommendations

8.1 That Standards Committee Members consider the information contained in this report in the context of their responsibilities for local investigation of complaints into conduct by members.

Reason for Recommendation

- 8.2 By continually monitoring decisions made by the Adjudication Panel the Standards Committee is fulfilling its Terms of Reference by keeping the Codes and protocols of the Council under review and ensuring they have a wide overview of all decisions taken regarding member conduct.

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