

Report of the Assistant Director Corporate Services (City Solicitor) to the meeting of Standards Committee to be held on 9 November 2010.

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Subject:

Adjudication Panel for England decisions.

Summary statement:

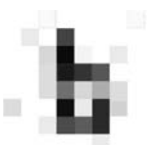
Members are invited to consider summaries of recent decisions made by the Adjudication Panel for England regarding allegations of misconduct against members.

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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
- 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

Barrow Borough Council

- 3.1 The Tribunal considered evidence and submissions on behalf of the Standards Committee and the subject member.
- 3.2 The subject member had appealed against the Standards Committee's finding that he had failed to follow paragraphs 3(1), 3(2)(b) and (c), 4(a) and 5 of the Code of Conduct through:
- Making public damaging personal attacks on the competence and integrity of officers of the Council and fellow members
 - Refusing to accept advice of officers of the Council on matters of conduct and persistently ignoring their corrections of fact in his utterances
 - Communicating by email with persons who were not members of the authority on confidential matters of Council policy and putting into the public arena the identity of subordinate employees of the authority with whom he had some issues.
- 3.3 The subject member has appealed against the action which the Standards Committee decided to take which was three months suspension. The Standards Committee also indicated that training should be arranged for the subject member.

Councillor Details

- 3.4 The subject member was elected to office on 1 May 2008 for a term of four years.

Findings of Fact

- 3.5 The Standards Committee had accepted the findings of the Investigating Officer, relating to emails sent by the subject member on 15 June, 2 July, 7 July, and 15 October 2009 and a motion he presented at a Council meeting on 13 October 2009. The subject member did not dispute the basic facts but whether the facts justify a finding that he failed to follow the provisions of the Code.
- 3.6 As part of this the subject member disputed whether in relation to these matters he was acting in his official capacity as a councillor or representative of the Council. The appeal also raises an issue of the extent to which the Code of Conduct can be used to interfere with his freedom of expression which is protected by Article 10 of the European Convention on Human Rights.

Official Capacity

- 3.7 There can be no breach of the Code unless a councillor is acting in his official capacity at the relevant time. Whether this is so is inevitably fact-sensitive and so whether or not a person is so acting calls for informed judgement by reference to the facts of the particular case. The Tribunal was satisfied that in relation to the emails of 15 June, 7 July, and 15 October 2009 and the Council meeting on 13 October 2009 the subject member was clearly acting in his role as a councillor and therefore in his official capacity. In particular the Tribunal noted that the emails of 15 June and 7 July were signed "Cllr B" and the content referred to his role as a councillor; the email to the press on 15 October refers to a "right of reply", "we" and his role as health and safety spokesperson for the Council; at the meeting of the Council on 13 October 2009 the subject member was exercising his right as councillor to move a motion.
- 3.8 However, the email of 2 July was less certain. This was signed "Tim B - Chair DDP" (the Dalton Development Partnership) which was different from the emails referred to above where he signed as "Cllr B", and it was clear that he was making a distinction between his role in that organisation and his role as councillor. This is not necessarily determinative and the Tribunal looked in detail at the contents of the email. In this he referred to "you guys", "the Borough" and "you lot" and there was no suggestion that he was writing as a Borough councillor. The Tribunal also noted his comment that he had been appointed to the Partnership before he became a councillor and that his membership of the DDP was not as a Councillor but as an independent trader. The Tribunal took account of the Standard's Committee view that the email was written in a dual capacity but considered on balance that the email was not written by the subject member as part of the business of his office as councillor and nor did it give the impression that he was acting as a representative of the authority. The email was therefore not written in his official capacity and the Code did not apply to it.

The Tribunal's findings in relation to breach

Submissions of subject member

- 3.9 In the process of carrying out his roles and duties in the important area of Health and Safety, it was necessary to communicate as effectively as he was capable of. All the emails sent out by him in respect of his role as Health and Safety Spokesperson were necessary in order to communicate important matters that needed to be brought to the attention of those involved. His constructive intentions were wrongly interpreted as criticism by a Council management culture who were not prepared to have leadership issues challenged by a relative newcomer. He vigorously disputed the critical interpretation of his communications at every opportunity and vigorously denied any intention to bully. A detailed rule 11 motion to the full council at the meeting of 13 July supported by two other members relating to the need for a professional appraisal process for the CEO should not be perceived as a "fact for a breach of the Code of Conduct" as it follows full council procedures. He read out only from a prepared script which was circulated with the notice of motion. Sometimes it is necessary to write to the local paper to keep the public informed of success and failures of the council where the "wellbeing" of the communities may be affected. Safety management includes reviewing leadership issues like appraisal process, the strategic aims and objectives of the Council and management of safety. Every attempt to engage and improve leadership issues of the Council were met with a "control freak type leadership mentality". This term is used as an accepted perceptive description of a leadership style.

Submissions of the Standards Committee

- 3.10 The Standards Committee arrived at its decision by following due process and proper procedure with the benefit of a full and independent investigation report. The subject member had been offered every opportunity to rebut, disagree or dispute the findings in the Investigator's report. He indicated that he "broadly accepted the content of the draft report" and the only disagreement expressed by him was that he took exceptions to the findings of bullying. His defence was characterised by statements on his experience in the field of Health and Safety and his commitment to his duties as the Council's Health and Safety spokesperson as he then was. The subject member did nothing to rebut or disagree with the report or the findings in the report.

Failure to treat with respect and bullying

- 3.11 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 is relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurred, who observed the behaviour, the behaviour itself and its proportionality to the circumstances, the character and relationship of the people involved and the behaviour of anyone who prompted the alleged disrespect.
- 3.12 Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine an individual or a group of individuals and is detrimental to their confidence and capability and may adversely

affect their health. Such behaviour may happen once or be part of a pattern of behaviour directed at another.

- 3.13 In considering whether the subject member breached paragraphs 3(1) and 3(2)(b) of the Code, the Tribunal has had regard to Article 10 of the European Convention on Human Rights which provides:

“(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of ... the protection of the reputation or rights of others,”

- 3.14 The right to freedom of expression is a crucially important right in a democratic society and it is clear that it may only be interfered with where there are convincing and compelling reasons within Article 10(2) justifying that interference. A key issue for the Tribunal’s determination is thus whether a finding of a breach of the Code on the facts as found would represent no greater an impairment to the subject member’s freedom of expression than is necessary to accomplish the legislative objective of the Code.
- 3.15 This requires a factual investigation of the nature of the words and the manner in which they were expressed in order to determine whether their expression constituted legitimate expression relating to matters within the legitimate concern of the member as a councillor (political or quasi political comment which benefit from a high level of protection), or whether they crossed the line into expressions of personal malice/anger or personal abuse. In the latter case, the high degree of protection required by the authorities is not engaged.
- 3.16 It is important that the restraints should not extend beyond what is necessary to maintain proper standards in public life and that political expression is afforded a high level of protection. In the Tribunal’s view it is important that members should be able to express in robust terms concerns that they may have about any aspect of the running of the Council, and this can include expressing disagreement with other members or officers and can include criticism of the way in which the Council or an officer handles particular matters.
- 3.17 In the Tribunal’s view the threshold for a failure to treat another with respect and a finding of bullying behaviour in the case of expressions of view has to be set at a level that allows for the passion and fervour that often accompanies political debate or debates relating to the efficient running of a council and which allows for appropriate and robust criticism of the performance of a council function. This is entirely consistent with the objective of maintaining proper standards in public life.
- 3.18 The allegations of disrespect and bullying centred on the emails of 7 July and 15 October and the motion to the Council on 13 October.
- 3.19 The email of 7 July is addressed to the complainant and copied to other councillors and the Democratic Services Manager. It states:

“It is time the Members took the initiative and I feel the council will not move forward whilst TC is CEO with the control freak mentality that exists”.

The Tribunal considered that this comment, which appeared (whether or not that was the intention) to be trying to persuade members to replace the Chief Executive, and copied as it was to a subordinate officer, showed a lack of respect to the Chief Executive. They considered that it was a personal attack and a breach of the Code.

3.20 The motion put forward to the Council on 13 October was supported by two other members of the Independent Group. The motion was in essence to:

- review the appraisal process for the CEO
- carry out an independent review of the Council’s CEO lead style of governance and
- have members of the “Audit” and “Overview and Scrutiny” committees supported by independent experts so as not to be so reliant on officer advice.

3.21 The Tribunal considered that this potentially attracted a high level of protection in terms of freedom of expression. It is essential that those representing the public are entitled in a democratic society to raise issues in a political arena. It was necessary, however, to consider in detail what was said. The subject member has provided to the Tribunal a copy of his statement, which he states was circulated in advance of the meeting and read out to the Council. The background to the motion was health and safety management. The statement expressed concern about the CEO leadership style of governance and referred to the fact that *“we have had serious consequences from poor leadership”*. However, there were no specific personal criticisms aimed at a particular officer or member and the Tribunal felt that, although the statement was challenging to the Council’s leadership and may well have caused concern to officers and members, it was no more than was acceptable in a democratic society.

3.22 An email was sent to the press by the subject member on 15 October which was stated to be as a result of a right of reply to a previous article in the press. Again the Tribunal scrutinised it carefully. The email refers to an accusation that the subject member bullied an officer of the Council. It then goes on to provide details of the alleged bullying and the title of the post holder who had been bullied. The Tribunal considered that it was inappropriate to release this information in a press release. Although the name of the post holder was not provided, it is common practice for the names of local government managers to be available to the public. The information that was released was part of an internal complaint that should have been kept confidential and the Tribunal considered that in releasing this information the subject member failed to treat the Officer with respect, in breach of the Code.

3.23 The email to the press then goes on to refer to leadership issues at the Council. It infers that there is poor leadership at the Council and emphasises the importance of the CEO’s leadership role. It also states that the present system of appraisal of the CEO by the Leader is open to criticism and a secretive culture has evolved. The Tribunal considered carefully whether this was a personal attack on the CEO and Leader of the Council such that it would be caught by the Code but concluded that it was not. The effectiveness of the leadership of the Council, both officer and

member, was something that must be allowed to be challenged and the criticism was more of the way the system operated than specifically of particular people. It did not amount to malice or personal abuse.

- 3.24 The Standards Committee had found that the subject member's behaviour in refusing to accept the clear advice of officers of the Council on matters of conduct represented a failure of respect for their official roles. The Tribunal did not consider that there was sufficient evidence before it to justify a breach of the Code in this regard.
- 3.25 The Tribunal considered whether the evidence showed that the subject member had bullied anyone. The Standards Committee found that he had "*made public damaging personal attacks on the competence and integrity of officers*" and that this was felt by them to be bullying. Although there were references to bullying of more junior officers, there was no evidence in the papers of inappropriate conduct towards them (other than the email of 15 October) and no evidence that they felt bullied.
- 3.26 The Tribunal then considered whether the Chief Executive had been bullied. The Tribunal had found on the evidence before it only one instance of lack of respect when the subject member had stepped over the boundary of legitimate comment into a personal attack, that is in the email of 7 July, but felt that this alone was not sufficient to constitute bullying. It was clear that the subject member had been very challenging in his correspondence but the Tribunal considered that the Chief Executive as Head of the Paid Service had to expect robust challenges to his actions as a leader. Indeed, the complaint letter refers to an email from the Chief Executive in which he states that he has "*an extremely thick skin*", which suggests that, although facing such behaviour is not pleasant, it was not causing too much of a problem for him.

Release of Confidential Information

- 3.27 The Standards Committee found that there had been a breach of the Code as confidential information had been divulged. As it was unclear from the papers, the Monitoring Officer was asked to provide details of what the confidential information consisted of and an explanation of how and why it was classified as confidential. The Monitoring Officer in response confirmed that this related to the subject member's email of 15 October 2009 to a local newspaper which mentioned an internal Council matter not in the public domain and the Manager by designation. The Tribunal considered that the information about the Manager was inherently confidential and the subject member should have been aware that it was of a confidential nature, as it was an internal matter affecting a member of staff. There appeared to be no public interest or other exception that would legitimise its release and the Tribunal found its release to be a breach of the Code.

Disrepute

- 3.28 The Standards Committee found that the subject member's persistent repetitions of his opinions about the Chief Officer and Leader of the Council had the odour of a vendetta and were couched in terms that were so personal as to overstep the reasonable limits of debate. The Tribunal did not consider that the evidence before it was sufficient to show this. They also did not consider that in all the circumstances, particularly as his focus appeared to be on health and safety matters, the subject

member's conduct was such as could reasonably be regarded as bringing his office into disrepute. They did not therefore find a breach of paragraph 5 of the Code.

Sanction

- 3.29 The Tribunal considers that its function on appeal against the sanction imposed by a Standards Committee is to decide whether the sanction was a reasonable and proportionate response to the breaches of the Code as found.
- 3.30 The Standards Committee had imposed a sanction of 3 months' suspension for the breach of paragraph 3(2)(b) and one month for the other breaches, to run concurrently. The Tribunal had found breaches of paragraphs 3(1) and 4(a) but not 3(2)(b), (c) and 5.
- 3.31 The Tribunal considered that it was clearly unacceptable for the subject member to disclose information about internal staffing issues in a press release or to show disrespect to the Chief Executive in the way he had. The Tribunal noted that he was a relatively new member of the Council and that, he encountered a shared frustration at the difficulty experienced by the independent members in functioning effectively within the Council. They also noted that he took his responsibilities as the spokesperson for the Council on Health and Safety issues extremely seriously. However, the Tribunal was concerned that he did not appear to understand and accept that his conduct was at times inappropriate and excessive.
- 3.32 The guidance states:
- "Suspension is appropriate where the circumstances are not so serious as to merit disqualification but sufficiently grave to give rise to the need to impress upon the Respondent the severity of the matter and the need to avoid repetition. A suspension of less than a month is not likely to have such an effect."*
- 3.33 The Tribunal agreed with the Standards Committee's view that this was a case where suspension was indicated and concluded that a short period of suspension was a reasonable and proportionate response by the Standards Committee.
- 3.34 Having regard to the overall balance, the Tribunal considered that the sanction of one month's suspension to run concurrently as originally imposed by the Standards Committee for breaches of paragraph 3(1) and 4(a) was appropriate and directs that it take effect as of 1 October 2010. The Tribunal also felt that training should be undertaken and requires the subject member to attend appropriate training arranged by the Monitoring Officer.
- 3.35 This case is of interest as it demonstrates where the boundaries exist when an elected member is frustrated with the management and leadership of the Council. In this particular case the Tribunal were not satisfied that all the breaches found by the Standards Committee were in fact proved. Specifically they recognised the right of a member to challenge quite forcefully and vigorously to ensure that leaders/senior managers are accountable for their actions.
- 3.36 The case also distinguished between the legitimate challenge and freedom of expression to make that challenge and where a challenge becomes personal and disrespectful.

- 3.37 In addition the case also demonstrates that where allegations are made there must be evidence to support the contention that the behaviour constitutes a breach of the Code. This was demonstrated in respect of the allegation that refusal to accept advice from officers would necessarily represent a failure to respect for official roles. It is perfectly legitimate for a member to disregard advice from officers as long as in doing so it does not result in illegality. Failure to follow officer advice will not necessarily constitute disrespect to that officer.

Leighton Linlade Town Council

- 3.38 The Tribunal considered submissions from both the subject member and the Standards Committee.
- 3.39 The subject member appealed against the Standards Committee's finding that the subject member had failed to follow paragraphs 3(1), 3(2)(b) and 5 of the Code of Conduct. The Standards Committee decided to suspend the subject member from Leighton-Linlade Town Council for a period of two months.
- 3.40 Permission was given for the appeal to proceed in relation to two issues raised by the subject member:

whether his actions toward KR and LB constituted bullying, the issue essentially being the interpretation of the word "bullying" in the Code of Conduct and;

whether at the time of the actions giving rise to such a finding, that he was acting in his official capacity.

The complaint

- 3.41 A complaint was submitted by PH on behalf of himself and six other people involved with Denial Promotions and another company which together have created and built up a music scene where young people have been given the opportunity to see professional touring bands and play at the same events if they were in bands themselves. The complaint alleged *inter alia* bullying and intimidation by the subject member in relation to two sixteen year-olds, KR and LB, with particular reference to events on 13 June 2008 and 18 July 2008.

The subject member's official details

- 3.42 The subject member has been a member of Leighton-Linlade Town Council since a by-election on 13 October 2006. He is currently the Chair of the Tactic and Youth Sub-Committee. He was Town Mayor from 14 May 2007 to 12 May 2008. At relevant times he was a representative of the Town Council on an outside body known as the Youth Forum.

The Standards Committee's findings

- 3.43 The Standards Committee found breaches of paragraphs 3(1), 3(2)(b) and 5 of the Code. These findings were based mainly on the events that occurred on 13 June and 18 July 2008. The event on 13 June 2008 was a Denial Promotions live music night. The Standards Committee found as a fact that the subject member kicked KR, used behaviour to him that was inappropriate and irresponsible, admitted to

engaging in “banter” with him, and engaged in inappropriate ‘banter’ between a councillor and a 16 year old. The Standards Committee found that the subject member slapped LB on the bottom and that the language and content of conversation used by the subject member to her was inappropriate and from the evidence it would appear that this is a reference to a similar music night on 18 July 2008. These facts were the basis for the finding of the breach of paragraph 3(1) of the Code for which permission was not given to appeal.

- 3.44 The Standards Committee also found that the humiliating verbal and physical behaviour towards KR amounted to bullying, that the slap on the bottom and inappropriate comments about tattoos to LB amounted to bullying, and that the inappropriate public behaviour, both verbal and physical, could reasonably be regarded as bringing the office of Town Councillor into disrepute.

Official Capacity

- 3.45 There can be no breach of the Code unless a councillor is acting in his official capacity at the relevant time.

Submissions by Standards Committee

- 3.46 The Livingstone case made clear that a distinction is to be drawn between the individual as a councillor and the individual as an individual. The case found that a councillor is not a councillor twenty-four hours a day.
- 3.47 It does not appear to be disputed that the subject member and the complainants were first introduced in an official capacity through his appointment to a body known as the ‘Youth Forum’. The complainants were a business applying to the ‘Youth Forum’ for funding.
- 3.48 The subject member stated in his representations that he did not believe he was acting as a councillor at around 10pm-1am on the nights after they had been out at music events. This raises the question of whether he accepts that he began by being in his capacity as a councillor. If one starts the night in one capacity, at which point, and with what certainty, has the capacity in which they are present suddenly changed?
- 3.49 The subject member accepted in that on occasions he wore his Mayoral Chain to events and that he did not necessarily pay for entry. He accepted that at least some events “*might have drifted into my Council life*”.
- 3.50 All the six complainants who attended the Standards Committee were clear that their only way of knowing the subject member was as a councillor. He constantly represents himself as Town Mayor or Town Councillor. It is clear from the terms of reference of the Town Council Committees that there is an assumption that councillors will come into close contact and frequent contact with organisations and act as a ‘point of contact’.

Submissions by the subject member

- 3.51 Just because the complainants knew him as a councillor and he had carried out his role and tried to assist them in the past, it does not follow that on a night out in the

pub on a Friday night at near midnight he was acting or giving any impression that he was a councillor on duty.

- 3.52 As can be seen from the timeline he has provided to the Tribunal, he first introduced himself to the complainant on a personal level from his personal profile on Facebook. He loves being a councillor and has enclosed press cuttings that show just how involved he was in many other activities in the town. His “job” was to help young people and he believed the complainant when he said he wanted to work with young people on the Youth Forum and help them put on a high profile, well-run, successful music event. He offered to use his personal “resources” and friends to help and thus the introduction was made.
- 3.53 His evidential time line shows that he did not attend the music nights in an official capacity at all. As a friend of the complainant when he had come back from Mayoral engagements he would often pop straight to see him and would not dream of leaving the Mayor’s chain in the car. He had his long black coat buttoned tightly to the neck despite the heat inside the building, and visited for a brief time near the end, hence no payment was made for this visit. On one occasion a girl asked if he was the Mayor and asked to see his chain. He does not consider he gave the impression that he was acting as a councillor. The fact that he was a councillor was simply not relevant to the circumstances due to location and time.
- 3.54 At the time the alleged assault on KR took place he had ceased to be the Mayor. In KR’s interview, when questioned about the alleged assault on him he says *“I can’t particularly remember if he was wearing the chain, but to be quite honest with you, he was clearly the mayor”*. This points to an unnecessary youthful fascination with an approachable person carrying out a role that traditionally would not have been so approachable to someone like K. Maybe with hindsight these young people were awestruck with their closeness to him.

Tribunal’s conclusions

- 3.55 The Tribunal considered whether the subject member was acting in his official capacity at the relevant times.
- 3.56 As a starting point the Tribunal considered the case of Livingstone v APE. The facts there were that the Mayor of London, Ken Livingstone, had been hosting a reception at City Hall. As he left City Hall when the reception was ended, as he was walking away, he was confronted by a reporter and a conversation took place. A key issue in the case was whether at the time the conversation took place he was performing his official functions: the court determined that on the facts he was not. The revised Code of Conduct was introduced in 2007 as a result of the case but the judgment is still useful in considering official capacity. Collins J considered that when making the comments to the reporter it was not even arguable that Ken Livingstone was performing his functions as Mayor. He stated *“Equally, it is important that the flamboyant, the eccentric, the positively committed ... should not be subjected to a Code of Conduct which covers his behaviour when not performing his functions as a member of a relevant authority.”* He also stated that official capacity *“will include anything done in dealing with staff, when representing the council, in dealing with constituents’ problems and so on.”*

3.57 Against that background the Tribunal noted the following:

- 3.57.1 The subject member has given conflicting statements as to how he met the complainant, PH. In a letter to the Tribunal he states *"I met the complainant through an official role"* and later submits that it was a personal contact through Facebook. Whether or not the initial contact between him and PH was in his role as councillor, it is clear that subsequent dealings between them were on that basis. In his own chronology of events he states that on 23 September 2007 (only eight weeks after the first contact) *"I sent him a message on Facebook. It is here I suggested doing some joint projects with the Youth Forum"*. Nine days later he sent an email, which included *"I told P of my plans, agreed at a Tactic and Youth meeting at the Council that I chaired."* He then refers to a meeting on 23 May 2008 at PH's flat to discuss youth events. *"I do recall this being one with JL present where I again outlined how the Council works and how the groups could go about working with the public sector."*
- 3.57.2 The subject member clearly has a strong interest in youth matters. He was a representative of the Council on the Youth Forum and is also Chair of the Council's Tactic and Youth Sub-Committee. It was clear from the papers that he is an assiduous and committed councillor. It was also clear that he enjoys being a councillor and was very proud of being the Mayor.
- 3.57.3 The documents provided to the Tribunal by the subject member included photographs of him with some of the complainants, which he argues show that his involvement with them was social rather than official. One of these had a caption *"I'm the Mayor don't you know"*. The Tribunal noted that he had by his own admission turned up at music events wearing the mayoral chain. Although the events which are the subject of this appeal took place after his mayoral term of office had finished, the Tribunal considered that it would be very difficult for the members of the youth group to know whether he was on or off duty as a councillor at any particular event. It was also noted that he did not pay to enter some of the music events. Although he has stated that he was friends with the group, they have denied this and stated very firmly that he was only tolerated because he was a councillor.
- 3.57.4 The subject member stated in representations to the Tribunal that *"I was simply carrying out my role in supporting activities for young people in being a representative on the Youth Forum and this in turn has led to the complainant's actions against me"*. This would appear to be an acceptance that he considered that his involvement in the activities of the youth group were a part of his role as councillor.
- 3.57.5 The Investigating Officer found that in his opinion the subject member *"liked it to be known that he was a Town Councillor/Mayor and repeatedly if not constantly gave the impression that he was acting as a Town Councillor/Mayor"*. This is also the firm impression that the Tribunal gained from the documents before it.

3.58 The Tribunal considered that the facts in this appeal could clearly be distinguished from those in Livingstone. This was a case where the subject member's public and

private life were intertwined, unlike in the Livingstone case where the Mayor had concluded his public function and was walking away.

- 3.59 Looking at all the facts the Tribunal concluded that the subject member acted or gave the impression that he was acting as a representative of the Town Council when he attended the music events on 13 June 2008 and 18 July 2008.
- 3.60 The Tribunal therefore considered that the subject member was acting in his official capacity with regard to the events with KR.
- 3.61 The Tribunal then considered whether this was also so in relation to LB on 18 July. The events affecting her occurred when the group of people running the music event moved on to the pub to have a “debrief” after the event. The question is whether moving to the pub was a change of circumstances such that the subject member was no longer giving the impression that he was a representative of the Council.
- 3.62 The Tribunal considered this carefully but concluded that the events at the pub could not clearly be separated from the music event. The fact that the discussion about the event had moved from the event hall to the pub was incidental. The same people were involved and the motive and reason for being there were the same. It was not like the facts in the Livingstone case where the councillor had finished official business and was going home. The Tribunal therefore considered that he was acting in his official capacity in relation to the incident with LB.

Bullying

- 3.63 The Tribunal considered whether on the basis of the information set out in the Standards Committee’s decision and taking account of the submissions of the parties, the subject member’s conduct could properly be regarded as bullying.

Standards Committee’s submissions

- 3.64 The Standards Committee referred to the Standards Board for England’s guidance on bullying and the ACAS definition. The Standards Committee found that the behaviour of the subject member towards both of the individuals, at separate times, was inappropriate and humiliating. They found that the bullying was both verbal and physical. They noted that both of the individuals were 16 years old.

Subject member’s submissions

- 3.65 The subject member denies bullying KR and LB.

Tribunal’s conclusion

- 3.66 The Tribunal considered the Standards Board for England’s definition of bullying. This has been approved by various case and appeal tribunals. This states *“Bullying may be characterised as offensive, insulting and humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.”*

- 3.67 The Tribunal fully accepted that from the facts as found the subject member had shown a lack of respect to KR and LB. The issue was whether his conduct constituted bullying. It has been accepted that even a single incident can in principle constitute bullying. Looking at the elements of the above definition the Tribunal accepted that his behaviour towards both K and L was offensive and humiliating. It also agreed that the behaviour was directed by him towards two much younger people over whom he had a perceived influence.
- 3.68 However, the issue was whether his behaviour attempted to undermine those people, and was detrimental to their confidence and capability, and may have affected their health. The Tribunal considers that the definition includes some element of an intent to undermine and was not satisfied that that was so in this case. The Tribunal considered that the subject member's behaviour was clearly unacceptable and inappropriate and they could certainly see that it would be unwelcome and annoying to both KR and LB. However, there was no evidence of any intention to undermine them and the Tribunal felt that this was a case where the behaviour was extremely ill-judged and inept rather than done with an intention to demean.
- 3.69 The Tribunal also noted that, although KR and LB were clearly annoyed and upset by his behaviour, this did not seem to have any significant impact on them beyond the night of the respective incidents. In this respect it noted the statement of GP in relation to KR.
- 3.70 The Tribunal concluded that there was insufficient evidence of intent or detriment to justify a finding of bullying and found that the subject member had not bullied KR and LB. They therefore did not find a breach of the Code of Conduct.

Sanction

- 3.71 Permission has not been given to appeal against the sanction of two months suspension imposed by the Standards Committee. However, the Tribunal wished to comment on it in the light of its finding that there had not been a breach of paragraph 3(2)(b).
- 3.72 From the papers before it the investigation appeared to be thorough and balanced and, after a full hearing, the Standards Committee found several breaches of the Code. Although the Tribunal has come to a different conclusion on whether bullying took place, it considers that the instances of lack of respect and disrepute were significant. The Tribunal has noted that the subject member has not accepted any criticism or provided an apology. From his representations before the Tribunal he appears oblivious of his impact on other people. In the circumstances the Tribunal considered that the sanction of two months' suspension remained proportionate. It is understood that the subject member's suspension from office has already taken place.
- 3.73 This case is interesting in that it examines the issue of acting in an official capacity. What is important to note is the way in which a members action are perceived in terms of determining whether they are in fact acting in an official capacity.

- 3.74 It is important to note how easy it is for a members personal/private life to become intertwined with their official business where they are required to participate in social events as part of their official business.
- 3,75 In addition the case considers when actions towards individuals can become bullying. Although in this case the actions were serious what was relevant was whether the behaviour attempted to undermine the individuals and was detrimental to their confidence and capability and/or had a affected their health. Whilst behaviours can be unpleasant, unacceptable and in inappropriate in the absence of evidence to support this contention it will not constitute bullying.

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.