



Report of the Assistant Chief Executive (Corporate Governance)

Standards Committee

Date: 16th December 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 Three case tribunal decisions and five appeals 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

Parish and Town Councils

Wycombe District Council and Marlow Town Council

- 3.1 It was alleged that a Councillor had failed to comply with the Code of Conduct by:
- Using his position as a member improperly to influence the outcome of two planning applications for the advantage of another person, contrary to paragraph 5(a) of the Code of Conduct;
 - Seeking to compromise the impartiality of officers dealing with one of the planning applications, contrary to paragraph 2(c) of the Code of Conduct;
 - Seeking improperly to influence the decisions on the planning applications, in which he had a prejudicial interest, contrary to paragraph 12(1)(c) of the Code of Conduct; and
 - In doing so bringing his office or authority into disrepute, contrary to paragraph 4 of the Code of Conduct.
- 3.2 The Councillor is a company secretary for two companies in which Mr and Mrs Folley are majority shareholders and is paid by them for his services. In addition, the Councillor is a friend of their son-in-law and business representative, and recommended his own brother to act as their planning consultant, whom they subsequently appointed.
- 3.3 The complaint against the Councillor related to an application for planning permission by Mr and Mrs Folley. The planning application was considered by Marlow Town Council in April 2007, and the Councillor declared a "non pecuniary interest" and did not take part in the discussion about the application. In May, the

Councillor's brother wrote to the Development Control Team Leader arguing for the application to be approved without being referred to the District Council's Development Control Committee.

- 3.4 In June the Councillor wrote to the Cabinet Member for Planning and Sustainability expressing concern about refusal of the application and suggesting he propose that the application be approved at the Development Control Committee meeting. The Councillor then became involved in email correspondence between the solicitor acting for Mr and Mrs Folley and his brother, discussing various issues concerning the planning application and how it would be dealt with by the Development Control Committee. In one of these emails, the Councillor suggested that the application could be deferred and dealt with by the Regulatory & Appeals Committee of which he was a member. The solicitor advised the Councillor to seek advice from the Monitoring Officer with regard to his interest, but he did not do so.
- 3.5 The Councillor then wrote to all the members of the Development Control Committee the day before the meeting asking them to "disagree with the officer's recommendation, and resolve to grant planning permission subject to suitable conditions". The letter was sent on official council headed paper and included his official title. The Committee's legal adviser advised members at the meeting to disregard the Councillor's letter due to his interest in the matter.
- 3.6 The complaint before the case tribunal also concerned the Councillor's involvement with another planning application, also made by Mr and Mrs Folley regarding a dilapidated barn on their land. In July 2004 the Councillor had attended a meeting with Mr and Mrs Folley's architect and council officers to discuss the rebuilding of the barn. The Councillor attended the meeting as a representative of Mr and Mrs Folley. In April 2007 the Council sent the Councillor a consultation letter about the planning application for the site in his capacity as a ward Councillor. The Councillor replied explaining that he had an interest in the application due to his position as company secretary to Mr and Mrs Folley's companies.
- 3.7 When the planning application was considered by Marlow Town Council, the Councillor declared a non pecuniary interest and did not take part in the discussion of it. In June 2007, the Councillor emailed the planning case officer referring to the meeting in June 2004 asking that a decision on the application be delayed.
- 3.8 In relation to the first planning application, the case tribunal decided that the letters to the Cabinet Member and to the members of the Development Control Committee constituted a breach of paragraphs 5(a) and 12(1)(c) of the Code. In relation to the second application, the case tribunal decided that the email to the planning case officer also constituted a breach of paragraphs 5(a) and 12(1)(c) of the Code. They reached these conclusions for the following reasons:
- The three documents had been written in his capacity as a Councillor and with the intention of influencing the outcome of the discussions on the planning applications. The case tribunal considered that such influence was improper as the Councillor was using his position to confer or secure an advantage for the applicants.
 - The case tribunal also decided that the Councillor had a prejudicial interest in the outcome of those planning applications and therefore should not have been involved.
 - The Councillor believed he had legal advice which supported his action of writing to the members of the Development Control Committee, but the case tribunal

believed that this advice was intended to encourage the Councillor to seek further guidance on his interest and was intended to caution him about the dangers involved in his course of action.

- Finally, the email to the planning case officer was written in his capacity as Councillor and was an attempt to influence the conduct of an officers and in so doing compromised the impartiality of an officer who worked for the Council.

The case tribunal also decided that the Councillor had brought his office into disrepute by his actions and also breached paragraph 4 of the Code of Conduct.

- 3.9 In considering what sanction to apply, the case tribunal considered the following factors:
- That the Councillor had been suspended for one month by the standards committee of Wycombe District Council for a similar incident in December 2006;
 - The Councillor showed no signs of insight into his behaviour and did not appear to regard the Code as important;
 - The Councillor believed that his intervention was justified because of the fast changing circumstances and actions taken by officers;
 - The Councillor had totally ignored the detailed guidance that the Council had for dealing with situations where a Councillor had a prejudicial interest and how to avoid conflict, and had not sought the advice of the Monitoring Officer; and
 - The Councillor had sought to challenge the reasons and means by the which the complaint had been made to the Standards Board for England, had hinted of a conspiracy and that information to support the complaint had been obtained in an underhand way.
- 3.10 The case tribunal felt that the above circumstances demonstrated four out of the five aggravating elements as set out in their guidance, and therefore a disqualification from being or becoming a member of a relevant authority for a period of one year was appropriate in this case.
- 3.11 **In Leeds, there is specific advice available for Members involved in planning applications contained within the 'Code of Practice for the Determination of Planning Matters' contained in Part 5 of the Council's Constitution. The Code of Practice advises Members to comply with the Code of Conduct in relation to declaring personal or prejudicial interests, but also advises Members to avoid contact with applicants or their representatives, to avoid becoming involved in the processing of the application, and to report any contact with the parties to the Chief Planning Officer.**

Tresmeer Parish Council

- 3.12 It was alleged that two Councillors had breached the Code of Conduct by:
- Failing to treat others with respect contrary to paragraph 2(b) of the Code by behaving in an aggressive, intimidating and disrespectful way to fellow Parish Councillors and a member of the public in council meetings between May and June 2007;
 - Making verbal and written attacks on the character and integrity of the ex-clerk to the council also contrary to paragraph 2(b) of the Code; and
 - In so doing, bringing their office or authority into disrepute contrary to paragraph 4 of the Code.

- 3.13 After local elections in 2007, five Councillors were elected unopposed who were all new members and had no previous experience of being a member of a parish council. The clerk had worked for the parish council for three years and continued as clerk after the election.
- 3.14 At the first meeting on 11th May the parish council members were asked to agree a schedule of meetings. Following the meeting the clerk emailed all members of the council setting out the dates of future meetings on a six week cycle and stating that he had booked the village hall on the appropriate dates. Two days later the Councillors responded. The essence of their reply was that the parish council had not agreed to a six week cycle of meetings, only that the next meeting would take place on 15th June. The Councillors wrote:
- “Can you explain why, then, you have taken it on yourself to arrange all the meetings until January next year at 6 weekly intervals without any consultation with the councillors and to further rub our noses in it, tell us that you have booked the village hall.*
- You and I clearly have differing opinions as to what constitutes democracy, but what is not open to debate is that the clerk is there to facilitate the operations of the parish council, not to dictate them.”*
- 3.15 The clerk responded to the Councillors advising them that *“it is open to the council to modify the decision if there is a majority view to do so. If my notes and therefore the draft minutes are in error, then the correction is a simple matter for the councillors to request at the next meeting”*.
- 3.16 The following day the clerk sent an email to all parish council members about a planning application which the council had been sent for its comments. The clerk asked the parish councillors to decide whether they wanted to request a formal meeting to discuss the application or whether they wish the plans to be circulated for comments informally and their comments passed on to the district council. The Councillors responded by email stating:
- “I am not prepared to accept that there is ever a valid reason for having as you call it “informal” or as I would call it “secret” discussion about any Parish Council matters... I have always believed that there has been an unnecessary air of secrecy about Parish Council operations and that the public have the right to know what we are doing and why”*.
- 3.17 The case tribunal found that the wording used by the Councillors in their emails to the clerk was rude and unjustified, regardless of whether the clerk had made an error or not. To make such implications about the clerk’s behaviour was an attack on his integrity. On 1st June, the chair of the parish council addressed all councillors on the need to listen to each others opinions and treat each other and the clerk in a respectful way. She said that the chair would not tolerate bullying tactics in meetings or between them.
- 3.18 At the next meeting on 15th June, the Councillor again raised the issue of the scheduling of the Council’s meetings. The case tribunal found that the Councillor used a raised voice, was aggressive when speaking to another councillors, inferred that the clerk had acted without authority for his own purposes at the meeting and that his conduct fell outside that which was acceptable at council meetings. There

was also a debate about a parish questionnaire and policy for the discussion of planning matters in public. The case tribunal found that the second Councillor had shouted during the debate, and went beyond what was acceptable in a Council meeting.

- 3.19 The clerk resigned from the parish council the day after the meeting saying that the vote on the minutes had amounted to a vote of no confidence in his personal integrity. Another parish council meeting was called to discuss the resignation. The case tribunal found that the preparations for this meeting were badly handled and the Councillors were not prepared for the subject of the meeting. However, even though the tribunal made allowances for this, and took into account that occasional outbreaks of anger occur in council meetings when people have strong feelings about a matter, they still concluded that both Councillors' behaviour went beyond the range of acceptable behaviour in a meeting. They talked over other parish councillors, interrupted them, they were aggressive, overbearing and rude, they shouted and they called the integrity of the clerk into question. In addition the case tribunal found that one of the Councillors had shouted at a member of the public during the meeting.
- 3.20 After the meeting three other parish councillors resigned because of the two Councillors' behaviour towards them and the clerk, leaving the parish council inquorate.
- 3.21 The case tribunal concluded that the Councillors had breached the Code as alleged, as the conduct took place when they were discussing council business, either at formal meetings or through correspondence. Therefore they were acting in their official capacity at the time. When considering whether the Councillors had brought their office or authority into disrepute by their actions, the case tribunal considered the evidence provided by an observer at one of the meetings who described it as entertaining in comparison to what she could have been watching at home on television. Such observations, in the case tribunal's opinion, show that the Councillors' behaviour fell a long way short of how a reasonable person would expect a person holding the office of councillor to behave. Therefore the case tribunal concluded that they had failed to comply with both paragraphs 2(b) and 4 of the Code of Conduct.
- 3.22 When considering what sanction to apply, the case tribunal took account of the following factors:
- That the Councillors continued to believe they were right and saw little wrong with the way they had conducted themselves;
 - They had ignored the chair's warning with regard to treating others with respect;
 - Their conduct, by its very nature, had the potential to damage confidence in local democracy;
 - Their conduct left the council unable to contract any business for almost a year as it led to the resignation of the clerk and then three other parish councillors, making the council inquorate;
 - The Councillors were inexperienced and had not received training on the Code;
 - The period of time covered in the complaint was short and there was not much time for the Councillors to reflect on their behaviour;
 - They were keen to take part in the Council and believed that they could help their community;
 - They did not act in bad faith;

- There was some apology at the final meeting and some acceptance of blame for the break up of the Council;
- Some anger on the part of the Councillors over the handling of the final meeting was understandable; and
- After the final meeting the Councillors had written to the chair saying that they saw no merit in the parish council resigning and that they wanted to draw a line under the past and work together.

3.23 Therefore the case tribunal imposed a sanction of disqualification for one year to reflect the mitigating factors identified by the tribunal.

3.24 **In Leeds, Members are provided with guidance on how to communicate with officers through the Protocol on Member Officer Relations, contained in Part 5 of the Council's Constitution. The Protocol states that the basis of the Member Officer relationship should be mutual confidence and trust, and warns against more extreme forms and behaviour and emotion which are rarely conducive to establishing mutual respect. The Protocol also asks that any dealings and correspondence between Members and Officers observes standards of courtesy.**

At the recent Standards Board Annual Assembly, the Standards Board also disseminated a model bullying and harassment policy produced in conjunction with the Society of Local Council Clerks. This is something which could be shared with the Parish and Town Councils in Leeds for use alongside their disciplinary and grievance procedures.

Borough, City or District Councils

Erewash Borough Council

3.25 The Standards Board for England investigated allegations that a Councillor brought his office or authority into disrepute by being convicted on several counts of making and possessing indecent images of a child. One of these counts related to thirteen images which had been found on a computer that had been provided to the Councillor by the Council for use in his capacity as a Councillor.

3.26 The case tribunal found that the Councillor was found guilty at Birmingham Crown Court on 5th April 2007 of three counts of making indecent images of a child and four counts of possessing indecent images of a child and was later sentenced to a three year rehabilitation order, a five year sexual offences prevention order and registered as a sex offender for seven years. The Councillor's term of office ended in May 2007 and he did not stand for re-election.

3.27 The convictions related to child pornography which was found on four computers used by the Councillor. One of these he owned privately, one belonged to the Erewash Conservative Association, one to the grammar school where he was a teacher, and the final one was provided by Erewash Borough Council to assist him in his work as a Councillor. One of the mitigating factors put forward by the Councillor was that the Council did not have an IT policy in place for Members' use of the Council provided equipment. However, the case tribunal did not accept this as a mitigating factor.

- 3.28 The case tribunal agreed with the Ethical Standards Officer that the Councillor had brought his office and authority into disrepute by using Council resources to commit serious offences. The case tribunal decided to disqualify the Councillor from office for five years.
- 3.29 **In Leeds, IT equipment is provided to Members for use in their capacity as a Councillor. Members have to agree to abide by the Guidelines for Members Using Council ICT Equipment which is referenced in the Protocol on Member Officer Relations. The guidelines specifically list the types of websites which Members are not permitted to visit using the Council ICT equipment, and this list includes illegal websites, such as those showing child pornography.**

Appeals against a local standards committee decisions

Milton Keynes Council

- 3.30 A Councillor appealed against the decision of Milton Keynes Council's Standards Committee, that he had failed to comply with paragraphs 2(b) and 4 of the Code of Conduct by:
- Using his position to gain entry and demand information from staff at a branch of the Open College Network (OCN);
 - Refusing to give his reasons for doing so and becoming belligerent, demanding and aggressive and refusing to leave until a senior member of staff threatened to call the police; and
 - Threatening the position of those present, saying "I'm going to close you down, you're never going to be able to train or teach again" and attempting to fulfil this threat by writing a letter of complaint copied to the relevant Director of the Council.
- 3.31 The appeals tribunal decided that the Councillor's objections to the processes were largely based on a misunderstanding of the procedures involved. However the appeals tribunal did consider that there was some merit in a number of points raised regarding the standards committee's consideration of the matter. In the appeals tribunal's view the standards committee failed to properly deal with all the disputes of fact. The witness statements differed in many respects, and the appeals tribunal were not satisfied that the standards committee had made its decision on the facts on the basis of the totality of evidence.
- 3.32 From its consideration of the written evidence in front of it, the appeals tribunal found the following undisputed facts:
- The Councillor held himself out as a Councillor during his visit to the OCN office. His email of complaint about the incident was also signed in his capacity as Councillor.
 - The Councillor's visit to the offices were not on Council business, but undertaken by him in his role as a community activist, which he was known for.
 - The OCN is independent from the Council and the Councillor was there as an invitee, although the Councillor did believe that there might have been a link between the company and the Council.
 - When he was not provided with the information he wanted and was asked to leave, he became annoyed and queried the continued funding of the OCN which the staff understood as being a threat to their employment.

- In the Councillor's email to the Council Director he stated that he felt her attitude was wrong and mentioned that she might be employed by the college.

- 3.33 The appeals tribunal found that the standards committee had failed to address the issue of whether the Councillor's conduct at the OCN's offices was undertaken in an official capacity. The appeals tribunal considered the Livingstone High Court Judgement and decided that it was not open to the standards committee to conclude that the Councillor was acting in his official capacity, as he was not on Council business and there was no apparent relationship between the purpose of his visit and any relevant function of the Council. The mere fact that he held himself out as a Councillor did not justify a conclusion that he was acting in his official capacity. For these reasons the appeals tribunal concluded that the Councillor did not fail to comply with paragraph 2(b) of the Code.
- 3.34 However, paragraph 4 of the Code applies not only when a Member is acting in their official capacity but also "in any other circumstances" as defined in the Livingstone judgement. This applies paragraph 4 of the Code to those circumstances in which the Councillor was using his position in doing or saying whatever is said to amount to misconduct. In his interview with the Ethical Standards Officer the Councillor did state that he had attended the offices as a Councillor, and that everyone there knew he had entered as a Councillor.
- 3.35 The appeals tribunal concluded that there was no evidence that he was treated unreasonably by the staff at the OCN offices, and they were entitled to refuse his request for information and ask him to leave. The appeals tribunal also concluded that a Councillor attempting to throw his weight around (verbally) in this fashion (for example, by threatening their employment), could reasonably be regarded as bringing his office into disrepute. Because the Councillor was holding himself out as such, his office as well as his personal reputation was damaged. Therefore the appeals tribunal upheld the finding of the standards committee, that the Councillor did fail to follow paragraph 4 of the Code of Conduct.
- 3.36 With regard to the censure applied to the Councillor, the appeals tribunal considered that the impression given by the standards committee was that censure was used because it was the only option open to them, as the Councillor had already left office. Taking into consideration the length of time taken to consider the matter, and the fact that the breach was minor with no prospect of repetition, the appeals tribunal concluded that censure was disproportionate, and that a finding of breach was sufficient sanction in itself. Therefore the censure applied by the standards committee ceased to have effect.

South Kesteven District Council and Carlby Parish Council

- 3.37 A Councillor appealed the decision of the standards committee of the above District Council, that he had failed to breach paragraph 10 of the Parish Council's Code of Conduct by failing to declare a prejudicial interest at a meeting in May 2007.
- 3.38 The appeals tribunal found the following facts in relation to the decision:
- The Councillor's home bordered a development site and a churchyard;
 - Some people in the village were concerned about the development causing potential damage to the churchyard trees, and as a result the Councillor wrote to the District Council about the issue. His representations related only to the trees

and not the effect of the development on his own home. However, planning permission was granted by the Council;

- In 2005 a second application for planning permission was granted for the development site. Again the Councillor wrote a letter of objection to the District Council about the possibility of damage to the trees, but planning permission was subsequently granted again;
- The Councillor then complained to the Ombudsman who found in his favour, and agreed that there had been a failure in how the planning permission had been granted to the monitor the condition of the trees; and
- In May 2007 the Councillor was elected to Carlby Parish Council, and at his first meeting there was an item to be discussed relating to the development site and a planning condition which had been applied in 2005. At the start of the item the Councillor declared an interest, but it was unclear what type of interest as it was not the Council's practice to record this. He sought advice from the Parish Clerk at the time, and the clerk advised him to declare an interest. However, he did not leave the room and took part in the discussion on the item.

3.39 The appeals tribunal accepted that the Councillor had spoken on the local resident's behalf at the Parish Council meeting, and that he was not motivated by financial gain. However when the test was applied objectively, the appeals tribunal concluded that the Councillor had a personal interest on the basis that he shared a boundary with the development site, he had written to the Ombudsman to personally complain about the planning decision, and he had made objections to both planning applications. Therefore a reasonable person would conclude that his well-being was likely to be more affected than other residents in the Parish Council's area.

3.40 The appeals tribunal also concluded that his interest would have been a prejudicial one under the previous Code of Conduct. Therefore, in the tribunal's opinion, the Councillor had breached paragraph 10 of the Code of Conduct.

3.41 In relation to the standards committee decision, the appeals tribunal stated that the decision had not been sufficiently reasoned and there were not enough details on the findings of fact. It also recommended that the standards committee should use the Standards Board for England template for decisions in future cases. Finally, the appeals tribunal recommended that the parish council should ensure that when interests are declared at meetings, it is made clear whether they are personal or prejudicial.

3.42 **In Leeds, the recent Parish and Town Council Audit revealed that several Parish and Town Councils in Leeds do not record whether interests declared by Members are personal or prejudicial. It was therefore agreed that Parish and Town Council Clerks are provided with guidance on this point.**

Leeds City Council has also chosen to use the Standards Board for England templates for its local assessment decisions.

Wealdon District Council and Crowborough Town Council

3.43 The Councillor appealed against the standards committee's decision that he had failed to follow paragraphs 2 and 4 of the Code of Conduct by bullying and intimidating the Clerk to Crowborough Town Council.

- 3.44 The appeals tribunal found that the Councillor had asked the new mayor whether he still felt that “The problems with the Council are up there” and made a gesture. The tribunal were satisfied that those present understood this to be a reference to the Town Clerk, and that the comment referred to a private meeting which had taken place a few months earlier where the new mayor had expressed a determination to remove the Town Clerk from office within six months.
- 3.45 In her appraisal, the Town Clerk raised a grievance about the Councillor regarding the above incident. Councillor Lyons and another Councillor pursued this grievance for her, and the tribunal found that there was evidence to suggest a friendship between Councillor Lyons and the Town Clerk. The outcome of the grievance hearing was presented to the Town Council in August 2006, and the Councillor was not present at the meeting on the grounds of having a prejudicial interest. The Council passed a resolution that the Councillor should apologise to the Clerk for his actions at the meeting. The Council did not provide reasons for this request or outline on what grounds the grievance had been upheld. The Councillor refused to apologise and was subsequently suspended from membership of all committees.
- 3.46 The appeals tribunal concluded that the Councillor did not fail to follow the provisions of the Code for the following reasons:
- The comment made by the Councillor during the meeting was a question or challenge to the Mayor and a reference to the views of the Mayor. The comment was not made in intemperate or abusive terms towards the Clerk or the mayor, and the comments about the clerk’s position had been made by the mayor, not the subject member.
 - The failure of the Councillor to apologise was not a breach of the Code in itself. The standards committee had found that the Councillor’s conduct at the meeting was not a breach of the Code, and therefore finding that failing to apologise for this behaviour was a breach of the Code was extending the Code beyond its proper bounds. The appeals tribunal found that it was not reasonable to require the Councillor to apologise for his actions without providing reasons or telling the Councillor what he was supposed to be apologising for. Finally, the appeals tribunal found that just because it was the will of the Council for him to apologise did not mean that the Councillor was bringing the Council into disrepute by not doing so.
- 3.47 Therefore the appeals tribunal dismissed the finding of the standards committee.

High Peak Borough Council

- 3.48 A Councillor appealed against the sanction applied by High Peak Borough Council’s Standards Committee, to suspend him for three months.
- 3.49 The standards committee found that the Councillor had treated an officer with disrespect by behaving in an angry and aggressive manner towards her at a meeting, and then at a presentation given by the officer. The standards committee further concluded that the Councillor’s behaviour belittled and systematically humiliated the officer in front of all those present at the presentation, that his language was unacceptable, and he would not modify his behaviour despite requests from other Councillors present and the fact that the officer became visibly upset. The standards committee also found that the Councillor had bullied and acted disrespectfully towards the officer by naming her in an email to a local

resident in a demeaning way designed to cause her embarrassment and to undermine her professional capabilities.

3.50 In light of these findings, the standards committee decided to suspend the Councillor for three months and to ask the Councillor to undertake training on a one-to-one basis with the Council's Monitoring Officer on the Code of Conduct. The Councillor appealed against this decision as he felt that the standards committee had not given proper regard to the mitigating circumstances, including:

- The Councillor had hearing problems causing him to speak loudly;
- The Councillor had had a heart attack causing his face to become red when he is stressed;
- The letters from the Monitoring Officer to potential hostile witnesses were very biased and leading;
- The Councillor had publicly apologised to the officer concerned;
- The Councillor had attended an anger management course; and
- He had admitted to treating the officer with disrespect.

3.51 The Councillor also felt that suspension was a punishment for his constituents rather than himself, and offered to put something back into the community as an alternative, such as litter picking or website design. He also told the appeals tribunal that he had taken on board the training and learnt that he was "the boss" and they were employees.

3.52 The appeals tribunal decided that the standards committee had given proper consideration to the mitigating circumstances put forward by the Councillor and had expressly stated this in their decision. In addition, the appeals tribunal noted that they found his public apology to be "somewhat hollow" as there was another incident between the officer and himself later on the same day.

3.53 The appeals tribunal considered that there had been a breach of the Code of Conduct which had caused harm to an officer who was bullied and felt humiliated by the Councillor and consequently suffered distress. The breach was initially sustained, but that the Councillor had subsequently acknowledged that he was at fault. In the all these circumstances, the appeals tribunal decided that the decision made by the standards committee was reasonable, proportionate and sustainable.

3.54 **In Leeds, Members who have concerns about the capabilities or conduct of an officer are advised through the Protocol on Member Officer Relations to avoid personal attacks on or abuse of the officer, ensure that any criticism is well founded and constructive, never make a criticism in public, and to take up the concern with the officer privately. If this is inappropriate, Members are advised to raise their concerns with the relevant director.**

West Sussex County Council

3.55 The appeals tribunal considered an appeal against the sanction imposed by the standards committee of West Sussex County Council following their findings that the Councillor had breached paragraphs 3(1) and 5 of the Code of Conduct. The sanctions imposed by the standards committee were to:

- Censure the Councillor;

- Suspend the Councillor from the office of cabinet member for a period of one month;
- Require the Councillor to submit a written apology to the complainant;
- Require the Councillor to undertake appropriate training; and
- Subject to his agreement and the agreement of the complainant, the Councillor should participate in conciliation.

- 3.56 The standards committee found that the Councillor had behaved inappropriately towards a member of staff at a training session by kissing her. The standards committee concluded that the Councillor had failed to treat the complainant with respect and that, while on official business, he had conducted himself in a manner which could reasonably be regarded as bringing his office as a cabinet member into disrepute.
- 3.57 When deciding on a sanction that standards committee took into account the following factors:
- The informal nature of the event;
 - The Councillor's remorse, willingness to apologise, and the fact he did not dispute the facts of the case in order to make her attendance at the hearing unnecessary;
 - That the Councillor had self-imposed a suspension from his councillor and cabinet office role; and
 - That it was a first offence.
- 3.58 The standards committee believed a period of suspension was necessary in order to bring home the point in the case, i.e. that cabinet members needed to conduct themselves properly, taking into account the vulnerability some junior or middle ranking staff may feel in their presence.
- 3.59 The Councillor told the appeals tribunal that he was sorry for any offence caused to the complainant but he had only meant to congratulate her on her performance in the live interview and to make her feel at ease. The meeting was informal and held in private between only six people, and the Councillor thought that as no one commented on his behaviour at the time, he had not brought his office into disrepute. The 'kiss' was also only a 'peck' in the Councillor's opinion, and afterwards he absented himself from the county hall for six weeks so as not to cause any further distress to the complainant. The Councillor also appealed on the grounds that the standards committee were relatively inexperienced, and had he known they were considering matters of such importance he would have attended the hearing to address them personally, and the standards committee should have adjourned to allow this and to hear from another witness.
- 3.60 In relation to each of the sanctions, the Councillor felt that his suspension should have been backdated considering the self-imposed suspension he had already undertaken, that training was unacceptable, and although he was willing to take part in conciliation he thought there was no need given that he had been removed from his cabinet post and therefore would be unlikely to come into contact with the complainant again.
- 3.61 The appeals tribunal considered all the sanctions imposed by the standards committee and concluded that all of the sanctions imposed should be upheld. The appeals tribunal found that censure was appropriate as the Councillor had acted

wholly inappropriately towards a newly appointed female member of staff, both in terms of the conduct itself and the position of authority he held as a Member. This conduct had been upsetting to the complainant and caused concern for the people witnessing it. The appeals tribunal found that an apology was also a reasonable sanction as the Councillor was prepared to give an apology and the complainant prepared to accept it. The appeals tribunal also found that training was a suitable sanction because the Councillor had shown a lack of insight into the delicate relationship between Members and officers and had not understood that his conduct towards an officer would have been intimidating and upsetting. The appeals tribunal felt that the one month's suspension was reasonable and proportionate in this case, as although the Councillor had absented himself from the Council for six weeks, this was not the same as a suspension imposed by the standards committee. Finally, the appeals tribunal concluded that conciliation was appropriate if the Councillor and complainant agree, in a manner agreed by the Monitoring Officer and Chair of the standards committee.

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.