

Report of the Assistant Director Corporate Services (City Solicitor) to the meeting of Standards Committee to be held on 3 December 2009.

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Subject:

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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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Improvement Area:



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BRADFORD
METROPOLITAN DISTRICT COUNCIL

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

London Borough Richmond Upon Thames

- 3.1 In this case the subject member Councillor C appealed against a determination by the Standards Committee of London Borough of Richmond upon Thames to censure him for a failure to comply with paragraph 3(1) of the Council's Code of Conduct which required the Councillor to treat others with respect.
- 3.2 The undisputed facts are that Councillor C had raised with the Planning Department his concerns over their handling of the planning application of two of his constituents. The applicants had been concerned over the rejection of their application for planning permission and had asked for a meeting with an officer at the Planning Department. That officer had written back a relatively short letter to say that "I do not see that a meeting with [sic] shed any further light on the matter". The applicants, unhappy with this response, had asked Councillor C to get involved. Councillor C wrote an email dated 12 June 2008 to the planning officer, copied to the applicants and three senior officers at the Council, including the Chief Executive:
- 3.3 "Telling a resident that a meeting will not be an efficient use of time, when you are employed to serve the public, is wholly unacceptable. I cannot recall such arrogance from an Officer of the Council. I must ask, therefore, ask [sic] that you agree to meet me and [the applicant] as soon after the date he has specified."

- 3.4 A more senior officer of the Planning Department replied to Councillor C on the 20 June 2008, explaining the position with regard to the refused application and the advice on a possible revised application which would be more likely to be accepted. She asked that “if you are concerned over a member of staff’s attitude could you please contact myself first to discuss the matter. In this instance, from speaking to the officer involved, and going through the case and file notes, I consider [the officer] has provided the applicants with correct and sufficient advice for them to revise the scheme, and do not consider a further meeting would be necessary or an efficient use of time or money for the applicants or the Council. However in this instance to move this case forward I would be happy to discuss the case with the applicants if they consider this necessary”.
- 3.5 The applicants submitted a revised application during August and awaited validation. Councillor C sent a chasing email to the more senior planning officer on 12 August 2009. This email, was acknowledged by the Investigating Officer as being “encouraging” in tone and “praising” of officers. A response from the senior planning officer on the same day, promised to get a decision out shortly after the consultation expired on 28 August 2009.
- 3.6 On 9 September 2008, Councillor C wrote the following email to the applicants:
- “I am outraged and shocked that as a consequence of the inertia of our planning officers you, and your young family are having to find alternative accommodation and that this might now be in jeopardy. As you can see I have copied this e-mail into the Director of Environment and the Chief Executive, as this is a damning [sic] indictment on the appalling service our planners are providing. I can only apologise on behalf of the Council and hope that by expressing my dismay in such forthright terms some one will pull their finger out and move this problem on without further delay.”
- 3.7 The original application had been decided within the 8 week target and as at 9 September 2008, the revised application was on target to be decided within this time period.

The Standards Committee decision

- 3.8 The Standards Sub-Committee found that Councillor C had failed to comply with paragraph 3.1 of the member’s Code of Conduct for the following reasons:
- representing the interests of constituents is an important part of a councillor’s role;
 - the tone and some of the words used in emails were insulting to officers of the Council and completely inappropriate ;
 - the concerns Councillor C raised could readily have been taken up using perfectly acceptable language;
 - copying the email to a range of senior officers appeared to be calculated to undermine the officer handling the case;

- copying the email to members of the public might have led to much more public criticism;
- the words used criticised a wide range of officers, who had no right of reply, and were not only insulting but were also unjustified on the facts;
- there were other means for Councillor C to raise any concerns with a senior officer;
- it was accepted that the planning applicants would have preferred their application to have been dealt with more speedily, but this was true of many applicants, and a councillor should establish whether or not proper grounds for a complaint were made out before pursuing it at senior level;
- the 9 September email was, in the view of the Sub-Committee, sent without making due enquiries. The email was a 'flamed' email in that it was sent without appropriate consideration about the impact the email would have on the recipients. The comments in that email made sweeping and outspoken criticism of the Council's planning officers generally and were also clearly aimed at one relatively junior officer, without justification in this case.

Councillor C's grounds of appeal

3.9 Councillor C's grounds with regard to the decision of the Standards Committee were, in essence that:

- the Committee appeared not to have given sufficient weight to the context in which the emails were made and the circumstances surrounding them;
- the polite and wholly proper email request dated 12 August asking the planning officers to act expeditiously had not been taken into account;
- the fact that the appropriate senior officers were copied into emails indicating that not all was well was in line with Council policy;
- in light of the genuine and sincere apology made by Councillor C on at least four occasions, the Committee should have concluded that in fact no action was the proper outcome of this investigation.

Standards Committee submissions

3.10 The Standards Committee disputed Councillor C's assertion that he had requested that an apology be passed on to the planning officers in December 2008. The only apology was that given via the Investigating Officer during the investigation of this complaint.

3.11 The remainder of the submissions related to the procedural grounds of appeal.

The Appeals Tribunal's Decision

- 3.12 The Appeals Tribunal has determined that Councillor C did not fail to follow the provisions of the Code for the following reasons.
- 3.13 The Appeals Tribunal noted that Councillor C had not bothered to make enquiries of planning officers as to the background to this matter and whether the applicants' complaints were well founded. It appeared that Councillor C took exception to the fact that the Planning Department was not prepared to meet with the applicant. The Appeals Tribunal took the view however that the Planning Department was entitled to conclude that a meeting was not a good use of officers' time and to refuse to meet. Whilst the letter informing the applicants of this was perhaps worded in a rather blunt fashion, this did not justify Councillor C's response. Councillor C's accusation of "arrogance" on the part of that officer was inappropriate. He could and should have raised his concerns in a different, more temperate way, not copying in the applicant, a member of the public.
- 3.14 This email was directed at a named officer. By contrast the email of the 9 September 2008 concerned the Planning service as a whole and was expressed in more generalised terms. The Appeals Tribunal recognises that the manner in which Councillor C raised the concerns in that email was inappropriate and the language used was intemperate. However, this particular email, although lacking in substance and unpleasant in tone did not give rise to a breach of the Code.
- 3.15 The Appeals Tribunal considered that this email, being in relation to the Planning Department and not directed at an individual officer, fell within the ambit of comment that it was acceptable for a councillor to make. It was of the utmost importance that councillors should not be deterred from raising concerns with regard to Council services.
- 3.16 As such, the Appeals Tribunal did not view this case as concerning a series of communications which might have been said to be disrespectful to individuals. The first email therefore had to be viewed as a one-off.
- 3.17 The Appeals Tribunal, whilst concerned at the terms of that first email and the fact that it had been copied to a member of the public and senior officers, did not consider it to amount to disrespect such as to give rise to a breach of the Code. The email had been critical of an officer in a robust and intemperate fashion, which the Appeals Tribunal acknowledged would not have been pleasant for a relatively junior officer, to receive. It was of the view however that, on its own, it was too insignificant to amount to disrespect and therefore a breach of the Code. Had it been coupled with other instances of inappropriate behaviour towards that officer or other individual officers it might have amounted to disrespect. Equally if coupled with instances of other inappropriate behaviour it might have brought the Council or Councillor C's officer into disrepute. That was not however the case before the Appeals Tribunal.
- 3.18 The Appeals Tribunal was of the view that this matter should perhaps not have passed the Council's assessment of whether a complaint should be referred for investigation – either on the grounds that if proven it would not

amount to a breach of the Code or alternatively that it was too minor. The Appeals Tribunal had some concerns that, on the face of it, no attempts had been made to deal with this issue in a different more informal way first (for instance, Councillor C being spoken to by the Monitoring Officer or the Leader of the Council). In any event, the Appeals Tribunal did not consider this the kind of case which warranted the full weight of the standards machinery.

- 3.19 The Appeals Tribunal has therefore rejected the finding of the Standards Committee.
- 3.20 What this case shows is the importance of setting the bar at the initial assessment stage. The Appeals Tribunal in this case were of the view that it should not have been referred for investigation. Their basis for this is that they did not believe in their view that if proven the conduct would constitute a breach of the code. Members may wish to consider whether they believe it would have been possible to come to that view on the information presented to the Assessment Sub-Committee given that the subsequent Standards Committee Hearing Sub-Committee and the Adjudication Panel would have had the benefit of the Investigating Officers Report.
- 3.21 Interestingly the case also raises the issue of informal resolution of complaints by the Monitoring Officer or Leader of the Council. Again this is an issue where there is a lack of clarity about how appropriate it is for a Monitoring Officer or Senior Management to instigate informal resolution where an Officer wishes to make a formal complaint.

Forest Heath District Council

- 3.22 In this case the subject member Councillor M appealed a determination by the Standards Committee of Forest Heath District Council to censure him and require him to write a letter of apology following their finding that by the content and circulation of an email on 14 November 2008 he had failed to comply with paragraphs 3(1) (you must treat others with respect) of Forest Heath District Council's Code of Conduct. The Standards Committee also recommend that further training on the Council's constitution and the Code of Conduct is undertaken.
- 3.23 The Appeals Tribunal has determined that the Appellant did not fail to follow the provisions of the Code because:

Councillor M in an e-mail stated "As for Councillor C attempting to denigrate my comments "Stating they were only Councillor M's personal opinions" how could she possibly know what I was about to say, how could anyone know until I finished, you know they used to burn witches at the stake for professing to have such abilities". The Investigating Officer concluded that the remark was a direct reference to Councillor C. In his submission Councillor M argued that he had no intention of suggesting that she was a witch or to suggest that anyone had such powers. It was a dramatic way of suggesting that what Councillor C purported to be able to do was impossible. The inference drawn by the Investigating officer that this was clearly personal to Councillor C is an inference which the Tribunal concluded was

not justified. The comment does not directly call her a witch; it was a far more general comment and did not pass into the realm of personal abuse. While it was incautious of him to use that expression on this occasion it did not amount to a breach of the code.

- 3.24 This case again highlights where the bar is set in terms of disrespect. Whilst the case is perhaps somewhat amusing it does highlight the need to have some clarity about where that bar sits and when behaviour, if proven, would constitute a breach of the Code.

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.