

Report of the Assistant Director Corporate Services (City Solicitor) to the meeting of Standards Committee to be held on 29 September 2010.

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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 subject member 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
- 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

Woodplumpton Parish Council

- 3.1 The Tribunal considered written (and oral) submissions from the subject member and from the Respondent Council.
- 3.2 The subject member appealed against the Standards Committee's finding that he had failed to follow paragraph 3(1) of the Code of Conduct in a presentation at a meeting on behalf of the Council when he indicated that the signatories to a petition had been obtained by coercion.
- 3.3 The subject member has appealed against the finding and the action which the Standards Committee decided to take in the light of the failure to follow the provisions of the Code of Conduct. That action was to submit a written apology to the complainants and undergo appropriate training.
- 3.4 Paragraph 3(1) of the Code provides:
- "You must treat others with respect"*
- 3.5 The Tribunal determined that the subject member did not fail to follow the provisions of the Code because:

- 3.5.1 It was alleged that the subject member councillor, in the course of his duties breached paragraph 3(1). For the purpose of this appeal the Tribunal separated the consideration of disputed fact from a consideration of the Code of Conduct. The Tribunal initially considered whether the facts as found by the Hearing Sub-Committee of the Standards Committee could amount to a breach of the Code of Conduct. The facts were all agreed except whether or not the subject member used the term coerced/coercion. In coming to this decision the Tribunal has come to no conclusion as to whether or not the alleged words were used.
- 3.5.2 The Hearing Sub-Committee found that the subject member addressed a meeting between the County and District Council on 30 January 2008 on behalf of his Parish Council. The Sub-Committee found that during his contribution he stated that individuals who had signed a petition had been coerced into signing it. Complaints were received from an organiser of the petition and from a signatory to it. The first such complaint being received on 17 March 2009 and the second 21 April 2009.
- 3.5.3 The Tribunal considered whether, in all the circumstances of the case, saying that people had been coerced into signing a petition could amount to a breach of paragraph 3(1) of the Code in that he failed to treat others – in this case organisers and signatories of such a petition - with respect.
- 3.5.4 The Sub-Committee in coming to its decision was influenced by a compact dictionary definition of coercion as meaning “persuade (an unwilling person) to do something by using force or threats”. The Council acknowledged that there was no suggestion that the subject member had meant that such force or threats had been used. The Council relied on the offence which had been caused to the complainants by the word and emphasised that the complainants were members of the public while the subject member a Parish Councillor was subject to the Code of Conduct. The Council stated that it would have been acceptable for the subject member to have stated that the signatories had been misled into signing the petition, even though it was acknowledged that this too could have caused offence.
- 3.5.5 The Tribunal was not satisfied that this definition adequately captured the full range of day to day use of the word which can encompass far wider and less pejorative meanings. Furthermore the relevant test which the Tribunal should apply in such a case is that of the impartial observer with knowledge of all the circumstances rather than the expressed subjective views of the complainants.
- 3.5.6 This was clearly, from all the documentation a fraught chain of events where there were strong views on both sides of the debate. The subject member was on one side of the debate, the complainant residents were on the other. While in this matter the complainants were not councillors; by organising a petition, signing a petition and attending various meetings they were also robustly engaged in the public debate. Although the subject member was subject to the Code of Conduct and the complainants were not, the actual relationship of the subject member and the complainants and their divided views on the key matter of concern are relevant.

- 3.5.7 The Tribunal noted the need to bear in mind the need for open debate in public matters and the chilling effect of excessive controls on such debate and the harm that such controls can do to the proper conduct of public affairs.
- 3.5.8 In all the circumstances the Tribunal was satisfied that even had the subject member used the term coerced/coercion that could not have amounted to a breach of paragraph 3(1) of the Code of Conduct – a failure to treat others with respect.
- 3.6 The decision of the Standards Committee ceases immediately to have effect.
- 3.7 This case highlights the danger in adopting a dictionary definition of a word used. What is important in considering whether or not the conduct constitutes disrespect is the context in which the word is used and the wider relationship between the parties.
- 3.8 This case highlights that there is an importance attached to undertaking open debate. Where parties, even members of the public, are engaged in a robust debate it is often the case that it will become very heated. The Tribunal took on board the fact that it is not in the public interest to attempt to excessively control such debate and any allegations of disrespect must be considered in that context.

Penzance Town Council

- 3.9 The Tribunal held a public hearing into an appeal made by the subject member of Penzance Town Council against a decision of the Standards Committee of Cornwall Council held on 21 April 2010.
- 3.10 The Standards Committee had found that the subject member had breached the Town Council's Code of Conduct when:
- 3.10.1 he referred to Councillor W as a liar at a meeting of the Town Council's General Purposes Committee on 18 May 2009;
- 3.10.2 he stated that Councillor W had not opened an account with the Cornish Community Banking ("CCB").
- 3.11 The Standards Committee "supported" the Investigating Officer's findings that the subject member had breached:
- 3.11.1 paragraph 3(1) of the Code – the obligation to treat others with respect;
- 3.11.2 paragraph 4(a) of the Code – the obligation not to disclose information obtained in confidence;
- 3.11.3 paragraph 5 of the Code – the obligation on a member not to conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.
- 3.12 The Standards Committee took account of the subject member's length of service and decided to impose a four month, rather than a six month, suspension.

- 3.13 The subject member appealed and was initially given leave for an appeal against sanction only. On seeing the information on which the Standards Committee's decision was based, the Tribunal extended the appeal to a full rehearing of the case because the Standards Committee's decision:
- 3.13.1 failed to set out its own reasoning in its decision;
 - 3.13.2 failed to find that the information that Councillor W had not opened a savings account with CCB was confidential information within the meaning of paragraph 4 of the Code;
 - 3.13.3 failed to deal with the subject member's contention that the information was not obtained in confidence and that anyway Councillor W had placed the matter in the public domain by stating that she would join the CCB;
 - 3.13.4 failed to give adequate reasons for applying paragraph 5, that the subject member had brought his office or authority into disrepute.
- 3.14 The Tribunal considered written and oral submissions from the parties and heard evidence on oath from the subject member, Councillor W and Councillor L. In addition the Tribunal heard from Councillor G as to the subject member's good character and commitment to public service.
- 3.15 The essence of the subject member's evidence was that the events leading to the alleged breach happened very quickly and that he had no clear recollection of exactly what he had said. However, he recollected referring to Councillor W's undertaking to save with the CCB and that she had not done so. In the Tribunal's judgment the subject member's evidence was truthful and could be relied upon in respect of the matters about which he had a clear recollection.
- 3.16 The Tribunal found Councillor W, who was the complainant, to be an impressive witness. She was straightforward in manner and gave a clear account of the relevant events which was consistent with the other information and evidence before the Tribunal. The Tribunal was particularly impressed by Councillor W's evidence on critical points when she must have known that it did not fully support the approach taken by the Standards Committee. In these circumstances the Tribunal accepted Councillor W's evidence as accurate and placed substantial weight on it when making its decision.
- 3.17 The Tribunal accepted the evidence of Councillor L in so far as it supported that of Councillor W.
- 3.18 Councillor G gave a good account of the subject member's commitment to public service and his willingness to assist others at short notice which went far beyond what a town councillor would normally be expected to do in the course of their work. The Tribunal found that Councillor G's appraisal of the subject member's character was a genuine attempt to give a rounded picture and that he made appropriate reference to the fact that at times he let himself down by losing his temper. The Tribunal placed weight on the information provided by Councillor G when dealing with the question of sanction.

The General Purposes Committee Meeting – 18 May 2009

- 3.19 The Appeal related solely to the appointment of a representative of the Town Council to the Treneere Together Partnership (“TTP”) following the reorganisation of local government in Cornwall by the creation of a unitary authority.
- 3.20 Councillor W was duly nominated and seconded as the Town Council’s representative and a vote followed which lead to her appointment.
- 3.21 The Tribunal found, on the basis of Councillor W’s evidence, that it was at this point that the subject member stood up and in an intemperate outburst referred to Councillor W as a liar because she had given an undertaking to save with the CCB but had not done so.
- 3.22 The subject member’s recollection of the meeting was poor. However, he explained to the Tribunal that his concern about Councillor W being nominated was that he objected to her putting herself forward because he understood that the constitution of the TTP required that you have to be resident in Treneere to have any voting rights. The subject member thus questioned how Councillor W could fulfil the role of Chair without voting rights particularly if there was a disputed situation. He was further concerned that such a situation would lead to more work for the staff of the TTP.
- 3.23 It was the Tribunal’s view the subject member was entitled to put his view as part of the debate about the nomination. However, his outburst following Councillor W’s nomination and appointment was too late to add anything to the debate. Further in the Tribunal’s judgment the word ‘liar’ was not a word which could reasonably be applied to Councillor W even on the facts as understood by the subject member.
- 3.24 Councillor W told the Tribunal that at the launch of the CCB at the Queens Hotel, Penzance, in probably 1998, when she was Mayor of Penzance, she had made a speech in which she said she would become a saver in the CCB but that she had not done so until a few months before the date of the hearing.
- 3.25 In the Tribunal’s judgment Councillor W’s failure to carry out her commitment to become a saver until recently did not justify calling her a liar. Indeed based on the Tribunal’s assessment of Councillor W’s character it had no doubt that if she had been asked whether she had opened an account she would have answered without hesitation and truthfully. While she was arguably open to criticism for not making good her commitment to become a saver for over ten years there was no indication that she had lied about her intention or about whether she had actually become a saver.
- 3.26 The subject member told the Tribunal that he had not at anytime accessed confidential information relating to Councillor W in his role as a non executive director of CCB approved by the Financial Services Authority. The subject member explained that in conversations on several different occasions with the then manager of the CCB, she had told him that Councillor W had not opened an account. These conversations took place in the offices of the CCB and it was likely that members of staff were present and could have heard what was said. The subject member was not told that this was confidential information and he had been present at the founding of the CCB and had heard Councillor W’s speech in which she undertook to save with the CCB. The subject member’s knowledge was

supported by his own observations on the fairly frequent occasions he attended at the CCB's collection points to check that those taking in money were complying with the rules that he had not seen Councillor W make any deposits. The subject member accepted that it was possible that Councillor W could have made deposits when he was not present but not seeing her do so supported the information he had received from the manager.

- 3.27 Councillor W told the Tribunal that she had indeed undertaken to open an account in her speech in 1998 and had meant to do so. However, time had gone by and she had not got round to opening an account. She had a substantial amount of involvement with CCB and its activities and knew the manager reasonably well as a result. Councillor W would visit the offices of the CCB and attended related meetings. It became a standing comment between Councillor W and the manager about when Councillor W would get round to opening an account. On some occasions the comment about an account would be initiated by Councillor W and she recalled she initiated such a comment around the time of the creation of a unitary authority in Cornwall at a private meeting at which both officers and members had been present.
- 3.28 The Tribunal found that the evidence of the subject member and Councillor W about the opening of an account was broadly in harmony and it thus accepted their evidence as correct.

Breach of the Code

Use of the word 'liar'

- 3.29 The Tribunal has found that the use of the word 'liar' by the subject member was not justified on the basis of the facts as understood by him. The Tribunal found that to call Councillor W a liar without substantial and clear justification was offensive and thus amounted to a failure by the subject member to treat her with respect. The Tribunal therefore found that the subject member had breached paragraph 3(1) of the Code.
- 3.30 It was also submitted that the subject member had breached paragraph 5 of the Code because the use of the word 'liar' without justification in a public meeting, whether or not the public was present, was sufficient to bring his office but not authority into disrepute.
- 3.31 Looking at the matter overall the Tribunal found that the reasonable person would not think that the single outburst and the use of the word liar at the meeting on 18 May 2009, when set against the subject member's long history of public service, was of sufficient gravity so as to bring his office into disrepute. Thus the Tribunal found that he had not breached paragraph 5 of the Code.

Confidential Information

- 3.32 The Tribunal was concerned that the information said to be of a confidential nature was that Councillor W did not have a bank account with CCB. While in the very loosest sense the information might be referred to as personal information the Tribunal found it hard to accept that a statement that a person does not bank with a particular organisation could properly be regarded as being of a confidential nature without something more to add to the personal content of the information.

- 3.33 The Tribunal noted that, information of a confidential nature does not have to be sensitive or harmful to a person's reputation but it does have to be of such a nature that a reasonable person would consider it to be confidential. In the Tribunal's judgment the statement that a person did not bank with a particular organisation would not be considered by the reasonable person to be of itself of a confidential nature because it lacked the necessary degree of personal content and would open a very wide field of information considered to be of a confidential nature. For example, a comment that a person had not attended a particular university or school or worked for a particular business would not usually be considered by the reasonable person to be disclosures of personal information. Nor in the Tribunal's judgment could such a statement be considered to be about a person's finances because it revealed nothing about the person's finances.
- 3.34 However, the Tribunal stressed that its decision was on the particular facts of the case and, while it found it hard to foresee when such a statement could be considered to be of a confidential nature, it may be that in other circumstances such a finding would be justified.
- 3.35 Paragraph 4(a) of the Code provides:
- "You must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably be aware, is of a confidential nature."*
- 3.36 The Tribunal has found that the subject member's evidence about his conversations with the manager were accurate and it follows that he was not told by her that the information was of a confidential nature and thus the information was not given to him in confidence.
- 3.37 From the evidence of Councillor W it is clear that there was a continuing piece of good humoured banter between her and the manager about her opening an account. Councillor W stated that to the best of her recollection this exchange happened every time the two met.
- 3.38 Further in the Tribunal's judgment Councillor W had put the question of whether she had an account into the public domain by making a speech in a public capacity undertaking to open an account. Looking at this information in the round, the Tribunal found that a reasonable person in the subject member's position would not reasonably believe nor ought reasonably to be aware that the information that Councillor W had not opened an account was of confidential nature. In the Tribunal's judgment the significance of the running comment was that it indicated that the manager was open about the information and did not attach any great significance to the information being known or made known in front of other people. It follows from this that it was very unlikely that she would have communicated directly or indirectly by her manner to the subject member that the information was of confidential nature.
- 3.39 Further in view of the Tribunal's finding that the information lacked the necessary personal content to be of a confidential nature it was not surprising that neither the manager, apparently, nor the subject member, on the basis of his evidence, thought the information was confidential.

3.40 On the basis of the above findings the Tribunal found that the subject member had not breached paragraph 4 of the Code of Conduct.

Sanction

3.41 The Tribunal kept in mind that any sanction it imposed should be with the aim of upholding and improving the standard of conduct expected of members as part of the process of fostering public confidence in local democracy. Thus the action of the Tribunal should aim to discourage or prevent the subject member from further non-compliance and discourage similar action by others.

3.42 The Tribunal's assessment of Councillor W was that she had robust personality and in the Tribunal's judgment would not take offence easily to the normal cut and thrust of political debate. Thus it was of significance that she had been sufficiently upset by the use of the word liar to make a complaint under the Code.

3.43 The Tribunal has found that the use of the word 'liar' was unjustified. It was noted that the subject member had received training about the Code and had been a member of a Standards Committee and involved in hearings, and thus he should have been fully aware of the need to observe the Code.

3.44 However, it was also noted that there were a number of factors in the subject member's favour:

3.44.1 his long service to the community;

3.44.2 Councillor G spoke with passion, conviction and realism about the attributes of the subject member and this was given substantial weight by the Tribunal because it demonstrated his known willingness to go beyond what is expected of those holding public office in helping others;

3.44.3 it was a single outburst that was not pre-planned and the subject member and Councillor W had been on good terms up to the incident.

3.45 Looking at the matter in the round the Tribunal did not think that the confidence of the public in local government would have been damaged by the incident nor did the Tribunal think that the subject member was likely to repeat such behaviour as he appeared from his comments at the hearing to have found the procedure very stressful. As to the need to discourage others the Tribunal thought unplanned outbursts which occur on the spur of the moment are unlikely to be discouraged by imposing a substantial sanction on the subject member. While there was force in the submission about his past involvement in the work of a Standards Committee, in the Tribunal's judgment the nature of outburst and the fact that it was over very quickly went some way to explain why he had not thought of the Code and controlled his behaviour.

3.46 The Tribunal found that having weighed all the above factors that the breach was a minor one and that no useful purpose would be served by the subject member's suspension from public office. However, the subject member had used the word 'liar' without justification and it had caused genuine offence to Councillor W and in those circumstances the Tribunal found that the appropriate sanction was to censure the subject member for his failure to show respect to Councillor W.

- 3.47 This case deals with two interesting issues. The first is consideration of when the use of the word “liar” will constitute disrespect and secondly when information will be regarded as confidential.
- 3.48 It is important to not use of the word “liar” will rarely be acceptable without substantial and clear justification. In the absence of substantial and clear justification it will be regarded as offensive and a breach pf Paragraph 3 of the Code. However where the use of such language is in the context of a one off outburst and is made by a member who has otherwise a long history of public service it is unlikely it will be regarded as disrepute.
- 3.49 With regard to confidential information the case highlights the fact that the subject member must know the information is given in confidence or reasonably to be aware that it is of a confidential nature. In the absence of such knowledge or a reasonable expectation of such knowledge information will not be regarded as confidential. This is an important point for officers to remember if they are passing confidential information to members they must make it clear that the information is to be regarded as such.

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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