

## Report of the Assistant Director Corporate Services (City Solicitor) to the meeting of Standards Committee to be held on 21 July 2010.

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**B**

### 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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### Improvement Area:



2006-2007  
Improving Rural Services  
Empowering Communities



INVESTOR IN PEOPLE

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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.tribunals.gov.uk](http://www.adjudicationpanel.tribunals.gov.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**

### **Doncaster Metropolitan Borough Council**

- 3.1 The Tribunal determined a reference from an Ethical Standards Officer (“ESO”) in relation to an allegation that Cllr F had breached Doncaster Metropolitan Borough Council’s Code of Conduct when he used his council issued laptop and email facility to send a joke based upon religion, contrary to the requirements of the Council’s Electronic Email Usage Policy. Cllr F agreed that his actions did constitute a breach of Paragraphs 6(b) and 5 of the Council’s Code of Conduct.

### **3.2 Findings**

The Tribunal noted that the following material facts were agreed:

#### Cllr F’s official details

- Cllr F was most recently re-elected to office on 10 May 2007 for a term of four years. In 2009/2010 he was the Deputy Civic Mayor and served on the Standards Committee, the Audit Committee and the Schools, Children & Young People’s Overview and Scrutiny Panel.
- Cllr F is also a member of Armthorpe Parish Council.

- Cllr F had given a written undertaking to observe the Council's Code of Conduct.
- On 21 May 2007 he attended a member seminar entitled 'New Code of Conduct'. On 29 September 2008 he attended further training provided by the Council, incorporating elements on the Council's Code of Conduct.

3.3 The Council has adopted a Code of Conduct in which the following paragraphs are included.

3.4 Paragraph 5 states: *"You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute."*

3.5 Paragraph 6(b)(i) states: *"You – must when using ...the.resources of your authority: act in accordance with your authority's reasonable requirements."*

3.6 On 6 March 2009 the Council most recently updated its Electronic Mail Usage Policy (the email policy). Paragraph 1 of this policy, under the heading 'Introduction and Scope', states:

*"The Council provides an electronic mail system (email) for use by members, its staff and other authorised third parties to communicate efficiently and effectively both internally and with outside parties."*

*The Council has a duty to inform all email users:*

- *Of the rules to be applied when using the email system*
- *Of their responsibilities*
- *What is defined as acceptable use of the system*
- *What would constitute misuse of the system*
- *Of the consequence of abuse of the system*

*This policy provides guidelines for the use of the Council's email system.*

*This policy applied to all staff and members of the Council and their use of email facilities, internally or externally."*

3.7 Paragraph 6 of the email policy, under the heading 'Prohibited Use of E-Mail', states:

*"Abuse of email is a disciplinary offence and may constitute Gross Misconduct in accordance with the Council's disciplinary rules."*

*Employees must not use email to transmit content that is harassing, discriminatory, menacing, threatening, obscene, defamatory or in any way objectionable or offensive"*

*Employees are prohibited from using email:*

- *For excessive personal use whilst clocked in for work*
- *To send, receive, solicit print, copy or reply to:*

- *Text that ridicule others based on their race, religion, colour, sex, sexual orientation, national origin, veteran status, disability, ancestry or age*
- *Jokes (text or images) based on sex, sexual orientation, race, age, religion, national origin, veteran status, ancestry or disability*
- *Messages that are disparaging or defamatory*
- *Sexual orientated messages or images*
- *Messages or images that contain foul, obscene or adult orientated language*
- *Messages or images that are intended to alarm others, embarrass the Council, negatively impact employee productivity or harm employee morale.*

3.8 Paragraph 8 of the email policy, under the heading 'Privacy of E-Mail', states:

*"Whilst personal use of email is permitted during lunch and work breaks, staff and members must be aware that e-mail facilities are provided by the Council - anything that staff and members would not want to be investigated, should not be conducted on the Council provided email service. Employees and members should mark any personal e-mails as 'Personal' using the sensitivity option and/or by beginning the subject with 'PERSONAL', ensuring that it is spelt correctly as any subsequent retrieval may exclude personal information using an exact match."*

#### Summary of facts

- 3.9 On 11 July 2007 Cllr F, as a member of the Council's Standards Committee, considered and approved a report on information security, including a review of the Council's email policy.
- 3.10 As part of this consideration, he was also provided with copies of the newly produced 'rough guides', including one specifically covering acceptable use of the Council's email system.
- 3.11 On 28 July 2009 a Mr X sent an email at 14.16 to Cllr F's council email address. The email was headed 'Types of Bra Sizes!' and was accompanied by three photographs; one of them showing a woman with her naked breasts protruding through a steel structure. The email was forwarded at 22.03 on 28 July by Cllr F to 18 people without any accompanying text or explanation.
- 3.12 On 6 August 2009 at 14:02 Mr X sent an email entitled 'Did you know...' to Cllr F's council email address. The email contained derogatory statements about illegal immigrants.
- 3.13 At 23:35 that evening Cllr F, using his council issued laptop, forwarded Mr X's email to 15 people without any accompanying text or explanation from his council email address.
- 3.14 On 18 September 2009 at 17:01 Mr X sent an email entitled 'I've a big favour to ask' to Cllr F's council email address. The favour was to allow a friend to camp in his garden. The friends were said to be travelling in a couple of old Mercedes. An accompanying picture showed two massively overlaid lorries on which were some non-caucasian people.

- 3.15 At 20:12 that evening Cllr F, using his council issued laptop, emailed a response to Mr X from his council email address.
- 3.16 At 20:24 that evening Cllr F, using his council issued laptop, forwarded Mr X's email from his council email address, to 33 people, again without any accompanying text or explanation.
- 3.17 At 22:43 that evening Mr X replied to Cllr F's earlier response.
- 3.18 On 29 September 2009 Mr X sent an email entitled 'Emergency telephone number' to Cllr F's council email address. The email asked that an emergency number should be passed "to all your Asian Friends." An attachment to the email stated that it was "Advice for new Muslim immigrants to all Commonwealth Countries", the advice was:

*"If you are trapped in a burning house or have been seriously injured and are bleeding to death, the new emergency number is"*

There followed a number which took up 45 lines of text.

- 3.19 At 22:46 that evening Cllr F, using his council issued laptop, forwarded the attachment from Mr X's email from his council email address to 21 people without any accompanying text or explanation.
- 3.20 On 30 September 2009 at 19:03 someone within the Ministry of Defence who had been forwarded a copy of Cllr F's email, emailed Cllr F to complain about the contents of his email and the fact that it had been sent from an official council email address. This email was also copied to the elected Mayor.
- 3.21 On 8 October 2009 both the Doncaster Free Post and the South Yorkshire Star carried articles covering Cllr F's email and its contents.
- 3.22 On that same day the President of the local Pakistan Cultural Centre & Mosque wrote to the Council expressing concern and distress at the contents of the email entitled 'Emergency telephone number' forwarded by Cllr F, from his council email address.

**Whether the material facts disclose a failure to comply with the Code of Conduct.**

- 3.23 Cllr F did not dispute his actions constituted a breach of paragraphs 5 and 6(b) of the Code of Conduct.
- 3.24 He accepted that his use of the Council's IT system and in particular the Doncaster.gov.uk address was in breach of both the spirit and letter of the Code of Conduct and also allowed recipients of the emails to infer that he was conducting the business of the office to which he was elected.
- 3.25 Cllr F had been involved in obtaining funding and was going to set up a dedicated phone line service through which the Polish community could access an interpreter. Some adverse comments had been reported to him. He had asked all his neighbourhood watch contacts and some other of his contacts to get in touch with

him if they heard or knew of any more adverse comments, he regarded the emails of 6 August and 29 September as responses to that invitation.

- 3.26 It was noted that none of the relevant emails forwarded by Cllr F, contained any indication or marking that identified them in anyway as being personal or which served to distinguish them from any emails sent by him when he was conducting the business of his authority. The ESO considered the onus to be on all authorised email users, both officers and members, to ensure that they clearly identify any personal emails they send and any emails sent from council email addresses not so identified run the considerable risk of being seen to give the impression that they were sent while the user was acting as a representative of the Council.
- 3.27 It was submitted that by failing to take any steps or measures to identify his emails as being private or personal, Cllr F did nothing to counter the impression that his emails, sent from his council email address, were connected to his position as a member of the authority and were sent while he was giving the impression he was acting as a representative of the authority.
- 3.28 The ESO submitted that at all times relevant to his investigation Cllr F was acting in his official capacity, in that he gave the impression that he was acting as a representative of his authority and therefore was subject to the requirements of the Council's Code of Conduct.
- 3.29 Paragraph 5 of the Council's Code of Conduct requires that members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute. This is an objective test; the Tribunal had to consider whether a notional reasonable member of the public, in full possession of the facts, would conclude that Cllr F's conduct 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.
- 3.30 The ESO attached weight to the terms and conditions as contained in the Council's email policy, together with the contents of each of the individual emails in question. It was submitted that the contents of each individual email was in breach of the terms of the Council's email policy and that some are of far more seriousness in nature than others.
- 3.31 In respect of the two emails he forwarded entitled 'Various types of bra' and 'I've a big favour to ask', it was not in dispute that Cllr F received these two email 'jokes' from Mr X and in each case forwarded them to a number of people, who he thought would find the 'jokes' amusing or humorous. It is equally indisputable that the individual content of each of these emails place them clearly into a number of the categories of types of emails that are expressly prohibited under the terms of the Council's email policy. These include the prohibitions on 'jokes (text or images) based on sex, sexual orientation, race, religion, national origin, veteran status, ancestry or disability' and 'sexual orientated messages or images'. The ESO considered that in relation to the sending of each of these emails Cllr F breached the terms of the Council's email policy.

- 3.32 The Tribunal also considered whether this conduct brought Cllr F's office or authority into disrepute. There may be occasions where a member's conduct would cause a reasonable member of the public to think less of them as an individual but would not necessarily bring either their office or authority into disrepute. The ESO submitted that a reasonable member of the public would expect an experienced councillor such as Cllr F to have ensured that any emails he sent from his council email address accorded with all the Council's relevant policies.
- 3.33 While the ESO accepted that these two email 'jokes' are perhaps at the lower end of the scale in terms of their seriousness they would be judged by many as both objectionable and offensive, a fact acknowledged by Cllr F. A reasonable member of the public would consider his failure to abide by the terms of the Council's email policy to be indicative of judgment so poor on his part as to reduce their confidence in his ability to fulfil his role as a member in an ethical manner. By his conduct in this respect he brought discredit to the office of councillor and caused it to be held in lower esteem. The ESO did not consider, however, that his essentially personal failing in this regard was such that it brought his authority into disrepute.
- 3.34 So far as concerns Cllr F's conduct in relation to the two emails entitled 'Emergency telephone number' and 'Did you know...', it is again not in dispute that Cllr F received these two emails from Mr X and subsequently forwarded them to a number of people from his council email address. It is also not in dispute that he took no steps to distinguish his actions in respect of these two emails from those he took in respect of the other emails he received from Mr X. None of the emails forwarded by Cllr F contained any accompanying text or explanatory statement as to the reasons why the recipients were receiving this email or what, if any, action or response was expected of them.
- 3.35 The ESO was aware that Cllr F has claimed that these two emails are not just further examples of 'jokes' sent to him by Mr X, which he then forwarded on to whoever he thought might find them humorous, as was the case with the other emails. The ESO did not consider his explanations persuasive or plausible in this respect. Even if these emails were provided to him in the manner and for the purposes he has claimed, she cannot conceive that he would forward such content without any accompanying text or explanation. For him not to have done so constituted at best, in the ESO's opinion, an inexcusable lapse in judgment on Cllr F's part.
- 3.36 Having considered the contents of these two emails the ESO was satisfied that they each breach a number of the terms and conditions contained within the Council's email policy. The ESO was satisfied that a reasonable member of the public would find their content to be objectionable and offensive and they would be shocked that such emails were circulated from a council email address. There cannot be any justification for him forwarding these emails in the manner in which he did. A reasonable member of the public would view his conduct as being, at best, a further example of extremely poor judgment on his part and, at worst, a misuse of the Council's email system that has brought shame and discredit upon himself and the Council as a whole.
- 3.37 Taking all these facts into account, the ESO was satisfied that a reasonable member of the public would expect an experienced councillor such as Cllr F to have ensured that any emails he sent from his council email address accorded with

all the Council's relevant policies. Especially if, as in this case, that councillor was the deputy civic mayor and a member of the authority's Standards Committee and, as such, should be expected to set and maintain the highest standards of ethical conduct.

- 3.38 A reasonable member of the public would, if they were to become aware of this conduct, have less confidence in his ability to carry out his functions, including hosting citizenship ceremonies in his capacity as deputy civic mayor, in an ethical and appropriate manner. His failings in this regard brought discredit to the office of councillor and to have lowered the reputation of the authority by diminishing public confidence in the Council.
- 3.39 The ESO considered, therefore, that he failed to comply with paragraph 5 of the Council's Code of Conduct in that he brought both his office and authority into disrepute.
- 3.40 Cllr F must be taken to be aware of the Council's policies on the acceptable use of its IT facilities. In forwarding the emails he was in breach of that policy:
- The "bra joke" was sexist and contained sexually orientated images.
  - The "favour" joke was based on race or national origin, was disparaging and/or sought to ridicule others on the basis of their race and/or national origin.
  - The "telephone number" email was based on religion and/or race and/or national origin, was disparaging and/or sought to ridicule others on the basis of their religion and/or race and/or national origin.
  - The "did you know" email was all of the above, highly offensive and also contained foul, obscene and adult orientated language.

### **Tribunal decision**

- 3.41 Cllr F did fail to comply with the Code of Conduct in that he misused Council resources (a laptop and emailing facilities), he has not sought to contest that his actions were inconsistent with the Council's IT policy and he accepts that he transmitted material which were unpleasant and inappropriate. This was contrary to paragraph 6(b) of the Council's Code of Conduct. His actions also brought the reputation of his office of councillor and of the Council into disrepute contrary to paragraph 5 of the Code of Conduct.

### **Submissions as to sanction**

- 3.42 The Tribunal heard evidence from Cllr F primarily in support of his contention that his actions in forwarding two of the emails were in the context of distributing material illustrating adverse comments to the proposed emergency helpline that he had been helping to set up.
- 3.43 The ESO's view was that Cllr F's failure to abide by the requirements of the Council's Code of conduct is a serious matter. The ESO considered that those who accept public office must accept that there are minimum standards of behaviour expected of elected officials and that his behaviour has fallen well below the minimum standard expected.



- 3.44 The ESO considered the misconduct identified within her report to be a matter of considerable concern and evidence of Cllr F's inability to correctly judge the appropriateness of his conduct and the potential damage his conduct may cause to the reputation of the authority.
- 3.45 The ESO rejected Cllr F's explanations for forwarding two of the emails. There is no evidence in any of the minutes of the neighbourhood watch committee to corroborate his submission that he had asked for adverse comments to be sent to him, there is no evidence of discussion of such comments. If the material was really relevant to the functioning of the neighbourhoods watch committee it is odd that there is no reference in the minutes to it. The only evidence is that it was forwarded to a group of people that Cllr F thought would find it amusing.
- 3.46 The ESO did not submit that Cllr F was a racist, the fact that he thinks something with racist overtones is funny does not of itself make him a racist.
- 3.47 There were mitigating factors:
- Cllr F had accepted that he is breach of the Code of Conduct.
  - He accepted his actions were ill-advised.
  - He had apologised.
- 3.48 Aggravating factors were:
- There was not just one offensive email sent but four over a period of three months.
  - It was done at the very least thoughtlessly and at worst because he thought it was amusing.
  - A feature of sending emails is that the action can have a very long reach. Anyone looking at the list of recipients would see that it had been through Doncaster Council.
- 3.49 It was noted that had an officer acted in the same way he or she would have been dismissed for gross misconduct.
- 3.50 Cllr F had apologised unreservedly to everyone concerned regarding the incident. That was very significant. He acknowledged that it was a foolish thing to do and that he could have done it better.
- 3.51 He now had his own laptop and would not use the Council's one for any contact with the range of people he used in connection with his neighbourhood watch work and his support team.
- 3.52 Cllr F accepted that all the emails were unpleasant and inappropriate and should not have been forwarded on without a level of judgement being applied. A man not terribly experienced with email immediately forwarded them rather than, with the benefit of hindsight including some explanatory text
- 3.53 The Tribunal were asked to draw a distinction between misjudgement and being a racist. This was an issue of misjudgement not racism. His misjudgement has

caused offence. He accepted that. It was a matter of sadness to him that it caused the letter from Sikh Temple to be written.

- 3.54 At the time this matter came up Cllr F was going to be the Civic Mayor as from the day of the Tribunal's hearing. He has relinquished this position. He was 75 years old. The opportunity for him to serve in that office was never going to come round again.
- 3.55 His misjudgement needed to be balanced against the clear work he had done as a member of the community and then as a councillor. His work is at a very local level, using the skills he has to advantage his community. He was not politically aligned and has concentrated on providing a useful and well respected service to members of his community. Testimony to this is provided in the letters that had been submitted particularly from the Parish Council. Other references are consistent and show a man well liked, well respected and who worked hard for his community.
- 3.56 It was submitted that the explanations for his actions had been consistent from the beginning. He had tried to put his cards on the table. While the ESO has found his responses to the two kinds of email difficult to understand he has not deviated from that explanation. The Tribunal were asked to accept this was what was in his mind at the time. He did not turn his mind to what would happen to the emails down the line.
- 3.57 It was only because of his own position and because the complaint was made by the Chief Executive that this matter was not investigated locally.
- 3.58 He had been humiliated by being the subject of the complaint, by being splashed over the newspapers, by the investigation process, by not taking the Mayor's chain of office and by attending the Tribunal.
- 3.59 Cllr F submitted that looking at the Tribunal's guidance on what sanction to apply, the only factor in the list of those which might result in disqualification was the misuse of Council resources, not so much the use of the laptop but the use of the Council email address. The Tribunal has been invited to accept that if a council employee had sent out these emails then there would be an enquiry into his or her conduct and he or she would potentially lose the employment. But this would not be a foregone conclusion. Alternatives should be sought which are fair to the circumstances and the individual. He submitted that disqualification would not be an appropriate sanction.
- 3.60 Cllr F asked the Tribunal not to suspend him or if it was minded to do so, to make the suspension as short a period as is justified in the circumstances. The seriousness of what he did had been brought home to him over the last six months. He had taken steps to avoid any repetition of inappropriate use of his Council email address.
- 3.61 He suggested that censure would be appropriate, he had learnt from these proceedings which have brought home to him that what he did caused offence. He was willing to apologise in any terms required by the Tribunal.

### **Tribunal decision**

- 3.62 The Tribunal did not accept Cllr F's explanation for forwarding two of the emails. That explanation was unsupported by any documentary evidence and stretched the Tribunal's credulity too far. This casts some doubt on the sincerity of his acceptance of his inappropriate behaviour.
- 3.63 Nevertheless the Tribunal did recognise the force of the submissions made on behalf of Cllr F and particularly his action in standing aside from becoming the Civic Mayor of Doncaster. That led the Tribunal to a lesser sanction than would otherwise have been the case but the Tribunal was not persuaded that censure would of itself be appropriate to bring home the message that his behaviour was inappropriate.
- 3.64 Taking into account his apology, his action in standing down from the Civic Mayoralty and the letters written in his support which testified to his public service the Tribunal felt that the appropriate sanction would be a suspension for a period of three months.
- 3.65 That suspension to begin from Monday 24 May 2010.
- 3.66 This case formed the basis of the mock hearing at the recent West Yorkshire Regional Standards Conference. Some members will recall some of the detail of the case. This demonstrates the level of breach required to be regarded as having brought the office of Councillor or authority into disrepute. In addition it gives a thorough consideration to the factors to be taken into account when considering sanction.
- 3.67 Members will note that use of email is a significant risk area in terms of circulation inappropriate literature. Members should be aware that once an email is sent they have no control about where it will be sent on.

### **Bolton Council**

- 3.68 The Tribunal considered written submissions from Cllr W and the Standards Committee of Bolton Council.
- 3.69 Cllr W has appealed against Bolton Council's Standards (Hearing) Sub-Committee finding that Cllr W had failed to follow paragraph 3(1) of the Code of Conduct by sending an inappropriately worded email.
- 3.70 Cllr W has appealed against the sanction imposed by the Standards Committee in the light of the failure to follow the provisions of the Code of Conduct. That action was to suspend Cllr W for four months.

### **Findings of Fact**

- 3.71 On Saturday 21 November 2009, Mr T, a Harper Green resident and former Conservative Candidate for the Harper Green ward, emailed several members of the Council and the news desk of the Bolton News about the Council's failure to

collect refuse. Those emailed included Cllr W and a Councillor C, the local councillors for the ward.

- 3.72 A further email was sent by Mr T on Monday 23 November 2009 to a Ms D, thanking her and others from the residents of the area for sorting out the problems with the refuse. Cllr W was copied into this email which stated :

*"Dear A,  
A big thanks to you, DB, Councillor M and all your team from the residents here at Caldbeck Drive and the surrounding areas.  
I know that you and your office are very busy sorting out all these problems with the new domestic waste systems and we are all very grateful for your quick response to our problem.  
I must say though that all the residents were quite disgusted that we didn't even get a reply from ANY of our local councillors. I just hope that they were not hoping for our support at the next local elections.  
Once again thank you for all your efforts.  
Regards,  
RT."*

- 3.73 On the 25 November 2009, Cllr W wrote an email to Mr T in response to Mr T's email to Ms D. That email stated:

*" Mr T*

*I am pleased to note you have already had a very prompt and satisfactory response to your original email which as is clear from the date was sent on Saturday. As I have been visiting my daughter in Birmingham this is the first opportunity I have had to respond to emails since Friday. Unlike the Leader of the Council I don't have the luxury of a Secretary to field them for me, I have to do my own.*

*As a former Conservative Candidate you are free to slag off me and other members of the Council as you wish. However do not take this email as an apology it is not, but please share its contents with Caldbeck Dr, In fact I'll email residents I have addresses for myself. In your haste to criticise you have actually emphasised what a good response you have had especially since enmeshed in your lactatious ego trip you forgot to say where the problem was. I would have known there could only be one RT writing an email such as yours. Indeed had you contacted me when your bins were first missed you might have got the whole thing sorted out even quicker!*

*Yours truly, Cllr W*

- 3.74 Mr T complained about the content of this email. That complaint was investigated by Bolton Council's Monitoring Officer. The Monitoring Officer's report concluded that on a balance of probabilities there had been a breach of paragraph 3(1) of the Code of Conduct. The matter was referred to the Standards (Hearing) Sub-Committee of Bolton Council's Standards Committee ("the Committee") on 19 March 2010.

- 3.75 The Committee found that Cllr W had breached section 3(1) of the Code of Conduct in that he had sent an inappropriately worded email to Mr T and by doing so had failed to treat Mr T with respect. The Committee decided to suspend Cllr W for 4 months.

**Findings as to whether Cllr W failed to follow the Code of Conduct.**

**Submissions on behalf of Cllr W**

- 3.76 In summary, Cllr W did not believe that he was in breach of the Code. Mr T is a Conservative political activist and has been Cllr W's opposing candidate. The complaint was entirely unreasonable and clearly politically motivated. This takes the matter into the grey area of political campaigning. Also when councillors do casework it is not an official duty. They do case work in their own homes and in their own time but it is something of a grey area when mixed with politics.
- 3.77 Further, as issues of 'tone' are quite subjective, if the Code has been breached, such a breach is at the minor end of the scale. In view of this, the sanction of four months suspension is excessive and vindictive.

**Submissions on behalf of the Standards Committee**

- 3.78 In summary the Committee was of the view that Cllr W was acting in his official capacity when he sent his email to Mr T. Case work is an integral part of a councillor's council business and at all material times he was acting in this capacity.
- 3.79 They found that Cllr W had breached the Code having considered the report of the Investigating Officer and other evidence relevant to the allegation as supplied by Cllr W to the Committee.
- 3.80 They also considered the similar facts and circumstances of a previous decision of the Committee.
- 3.81 In imposing a sanction the Committee considered the following factors:-
- 3.81.1 Cllr W is a senior experienced member of the Council and that the email was disrespectful, inappropriate and offensive.
  - 3.81.2 This is the second occasion that Cllr W had written inappropriately. He had received one month's suspension in February 2008 under similar circumstances.
  - 3.81.3 At no time in either instance did Cllr W offer a suitable apology or see any error in his actions or language used in the communication.
  - 3.81.4 That in not attending the hearing he demonstrated a level of contempt for the Standards Committee and standards in general.
- 3.82 In terms of the length of suspension the Committee considered the guidance of Standards for England which sets out there is no firm tariff. They gave considerable consideration as to whether the sanction was reasonable and proportionate to the member's behaviour and considered the following in detail.

- 3.82.1 That Cllr W did not accept that he was at fault in either of the cases that had come before the Committee.
- 3.82.2 That no offer of an apology was made.
- 3.82.3 That this was a second incident in almost identical circumstances.
- 3.82.4 That unless a substantial sanction was imposed Cllr W was likely to do the same again.
- 3.82.5 Additionally the Committee was mindful of the fact that the suspension would only be effective to a lesser extent because of the period leading up to election there is a reduced activity in the Council's calendar.

### **The Tribunal's findings in relation to breach.**

- 3.83 The Tribunal found that Cllr W was acting in his official capacity when his email of the 25 November was sent. The email related to a matter of council business, namely refuse collection and he responded to the email using the Council's email system and in his capacity as a councillor, signing the email 'Cllr W'. Therefore it could reasonably be assumed that he was carrying out case work relating to his role as a councillor which, in his own words "is part of the job", even if it was being conducted at home.

### **Failure to treat with respect and disrepute**

- 3.84 In the Tribunal's view, failure to treat others with respect will occur when unfair, unreasonable or demeaning behaviour is directed by one person against another. The circumstances in which the behaviour occurred are relevant in assessing whether the behaviour is disrespectful. The circumstances include the character and relationship of the people involved, and the behaviour of anyone who prompted the alleged disrespect.
- 3.85 Whilst the Tribunal recognised that Mr T had been a Conservative Candidate there is no evidence before the Tribunal that indicated that the complaint was "entirely unreasonable and clearly political trouble making", as Cllr W has alleged. Cllr W has said that he knew Mr T from previous political campaigns and they did not have a "friendly relationship". Mr T, however has said that he had stood against Cllr W on one occasion and there had been no difficulties between them and they had barely spoken.
- 3.86 The Investigating Officer's report stated that Mr T, as a person who had been involved in local politics and was thought to have some connections which would help with the refuse difficulty, had been approached by local residents in the Harper Green area to assist them. He had emailed a number of councillors, not just Cllr W and the response he received had been, in his view, very civil.
- 3.87 By contrast, Cllr W's email response, which could not be classified as political criticism or political banter, appeared to be an expression of personal irritation and annoyance at Mr T's criticism of the lack of response he had received.
- 3.88 Cllr W had said to the Investigating Officer that councillors cannot be expected to work 24/7 and this frustration appears to have spilled out into his email.

- 3.89 There was no evidence before the Tribunal that the email was sent to anyone other than the recipient, Mr T. Even so, Cllr W could have dealt with what he perceived to be personal criticism in a more temperate and polite way.
- 3.90 The tone and words used in the email could have been better chosen but, in the Tribunal's view they were neither abusive nor overtly offensive. Furthermore, the Tribunal were of the view that, even though the Tribunal did not find it to be the case, it was not unreasonable for Cllr W, in all the circumstances to regard Mr T's widely circulated and critical email as both unfair and politically motivated and on that basis Cllr W's conduct in sending the email does not reach the threshold of being unfair, unreasonable or demeaning to the extent necessary to engage paragraph 3(1) of the Code of Conduct. Therefore the Tribunal finds there has been no breach of the Code of Conduct.
- 3.91 The Tribunal has rejected the findings of the Committee.
- 3.92 The decision of the Committee ceased immediately to have effect.
- 3.93 This case demonstrates that not all critical emails will necessarily be regarded as disrespect. This is a very recent decision of the first tier tribunal (June 2010) and does represent an interesting consideration of where the bar is set in terms of the level of conduct required to breach 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.

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