



Report of the Assistant Chief Executive (Corporate Governance)

Standards Committee

Date: 1st July 2008

Subject: Adjudication Panel for England: Decisions of Case Tribunals

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. This report provides summaries of the recent decisions made by the Adjudication Panel for England regarding allegations of misconduct against Members. The case tribunal decisions have each been summarised and then conclusions drawn regarding whether there are any lessons to be learnt for Leeds City Council.
2. Members of the Committee are asked to note the recent decisions of the case tribunals and to consider the lessons to be learnt for Leeds City Council.

1.0 Purpose Of This Report

- 1.1 This report provides summaries of recent decisions made by the Adjudication Panel for England in its role of determining allegations of misconduct. Further details of specific cases are available at www.adjudicationpanel.co.uk

2.0 Background Information

- 2.1 Two case tribunal decisions have been published since the last report. The decisions are summarised below, in order that Members of the Committee may consider if there are any lessons to be learned by this authority. Copies of each case summary published on the Adjudication Panel for England's website have been sent separately to those Members who have requested them.
- 2.2 The Committee will note that the majority of cases highlight the need for comprehensive and regular training for elected and co-opted Members, on the detailed requirements of the Code of Conduct.
- 2.3 Members of the Committee may wish to note that the cases have been separated into those involving Parish and Town Councils, those involving Borough, City or District Councils, and those which are appeals against local standards committee decisions, for ease of reference.

3.0 Main Issues

Appeals against a local standards committee decisions

Shepway District Council and Hythe Town Council

- 3.1 The Councillor appealed against the standards committee's finding that he had breached paragraphs 2(b), 2(c) and 4 of the Code of Conduct through the comments he made about the Town Clerk at a meeting of Charity Trustees. During this meeting the Councillor made the comment that the Public Rights of Way Officer had found the Town Clerk "difficult to get on with", and that "this was also the view of many towns people who say that when they try to contact the Town Clerk she is downright rude to them..."
- 3.2 The Councillor also appealed against the action that the standards committee decided to take, which was to censure him.
- 3.3 The Councillor cited several procedural matters in respect of the standards committee hearing which in his view amounted to a breach of natural justice. The Appeals Tribunal provided comments on this procedural matters for the standards committee to consider in respect of future hearings:
- Firstly, that it is important for hearings to take place in public (except where confidential or exempt information is being discussed) and that public access to the meeting is well facilitated. Where any part of a meeting will be conducted in private, the reasons for doing so should be clearly explained to the public present and preferably produced in writing.
 - Secondly, where the case is being determined in the absence of the Councillor, further evidence should not be introduced to the committee without giving the

Councillor the opportunity to have sight of that evidence so that a decision can be made whether they would like to attend the meeting to rebut the evidence or make written representations in respect of it.

- Finally, the Appeals Tribunal concluded from the paperwork presented to it, that the standards committee chose not to follow the guidance produced by the Standards Board in respect of the conduct of hearings and the pre-hearing process. Not doing so may have led to a degree of unfairness in this case.

3.4 The Appeals Tribunal decided that the Councillor did not breach the Code of Conduct as alleged for the following reasons:

- The fact that the Councillor refused to apologise for comments that he honestly believed to be true and was simply reporting and then failing to apologise, cannot in the opinion of the Appeals Tribunal, amount to treating the Town Clerk disrespectfully. The comments were not made in a malicious manner, and were within the remit of the meeting.
- The Appeals Tribunal disagreed that the Councillor had behaved in such a way that was likely to compromise the impartiality of the Town Clerk by inhibiting her ability to fulfil her functions effectively when dealing with officers and officials at Kent County Council. There was no evidence of any problems in the Clerk's dealings with others, and the comments provided by the original complainant on the draft investigation report refer to the 'very friendly' relationship between the Clerk and one official.
- In the Appeals Tribunal's view it is important that Members should be able to express in robust terms their concerns over any aspect of the running of the Council and this can include disagreement with officers and their methods. The Appeals Tribunal does not consider that a reasonable objective observer of the proceedings would think that the comments would bring the office or Councillor or the Council into disrepute.

3.5 Therefore the Appeals Tribunal dismissed the findings of the Standards Committee.

3.6 **In Leeds, the Standards Committee Procedure Rules reflect the recommended practice in the Standards Board guidance on hearings and investigations. There is also a clear presumption within the Procedure Rules that hearings will be held in public.**

Birmingham City Council

3.7 The Councillor appealed against the standards committee's decision that he failed to follow paragraph 2(b) of the Code of Conduct by trespassing on private land and recording a video, which was subsequently posted on the internet, the content of which was inaccurate and biased against the landowner and therefore failed to treat him with respect.

3.8 The Councillor also appealed against the action taken by the standards committee which was to suspend him for a period of one month, unless he gave a written apology within 14 days of the standards committee decision.

3.9 The Appeals Tribunal decided that the Councillor did fail to follow the Code of Conduct because:

- The Councillor was acting in his official capacity at the time as he was seeking to deal with a constituent's problems;
- He trespassed on the complainant's land and a building he owned, filmed him and the building and made the film available on the internet;
- The film made a number of negative statements regarding the ownership of the property including that the owner carried out work on the property without planning and building control consent, that the building was structurally unsafe and made defamatory remarks about him which caused him and his family distress;
- The Councillor was disrespectful to the complainant at the time of the visit to his property because it was an unreasonable interference with his property rights, having neither sought permission to enter or informed him that he was going to visit the building;
- The tenor and content of the video was biased against the complainant, and the Appeals Tribunal concluded that its purpose was to show him in a poor light. The Councillor was happy to associate himself with the video (even if he did not make the comments personally), as he posted the video on YouTube through a link on his own website. Some of the comments were speculative or simply incorrect, and by publishing the video, the Appeals Tribunal felt that the Councillor was unfair and unreasonable to the complainant within the context of the Code of Conduct;
- The Appeals Tribunal also felt that the Councillor failed to show respect to the complainant by failing to edit the video or the accompanying blog in the light of new information. In addition, the Councillor sent the video to a local news website called 'The Stirrer' which also published it, causing the complainant and his family distress and harming the complainant's public standing. The Appeals Tribunal also considers this to be a breach of paragraph 2(b) of the Code;
- Finally, the Appeals Tribunal concluded that the Councillor had breached paragraph 2(b) of the Code of Conduct by continuing to publish the video after the building inspection took place and he was requested to remove it by the complainant's solicitors.

3.10 The Appeals Tribunal considered that the conduct of the Councillor represented a serious breach of the Code meriting a short period of suspension. They also varied the one month suspension imposed by the standards committee to no longer offer the option of an apology to avoid suspension. The Appeals Tribunal therefore upheld the findings of the standards committee.

3.11 **In Leeds, the guidance on applying sanctions within the Standards Committee Procedure Rules and the Hearings Manuals states that a period of suspension may be appropriate in more serious cases, or where there is a fear that the behaviour may be repeated or may have brought the Members' office or authority into disrepute.**

4.0 Implications For Council Policy And Governance

4.1 There are no implications for Council Policy.

4.2 By continually monitoring decisions made by the Adjudication Panel and the implications for Leeds, the Standards Committee is fulfilling its terms of reference by keeping the codes and protocols of the Council under review.

4.3 By identifying problem areas the Standards Committee are also able to improve the training provided for Members on conduct issues, and maintain good conduct in the Council.

5.0 Legal And Resource Implications

5.1 There are no legal or resource implications to noting this report.

6.0 Conclusions

6.1 This report summarises the case tribunal decisions that have been published by the Adjudication Panel for England since the last Committee meeting. The possible lessons to be learnt for Leeds City Council are highlighted in bold at the end of each summary.

7.0 Recommendations

7.1 Members of the Committee are asked to note the latest decisions of the Adjudication Panel's case tribunals, and consider if there are any lessons to be learned for Leeds.