



Report of the Assistant Chief Executive (Corporate Governance)

Standards Committee

Date: 21st April 2009

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 One case tribunal decisions and three 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

Borough, City or District Councils

Fylde Borough Council

- 3.1 It was alleged that a Councillor had failed to comply with the Members' Code of Conduct by:
- publicly calling for the chief executive of Fylde Borough Council, Mr Woodward, to resign and stating that "You should also tell the truth to the people of Lytham St Annes".
 - during a meeting adjournment, stating that he was "gunning for Phil Woodward big time now."; and
 - in so doing failing to treat Mr Woodward with respect contrary to paragraph 3(1) of the Code of Conduct and bullied him contrary to paragraph 3(2)(b) of the Code.
- 3.2 The case tribunal concluded that due to disagreements over what was said during the meeting adjournment and the differing evidence of witnesses, they could not pursue this particular allegation. With regard to the other incidences the case tribunal was assisted by being able to view the web-cast of the meeting.
- 3.3 The case tribunal was asked to consider the effect of Article 10 of the Human Rights Act on this case. They concluded that although the call for the resignation of the chief executive was within a highly politically motivated speech, when the Councillor departed from his focused attack on the ruling Conservative group and turned his attention on the chief executive he moved away from freedom of political expression and moved into the remit of the Code of Conduct. The case tribunal then went on to

consider whether the comments made during the meeting were a breach of the Code of Conduct as alleged.

- 3.4 Firstly, the case tribunal considered the call for the chief executive to resign, specifically whether this was a call for the chief executive as head of the paid service to resign or a personal attack on Mr Woodward. The tribunal also considered whether this was a call for the chief executive to be accountable for the management of the council at a time when there were questions about the council's finances. The tribunal came to the conclusion that it was the post of chief executive that was being attacked. There was no reference to Mr Woodward's abilities or qualities and there was an absence of malice or insult. This being the case the tribunal could not find a basis for disrespect or bullying.
- 3.5 Secondly, whether the use of 'You' within the statement quoted was intended to refer to Mr Woodward. The tribunal's earlier finding on this point was that the evidence was unclear as to whom the Councillor was referring to when he said this and it has been accepted that it could have been a reference to the ruling Conservative group. The tribunal has concluded that it is more likely than not to have been a reference to the Conservative group because of its context within a politically motivated speech attacking the Conservative group's performance.
- 3.6 Thirdly, the tribunal considered the use of the word 'truth' by the Councillor and whether it was a request for accurate and full information or intended to mean 'stop lying'. If the Councillor intended people to stop lying he could have used those words. In the tribunal's view his words were a request for more accurate information and this did not imply that there had been previous lies.
- 3.7 These three elements led the tribunal to the conclusion that there had not been a breach in respect of paragraph 3(1) and 3(2)(b) of the Code of Conduct and therefore it would not be taking any further action.

Appeals against Standards Committee decisions

North Wiltshire District Council and Calne Town Council

- 3.8 The former Councillor appealed against a decision by North Wiltshire District Council's Standards Committee that he had breached paragraphs 3(1) and 3(2) of the Code of Conduct by failing to treat the Town Clerk with respect and bullying her. The Standards Committee had decided to suspend the Councillor for one month unless he gave a written apology to the Clerk before the date his suspension was due to commence. The former Councillor appealed against the decision that he had breached the Code of Conduct and the sanction applied by the Standards Committee.
- 3.9 Both the Town Clerk and the Councillor agreed that there were no problems in their working relationship prior to the following incidents. The Councillor was strongly in favour of flying the union flag from the Town Hall, but this decision required the agreement of the Town Council. The matter was considered in accordance with the standing orders of the Council, but the resolution was not passed. According to the Town Council's standing orders it was not possible for the matter to be considered again for another six months.

- 3.10 In the Town Clerk's absence the Councillor asked the Deputy Clerk to fly the union flag. When the Town Clerk returned from leave she asked for it to be taken down again as there had been no formal resolution from the Council to fly the flag.
- 3.11 The Councillor then called the Town Clerk to discuss the flag having been taken down. There was a dispute between the parties as to the words used during this conversation and the appeals tribunal noted that the Standards Committee had simply accepted the investigating officer's findings of fact without giving reasons. The appeals tribunal accepted the former Councillor's version of the facts, that he said "I don't like your attitude".
- 3.12 Following the telephone conversation the Councillor sent an email to a number of people, including the press and the Town Clerk's PA (but not to the Town Clerk herself). In this email he states that the Town Clerk told him "the town council is under no obligation to take any notice of the Parish meeting" and he goes on to say "she will find herself with a virtual war on her hands". The Clerk responded to the email to dispute his words and stating that the Council "had a duty to consider the proposal".
- 3.13 The Councillor then sent the Clerk a further two emails in which he suggests that the Clerk had failed to comply with her legal obligations by failing to explain the implications of the Council's decision at the meeting and in which he suggests that she may wish to seek legal advice as they would not be letting the matter rest.
- 3.14 The final incident involved the Councillor querying a petty cash claim made by the Clerk in relation to breakfast sandwiches for a meeting with external consultants. The Councillor allegedly questioned why the Clerk did not pay for such things out of her own salary as she earned much more than Councillors and the previous Clerk paid for refreshments for Council staff from her own salary. However, the former Councillor disputes this version of the incident and had been led to believe that they were refreshments provided during a staff training event.
- 3.15 The former Councillor also objected to the fact that the Standards Committee hearing was held in private and that certain witnesses he had suggested had been disallowed by the Committee. The appeals tribunal considered the explanation of the Monitoring Officer on these points, that there was a concern that the hearing would stray into wide ranging criticism of the Town Clerk which would go beyond the scope of the complaint, and therefore agreed that the Standards Committee had properly exercised its discretion in this regard. In relation to the witnesses the appeals tribunal considered that the Councillor had not provided an outline testimony for the witnesses and that investigating officers report was suitably detailed that the Councillor had not been disadvantaged by this decision.
- 3.16 The appeals tribunal went on to consider whether the facts revealed a breach of the Members' Code of Conduct. In relation to the disagreements regarding the flying of the union flag the appeals tribunal considered that it would have been helpful if the Clerk had explained the legal implications of the Council's decision at the time of the meeting and felt that the Councillor was genuinely confused about the nature of the decision that had been taken. Accordingly they felt that the telephone call, although uncomfortable for the Clerk, was nothing more than a direct and robust challenge of an officer decision by a Councillor.

- 3.17 With regard to the emails the appeals tribunal concluded that the terms of the emails were not directed at the Clerk personally and were more general. The steps referred to by the Councillor in the emails, such as the Parish Poll, would have been actions against the Council rather than the Clerk. The appeals tribunal concluded that all the actions taken by the Councillor were forceful and direct, but given that the Clerk was the most senior officer of the Town Council she should be expected to deal with robust and direct challenges by Councillors. The tone used by the Councillor was unfortunate at times but did not amount to disrespect or bullying.
- 3.18 With regard to the expenses claim incident the appeals tribunal considered that the Councillor should not have raised the matter during a public meeting and should not have suggested that the Clerk should pay for such things from her own salary, regardless of what the previous Clerk had done. They also felt that the Councillor had failed to treat her with respect by referring to her salary level in a public meeting and had therefore breached paragraph 3(1) of the Code of Conduct.
- 3.19 The appeals tribunal did not agree that the Councillor had bullied the Town Clerk as there was no pattern of behaviour (given that they had decided that the Councillor had not breached the Code through the telephone call or emails to the Clerk) and the incident relating to expenses was not sufficiently serious to amount to bullying.
- 3.20 With regard to the sanction imposed by the Standards Committee, the appeals tribunal did consider that the breach was serious enough to warrant a period of suspension. Furthermore the Councillor could have mitigated the period of suspension by providing an apology, which he had failed to do.

Berwick-Upon-Tweed Borough Council

- 3.21 A Councillor had appealed against the Standards Committee's finding that he had failed to follow paragraphs 3(1) and 5 of the Council's Code of Conduct. The Councillor had been reported in a local newspaper under a headline "Planning Chief attacks own department." The report quoted him as saying that the relevant council department was not performing as it should. He was also quoted as saying that there was a problem in Berwick about the Council being officer-led and that people who came into jobs in the Council lacked local knowledge and a commitment on the future of Berwick.
- 3.22 The Hearings Sub-committee found that the Councillor had made the comments attributed to him in the press article and rejected his claim to have been misquoted. The Hearings Sub-committee found that the Code of Conduct did apply to the Councillor during his conversation with the journalist. The Hearings Sub-committee found that therefore the Councillor had failed to treat the staff of the Development Services department with respect. The reason given was that the comments had been made in a very public forum, rather than through the appropriate channels within the authority, which had given the staff concerned no opportunity for redress.
- 3.23 The Hearings Sub-committee also found that the Councillor had conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute. The reason given was that in their view, the comments were likely to result in a reduction in public confidence not just in the Development Services staff and the planning function but also in the local authority generally. They noted that the Councillor had shown no remorse in respect of his comments at any time

despite the obvious concern and distress which these had caused the Development Control Services staff at the Council.

- 3.24 The Councillor also appealed against the action, which the Standards Committee decided to take in the light of their decision that he had failed to follow the provisions of the Code of Conduct. That action was to suspend the Councillor for six months.
- 3.25 The appeals tribunal heard that a journalist employed by the Newcastle Journal received an anonymous tip off to the effect that a planning application submitted to the Council in the name of the Councillor's grandson represented a conflict of interest for the Councillor. Following initial researches, he telephoned the Councillor. This was an unarranged, speculative telephone call and there had been no previous contact between the journalist and the Councillor. Although the Councillor contends that the telephone call was made to him in his private capacity, having regard to the substance of the interview (which is not seriously challenged by the Councillor), the appeals tribunal preferred the evidence of the journalist that the call was made to the Councillor in both his private capacity and as a member of the Council.
- 3.26 The first part of the telephone call was concerned with whether there was any basis for the allegation of a conflict of interest. There is no dispute that this part of the conversation was conducted off the record. The journalist quickly established by his questions that there was no conflict of interest. As a result, he informed the Councillor that the angle of his story had changed and the interview became focussed, although not exclusively, on the Council's Planning Department. There is a dispute between the journalist and the Councillor as to whether this second stage of the interview was on or off the record. The appeals tribunal was satisfied that the Councillor remained genuinely uncertain as the status of the interview. Those parts of it which related to his private capacity he regarded as on the record as addressing the anonymous complaint. Those parts which related to his public capacity as a member of the Council he regarded as being off the record.
- 3.27 The appeals tribunal then went on to consider whether when talking to the journalist on the telephone, the Councillor was acting in his official capacity for the purposes of the Code i.e. conducting the business of the Council or acting, claiming to act or giving the impression that he was acting as a representative of the Council, and if so, whether what he said:
- failed to treat others with respect; and/or
 - was such as could reasonably be regarded as bringing his office or the Council into disrepute.
- 3.28 In the appeals tribunal's view, the content of the interview coupled with the statements made by the Councillor to the investigating officer in his interview during the investigation are such that the Councillor did give the impression that he was acting as a representative of his authority. The Code therefore applied to his conduct in giving the interview regardless of the fact that he saw it as off the record. However, the appeals tribunal did not consider that any of the statements made to the journalist by the Councillor failed to treat any other person with respect within the scope of the Code.
- 3.29 Having regard to the evidence before the appeals tribunal in the form of various reports on the Council's performance in the processing of planning applications, it was a fair comment that the Development Services Department was not performing

as it should be. The appeals tribunal noted the conclusion of the Investigating Officer that what he termed the Councillor's "frustration" on this issue was "entirely justified". The comment was not unfair, unreasonable or demeaning. It was not on any assessment disrespectful. It was not expressed in intemperate or offensive terms. Whilst Council officers might have wished for such criticism to be made directly and privately to them, with an opportunity to respond, this was criticism directed at the functioning of a department of the Council. There was no personal criticism raising issues of competence or integrity levelled at any individual and the appeals tribunal was satisfied that none was intended. This was generalised comment of a political nature and those who elected him would expect him to voice concerns of this kind on their behalf.

- 3.30 As to the reference to the Council being "officer led", the Councillor's genuinely held view was that the history of the Council had led to an executive weakness which officers had to respond to. In his view, this led to the Council being perceived to be officer led. Some may have regarded this view as offensive and it may have had little or no justification. However, it was the Councillor's genuinely held view on the balance of power within the Council and his expression of it was a political statement. It was not derogatory of any individual and was not capable of being seen as an attack on the integrity of any individual or body of officers. It was not expressed in a way which was unreasonable, unfair or demeaning to any identifiable individual or body of officers. It did not as a matter of fact fail to treat any person with respect.
- 3.31 The comment "There are people who come into jobs who don't have the local knowledge, and they lack the commitment on the future of Berwick" was looked at in context by the tribunal. Better recruitment and retention of staff had been identified as essential if performance was to improve. The Councillor's view, as expressed in interview and evidence was that the proper approach was to recruit locally because "...there are people who lived in Berwick who can do the jobs and that the people that do the jobs, to be committed, should work and reside in the same area".
- 3.32 This comment may have been regarded by others as misguided, naïve and unsupported by evidence. However, it was the Councillor's view and, given the substance of it, he was entitled to express it. This was a general comment of a political or quasi political nature made in the context of a single, ad hoc telephone interview, discussing the Council's performance as planning authority generally. It was not of a personal nature, there is no evidence of any "history" between the Councillor and planning officers from which a personal attack could be implied, nor any evidence that the Councillor was engaged in a course of conduct intended to undermine any individual officer or, indeed the small department as a whole. Looked at in the context of all of the circumstances, this comment could not reasonably have been taken to be a criticism of any existing individual officers in any department of the Council nor did it fail to treat any person with respect. It did not meet the threshold for a breach of paragraph 3(1) of the Code and, in the appeal tribunal's view, it would be a disproportionate restriction on the Councillor's right to freedom of expression to find such a breach.
- 3.33 In the appeals tribunal's view, expressing such views does not meet the threshold set by the words of paragraph 5 of the Code of Conduct. Neither looked at objectively would have any material bearing on public confidence in either the office of councillor or the authority itself. Both are comments of a very general political or quasi political kind which respect for the freedom of expression of (possibly)

unpalatable views in the political context must allow for. Their content properly understood, the manner and forum in which they were expressed and the absence of any personal criticism are such that they could not reasonably be regarded as affecting the essential trust between officers and the Councillor and his ability to perform his functions. In the appeals tribunal's view it would not be proportionate for the Code to prevent the expression of such genuinely held views even though they may be contentious.

- 3.34 For these reasons, the appeals tribunal determined that the Councillor did not fail to follow the provisions of the Code. Therefore the appeals tribunal rejected the finding of the Standards Committee and the decision of the Standards Committee ceases immediately to have effect.

West Wiltshire District Council and Westbury Town Council

- 3.35 A Councillor appealed against a finding by the Hearings Sub-committee of the Standards Committee that he had failed to follow the provisions of the Code of Conduct adopted by Westbury Town Council but that no further action need be taken. The decision of the Sub-committee referred to a breach of Paragraph 7(1) of the Code. That sub paragraph defines when a member of the Town Council had a personal interest. It is not of itself a paragraph which can be breached: the breach would come if the member failed to follow the provisions of Paragraph 8 of the Code which requires the member to declare an interest of the kind defined in paragraph 7(1).
- 3.36 The Councillor himself referred the matter to the Standards Board for England saying he had inadvertently forgot to declare a personal interest arising from his brother's part-ownership of a shop business in Westbury High Street.
- 3.37 The Notice of Decision issued by the Hearings Sub-committee indicated that the Sub-committee did consider that the matter under discussion at the Town Council (a traffic management scheme for Westbury) could reasonably be regarded as affecting the financial position of the Councillor's brother to a greater extent than other council tax payers and inhabitants. Assuming that the facts supported such a conclusion there would be a breach of paragraph 8 of the Code as the Councillor had not declared the interest at the relevant meeting. The Notice of Decision did not go on to reflect any consideration of whether the particular interest should also have been regarded as a prejudicial interest which, if in existence, would have meant that the Councillor would not have been able to participate in the relevant meeting.
- 3.38 The appeals tribunal noted that the exact nature of that interest was not established, the company name used in the report was inconsistent, no company search appears to have been undertaken, and no enquiries were made directly of the Councillor's brother. The need for more and clearer information should perhaps have been picked up by the Sub-committee which, according to its own minutes of the meeting, had experienced difficulty in obtaining confirmation from the Councillor as to whether his original statement was correct. However the appeals tribunal concluded that the Councillor undoubtedly had made a statement to the effect that his brother had an interest arising from part-ownership of a shop in Westbury High Street.
- 3.39 The Investigator stated in her report that she had taken it in the round that the Councillor's brother had a legal interest in Chantry TV Limited which has an interest in a lease and runs a business from the shop. There was no evidence in the papers

before the appeals tribunal (which include the papers before the Sub-committee) of the lease or the parties to it. However, it was common knowledge that a business with the name of Chantry TV operated from a shop in Westbury High Street and the Councillor had not sought to dispute that his brother has an interest in that business. That being so it was reasonable for the Sub-committee to conclude that there was a personal interest of the kind identified by paragraph 7(1)(a) of the Code of Conduct. There may also have been interests of a different kind but the evidence was not clear about this, and the appeals tribunal felt that those further possible reasons for finding there was a personal interest did not need to be explored.

- 3.40 The Councillor argued that the particular shop would not be affected by his proposals to any greater extent than other nearby shops. The appeals tribunal concluded that that argument was based on a mistaken understanding of the Code of Conduct. The relevant test was whether the Council's decision on the matter under consideration (a proposal to reverse the traffic flow in High Street) would affect his brother to a greater extent than other council tax payers, ratepayers or other inhabitants of the council's area, i.e. the whole area of Westbury Town Council. It was self-evident that a proposal to reverse the traffic flow in a particular street would have a greater effect on properties within that street, and those living or conducting business in them, than on other properties and residences in the whole town.
- 3.41 Although it does not appear from its decision that the Sub-committee addressed its mind to the issue of whether the Councillor had a prejudicial as well as a personal interest, it was clear that the Investigating Officer had given the matter some consideration. However the report contained no reasoning to explain her conclusion that the wellbeing or financial position of the Councillor's brother would not be affected by the matter under consideration. Although not referred to in her reasoning, her report did contain a statement from the County Council's Principal Highways Engineer that although he did not know what the effect of the reversal of the traffic flow would be on Chantry TV, in his opinion any impact would be negligible. If the Engineer did not know what the effect would be, the appeals tribunal was puzzled as to how he could express a view about its impact.
- 3.42 The appeals tribunal was of the view that had the Councillor's brother still been a councillor (as he had formerly been) the brother would have had a prejudicial interest and thus would have been precluded from participating in the discussion. Although possibly of no great impact on the brother's overall business interests, the evidence from the Councillor's own statements is that his proposal was likely to be to the financial advantage of shops, including that in which the brother had an interest. Nevertheless, it does not automatically follow that the Councillor who, as far as the appeals tribunal knows, had no direct financial interest, should have been precluded from such participation.
- 3.43 The key question is whether a member of the public with knowledge of the relevant facts would reasonably regard the Councillor's interest (arising from his brother's involvement with Chantry TV and thus with a shop on the affected street) as likely to prejudice his own judgement of the public interest. In addressing that question the Investigating Officer stated: "There is no indication that the response (to Wiltshire County Council) in relation to the reversal of traffic flow was likely to prejudice the Councillor's judgement of the matter, despite the brother having a legal interest in the shop on the High Street." In the appeals tribunal's opinion, that seemed to be dealing with the question the wrong way round. The Committee discussion was

about formulating the response (to Wiltshire County Council) so the question was whether the brother's interest could be seen as prejudicing the Councillor in participating in the decision as to how to frame such a response.

- 3.44 There is some evidence that in the past the Councillor has supported proposals (about the proposed Westbury by-pass) which were opposed by his brother. Thus, there would be some basis for a member of the public to recognise that the Councillor was capable in putting to one side any effect on his brother when considering what was in the public interest. Bearing that in mind, and (in the absence of hard factual evidence) the appeals tribunal's impression that the proposal was not likely to have a major impact on the fortunes of Chantry TV, the appeals tribunal has concluded that while a cynical member of the public might have suspicions, on a reasonable view the Councillor should not be regarded as having a prejudicial interest.
- 3.45 As the only part of the Code which has not been followed is that involving the failure to declare a personal interest, the appeals tribunal concurred with the view that no further action needs to be taken.
- 3.46 This case highlights the importance of considering each stage of a complaint and ensuring that the Committee consider the investigator's reasoning thoroughly. In Leeds, during the initial assessment and review stage, the Assessment flowchart and Code matrix must be used by the Sub-Committee to evidence their consideration of each stage of the process and section of the Code in relation to every complaint.**

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.

Background Documents

- APE0410, Councillor Hayhurst of Fylde Borough Council, 3rd February 2009
- APE0413, Councillor Ireland of Calne Town Council (appealing decision of North Wiltshire District Council), 23rd January 2009
- APE0414, Councillor Douglas of Berwick Upon Tweed Borough Council, 10th February 2009
- APE0416, Councillor Hawker of Westbury Town Council (appealing decision of West Wiltshire District Council), 13th March 2009

(All above case tribunal decisions available at:

<http://www.adjudicationpanel.tribunals.gov.uk/Public/Decisions.aspx>)