

## Report of the Assistant Director Corporate Services (City Solicitor) to the meeting of Standards Committee to be held on 23 December 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

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.

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)

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

### Brentwood Borough Council

- 3.1 The appellant was found by the Council's Standards Committee to have breached Paragraph 5 (conduct which brings the office or authority into disrepute) of the Code of Conduct and was suspended for seven weeks.

- 3.2 The facts which gave rise to the finding are as follows;

In Spring 2009, the Appellant produced a leaflet prior to the Essex County Council elections to be held in June 2009. The Leaflet was distributed by hand during April/May 2009 to households to inform the residents of current issues at both Brentwood Borough and Essex County Councils.'

- 3.3 The front page of the Leaflet contained the following passage,

'The Council Offices are looking more and more like the Marie Celeste – empty Planning Department, empty Highways Department, empty Finance Department, empty Chief Executives office – where will it end! Those rooms were full and bustling with activity on our residents behalf when the Lib Dems ran the Council, and we still successfully balanced our annual budget.'

3.4 On the reverse page of the Leaflet, it said,

‘FIVE QUESTIONS TO ASK YOUR TORY CANDIDATE (IF YOU SEE THEM)  
...5. Why are the Tories dismembering Brentwood Borough Council piece by piece, i.e. no Chief Executive, no Planning Department, no Finance Department and no Highways Department?’

3.5 Complaints were received from local residents which expressed concern that the leaflet gave the impression that Brentwood Borough Council was not effectively discharging its functions.

3.6 The Standards Committee formed a view that the leaflet ‘could reasonably be regarded as reducing public confidence in Brentwood Council being able to fulfil its functions and duties and therefore brought the authority into disrepute.’ and found that the Appellant had breached paragraph 5 of the Code of Conduct:

3.7 The Tribunal has considered the appeal on the bases of the political composition of the Sub-Committee and Article 10 of the Convention and also in relation to issues arising from the Web Cast.

3.8 The Appellant claims that some members of the Sub-Committee were potentially biased against him. There were four members in number;

An independent chairman,  
An independent parish council member,  
Councillor M, a Conservative Party member, and  
Councillor S, a Liberal Democrat Party member.

The Appellant contended that, because of past conflicts between them, Councillor M could not be seen as an objective and fair member of the Sub-Committee and that both independents, were known to be supporters of the Conservative Party and, therefore, possibly biased against him.

3.9 It was evident that the alleged bias was considered to some degree by the Sub-Committee, but no reasons were given for dismissing the Appellant’s allegations. In fact, from the Web Cast, it appeared that the decision was taken by the Chairman without consultation with his colleague members, save for hearing from Councillor M that she considered that she was not biased. The Tribunal considered that a Standards Committee has a duty to consider any allegation of bias and should hear those allegations. The duty is a continuing one and is relevant in relation to any bias shown or perceived at a hearing. It is good practice for a Standards Committee to ensure that its proceedings are free from actual bias or perceived bias. In this respect, a Committee should take a proactive role rather than relying on individuals to declare interests or to express subjective views as to their impartiality. The Tribunal did not find that Councillor M was biased but observes that insufficient consideration was given to the issue by the Sub-Committee and that this was compounded by the absence of reasons for their decision.

3.10 The Tribunal did not find that there was actual bias against the appellant, but expressed concern that the Sub-Committee appeared not to have addressed the Appellant’s concerns by allowing him to express them fully and responding to them with adequate and cogent reasons.

- 3.11 The Tribunal did have concerns as to the proceedings. The Sub-Committee:
- 3.11.1 appeared not to have considered whether or not the Appellant was acting in his capacity as a councillor;
  - 3.11.2 gave inadequate reasons for
    - finding that the Appellant had breached the Code of Conduct and
    - deciding upon the sanction to be imposed; and
  - 3.11.3 appeared not to have considered Article 10 of the Convention.
- 3.12 The Appellant produced the Leaflet to further his candidacy for election to Essex County Council. The Investigating Officer considered the question of the capacity in which the Appellant was acting. She considered the guidance from Standards for England which expressed the view that a member when canvassing for re-election was likely to be acting in a private capacity as a political candidate because it is not the function of a councillor to get re-elected. The Investigating Officer distinguished the Appellant's position, and appears to have concluded that he was acting in his capacity as a councillor, because he was seeking election to the county council whilst remaining a borough councillor. It is not, however, within the role of a councillor from one authority to campaign for election to another. Moreover, the Investigating Officer's reasoning is not sustainable. It appears to suggest that a councillor could criticise his own council when seeking re-election to that council, but could not if seeking election or re-election to another council. There must be a proper assessment of the position with a reasoned conclusion. The Sub-Committee did not address the position at all, but simply seems to have accepted the Investigating Officer's view without further enquiry.
- 3.13 The Sub-Committee's findings were announced by the Monitoring Officer. In announcing the finding that there had been a breach of the Code of Conduct, he said that the Sub-Committee had found that the Leaflet was inaccurate and that 'there was no evidence either way' as to whether or not the inaccuracy arose from a clerical error, as suggested by and on behalf of the Appellant. The Appellant had stated that the words 'of its own' included in the other leaflets which had been provided to the Tribunal, had accidentally been omitted in the leaflet after the list of departments. The Sub-Committee appears on that basis to have found against the Appellant. It ignores the burden of proof which lies with those who allege the breach of the Code of Conduct. No reasons have been given to support the Sub-Committee's findings, either as to the accuracy of the Leaflet or as to their apparent conclusion that it was not inadvertent.
- 3.14 The Tribunal noted that no party other than the Appellant was represented at the hearing before the Sub-Committee. The Investigating Officer was ill and could not be present. It is unsatisfactory that nobody was present to prosecute the allegation and to be put to proof and to have witnesses cross-examined by or on behalf of the Appellant. It gives the impression that the Investigating Officer's report was simply adopted by the Sub-Committee without due enquiry.
- 3.15 In relation to the sanction, the Monitoring Officer advised the Sub-Committee of the relevant guidance prior to their retiring to reach a decision. On reporting their decision, he made reference to only two issues which had been taken into account:

the Appellant's length of service as a councillor and the fact that the Council was entering into a period in which there would be little transaction of business. There is no reason given as to why the Sub-Committee decided that a suspension was the appropriate sanction.

- 3.16 In relation to capacity, the tribunal noted that the Leaflet was produced by the Appellant to further his candidacy for election to Essex County Council.
- 3.17 The elements of the Leaflet which gave rise to the allegations relate to the basis upon which Brentwood Borough Council delivers its services. It is probable that the administrative processes leading to the adoption of the present model included considerable research and negotiation, both with those with whom partnerships were to be entered and with representatives of existing staff. It is evident that there was a party political dimension to the issue. The new regime has been devised and implemented by the Conservative Party. It has been opposed by the Liberal Democrats. A properly informed, objective observer would also be aware of this factor and would place the Leaflet within the context of these factors and would form a view, given the party political dimension, that the primary purpose of the Leaflet was to promote the Appellant at the expense of his political opponents. In these circumstances, the Tribunal found that an objective observer, would view the Appellant as acting in his capacity as a candidate for election to Essex County Council rather than as a councillor of Brentwood Borough Council.
- 3.18 Article 10 of the Convention provides:
- ‘(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and receive and impart information and ideas without interference by public authority and regardless of frontiers...
- 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 interest of ... the protection of the reputation or rights of others...’
- 3.19 It is not an absolute right. The Article permits an exception in accordance with the law and in so far as is necessary in a democratic society for the protection of the rights of others.
- 3.20 There has been no attempt to justify an interference with the Appellant's right to say what he did in the Leaflet. It appeared that the issue is a matter of political party interest and debate. It is appropriate for such issues to be canvassed in the electoral process. There is no evidence that the Appellant's right to raise the issue is outweighed by any public interest. It is open to those holding opposing views to express them in the same way. The Tribunal found that there has been a breach of the Appellant's Article 10 rights.
- 3.21 It followed from the Tribunal's findings that the Appellant was not acting in his capacity as a councillor and that his Article 10 rights had been breached, that he did not breach the Code of Conduct.

- 3.22 This case is interesting in that it examines the difficulties that will arise if the Hearings Sub Committee does not undertake its role in accordance of the Rules of Natural Justice and the appropriate procedures. Whilst the Hearings Committee may have had a particular view regarding the Appellants allegations of bias the Tribunal felt it was important to address those allegations appropriately in the decision making process.
- 3.23 The case also highlights the need to ensure that the investigation officers conclusions are appropriately challenged by the Hearings Sub-Committee forum. Specifically in this case insufficient attention was given to the issue of whether the appellant was acting in his official capacity and the implication of the Human Rights Act in relation to the contents of the leaflet.
- 3.24 This case highlights the legal complexities which attach to the Hearings Sub-Committee process.

### **Wingate Parish Council**

- 3.25 The Appellant appealed against the Standards Committee's findings that he had failed to follow the Code of Conduct by bullying the Clerk to the Council during the course of a telephone conversation on 4 November 2009.
- 3.26 The Appellant appealed against the action, which the Standards Committee decided to take was to submit a letter of apology by no later than 23 July 2010 and undertake training on the Code of Conduct. The Committee decided that, in the absence of a suitably worded apology by that date the Appellant would be subject to a six week suspension from his duties.
- 3.27 The Tribunal determined that the Appellant did fail to follow the provisions of the Code because:
- 3.27.1 The Clerk to the Council gave evidence that he had been Clerk with the Council for fifteen years and worked in local government before that. Working relations in the Council were generally good. The difficulties had arisen when he was informed that confidential information had been given to one of the Council's employees. Although all councillors had denied passing on the information; when he had discussed the matter with the employee concerned the employee confirmed that he had been given the information by the Appellant who had also made disparaging comments about the Clerk. The Clerk had notified the Chair of the Council of this. The Chair had decided to address the issue by having conversations with the persons concerned.
- 3.27.2 On the following afternoon the Clerk arrived home early and noted that he had four missed calls in very rapid succession from the Appellant. He rang the Appellant and said hello and then was met by a torrent of speech which was abusive and threatening. He had done nothing to elicit it and had never had a call such as that in his life. The call left him threatened, emotional, concerned and worried.

- 3.27.3 He reported the phone call to the police who acknowledged the seriousness of the harassment and advised him of his options. In the light of this he decided to give the Appellant the opportunity to apologise. On the following Monday evening however an incident occurred between him and the Appellant and as a result of this he contacted the Police again who subsequently warned the Appellant as to his conduct.
- 3.27.4 In his evidence the Appellant denied any misconduct or that there had been any abusive or threatening content in the call. He agreed that he had told the Clerk not to come on his property again, had used the expression “like creeping Jesus” but claimed that this instruction and expression derived from the views of his wife and neighbour who had been concerned at the Clerk’s behaviour. He believed that he was the victim of a political conspiracy and queried the delay in reporting the matter to the police.
- 3.27.5 The Tribunal concluded on a balance of probabilities that the telephone call had occurred as the Clerk described. The repeated calls by the Appellant within a short period of time were indicative of a sense of urgency or a strong emotion on his behalf. The admitted instruction to the Clerk not to visit to deliver letters and notices and the admitted expression “creeping Jesus” were indicative of a level of hostility to the Clerk. It was not possible to discern any reason why the Clerk would wish to lie about the Appellant’s conduct. The Clerk’s subsequent accounts of his behaviour were consistent with the experience he had undergone and his accounts of the content of the telephone conversation were entirely consistent. The Tribunal was satisfied that the phone call, culminating in the statement “I don’t take any shit; I’ll put you in hospital” occurred, were a result of the Appellant’s lack of self-control in the face of the actions by the Chair of the Council to investigate the issues raised by the confidentiality issue.
- 3.27.6 The Tribunal was satisfied that an incident of this nature involving the loss of temper, intimidation and threat amounted to bullying of the Clerk and a breach of the Council’s Code of Conduct.
- 3.28 The Tribunal has upheld the finding of the Standards Committee.
- 3.29 The Tribunal noted that at the hearing the Appellant was still unwilling to make an apology; however the Tribunal wished to give him the opportunity to reconsider this obduracy and directed that the sanction of making a suitable apology failing which there will be a six weeks suspension from the Council originally imposed by the Standards Committee be upheld and in the absence of an apology the suspension will take effect as of 2 December 2010. The Tribunal further directed that the Appellant receive suitable training on the Code of Conduct as determined by the Monitoring Officer of Durham County Council within two months.
- 3.30 This case demonstrates the seriousness attached to incidents of bullying and harassment. The Committee’s attention is drawn to the fact that the Tribunal upheld a six week suspension based on an allegation of two incidents of inappropriate behaviour. It is right that if the incidents are specifically serious a small number of incidents will constitute a breach of the Code.

- 3.31 The case also highlights the way in which situations where there is little independent evidence are considered in terms of determining culpability. Standards Committee will be faced with situations where there are two opposing versions of events and will have to determine the weight they are prepared to apply to the testimony of individuals and where on the balance of probability the more acceptable version of events lies.

#### **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.