

Report of the Assistant Director Corporate Services (City Solicitor) to the meeting of Standards Committee to be held on 28 October 2009.

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Subject:

Adjudication Panel for England decisions.

Summary statement:

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

2. Background

- 2.1 The Adjudication Panel was established by the Local Government Act 2000 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 Two 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

Great Linford Parish Council

- 3.1 In this case the subject member Councillor R appealed against the decision of Milton Keynes Council Standards Sub-Committee finding that she failed to follow Paragraph 3 of the Code of Conduct and their decision to suspend her for six months, reduced to 4 months if during that period Councillor R sent a letter of apology to Great Linford Parish Council and the Clerk to the Council and undertake training on the Code of Conduct.
- 3.2 Paragraph 3 of the Code provides:
- You must treat others with respect
 - You must not bully any person
- 3.3 The Standards Committee found the following relevant facts:
- During a training event Councillor R used offensive language, directed at specific individuals, loudly on several occasions.
 - Councillor R's conduct at that event caused embarrassment and distress for individuals involved and Great Linford Parish Council.

- Councillor R's conduct at that event was aggressive, intimidated individuals causing upset and distress to those affected.
- Telephone calls made by Councillor R had been abusive to councillors and officers of Great Linford Parish Council.
- Councillor R had displayed a pattern of behaviour over a period of time that appeared to the hearing to be intentionally designed to be a form of intimidation.

3.4 Councillor R's grounds of appeal were as follows:

- The hearings Sub-Committee failed to take into account medical factors.
- The Investigating Officer failed to request further information from the GP when invited to do so.
- The Sub-Committee had not responded to Councillor R in respect of the apology and retraining programme.
- The Sub-Committee added a rider to the determination when the case had already been closed.

3.5 The Tribunal considered Standards for England's guidance on sanction and felt that suspension was appropriate in this case.

They then considered what length of suspension was appropriate and concluded that the matter was potentially so serious as to merit the maximum suspension available. The Tribunal noted that the Standards Committee had found that there was a pattern of behaviour over a period of time which amounted to bullying. It noted that the Tribunal would not have considered the matter so serious if the breach had consisted of poor behaviour on a single occasion, but this was not the case. The evidence showed that Councillor R had shown disrespect and bullying behaviour to the current Clerk to the Parish Council, the previous Clerk to the Parish Council, Parish Council members and members of other Councils. The Tribunal considered that this type of bullying and disrespectful behaviour was not only distressing to the individuals concerned but also detrimental to the good governance of the Parish Council and was a very serious matter.

3.6 The Tribunal therefore agreed with the Standards Committee that a sanction of six months' suspension was proportionate to the breach. It then considered whether there were any mitigating factors that might point to a lesser penalty being imposed and again took into account the guidance of the Adjudication Panel for England on sanctions.

3.7 Although it was noted that Councillor R had apologised to the Parish Council Clerk at the Standards Committee hearing, the Tribunal gave the apology little weight as a mitigating factor, as to demonstrate appropriate contrition it should have been made much sooner.

- 3.8 The Tribunal also considered the Adjudication Panel guidance including as a mitigating factor evidence that the member's actions have been affected by ill-health and noted Councillor R's submissions and evidence in this regard.
- 3.9 Specifically the Tribunal noted that Information on her medical history was provided to the Sub-Committee in the form of a letter from a medical practitioner. Councillor R has argued that the Sub-Committee did not take her medical factors into account. However the Tribunal were of the view that it was clear from looking at the Sub-Committee's determination that it did address its mind to the issue of her medical history and, although they did not dispute that she had long term health problems, concluded that there was no evidence to support her assertions that her behaviour was caused by her medical condition or medication.
- 3.10 Councillor R submitted that the Investigating Officer should have sought further evidence from her GP. However the Tribunal's view was that if Councillor R wished to rely on mitigating factors the onus was on her to provide the proper evidence for this.
- 3.11 Specifically the Tribunal Noted that there was nothing in the letter from the GP to indicate that the medication she had taken would have contributed to the sort of behaviour that led to the finding of the breach of the Code or that would justify sustained bullying and bad behaviour.
- 3.12 The Tribunal therefore did not feel that there were any mitigating factors and concluded that six months' suspension was appropriate.
- 3.13 The Tribunal felt it appropriate to clarify what was required of Councillor R in terms of the apology and advised that the letter should include the following:
- "I apologise for what I did or said which offended you and other members of the Parish Council and I acknowledge that my behaviour was unacceptable".
- 3.14 In addition the Tribunal recognised that Councillor R would benefit from training and supported the Standards Committee proposal that she attend training within 4 months of this decision.
- 3.15 This case highlights a number of issues. First of all the seriousness with which aggressive, intimidatory and bullying behaviour is regarded by the Adjudication Panel. In addition it is noted that if a subject member wishes to rely on mitigating factors it is for that subject member to produce the evidence to support that mitigation. Simply producing a letter from a GP indicating that further information is available is not sufficient and does not create an onus on the Standards Committee Sub Committee or the Investigating Officer to seek that further evidence.

Bardney Group Parish Council

- 3.16 In his case Councillor H appealed against the decision of the Standards Committee of West Lindsey District Council that he had failed to follow paragraph 9 of the Code of Conduct and its decision to censure him and to require him to attend training on the Code of Conduct within the next six months.

3.17 Paragraph 9 of the Code provides:

“When you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to the meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent”

- 3.18 Councillor H was a member and Treasurer of the Bardney Development Trust (“the BDT”) which is a voluntary, non-charitable community organisation. Councillor H was not appointed or nominated to the BDT by the Bardney Parish Council.
- 3.19 During 2007 and 2008 the BDT had been working to provide village signs at various locations in Bardney. The Parish Council had no objection to the principle of the erection of signs however their design was a matter of controversy and the Council had rejected one design in July 2007.
- 3.20 Lottery funding had been obtained for the manufacture of the signs and the signs had been made. The Parish Council met on 9 May 2008 to deal with one item of business namely “Village Signage”. There was evidence that without the support of the Parish Council, it was unlikely that the signs would be erected.
- 3.21 Councillor H had no personal financial interest in the decision as to whether the signs were erected. The minutes of the meeting of 9 May 2008 show that Councillor H was present and participated in the debate. Further they disclose that Councillor H declared no personal interest in the single agenda item although his involvement in the BDT and the signage project was well known. Councillor H seconded the motion proposed that the signs be accepted. This was voted on and approved by the Parish Council.
- 3.22 The Appeals Tribunal considered whether on these facts, Councillor H breached paragraph 9 of the Code.

The Tribunal found that there was no question of the decision having any bearing on Councillor H’s financial position, so the issue narrowed to the effect on his well-being. The Tribunal therefore considered the meaning of the term “well-being” was addressed by Justice Keith in the case of *Murphy and The Ethical Standards Officer (2004)* in which he endorsed the following definition:

“Well-being’ can be described as a condition of contentedness, healthiness, and happiness. Anything that could be said to affect a person’s quality of life, either positively or negatively is likely to affect their well-being. It is not restricted to matters affection a person’s financial position.”

The Judge added *“Someone can have a sense of well-being without having benefited in a material or financial way”.*

- 3.23 On the facts, the Appeals Tribunal concluded that it is more likely than not that the contentedness and therefore well-being of Councillor H would have been affected to a greater extent by the decision of the Parish Council than

that of the majority of the tax payers and inhabitants of the Parish Council's area. He was the Treasurer of the voluntary organisation which had a longstanding project to erect the signs and he himself supported the project as demonstrated by his seconding of the motion for the acceptance of the signs. Lottery funding had been secured for the signs, they had been made, and an inability to erect them would at the very least have led to additional complications for the Treasurer of BDT. Acceptance of the signs in this context was likely to have a greater effect on him than the majority of other tax payers, rate payers and inhabitants of the Parish.

The Appeals Tribunal therefore finds that the Appellant did have a personal interest which should have been declared at the meeting of 9 May 2008 and, in failing to do so, Councillor H did fail to follow the provisions of the Code.

- 3.24 The Appeals Tribunal decided that the action appropriate for Councillor H was to be required to undertake training on the requirements of the Code of Conduct within 6 months. The Tribunal found that this was an unintentional and technical breach of the Code, the consequence of a failure to understand the implications of the Code rather than any intent to hide a declarable interest.

The Tribunal found that Councillor H's involvement with BDT was well known and no breach of the Code was involved in his voting on the motion to approve the signage. However it appeared that Councillor H did not understand the full implications of the Code and that some training would be appropriate.

- 3.25 This case is interesting in that it addresses the somewhat difficult issue of what is "well-being". In this case the subject member did not have a financial interest in the outcome of the decision but clearly had an involvement to the extent that it did in the view of the Tribunal have an impact on his well-being.

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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