

Report of the Assistant Director Corporate Services (City Solicitor) to the meeting of Standards Committee to be held on 26 January 2010.

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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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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

Coventry City Council

- 3.1 In this case the subject Member Councillor M appealed against the decision by the Standards Sub-Committee of Coventry City Council to suspend him for a period of three months and to require him to submit a letter of apology for failing to comply with the Council's Code of Conduct.
- 3.2 The issue that was determined by the Appeals Tribunal concerned the alleged incident on the 10 December 2008 and the decision of the Council's Standards sub-committee of the 3 November 2009.
- 3.3 The Appellant's grounds for appeal in relation to these issues was summarised as follows:
 - 3.3.1 The Appellant did not breach the Council's Code of Conduct. The alleged conversation reported by the complainant between the Appellant, the complainant and Ms X was disputed. The Appellant had no recollection of the alleged conversation.
 - 3.3.2 The complainant's testimony was the sole evidence of the alleged conversation and her credibility should be questioned, particularly as she had been drinking at the time the incident took place. There was nothing to suggest that the complainant did not maliciously formulate her complaint on the grounds of disliking the Appellant on the basis of his age or sex.

- 3.3.3 The documentary and oral evidence did not prove the conduct as alleged.
- 3.3.4 In the absence of conclusive proof, it must be concluded that on the balance of probabilities the Appellant did not use unacceptable language towards the complainant or any other party and that the alleged breach of the Code of Conduct could not be upheld.
- 3.3.5 There had been an unreasonable delay in carrying out the investigation and it was unreasonable to expect the Appellant to recall whether the alleged conversation had taken place.
- 3.3.6 There was a failure to consider evidence and interview witnesses as requested.
- 3.3.7 The sanction was disproportionate to the alleged offence.

The Appeals Tribunal's finding of Fact

- 3.4 The Appeals Tribunal considered all the documentary evidence and made the following findings of fact:

Facts as found not in dispute:

- 3.4.1 The Appellant had been a member of the Council since 1999. On taking office the Appellant has signed an undertaking to abide by the Code of Conduct. On being elected Lord Mayor on the 15 May 2008, the Appellant had signed a further undertaking. The Appellant had also undertaken training on the Code of Conduct in 2008.
- 3.4.2 The Council's Code of Conduct provided:
 - Paragraph 5.1.3.1 "You must treat others with respect"*and
 - Paragraph 5.1.5 "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute"*
- 3.4.3 On the 10 December 2008 the Appellant, as Lord Mayor of the Council hosted a community party, the purpose of which, in the words of the Appellant, was both ceremonial and a fund raiser for the Lord Mayor's charities. It was attended by over 500 people. The Appellant attended in his official capacity as Lord Mayor of the Council and wore his mayoral chain of office.
- 3.4.4 As the official host of the event, the Appellant moved around the party greeting, chatting and dancing. He also had his photograph taken with a number of guests. There was food, drink, including alcohol, and entertainment at the party.
- 3.4.5 The complainant attended the party with eight friends and colleagues including a Ms Claire Cheney and a Ms Gennie Holmes. Ms X also attended with a group of work colleagues.

Facts as found in dispute:

- 3.4.6 The Appeals Tribunal found, on a balance of probabilities that sometime during the evening the Appellant, who had been drinking, had a collective dance with Ms X and some of her work colleagues. When Ms X left the dance floor and went to sit next to the complainant, the Appellant joined them.
- 3.4.7 A conversation took place between the Appellant, Ms X and the complainant, some of which was of a sexually explicit nature. The conversation included comments by the Appellant about the age at which he lost his virginity and the comment that he would “like to f***” Ms X.
- 3.4.8 In finding that this conversation did take place; the Appeals Tribunal was mindful that the Appellant had consistently said that he had no accurate recollection of the conversation. The Appeals Tribunal had taken into account the Appellant’s view that the original investigation had failed to interview witnesses but concluded that as no other persons were party to the actual conversation the scope of the investigation was adequate.
- 3.4.9 By contrast to the Appellant’s inability to recall the alleged conversation, the complainant had consistently had a clear and unequivocal recollection of the conversation and the nature of what was said.
- 3.4.10 The Appeals Tribunal took into account that very soon after the conversation had taken place, the complainant had told Ms Cheney and Ms Holmes. This is confirmed in the two women’s statements both of which describe the context in which the conversation took place and corroborate the complainant’s account in an important respect.
- 3.4.11 In Ms Cheney’s statement she said that she saw the Appellant come and sit with Ms X and the complainant and leaned towards the two women. She confirmed that it looked as if they were having a serious conversation. She stated that she noticed the Appellant was staggering and his speech was slurred. After a further period Ms X and the complainant joined her on the dance floor and the complainant told her about the conversation that had just taken place.
- 3.4.12 In Ms Holmes’ statement she said that the Appellant, the complainant and Ms X were having a conversation which she could not hear and left them to go for a dance. She noticed that the conversation between the three of them resulted in a lot of “shaking of heads and hand movements in a polite way but everything was not right”. She stated that the body language was consistent with the nature of the conversation which was told to her by the complainant when she was joined by Ms X and the complainant on the dance floor shortly after the conversation had taken place. The complainant also told Ms Holmes about the conversation again in the taxi home at about 1am.

- 3.4.13 The Appeals Tribunal also noted that the complainant, upon arriving home, told her fiancée and made a written note of the conversation before she went to bed, when the events were still fresh in her mind. The next morning she discussed the incident with her line manager.
- 3.4.14 The complainant repeated the incident and the nature of the conversation to Mr David Taylor, the Investigating Officer on 23 April 2009. Again, the complainant repeated these events to the Council's Standards sub-committee on the 3 November 2009 when, quite rightly in the absence of the Appellant at the hearing, her evidence was robustly challenged and she was subjected to some quite probing, direct and blunt questioning.
- 3.4.15 The Appeals Tribunal took account of the fact that the complainant had been drinking at the party; a matter that was put to her by the Standards sub-committee, but accepted that alcohol had not affected her recollection, particularly as she had written the facts down as soon as she had got home that evening. Both the evidence of Ms Holmes and Ms Cheney confirm that the complainant had a few glasses of wine and may have been a little tipsy but was not drunk and was not slurring her words.
- 3.4.16 The Appeals Tribunal considered carefully the Appellant's suggestion that the complainant had maliciously formulated her complaint as she disliked him on the basis of his age or sex. The Appeals Tribunal concluded that there was no credible evidence that showed, or even indicated, that the complaint had been made maliciously.
- 3.4.17 The Appeals Tribunal found that, on balance the complainant had given an entirely credible and truthful account of what had taken place at the community party on the 10 December 2008 and therefore concluded that the alleged incident had occurred.

Failure to comply with the Code of Conduct.

- 3.5 On the facts as found, the Appeals Tribunal were of the view that the conversation that the Appellant had with Ms X and the complainant was highly embarrassing, offensive and disreputable. It would have offended anyone who heard it and was totally inappropriate. The Appellant certainly failed to treat both Ms X and the complainant with respect and therefore he had failed to comply with paragraph 5.1.3.1 of the Council's Code of Conduct.
- 3.6 In addition to this the Appeals Tribunal was of the view that by this disgraceful conduct, the Appellant had brought his office and authority into disrepute. Disrepute was defined as a lack of good reputation or respectability in the Oxford English Dictionary. In the Appeals Tribunal's view, on an objective standard, by having this type of conversation while at an official function, where the Appellant attended in an important ceremonial capacity; representing the Council, his conduct was capable of diminishing public confidence and harming the reputation of the office of Lord Mayor, the position of Councillor and, indeed, the authority as a whole. Therefore the

Appellant had failed to comply with paragraph 5.15 of the Council's Code of Conduct.

Sanction

- 3.7 The Appeals Tribunal took account of the representations from the parties. Credit was given to the representations made in mitigation on behalf of the Appellant by Ms Jane Barlow, a member of the Lord Mayor's Office staff, that he had had a successful year as Lord Mayor and in his dealings and travels with her, their relationship had been very good and his conduct had always been perfect. Also the comments made by Ms Lorraine Evans, PA to the Council Leader who said her relationship with the Appellant had always been quite proper; that she had never detected any hint of inappropriate behaviour and that she had a good relationship with him and could not recall any problems.
- 3.8 However, the Appeals Tribunal was very concerned that the Appellant, in conducting his defence had attempted to malign the reputation of the complainant and impugn the standing of someone who did no more than their duty in making the complaint. In the Appeals Tribunal's view these were aggravating factors that may well have increased the appropriate sanction in this case.
- 3.9 The Appeals Tribunal considered the guidance issued by Standards for England entitled "Standards Committee Determinations" and the guidance issued by the President of the Adjudication Panel for England entitled "Guidance on decision to be made by a Case Tribunal where a respondent has been found to have failed to comply with a Code of Conduct". This document was issued for Case Tribunals but was nonetheless of assistance in gauging the appropriateness of sanctions imposed by Standards sub-committees.
- 3.10 All guidance was intended to assist those considering breaches of the Code of Conduct to gauge what action was appropriate in order to discourage or prevent the particular member from any future non-compliance and also to discourage similar action by others. The guidance advised that a tribunal should bear in mind the aim of upholding and improving the standard of conduct expected of members as part of fostering public confidence in local democracy. The Adjudication Panel for England guidance provided:
- "Suspension is likely to be appropriate where the Respondent has been found to have brought his or her office into disrepute..."*
- 3.11 It followed from this guidance that, given the Standards sub-committee found that the Appellant had failed to comply with paragraph 5.1.5 of their Code of Conduct, suspension was a sanction which was appropriate. The Appeals Tribunal may well have imposed a longer period of suspension than that imposed by the Standards sub-committee considering the aggravating factors but accorded appropriate deference to the decision of the Standards sub-committee with its knowledge of the local circumstances and which had the benefit of hearing oral and written evidence.

- 3.12 The Appeals Tribunal was of the view that the Standards sub-committee's sanction was reasonable and proportionate and decided to uphold its decision to suspend the appellant for 3 months and to require him to submit a letter of apology in a form specified by the sub-committee.
- 3.13 This case highlights that there will be occasions where the Standards Committee will be required to consider two opposing versions of events and determine whether there is any corroborative evidence to support either party. It is interesting to note that just because the subject Member states they have no recollection of the event will not exonerate them.
- 3.14 The case also demonstrates the application of the sanctions for disrespect and bringing the office or authority into disrepute. Members will note that the adjudication panel were of the view that they may have imposed a longer period of suspension but were prepared to uphold the three months imposed by the local Standards Sub-Committee.

Leicestershire County Council

Findings of fact made by the Standards Committee

- 3.15 In this case the subject Member, Councillor F, appealed following a determination by the Standards Sub-Committee of Leicestershire County Council to impose a sanction of one month's suspension, censure, and training in relation to equality and requiring Councillor F to pay the first £250 towards the cost of training, for failure to comply with Paragraph 5 of the Leicestershire County Council's Code of Conduct.
- 3.16 The Appellant has been a County Councillor since May 1993. When he was re-elected in May 2005, he signed a declaration of acceptance of office on 6 May 2005 undertaking to observe the Code of Conduct governing the behaviour of members of the County Council. He attended training on the Code of Conduct on 27 November 2007.
- 3.17 The Appellant was cabinet lead member for equalities from May 2003 to December 2004. Since 2006, he has undertaken equality training arranged by the County Council as follows:-
- Equality Standards for Local Government – 28 September 2006
 - Master Class Equality and Diversity – 04 October 2007
 - Equality and Diversity Workshop – 27 November 2008
 - The Appellant also undertook a course on Equality and Diversity - Travellers' issues on 16 March 2009 which he arranged and paid for himself.
- 3.18 On 8 January 2009, the Appellant attended a public meeting called by Groby Parish Council. The meeting was held to look at perceptions and draw out people's views on a proposed gypsy/traveller site location in Groby, and was

held in response to a leaked confidential Hinckley & Bosworth Borough Council report published in the Leicester Mercury.

- 3.19 The entire meeting was video recorded by someone in the audience and that recording, including the statements made by the Appellant, was posted on the 'YouTube' internet site. The Appellant states that he was not aware the meeting was being recorded. The matter was later reported in the Leicester Mercury on 9 and 11 March 2009. In the newspaper articles, the Appellant was identified as an elected member of Leicestershire County Council and some comments were directly quoted and attributed to him.
- 3.20 During the course of the meeting, the Appellant made the following comments:
- *"Some of these European ones they make the Irish look like complete amateurs and I would dread, I would dread to see them in Groby".*
 - *"The Romanians. They're lovely people they are. They'll stick a knife in you soon as look at you. There might be some good ones. Excuse me if there are any Romanians here. Hopefully without a knife. I've got to get out of here. I'm a bit slow".*
 - *"What's going to happen to the loved ones that have been buried in a cemetery, with a transit site around the corner? We know what's going to happen there straight away. You can only imagine it".*
 - *"Over my dead body will they come here"*
- 3.21 The article in the Leicester Mercury on 9 March 2009 includes a statement that the Appellant apologised and said he regretted the "spur of the moment" remarks.
- 3.22 The Standards (Hearing) Sub-Committee ("the Standards Committee") concluded that at the meeting on 8 January 2009, the Appellant had been acting, claiming to act or giving the impression that he was acting as a County Councillor and so as a representative of Leicestershire County Council, with the consequence that the Code of Conduct applied to his actions.

The Standards Committee's decision

- 3.23 In relation to the statements made by the Appellant and the recording of the meeting, there was no doubt that a recording had been made. The Standards Committee had been told that this was a covert video recording and Mr Batty, on behalf of the Appellant had raised questions as to its evidential value. However, the Appellant had admitted in interview and at the hearing of the Standards Committee, that he had made the statements. He had also apologised for them. As he had made an admission and not argued that the statements had never been made, the Standards Committee was satisfied both that they had been made and that they could be considered in evidence by the Standards Committee.

- 3.24 The Standards Committee was satisfied on the balance of probabilities that the Appellant had breached paragraph 5 of the Code of Conduct by conducting himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.
- 3.25 The Standards Committee considered the importance of ensuring that members had a right to freedom of expression and that in a democratic society it is particularly important to ensure appropriate and robust political debate. The Standards Committee concluded that the statements made were of a generalised and derogatory nature and that although the Appellant had stated that they were made in a jocular manner, some were clearly made in earnest. The comments made and the nature of the language were such that they did not form part of acceptable or appropriate political debate on policy or acceptable expression of political opinion.
- 3.26 The Standards Committee was satisfied that the Appellant had conducted himself in a manner which could reasonably be regarded as bringing his office into disrepute and could have harmed the reputation of the authority.

Standards Committee's Sanction

- 3.27 That the Appellant be censured for his conduct and breach of the Code of Conduct.
- 3.28 That the Appellant be suspended for one month and his allowance withheld for this period.
- 3.29 That the Appellant undertake further training in relation to equalities on an intensive basis, preferably one to one training, from an external trainer identified by the County Council and the Appellant to pay the first £250 of the cost of that training.

Grounds for the grant of permission to Appeal

- 3.30 On 15 October 2009 the President of the Adjudication Panel for England granted permission for this appeal in the following terms:

"The permission is limited to the Appeal against the action to be taken following the finding that he had been in breach of the code. It does not seem to me that Mr Batty's concerns about procedure are relevant to that issue.

I am doubtful as to whether the Standards Committee has powers to require the Councillor to pay for all or part of the cost of the specified training."

On granting permission to appeal the President suspended the sanction imposed against the Appellant.

Sanction – the extent of Regulation 19

- 3.31 The Tribunal considered the extent of the Standards Committee's power to require the Appellant to pay for training required by the Standards Committee as part of the sanction it wished to impose.

- 3.32 Regulation 19 of the Standards Committee (England) Regulations 2008 deals with the findings that a Standards Committee is required to make and its power to impose sanctions following a finding that the Code has been breached. Regulation 19(3) lays down a list of the sanctions available to a Standards Committee and provides that it “shall impose any one of, or any combination of, the following sanctions.” The Tribunal found that this wording means that the only powers of sanction available to a Standards Committee when exercising its powers of sanction following a hearing under Regulation 18 are those set out in Regulation 19. Thus, in the Tribunal’s judgment, a Standards Committee has no power following a hearing under Regulation 18 to impose any other sanctions however judicious the Standards Committee may think that other sanction is on the facts of the case.
- 3.33 The Tribunal acknowledged that the rules of a council’s scheme under which allowances are paid to members may depend on attendance at meetings and the undertaking of other duties and thus that the imposition of a period of suspension by a Standards Committee under Regulation 19 may have the inevitable side effect of the member losing income from allowances.
- 3.34 However, the Tribunal found that whether an allowance continues to be payable to a member during a period of suspension cannot properly be at the discretion of the Standards Committee when imposing a period of suspension because Regulation 19 sets out the sanctions available to the Standards Committee and the discretion to remove a member’s allowances is not given to a Standards Committee.
- 3.35 Thus the Tribunal arrived at the view that while a member may lose money paid in the form of allowances as an inevitable consequence of a Standards Committee’s decision that loss should occur as a result of the operation of the terms of the council’s allowance scheme and not at the discretion of the Standards Committee. When such a loss is inevitable it will, in the Tribunal’s view, be a matter to be taken into account when considering the appropriate level of sanction because the loss is a direct and inevitable result of the Standards Committee’s decision. In contrast speculation about whether a Standards Committee’s decision will lead to the loss of other allowances say, because the member will no longer be considered fit to hold a particular position, will need to be treated with greater caution and the amount of weight put on such a matter will depend on the circumstances of the particular case.
- 3.36 It followed from the Tribunal’s findings as to the scope of Regulation 19 in relation to allowances that it varied the sanction imposed by the Standards Committee by deleting the words “and his allowance withheld for this period”.
- 3.37 Regulation 19 is silent as to how any training imposed as a sanction is to be paid for. While sub paragraphs (i) & (k) contemplate that the period of suspension can be shortened by a member completing the specified training, and thus an incentive is provided to undertake the training, the Regulation is silent about who is to pay for the training.

- 3.38 The Tribunal started from the proposition that if Parliament wished to impose a sanction it should do so in the clearest language and it was not for the Tribunal to infer a power to impose a sanction unless there was strong evidence that lead to that inference. In this case there was no evidence to support the contention that Parliament intended members found to have breached the Code to bear the cost of training specified by a Standards Committee under Regulation 19. In the Tribunal's view it could be more cogently argued that, Parliament having carefully and in detail laid down the powers available to a Standards Committee without reference to a power to make the member pay for such training, it was for the body which wished to see the training undertaken to bear the cost.
- 3.39 It followed from the Tribunal's findings as to the scope of Regulation 19 in relation to who should bear the cost of any training specified by a Standards Committee that it varied the sanction imposed by the Standards Committee by deleting the words "and Mr Fraser to pay for the first £250 of the cost of that training."

Sanction – Fairness

- 3.40 The Tribunal considered whether the imposition of any sanction was appropriate in the circumstances of the case.
- 3.41 In addition it was relevant that the Appellant had been returned by the electorate in May 2009 when his comments which are the subject of this appeal were in the public domain although the Standards Committee had not by then reached it decision.
- 3.42 As the Tribunal has noted the Appellant has accepted his breach of the Code and the imposition of censure.
- 3.43 There is much to be said for the Appellant on the basis that in his statement of 24 April 2009 he accepted that his comments amounted to a lapse of judgement which he bitterly regrets and he has, at his own expense, undergone training. However the Tribunal arrived at the view that his breach merited the imposition of a period of suspension to mark both the seriousness of the breach and to encourage others to keep the Code in mind when dealing with highly charged political issues.
- 3.44 The meeting at which the Appellant made his comments related to a proposed gypsy/traveller site. In the Tribunal's judgment a councillor with the experience and training of the Appellant should have been aware before attending the meeting of the likely prejudices that would be aired. While the Appellant's explanation of how he came to be at the meeting is noted there can be no doubt that the Appellant gave the appearance of being there as a County Councillor, indeed his comment that "over my dead body will they come here" was a clear acknowledgement that he was in a position to influence.
- 3.45 Looked at in the round the comments are substantial and not a mere slip of the tongue which occurred in a relaxed jovial atmosphere.

- 3.46 Taking into account the above factors the Tribunal arrived at the view that the suspension of the Appellant for a period of one month was a reasonable assessment of the appropriate sanction even against the background of the losses suffered by the Appellant and taking account of his re-election.
- 3.47 Accordingly the Tribunal upheld the period of suspension imposed by the Standards Committee.
- 3.48 The Tribunal could see the force in the view of the Standards Committee that the substantial training which Appellant had previously undertaken appears not to have lead to a sound understanding on his part of the nature of prejudice and the need to promote equality. In particular the Standards Committee took the view that part of the Appellant's statement of 24 April 2009 and responses when asked to explain his various comments demonstrated that he had not properly understood the objections to his comments as he had sought, to a degree, to justify the comments he had made.
- 3.49 When the Tribunal read the Appellant's statement of 24 April as a whole it did not arrive at the same view as the Standards Committee. In the Tribunal's view the statement did demonstrate that the Appellant accepted he should not have made the comments, that he did now understand why they were objectionable, that he genuinely regretted his comments and that on the basis of the statement and representations on behalf of the Appellant the chances of his again breaching the Code in this way was negligible. In these circumstances the Tribunal found that no useful purpose would be served by the Appellant being required to undertake further training and thus the Tribunal varied the sanction imposed by the Standards Committee by removing the requirement that the Appellant undertake further training in relation to equalities.
- 3.50 This case highlights the limit that is placed on the Standards Committee for imposing sanctions. In this particular case the Standards Committee felt that the subject Member should be subject to some financial penalty as the result of his failure to comply with the Code of Conduct. The Adjudication Panel made it clear in their decision that the sanctions available to the Standards Committee were limited by regulation 19 of the Standards Committee (England) Regulations 2008, and no further sanctions were available.
- 3.51 This case also highlights the need for all Members to be aware that in an age of mobile phones and video cameras, it is easy for comments to be recorded and given wide publicity without the Member's knowledge or consent. It therefore highlights the need to ensure absolute compliance with the Code in all circumstances where a Member is interacting with the public.

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.