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## Report of the Assistant Chief Executive (Corporate Governance)

### Standards Committee

Date: 15<sup>th</sup> October 2009

### Subject: Adjudication Panel for England: Decisions of Case Tribunals

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#### Electoral Wards Affected:

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

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## 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](http://www.adjudicationpanel.co.uk)

## **2.0 Background Information**

- 2.1 Thirteen case tribunal decisions and seven appeals tribunal decisions have been published since the last report, however six cases which related to the same Council were considered together at one tribunal. 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 Borough, City or District Councils, those involving Parish and Town Councils, and those which are appeals against local standards committee decisions, for ease of reference.

## **3.0 Main Issues**

### **Borough, City or District Councils**

#### Somerset County Council (i)

- 3.1 It was alleged that a Councillor had failed to treat others with respect, contrary to paragraph 3(1) of the Code of Conduct in relation to:
- An e-mail which he sent to Nick Graham, an officer of the Council;
  - His conduct towards Miriam Maddison, and officer of the Council;
  - His conduct during a telephone conversation with Sarah Diacono, an officer of the Council; and
  - His conduct towards Philip Downer, an officer of the Council.

#### E-Mail to Nick Graham

- 3.2 The Councillor requested a meeting with Nick Graham, the Council's Corporate Web Manager. Mr Graham's Head of Service advised him not to meet with the Councillor as she believed that she could provide the information he required during another meeting. Mr Graham e-mailed the Councillor to cancel the meeting. The Councillor replied to Mr Graham by e-mail (copied to the Chief Executive, his Head of Service, and the Leader of the Council), saying, 'Thank you for cancelling our meeting. Firstly, For the avoidance of any doubt in the future. When I ask for a meeting to be arranged I expect it to be so arranged. If I feel the need to cancel it or rearrange it I will. I do NOT expect you or any other officer in the County Council to have to seek prior approval from ANYBODY to meet with me', and to request that another meeting be arranged regarding the web strategy.

- 3.3 The case tribunal took into account the following factors when deciding whether the e-mail should be considered a breach of the Code:
- It would have been preferable for Mr Graham's Head of Service to have raised this matter with the Councillor as she was the senior officer and it was her wish that the meeting did not take place;
  - It was not surprising that the Councillor was annoyed at the manner in which the meeting was cancelled, which was in itself arbitrary and gave no substantial explanation of why the Councillor having met with the Head of Service would make the meeting 'superfluous';
  - It was desirable that the threshold for a failure to treat another with disrespect be set at a level that allowed for the minor annoyances and on occasions bad manners which are a part of life;
  - Mr Graham was upset and shocked by the Councillor's e-mail, and was a relatively junior officer with no experience of dealing with Members. However Mr Graham's reaction is not determinative of the issue and in the case tribunal's view a number of other factors needed to be considered;
  - Whilst the first part of the e-mail is arguably abrupt and sarcastic, the second part is friendly and positive, and addressed directly to the things which Mr Graham dealt with in his work;
  - It was the case tribunal's view that the Head of Service is the target of the first part of the e-mail as it relates to the cancellation of the meeting and the need for prior approval;
  - Although the ESO suggested that the use of capitals in the e-mail is to be equated to shouting, it was the case tribunal's view that it was to be noted that only two words are in capitals and these are both in the first part of the e-mail and add emphasis to the Councillor's key point. While there may be circumstances when it is appropriate to equate capitals to shouting this limited use was not such an occasion.

- 3.4 The case tribunal did not condone the tone or wording of the first part of the e-mail but looked at in the particular circumstances, it fell just short of being a breach of the Code.

#### Conduct towards Miriam Maddison

- 3.5 Avon and Somerset Constabulary commenced an investigation into a number of suspicious deaths at a Somerset County Council residential care home. Ms Maddison, the Council's Corporate Director for Community Services and Director of Adult Social Services was informed of the investigation and requested that information about the investigation be restricted to a very limited number of people. Ms Maddison only told the Chief Executive, the Portfolio Holder and the Leader of the Council. Ms Maddison became aware that a national newspaper was aware of the investigation and was going to run a major news story the following day. She informed the Leader and the Portfolio Holder of this, and it was agreed that key Members should be informed. The Leader contacted the Councillor that evening. The story appeared in the newspaper the next day (15 March 2007).
- 3.6 In a memo to the Chief Executive dated 2 April 2007, Ms Maddison stated that on 15 March 2007, the Councillor had arrived at her office at 8.30am and told her off in an aggressive manner for not telling him about the case at a much earlier stage. She also alleged that he spoke to her in a raised voice and an angry tone.

- 3.7 The case tribunal took into account the following factors when deciding whether this conduct should be considered a breach of the Code:
- Ms Maddison's PA, whose desk was just outside Ms Maddison's office doorway, did not recall the incident;
  - Ms Maddison is one of four Corporate Directors of the Council and thus a very senior officer. She is used to dealing with Members and is to be expected at times to have to cope with the conflicts which arise from the differing perceptions of officers and Members;
  - The fact that Ms Maddison had not thought fit to raise the question of the Councillor's conduct of her own volition immediately after it had taken place.

3.8 Therefore, the case tribunal concluded that the Councillor's conduct was not disrespectful in this incident.

#### Telephone conversation with Sarah Diacono

3.9 It was alleged that the Councillor had failed to treat Ms Davidson-Grant with respect by, in a telephone conversation with Ms Diacono, using inappropriate language and advising her that she had offended Ms Davidson-Grant (her Corporate Director), and that she had the intention of managing her out of the organisation.

3.10 The case tribunal took into account the following factors when deciding whether this conduct should be considered a breach of the Code:

- The case tribunal found that the Councillor had not said anything new about the nature of Ms Diacono's relationship with Ms Davidson-Grant, and that the conversation was not remembered in detail by the parties or the others who overheard the conversation;
- If the Councillor had undermined Ms Diacono's relationship with her senior officer then that would be disrespectful to the senior officer, however such a finding required something more than the Councillor, in what was a gossipy conversation, simply going along with or even rehearsing Ms Diacono's pre-existing view of the situation;
- It had to be recognised that people gossip and at work they gossip about their boss and their perceptions of their boss and it would be unrealistic to expect Members and officers not to gossip about other Members and officers;
- In the case tribunal's view such conversations were to be taken for what they were, as informal conversations which on occasion strayed from hard fact;

3.11 The case tribunal therefore found that the Councillor's conversation with Ms Diacono did not amount to a failure to treat Ms Davidson-Grant with disrespect.

#### Behaviour towards Philip Downer

3.12 In April 2007, the Council held a 'meet the bidder' event for staff in relation to a project which might have potentially resulted in some officers having their employment transferred to a new joint venture company. During the meeting the Councillor stood at the back of the room. Towards the end of the session Mr Downer, a database administrator at the Council asked the panel two questions. Two witnesses stated that, while Mr Downer's questions were asked in a robust fashion, he was polite and did not behave inappropriately.

3.13 The case tribunal found that whilst Mr Downer was asking his questions, the Councillor made the remarks 'who is the wanker, what's his name', and 'shutting the

bastard up before it gets any more embarrassing'. The case tribunal also concluded that the Councillor had engaged Mr Downer in a short conversation of a few minutes after the meeting during which he was aggressive and angry, and that Mr Downer was intimidated by the Councillor.

- 3.14 The case tribunal found that the purpose of the meeting was to provide an opportunity for the staff affected by the project to raise their concerns in a safe environment. Thus whatever the rights and wrongs of Mr Downer's statements and questions they should have been treated in a neutral manner and a direct and angry challenge was inappropriate as it was against the spirit of the meeting.
- 3.15 In the case tribunal's judgement there was no doubt that a reasonable person would consider that the Councillor's remarks were disrespectful of Mr Downer. It is a matter of common knowledge that the expression 'wanker' is a term of insult and is meant to be disrespectful of the person to whom it is applied. Equally the other remarks of the Councillor about 'shutting the bastard up' would be understood by a reasonable person as intended to be insulting and disrespectful. For these reasons the case tribunal concluded that the Councillor had failed to respect Mr Downer contrary to paragraph 3(1) of the Code.
- 3.16 Similarly the aggressive and angry tone of the Councillor's conversation with Mr Downer went beyond a robust disagreement and intimidated Mr Downer. Mr Downer and two of the witnesses to the conversation had also thought the matter serious enough to pursue it by way of an internal complaint shortly after the incident. For these reasons the case tribunal concluded that the Councillor had failed to respect Mr Downer contrary to paragraph 3(1) of the Code.
- 3.17 The tribunal viewed this incident as one breach of the Code because the events arose from Mr Downer's statements and questions and there was no opportunity for the Councillor to 'cool off' before the end of the meeting. In deciding what sanction to apply, the case tribunal considered the following points:
- The breach was at the less serious end of the scale as the Councillor's remarks had not been made directly to Mr Downer and he had probably not intended them to be overheard;
  - The conversation with Mr Downer had not contained an abusive language and the Councillor's motivation had been to set the record straight and in his attempt to do so he had overstepped the mark;
  - As the Councillor was no longer the Deputy Leader of the Council or a member of a political group there was little likelihood of such conduct being repeated in his daily dealings with officers;
  - The limited seriousness of the breach and the short time remaining until the next elections indicated that this was not an appropriate case for disqualification. This view was supported by the initial assessment of the ESO that this was a case suitable for determination by the Council's own Standards Committee (however as the case had attracted a lot of publicity it had been referred to the Adjudication Panel for England);
  - As the Councillor no longer held any office other than that of Councillor, it would be difficult to target a suspension of the Councillor at anything other than his basic duties of representing those who had elected him which was, in the case tribunal's view, inappropriate;
  - From the evidence heard there was no indication that there was any realistic proposition of reconciliation or scope for apology. The short period remaining

until the end of the Councillor's term of office and his denials led the case tribunal to the view that training was not an appropriate sanction.

- 3.18 Taking into account the above factors the case tribunal found that the appropriate sanction was to censure the Councillor (i.e. the tribunal expressed their strong disapproval of the Councillor's actions).
- 3.19 **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.**

Somerset County Council (ii)

- 3.20 It was alleged that a Councillor had failed to comply with the Code of Conduct by making written allegations of serious misconduct by Mr Jones, the Chief Executive of the Council, to the Society of Local Authority Chief Executives (SOLACE) and the Association of Local Authority Chief Executives (ALACE) and to the County Council, and in doing so:
- Intimidated or attempted to intimidate Mr Jones, a complainant in a Code of Conduct investigation, contrary to paragraph 3(2)(c) of the Code;
  - Used his position as a Member improperly to confer a disadvantage on Mr Jones, contrary to paragraph 6(a) of the Code; and
  - Brought his office or authority into disrepute, contrary to paragraph 5 of the Code.
- 3.21 In April 2007, the Chief Executive of Somerset County Council made a number of complaints about the Councillor's behaviour to Standards for England. Later on that year, the Councillor made a formal complaint to the Council about the Chief Executive's conduct which the Council decided not to investigate.
- 3.22 Following a further complaint from the Chief Executive about the Councillor, the Council's Liberal Democrat group asked the Councillor if he would suspend himself from the group pending the outcome of all ongoing investigations, but he declined. The Councillor was notified that his membership of the Liberal Democrat group had been formally revoked on 5 December 2007.
- 3.23 On that same day, the Councillor wrote a letter to the Association of Local Authority Chief Executives (ALACE) stating formal complaints about the Chief Executive and listed five headings of inappropriate and unacceptable types of behaviour that the Chief Executive had allegedly committed. And five days later, he sent a letter in identical terms to the Society of Local Authority Chief Executives (SOLACE).
- 3.24 On 15 December 2007 the Councillor further wrote a formal complaint to the Council's Monitoring Officer in almost identical terms. He was asked by the Monitoring Officer to give specific details rather than headings of the matters about which he wished to complain. He did so in a letter dated 2 January 2008.
- 3.25 The Chief Executive then complained about the Councillor's motivation and intent in

making the serious allegations about him in the letters. This was because the Councillor knew that Chief Executive was the complainant in an ongoing investigation.

- 3.26 The Tribunal's findings were that the Councillor had not voiced the concerns he was now alleging and that:
- although he may have formed a belief about the seriousness of the alleged behaviour, there was no evidence to suggest that it was reasonable for him to have done so;
  - whatever he had seen, he did not at the time regard the alleged incidents as seriously as he was asserting at the time he wrote the letters; and
  - he had knowingly exaggerated the facts about the Chief Executive's style and performance in order to strengthen his allegations of serious misconduct.
- 3.27 Counsel for the ethical standards officer (ESO) had referred the Adjudication Panel to the Shorter Oxford Dictionary definition of the word 'intimidate' as meaning terrify, overawe, cow. The dictionary suggested the word was now used especially in order to mean to force to or to deter from some act by threats of violence.
- 3.28 Against this background, the Case Tribunal had no doubt that in writing the letters to ALACE and SOLACE and later to the council, the Councillor was motivated by a desire to cause harm to the Chief Executive whom he saw as responsible for the collapse of his political career.
- 3.29 The case tribunal also concluded that the Councillor intended to cause the Chief Executive a disadvantage both in terms of his future employment with the Council or more widely. Because those letters were submitted essentially as an act of revenge, the respondent did use his position improperly and had thus failed to follow the provisions of paragraph 6(a) of the council's Code of Conduct.
- 3.30 The tribunal also found that even though there was no evidence that the Chief Executive was intimidated, that did not of itself mean that the allegation of a breach of paragraph 3(c) failed. There would still be such a breach if the respondent had attempted such intimidation.
- 3.31 The case tribunal believed that for the claim to succeed it would have to accept that the letters were intended to intimidate the Chief Executive into:
- altering any evidence he was called upon to give against the Councillor; or
  - not making further complaints about the Councillor.
- 3.32 On the facts of this particular case the case tribunal concluded that neither were the Councillor's intention. The evidence here was that the respondent was seeking revenge for the Chief Executive's past actions rather than seeking to intimidate him. Therefore there was no breach of paragraph 3(c) of the Council's Code.
- 3.33 In deciding whether the Councillor had brought his office into disrepute, the statement in the Livingstone case about the need to separate the bringing into disrepute of the office rather than the person holding the office caused the case tribunal some difficulty. The case tribunal took into account the recent controversy about claims for large expenses submitted by some Members of Parliament. That has had the consequence of bringing the office of the MP into disrepute, in the eyes of the public, a disrepute which the public attaches even to those MPs of whom no

personal criticism has been made.

- 3.34 The particular actions of the Councillor which the case tribunal had considered, even when seen in the context of an ongoing breakdown of relations with a Chief Executive and regardless of where fault lies for that breakdown, cannot do other than bring the office of Councillor into disrepute. The case tribunal therefore found that there had been a failure to follow the provisions of paragraph 5 of the Code of Conduct.
- 3.35 The Case Tribunal's view was that the Councillor, in allowing his actions to be motivated by his desire for revenge, had shown himself to be unfit to be a Councillor and local authorities should be protected from his membership. This is a case where if the Councillor had still been serving as a Councillor the case tribunal would have disqualified him.
- 3.36 Although the Councillor had by then ceased to be a Councillor, he was disqualified was two years.
- 3.37 The case tribunal also had some reservations about the procedures used by the Council in considering the Councillor's complaints about the Chief Executive. Public confidence in the Council's procedures in such cases would in the tribunal's view be enhanced if there were an independent element involved in participating in or reviewing the early stages of that process. This recommendation was therefore made to the Council.
- 3.38 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. Complaints about the Chief Executive should be raised with the Leader, who may refer the complaint to the Employment Committee. A separate disciplinary procedure for the Chief Executive is currently being drafted.**

#### West Somerset District Council

- 3.39 It was alleged that a Councillor had failed to comply with the Members' Code of Conduct by disclosing information of a confidential nature given to Members in confidence about a proposed redundancy agreement with the council's Chief Executive without the disclosure being reasonable and in the public interest, contrary to Paragraph 4(a) of the Code.
- 3.40 On 12 December 2007 West Somerset District Council considered a report containing information about a redundancy settlement for the Chief Executive, including financial elements of the arrangements and personal details of the Chief Executive. The Council resolved, without dissent or discussion from any Member, to exclude the press and the public while the report was considered.
- 3.41 Following the meeting, the Councillor communicated with the press and disclosed the details of the Chief Executive's redundancy package based on the information in the report. At the time, the Councillor did not know whether the agreement with the



Chief Executive had been concluded. The information was then published in the local newspaper and correctly attributed to the Councillor on 28 December 2007.

- 3.42 The case tribunal considered whether the information disclosed by the Councillor was of a confidential nature. The case tribunal did not accept that the information was readily available by other means, as although the Chief Executive's salary was already public knowledge within £10,000 bands within the Council's published accounts, more information, such as years of service and age would have been required to work out his redundancy pay. There were also other elements in the settlement that had never been in the public domain, as well as personal biographical details.
- 3.43 The case tribunal also considered that the information that was disclosed was given to the Councillor in confidence and was of a confidential nature, as it was received at an 'exempt' session of the Council, the minutes of which show that the Council considered the public interest test in deciding whether the information should be kept confidential.
- 3.44 The Councillor had relied upon the decision of the Information Commissioner dated 25 August 2005 relating to Corby Borough Council, where it was ruled that the Council should disclose the exact total amount paid to an Interim Head of Finance. The case tribunal considered that there were clear differences between the circumstances in the Corby case and the case before it, and was also referred to the Information Commissioner's guidance 'When should salaries be disclosed?'. The case tribunal decided that although the guidance related to salaries rather than redundancy payments, the principles were relevant and supported the argument that the Chief Executive's detailed redundancy arrangements could legitimately be considered to be confidential.
- 3.45 The case tribunal therefore concluded that the Councillor had disclosed information given to him in confidence and which he believed or ought reasonably to have been aware was of a confidential nature. The case tribunal then had to consider whether any of the exceptions listed in paragraph 4 applied, namely:
- (a) Did the respondent have the consent of a person authorised to give it?;
  - (b) Was the respondent required by law to disclose the information?;
  - (c) Was the disclosure made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person?; and
  - (d) Was the disclosure reasonable and in the public interest, and made in good faith and in compliance with the reasonable requirements of the authority?
- 3.46 The case tribunal decided that points (a), (b) and (c) did not apply. In relation to (d), it was first considered whether the disclosure was reasonable and in the public interest. The case tribunal considered the factors in favour and against disclosure of the information, and concluded that there should have been some transparency in relation to the Chief Executive's redundancy arrangements, but that he was entitled to some privacy in his financial arrangements and that the details of his redundancy package should not have been disclosed by the Councillor. It was therefore considered that it was not in the public interest to disclose the information, particularly as the full Council had agreed unanimously to treat the information as exempt and as a matter of good governance there was a public interest in Councils being able to rely on confidential information remaining so where the proper process had been followed.

- 3.47 The case tribunal did not consider that the Councillor had made the disclosure in good faith or in compliance with the reasonable requirements of the authority. It was therefore concluded that the Councillor had breached paragraph 4 of the Code of Conduct.
- 3.48 In deciding what sanction to apply, the case tribunal took into account the following factors:
- The Councillor's relative inexperience as a councillor and his desire to do the best by his constituents;
  - The fact that this was a case where the Councillor had released information which was clearly provided to him in confidence and where harm could have been caused;
  - The Councillor's concern that the fact of the Chief Executive's redundancy should be made public, and it appeared that the Council had failed to indicate that it was intending to publicise this;
  - It was a serious matter to disclose confidential information in breach of the Code;
  - Although the Councillor had accepted that he had breached the Code, he had not expressed remorse. The Councillor also considered that the Code of Conduct provides unwelcome restraints on what he could do as a Councillor; and
  - The case tribunal considered that as a matter of good governance the Council and Council employees should be entitled to be able to rely on Councillors to keep confidential information that was provided to them during 'exempt' business.
- 3.49 The case tribunal decided unanimously to suspend the Councillor from being a Member of West Somerset District Council for a period of three months.
- 3.50 In Leeds, Members are given training on how to deal with the media through the personal development programme. Members are also given guidance through the Member/Officer Protocol which states that Members must always indicate in what capacity they are speaking and give thought to the likely consequences of their comments for the Council.**
- 3.51 The Access to Information Procedure Rules explain that should a Member wish to disclose exempt information, they should approach the relevant Director for decision as to whether that information should be disclosed. Disclosure by a Member would only be refused if the Director decided that if the Council received an FOI request at that time, the Council would not be obliged to disclose that information.**
- Gosport Borough Council  
*(This decision has been appealed to the High Court, the result of which is awaited. The President has agreed to suspend the effect of the sanction pending the High Court's decision effective from 29 July 2009.)*
- 3.52 It was alleged that a Councillor had breached the Code of Conduct by failing to declare a personal and prejudicial interest in matters relating to the Stokes Bay music festival at a full Council meeting held on 14 July 2008.

- 3.53 The Councillor, in his private capacity as an events organiser, had been liaising extensively with the council in 2008 over his plans to stage a music festival at Stokes Bay. The festival was to be held on council-owned land and would need licences for alcohol sales and live entertainment. The Councillor was the sole director of a limited company set up to handle the financial aspects of this festival.
- 3.54 Despite his role as the main event organiser and promoter, the Councillor refused to declare an interest, even when prompted, during a Council meeting in which a motion was proposed which included reviewing the terms of the arrangements between him and the Council.
- 3.55 As well as refusing to declare an interest or leave the meeting, during which advice sought by the Council on the legal implications of changing the arrangements was presented, the Councillor also breached the Code of Conduct by voting. He cast his vote against the motion to change the terms of his agreement with the Council over the fees and licensing for the festival.
- 3.56 The motion was lost by 16 votes to 17. Had the motion been tied, the Mayor - who had voted in favour of it - would have been given the deciding vote.
- 3.57 The case tribunal considered that the Councillor had a personal interest in the motion (which was intended to reconsider the decision to grant the Councillor permission, in principle to hold the music festival) because he was the main festival organiser, employee, sole director and owner of the company which organised and ran the Stokes Bay music festival. The Councillor and his company handled all the finances relating to the festival and he was the person with whom the Council were proposing to enter into a land licence agreement for the staging of the festival. The cost of staging the music festival was about £270,000.
- 3.58 The motion under consideration therefore affected the Councillor's employment and business and any decision in relation to the Stokes Bay music festival might reasonably be regarded as affecting his well-being or financial position to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward affected by the decision.
- 3.59 The case tribunal also considered that the interest was also a prejudicial one as it was one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it was likely to prejudice the Councillor's judgement of the public interest.
- 3.60 The case tribunal considered that failing to declare a personal and prejudicial interest in the motion and not withdrawing from the council chamber before a vote was taken was in breach of paragraphs 9 and 12 of the Code of Conduct.
- 3.61 It was also considered that by this conduct, the Councillor used his position as a Member of the Council to improperly influence the outcome of the motion to his and his company's advantage which was also a breach of paragraph 6(a) of the Code. Further, by this conduct, the Councillor, as an experienced Member had also brought discredit to his office and lowered the esteem of the Council in the mind of a reasonable member of the public. Therefore it was considered that the Councillor had also brought his office and authority into disrepute in breach of paragraph 5 of the Code.

- 3.62 In deciding what sanction to apply, the case tribunal took into account the following factors:
- This was an extremely serious case which went to the very heart of the ethical framework within which local government must operate;
  - The facts in the case clearly indicated that the Councillor took a deliberate decision not to declare a personal and prejudicial interest in the motion relating to Stokes Bay music festival. It was also clear that he had a financial interest relating to this commercial enterprise;
  - This was a blatant and deliberate disregard for the Code of Conduct which would have undermined the confidence that members of the public had in the integrity of the Council, particularly as this conduct came from someone with such seniority and experience;
  - The Councillor's record of good service, that he had recognised that there had been a failure on his part to comply with the Code of Conduct and had issued a public apology to his electorate, and had stood down from his posts as Deputy Leader and Chairman of the Council's Community and Environment Board as a result;
  - These breaches were of such a serious nature, in that the Councillor had deliberately sought to misuse his position and had deliberately failed to abide by the Code, that, notwithstanding the Councillor's recent re-election to Hampshire County Council, the most severe of sanctions, being disqualification was appropriate and proportionate in this case;
  - Two examples of caselaw, in which the Members concerned had been re-elected since the events before the case tribunal; and
  - The Councillor's conduct had shown that he was unfit to fulfil the responsibilities which the electorate had invested in him, and any sanction imposed should aim to uphold and improve the standard of conduct expected of Members as part of the process of fostering public confidence and democracy.

3.63 The case tribunal were of the view that a period of two years disqualification was the minimum which could properly meet the gravity of this breach.

**3.64 In Leeds, Members are strongly advised that where their interest in a matter is prejudicial, they should not participate or give the appearance of trying to participate in the making of any decision on the matter by the authority. Officers in Governance Services also compare meeting agendas with the relevant Committee Members' register of interests, and alert the Member concerned if a potential interest is identified.**

### **Parish and Town Councils**

#### **Maltby Town Council**

- 3.65 It was alleged that a Councillor had breached the Code of Conduct by:
- Instructing a solicitor, without the authority of Maltby Town Council, to defend eight Councillors accused in a grievance brought by the former Town Clerk;
  - Introducing a resolution to suspend Mr Morton at a Council meeting without giving the required notice, thus causing Mr Morton humiliation; and
  - Failing to allow consideration of excluding the press and public from that meeting, so adding to the distress caused to Mr Morton.

- 3.66 The Town Clerk, Mr Morton, initiated a grievance against a number of Councillors (not including the Councillor in this case), which lacked details to support the grievance. The Councillor met with a solicitor to seek advice about many issues facing Maltby Town Council as he felt there was no support available from Rotherham MBC and he did not wish to approach the Yorkshire Local Councils Association as he believed that the Town Clerk worked for this organisation. The solicitor understood that he was being asked to advise Maltby Town Council. There had been no authorisation by the Council to instruct a solicitor, therefore the Councillor breached Standing Order 67 by instructing a solicitor on behalf of Maltby Town Council without authority to do so.
- 3.67 Following this, three Councillors were tasked with conducting a grievance hearing related to Mr Morton. They sought advice from Rotherham MBC, who said that they would not be able to provide legal advice. They then obtained advice from a solicitor without authorisation from the Council. The case tribunal was satisfied that this was done in good faith through a lack of knowledge of the governance framework for the Council.
- 3.68 The Councillor met with the solicitor on subsequent occasions, including on one instance with seven or eight other Councillors when the suspension of the Clerk was discussed. At this meeting the solicitor drafted a five point resolution and a letter to be handed to Mr Morton.
- 3.69 At the Council's meeting on the same date the Councillor introduced the resolution which was not on the agenda and which proposed disciplinary proceedings against the Town Clerk and his immediate suspension. The Councillor did not allow any consideration of whether to exclude press and public before the Council considered the resolution, contrary to Standing Order 38.
- 3.70 The resolution was passed resulting in the immediate suspension of Mr Morton, and the Councillor handed a letter to Mr Morton. The case tribunal was satisfied from the oral and written evidence that no attempt was made to inform Mr Morton of the intention to suspend him and no relevant document was provided to him until after the vote had been taken. Mr Morton submitted his resignation to the Councillor on the following day. The Councillor paid for the services of the solicitor himself.
- 3.71 The tribunal was satisfied that the Councillor failed to treat Mr Morton with respect by deciding to bring a resolution to suspend him without notice, and refusing to allow consideration of a motion excluding the press and public.
- 3.72 As Chair, the Councillor was responsible for the conduct of the meeting. He was advised not to conduct the meeting in this way and disregarded that advice by not permitting debate on the motion. The ordinary business of the meeting was therefore disrupted and deferred to a later date, and the Councillors who were not present at the meeting were unaware that a major decision of this nature might be considered. The case tribunal considered that these actions as Chair of the Council brought his office as Chair and Councillor and his authority into disrepute.
- 3.73 Whilst concerned at the way the solicitor was instructed and the lack of clarity in the relationship with the solicitor, the case tribunal was not satisfied that this in itself brought the Council into disrepute.

- 3.74 In considering what sanction to apply, the case tribunal took into account the following factors:
- The Councillor's previous exemplary record, and the fact that his difficulties only started when he became Chair of Maltby Town Council, which was widely regarded as a difficult role to fulfill;
  - The changing accounts of events which the Councillor had given over time to the ESO, his propensity to blame others and his partial remorse;
  - The voluntary nature of the Councillor's work as a Town Councillor and his relative lack of management experience;
  - The Councillor had received or been offered a range of relevant training and had served as a Councillor for eight years before the events in question;
  - The disrespect and disrepute were serious matters especially in the Councillor's role as Chair where he had a considerable influence on the course of events. In light of their serious nature and the gravity of the consequences for Mr Morton the case tribunal considered that suspension from the Council as a whole was the appropriate sanction and that suspension from the Chair of the Town Council and from service as a member of Rotherham MBC's Standards Committee was essential; and
  - In light of his good service as a ward Councillor the suspension from Maltby Town Council was for a shorter period than would otherwise be the case.
- 3.75 The case tribunal imposed the following sanctions:
- Partial suspension from serving as the Chair of Maltby Town Council for a period of 12 months;
  - Partial suspension from serving as a member of Rotherham MBC's Standards Committee for a period of 12 months; and
  - Suspension from membership of Maltby Town Council for a period of three months.

#### Dartmouth Town Council

- 3.76 It was alleged that a Councillor had failed to comply with paragraphs 3(1), 3(2)(b) and 5 of the Code of Conduct by constantly undermining and bullying the Town Clerk, Mr Horan and showing contempt and disrespect to him, other staff of the Council and Council Members.
- 3.77 The Councillor was alleged to have bullied and undermined the Dartmouth Town Clerk over a long period. He subjected the Clerk at one stage to almost daily visits in the Council's offices, during which he would frequently become aggressive, angry and intimidating in front of officers and Members. He also repeatedly accused the Clerk of incompetence, to his face and to others.
- 3.78 The Councillor's conduct at Council meetings, attended by the local press and the general public, was often aggressive, and was so disruptive that on one occasion, a senior police officer attending the meeting believed it to be verging on public disorder and considered intervening. He declined to sit down at Council meetings on frequent occasions, in spite of the ruling of the Mayor.
- 3.79 Mr Horan also became ill and was absent from work for about four weeks, which he attributed directly to his treatment by the Councillor.

- 3.80 The Councillor was also disrespectful to other Members, referring to the Mayor as a 'bloody hypocritical bitch', and claiming in a letter to a new Member that two of their fellow Councillors were showing 'signs of serious dementia'. Council staff found his discussions with other members so heated that they had to ask for the conversations to be held elsewhere, as they disturbed the running of the Council office.
- 3.81 In April 2008, Members resolved on a vote of fourteen out of fifteen Members present that they deplored the behaviour of the Councillor, disassociated themselves from comments made by him and considered his actions disloyal to the Council, misleading the public and demeaning in the public arena. At the same meeting the Councillor was suspended from all Council Committees for a period of six months.
- 3.82 The case tribunal concluded that at all material times, when the conduct complained about took place, the Councillor was acting in his official capacity. His conduct took place in the council offices, at council meetings and in correspondence with other Councillors, the content of which was about Council business. Even though the Councillor stated that two pieces of correspondence were private, he did not dispute that he wrote them in his capacity as a Councillor advising newly elected Members about his perception of other Councillors and the workings of the Town Council.
- 3.83 The case tribunal then considered whether the Councillor's conduct failed to treat others with respect and/or was such as to amount to bullying. Although the case tribunal accepted that Councillors may disagree with Council officers on the implementation of Council policy and may have justifiable concerns about an officer's effectiveness, there are recognised procedures which should be used to raise these concerns. The Councillor did not use these procedures in this case.
- 3.84 The Councillor's behaviour towards Mr Horan was undermining and inappropriate. It was also offensive, intimidating and on occasions, humiliating. For example, the Councillor called Mr Horan incompetent and referred to him as ineffective and inefficient to his face while standing over him.
- 3.85 The case tribunal were satisfied on the evidence that Mr Horan suffered ill health as a result of this conduct. The case tribunal found that the Councillor's conduct towards Mr Horan could reasonably be regarded as bullying and failure to treat him with respect. The case tribunal also found that the Councillor failed to treat his fellow Councillors with respect, in particular, his comments about two Councillors 'having signs of serious dementia' and that 'elderly colleagues from the lower town are losing the plot'.
- 3.86 The case tribunal then considered whether the Councillor brought his office or authority into disrepute. The case tribunal found that the Councillor had brought his office and authority into disrepute by his lack of regard for the authority of the Mayor and his conduct during Council meetings. This included verbal aggression to other Councillors, the manner in which he shouted down others, his refusal to abide by points of order asked of him by the Mayor and by conduct which was described by Police Inspector Morgan as 'bedevilment'.
- 3.87 In deciding what sanction, if any should be imposed in this case, the case tribunal took into account the following factors:

- The nature of the Councillor's breach involved unreasonable, intimidating and humiliating behaviour towards others over a number of years, and as a direct result of this a number of Councillors were distressed and upset;
- Also as a direct result of this conduct, Mr Horan suffered a period of ill health and was absent from work for about four weeks, which must have impeded the good administration of the Council;
- The breach also greatly impeded the ability of some Councillors in Council meetings to carry out their duties and responsibility for which they were elected, which damaged the reputation of the Council as a whole;
- The Councillor's length of service as a Councillor and the positive comments about his performance from colleagues;
- A previous finding by Standards for England that the Councillor had breached the Code of Conduct but which did not result in any sanction being given, had not made any impact on the Councillor's conduct;
- The Councillor had, in effect already received a period of partial suspension imposed by his fellow Councillors, and the case tribunal heard evidence that his conduct had changed very little as a result;
- During the hearing, the Councillor gave no indication that he appreciated the seriousness of his own conduct or expressed remorse for the effect this had had on others; and
- The need to uphold and improve the standard of conduct expected of Members as part of the process of fostering public confidence in local democracy.

3.88 The case tribunal was of the view that this was such a case and unanimously decided that a period of disqualification for three years was appropriate. In reaching this decision the case tribunal was mindful that any period of disqualification had to be for the minimum period necessary to enable the Councillor to reflect on his actions and the result this had on others. It also needed to be for a sufficient period of time to enable the Council to recover from this period of disruption, work together for the benefit of the electorate and begin the process of rebuilding public confidence in it.

**3.89 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.**

#### Needham Market Town Council

3.90 It was alleged that a Councillor had breached the Code of Conduct by calling another Councillor and the Town Council's Deputy Clerk 'proven liars' at a Council meeting on 7 May 2008.

3.91 In November 2006 the District Council's Standards Committee decided that the Councillor had failed to treat the Clerk to the Council with respect, and as a result had brought his office and authority into disrepute. The Standards Committee suspended the Councillor from office for a period of three months ('the 2006 complaint').



- 3.92 During the investigation and hearing of the 2006 complaint the Councillor alleged that the Clerk and Deputy Clerk to the Council, had lied about whether a telephone call had taken place on 22 December 2005 between himself and the Clerk. Both the investigator and the District Council's Standards Committee decided that it was unnecessary to come to a conclusion on the matter because it was not a material fact.
- 3.93 Between November 2006 and May 2008, the Councillor tried to get the Council to recognise that the Clerk and Deputy Clerk had lied about the telephone call. The Council refused to look into the matter further.
- 3.94 In April 2007 the Clerk retired as Clerk to the Council and in May 2007 she was elected as a Member of the Council.
- 3.95 At a Council meeting on in May 2008, Councillor L (the former Clerk) was elected as Town Mayor and Chair of the Council. During the election process the Councillor said that both Councillor L and the Deputy Clerk were proven blatant liars. The Councillor was given the opportunity to withdraw his comments at the end of the meeting but he refused.
- 3.96 Despite the wishes of the Councillor, the case tribunal found it unnecessary to determine which version of the events of 22 December 2005 was correct, because it was not the truth of the comments of the Councillor that was at issue but whether he had failed to treat others with respect. The case tribunal was satisfied that the comments of the Councillor were, in the particular circumstances, a breach of the Code whether or not they were true.
- 3.97 The case tribunal found that the manner in which the Councillor chose to raise the matter at the Council meeting in May 2008 was not appropriate. The Councillor's views were long standing and were well known, and there was no new information that required the Councillor to raise the issue at the meeting. The case tribunal found that the Councillor's true purpose in raising these matters was to tarnish the election of Councillor L.
- 3.98 The case tribunal found that the Councillor was capable of expressing his views in neutral language which acknowledged that the matter was disputed and referred to the facts which supported his view. Had the Councillor adopted such an approach the case tribunal thought it unlikely that he would have breached the Code.
- 3.99 The case tribunal was satisfied that the Councillor had failed to treat Councillor L with respect by referring to her as a blatant liar at the Council meeting in May 2008 because he knew that his views were disputed, that there had been no independent finding that his version of events was correct and his views were well known to the other Councillors. The case tribunal also found that the form of words used was intended to be inflammatory rather than to bring the issue to the Council's attention.
- 3.100 The case tribunal found that the position of the Deputy Clerk was different to that of Councillor L because at the time of the meeting in May 2008, she was an elected Member of the Council and therefore was in a position to reply openly in meetings. The Deputy Clerk was an officer of the Council and therefore did not have the same freedom to reply in the meeting.

- 3.101 The case tribunal had already found the Councillor's view to be of long standing and well known, and in addition there was nothing in the business of the meeting which made it necessary to refer to the Deputy Clerk. Therefore, the case tribunal concluded that the Councillor had failed to treat the Deputy Clerk with respect and had breached paragraph 3(1) of the Council's Code by referring to her as a liar at the Council meeting in May 2008.
- 3.102 As the case tribunal left the hearing room to consider its decision on sanction the Councillor told the tribunal that he had arranged for his resignation to be sent by e-mail to the Town Council that morning. He also stated that he would not stand for election until 2011 at the earliest. This left the tribunal with power only to take no further action, to censure the Councillor or to disqualify him from office.
- 3.103 The case tribunal considered that the following factors were in the Councillor's favour when considering what sanction, if any to impose on the Councillor:
- His long record of public service on both District and Town Councils;
  - His re-election to the Council in May 2007 following his suspension in November 2006 when the electors would have knowledge of his previous breach of the Code;
  - That the May 2007 election had been contested and the Councillor had received a substantial number of votes;
  - The Councillor's opinion about whether there had been a telephone call to him on 22 December 2005 had some evidential basis and was not one which it was unreasonable to hold;
  - The honesty of other Councillors and Council officers was a matter of legitimate concern to a Councillor and of public interest;
  - The Councillor had tried to get the Council to investigate his allegations in relation to the Deputy Clerk through its Employment Committee but had not, apparently, received any response; and
  - The suspension of the Councillor in November 2006 related to a different matter.
- 3.104 The case tribunal also took the following factors into account:
- The Councillor was capable of keeping the dispute running over a long period and he had demonstrated this by his actions since the dispute had started in Summer 2006 and was still being pursued at the date of the hearing nearly three years later;
  - The Councillor's view that he could not be a 'bully' because he was outnumbered by the other Councillors was rejected by the case tribunal. The Councillor's commitment was also found to be disproportionate to the substance of the dispute;
  - The Councillor's strength of character was such that he was causing genuine personal anxiety to other Councillors; and
  - The Councillor's conduct was often based on tactics which had as their objective causing difficulty for those who opposed his views, rather than achieving an objective that was in the public interest.
- 3.105 Looking at all the circumstances and in particular the events which led to his previous suspension, and the Councillor's conduct after his re-election in May 2007, the case tribunal found that it was appropriate to disqualify the Councillor for a period of 12 months to bring home to the Councillor the need to change his ways and to give a clear and public signal that this type of disruptive conduct over a long

period was unacceptable as it damaged both the image and effectiveness of local government.

### Ludlow Town Council

- 3.106 It was alleged that Councillors A, B, C, D, E and F had disclosed confidential information received during closed sessions of meetings of the Ludlow Town Council's Staffing and Appeals Sub-Committee on 9 October 2008 and of the Policy and Finance Committee on 20 October 2008 and in so doing:
- Failed to treat others with respect contrary to paragraph 3(1) of the Code;
  - Disclosed information given to them in confidence contrary to paragraph 4 of the Code;
  - Brought their office and authority into disrepute contrary to paragraph 5 of the Code; and
  - Failed to comply with paragraph 6(a) of the Code.

- 3.107 On 12 November 2008 Councillors A and B invited Councillors C, D, E and F to sign a statement which Councillor A had prepared. The preparation of the statement was triggered by a claim made by Councillor B that an Inspector of the local police, to whom he and Councillor C had reported the circumstances surrounding the destruction of some cheques belonging to the Council by a Council officer, had indicated that the town clerk had not provided a witness statement to the police. Councillors A, B, C, D, E and F signed the statement which read as follows:

*'We the undersigned Ludlow Town Councillors would like to publicly announce our condemnation of inappropriate management of public money by a member of staff at Ludlow Town Council.'*

*'An investigation into the matter has not been carried out promptly or thoroughly as requested by the Council at a Council Committee. This failure makes us feel that the matter must now be investigated by the police who have the powers and authority to act. We also urge that all staff, including the clerk, fully co-operate with said investigation.'*

- 3.108 On 13 November 2008 an article with the headline 'Town Councillors call in the police' appeared in a local newspaper which was written by Mr Kibbler, who had been in contact with Councillors B and C. There was no reference in the article to the statement prepared by Councillor A, and no reference to any of the Councillors other than Councillors B and C.
- 3.109 The case tribunal was satisfied that the purpose of the statement was to act as a strong representation to the Town Clerk to encourage co-operation with the police and for a decision to refer the matter for internal investigation to be reconsidered by the full Town Council. There was no evidence of any intention that it should be made available to anyone other than the town clerk. Given that the statement contained information already known to the town clerk, there was no disclosure of confidential information given in confidence or of a confidential nature other than to the police by Councillors B and C.
- 3.110 The only evidence before the case tribunal of statements made to the press by Councillors B and C was the article dated 13 November 2008 which contained no information of a confidential nature or information disclosed to them in confidence at

any Town Council meeting. It simply recorded the fact of a report to the police.

- 3.111 The case tribunal then considered whether on these facts, any of the Councillors breached any paragraph of the Town Council's Code of Conduct. Firstly, the case tribunal considered whether any of the Councillors had failed to treat others with respect or brought their office or authority into disrepute (paragraphs 3(1) and 5 of the Code respectively). The case tribunal considered that the statement signed by the Councillors addressed issues of legitimate concern to them over the handling of a matter of significant importance to the Town Council. The case tribunal did not consider that the statement failed to treat all other officers of the Town Council with respect by not naming the individual at the centre of the allegation. The statement was not made publicly available and the only known recipient of it, the Town Clerk, knew the identity of the officer concerned.
- 3.112 Given the absence of any disrespect or breach of confidence, and given that it found as a fact that the statement was intended as a robust attempt to secure co-operation with any police investigation and for the appropriate investigatory route to be reconsidered by the Council through due process, the case tribunal did not consider that the behaviour of any of the Councillors could be said to have breached paragraph 5 of the Code.
- 3.113 The case tribunal found as a fact that the only disclosure of anything of a confidential nature or received by the Councillors in confidence was by Councillors B and C in making their complaints to the police. The case tribunal considered that this disclosure was made in accordance with their duty as a citizen to report what they considered was, potentially, serious criminal conduct to the police. The case tribunal considered that such a disclosure was either one required by law or alternatively reasonable, in the public interest, made in good faith and involving no conflict with the reasonable requirements of the Town Council. It therefore involved no breach of paragraph 4 of the Code.
- 3.114 For the reasons it has given in finding no breach of any of the other paragraphs of the Code, the case tribunal found that there was nothing improper in the behaviour of the Councillors and therefore no breach of paragraph 6 of the Code. The case tribunal found unanimously that the Councillors did not breach the Code.

### **Appeals against Standards Committee decisions**

#### **Sedgemoor District Council and Compton Bishop Parish Council**

- 3.115 The Councillor appealed against a determination by the Standards Committee to suspend him for a period of three months and to require him to submit an apology and attend training for failure to comply with paragraphs 3(1), 3(2)(b) and 5 of the Parish Council's Code of Conduct.
- 3.116 The Councillor argued that the sanction imposed by the Standards Committee was excessive and disproportionate, for the following reasons:
- The Councillor thought that it was clear that he had good reason to behave in the way he did, given the provocation he experienced from certain Members of the Council and his frustration at being unable to express himself verbally in a meeting or on the phone;
  - He hoped that a line could be drawn under the issues and that in future all parties can behave with dignity and respect towards each other;

- His dyslexia can have a profound effect on his behaviour; and
- He still has a lot to offer the community and will continue to the best of his abilities to serve his fellow parishioners.

- 3.117 The appeals tribunal found that there was considerable antipathy between the Councillor and some of his colleagues on the Parish Council, and others in public life including some Members of the District Council. This has led to the Councillor making a number of claims that others have breached Codes of Conduct, none have which has been found to be substantiated.
- 3.118 The tribunal also found that a dyslexic condition did not excuse the Councillor's actions in the particular circumstances of this case. It was also found that there is a great deal of written material put into the public arena by the Councillor and others which do nothing to foster good relations and run the risk of resulting in ever deteriorating relationships.
- 3.119 The appeals tribunal was concerned that the relationships which gave rise to the present case appear still to be damaged. All concerned were urged to make efforts to understand each other's positions and to work together, using mediation and mentoring, to overcome the present disharmony which is damaging relationships and serving no useful purpose.
- 3.120 In considering the sanction, the tribunal considered that there had been a breach of the Code which caused harm to others, and that there was bullying and unsubstantiated allegations of corrupt practice against persons in public life. The impact of such actions is serious and inherently harmful.
- 3.121 The Councillor's actions fell short of the threshold on which disqualification was upheld in two previous cases, however they did correspond to those of a case in which the sanction was altered from disqualification to suspension for six months. The appeals tribunal considered that the decision of the Standards Committee was reasonable, proportionate and sustainable. The appeals tribunal therefore dismissed the Councillor's appeal.

#### Tendring District Council

- 3.122 The Councillor appealed against the Standards Committee's decision to suspend him for three months for a failure to comply with paragraph 2(b) of the Code of Conduct.
- 3.123 The Appeals tribunal was not required to consider whether the Councillor was in breach of the Code of Conduct and was satisfied that the evidence very clearly demonstrated a breach of this provision.
- 3.124 The Councillor argued that three months suspension was disproportionate and unrelated to the actual findings against him, for the following reasons:
- It had not been alleged that he had bullied the planning officer – this was an interpretation by the Hearings Sub-Committee;
  - The incident was an isolated incident of bad behaviour;
  - He had apologised;
  - He had offered to have suitable training and promised to abide by the Code in future; and

- Since September 2006 there had been no formal complaint made about him.

- 3.125 The tribunal noted the conclusion of the Hearings Sub-Committee that: 'During the incident a relatively junior officer had been verbally abused in such a way that other officers could hear and that apparently encouraged a member of the public to verbally abuse him in a similar manner'. The tribunal shared the view of the Hearings Sub-Committee that this was a serious incident and even if isolated it was of such severity that a sanction ought to be imposed.
- 3.126 The tribunal was satisfied that a period of suspension was the appropriate sanction to reflect to the Councillor the severity of the matter and to uphold and improve the standard of conduct of Councillors.

#### Middlesbrough Council

- 3.127 The Councillor appealed against the Standards Committee's finding that she had failed to comply with paragraphs 3(1), 5 and 6(b)(i) of the Council's Code of Conduct, and the sanction imposed, which was suspension for two months.
- 3.128 The complaint arose from an earlier complaint by the complainant in relation to waste collection services at her home. The complaint was heard by the Council's Complaints and Appeals Committee, at which both the complainant and the Councillor were present. The complainant submitted a further complaint in relation to the Councillor's conduct at that meeting and in the days following that meeting in respect of a series of postings by the Councillor on the forum of the Middlesbrough Evening Gazette. It is the allegations in the subsequent complaint that led to these proceedings.
- 3.129 The Councillor argued that she was not acting in her official capacity as all her comments on the forum were made in her private time and all using the pseudonym of 'Indie'. However, taking the contents of the posting on the Evening Gazette forum as a whole the appeals tribunal concluded that the Councillor did give the impression that she was acting in the role of a Councillor and thus representing the Council.
- 3.130 The tribunal then considered whether the Councillor failed to treat the complainant with respect. The Councillor chose to take the issue to a very public blog-site, run by the local newspaper. It was inappropriate for someone with a valid and accepted complaint, which had been taken seriously by the Council, to be subjected to public ridicule and demeaning statements on a public website by a Member of that Council. The tone of the Councillor's postings was derogatory and disparaging to the complainant, including references to her as 'the wheelie bin woman'. The Councillor's postings also triggered off abusive responses directed at the complainant from other people. The tribunal therefore concluded that the Councillor had failed to treat the complainant with respect, contrary to paragraph 3(1) of the Code of Conduct.
- 3.131 The tribunal then considered whether the Councillor had brought her office or authority into disrepute. The tribunal considered that the way that the Councillor had behaved was not that expected of a Councillor and would diminish the office of Councillor. It therefore concluded that the Councillor had brought the office of Councillor into disrepute in breach of paragraph 5 of the Code of Conduct.

- 3.132 The appeals tribunal felt that by implication using a Council computer for such purposes would constitute a breach of paragraph 6(b)(1) of the Code of Conduct. However, this was a technical breach and in itself not significant.
- 3.133 The appeals tribunal felt that this was a case where there was a fairly serious breach of the Code of Conduct. The tribunal was presented with documents relating to three previous occasions on which the Councillor was found to have breached the Code. It was clear that she had not learnt from these previous occasions and the appeals tribunal therefore considered that the two month suspension imposed by the Standards Committee was appropriate.
- 3.134 The tribunal decided to impose an additional sanction of the requirement for training on the Code of Conduct to ensure that the Councillor fully understands the Code and so that any misconceptions she currently has are addressed.
- 3.135 **This case highlights the need for Members to be aware that the Code of Conduct applies when they are acting, claiming to act, or giving the impression they are acting in their official capacity.**

North West Leicestershire District Council and Ellistown and Battleflat Parish Council

- 3.136 The Councillor appealed against the determination by the Standards Committee that he had failed to comply with paragraphs 3(1) and 5 of the Council's Code of Conduct and the sanction which was to require him to:
- (a) send a letter of apology to the complainant; and
  - (b) undergo one to one training on the Code of Conduct.
- 3.137 The Standards Committee found as a fact that during a public question and answer session of a meeting of the Parish Council, an exchange took place between the Councillor and the complainant which amounted to a breach of paragraphs 3(1) and 5 of the Code. The Standards Committee made no findings of fact as to what was said by the Councillor in the exchange, nor did it provide any reasoning as to why what was said amounted to a failure to comply with these paragraphs of the Code.
- 3.138 The substance of the Councillor's grounds of appeal was that no exchange amounting to a breach of the Code occurred. The appeals tribunal therefore found it necessary to proceed by way of re-hearing.
- 3.139 There was a dispute of fact as to whether the Councillor asked the complainant 'what are you doing here' at a Parish Council meeting. The appeals tribunal was not satisfied that that it is more likely than not that the Councillor did utter those words. The tribunal considered that it was inherently unlikely that he would have done so given the context in which the meeting was called and the efforts the Councillor had taken to advertise it.
- 3.140 It would also be surprising that if the words had been said, they were not recalled by a witness who said that she would have heard all that was said at the meeting. The tribunal did not doubt that the complainant heard the words 'what are you doing here' but the tribunal considered that this belief arose from a misunderstanding as to what was said in the context of a brief encounter in a difficult meeting.

- 3.141 The tribunal attached little weight to the evidence of another witness who provided some support for the words being used by the Councillor. Her version of the alleged words was not consistent with the complainant's recollection, and she claimed that the Councillor had sought to cut the complainant off. The complainant's evidence was that the Councillor's comment came at the end of the exchange and he made no complaint that any attempt was made to prevent him speaking.
- 3.142 The appeals tribunal was not satisfied that the conduct which the Standards Committee determined amounted to a failure to follow the Code did in fact occur. Therefore, the appeals tribunal found that the Councillor did not breach the Code, and rejected the finding of the Standards Committee.
- 3.143 **This case highlights the importance of making findings of fact during the hearings process, and considering evidence from both the Investigator and the subject Member (and their witnesses) where there is a significant disagreement about the facts. The Standards Committee Procedure Rules set out the stages that will be followed by the Hearings Sub-Committee in conducting a hearing, which includes making findings of fact.**

Boston Borough Council

- 3.144 The Councillor appealed against the Standards Committee's finding that the Councillor had failed to follow paragraphs 3(1) and 5 of the Code of Conduct.
- 3.145 The appeals tribunal agreed to take new evidence into account from the Councillor that:
- (a) the e-mail which was the subject of the complaint was written on the same day that she received news of her cancer; and
  - (b) the complainant had 'fallen for her'.
- 3.146 The appeals tribunal determined that the Councillor did not fail to follow the provisions of the Code because:
- the evidence which was before the Standards Committee did not support its finding that the Councillor had, at the material time been acting in her capacity as a Councillor; and
  - the e-mails which passed between the Councillor and the complainant contained a mixture of personal and business issues. The e-mail exchange which led to the complaint was related to a website which is not produced or sanctioned by the Council.
- 3.147 The tribunal was concerned, however, that the Councillor did not discourage the complainant in intermixing personal and business issues. If she had done so, the complaint may not have arisen. The tribunal therefore recommended that a more cautious and transparent approach be adopted in future.
- 3.148 Had the appeals tribunal found that the correspondence did relate to Council business, the Standards Committee's finding that the Councillor had brought her office or authority into disrepute would not be shared by the tribunal. In the Livingstone case, Collins J indicated that it was 'important to understand the appellant's frame of mind when confronted...' The Councillor in this case was confronted by an e-mail which she reasonably construed as calling her a liar, which warrants a robust response. In addition, she had just been diagnosed with cancer, which explains the apparent lack of reflection in the use of language.



- 3.149 In Livingstone, Collins J also said ‘It seems to me that the expression [“in performing his functions”] should be construed so as to apply to a Member who is using his position in doing or saying whatever is said to amount to misconduct’. The Councillor in this case was not using her position in responding to the complainant.
- 3.150 The tribunal also determined that it would be a disproportionate response to interfere with the Councillor’s Article 10 (freedom of expression) rights on the basis of a single expletive in a private e-mail responding to an accusation of dishonesty.
- 3.151 Therefore, the tribunal overturned the finding of the Standards Committee.

#### London Borough of Hillingdon

- 3.152 The Councillor appealed against the decision of the Standards Committee that he had failed to follow paragraphs 3(1) and 5 of the Code of Conduct when he used the word ‘corrupt’ against Conservative Members at a full Council meeting.
- 3.153 In this appeal by way of re-hearing from that decision the appeals tribunal determined that the Councillor did fail to follow the provisions of the Code.
- 3.154 The tribunal heard evidence from Councillors as well as an officer and the public. A number of witnesses gave evidence that they could not recall the Councillor using the word corrupt. Others said they had heard it. One witness recalled the comment ‘You’re all corrupt’ being made by the Councillor as a throwaway remark as he was being heckled.
- 3.155 The Interim Head of Democratic Services who had been responsible for keeping a record of the meeting recalled the Councillor describing Conservative Councillors as corrupt. The tribunal was particularly impressed by this evidence which it found to be impartial, credible and compelling.
- 3.156 The appeals tribunal was satisfied that the Councillor, under the pressure of barracking and his own strong feelings about the behaviour of the majority group, inadvertently referred to that group as corrupt.
- 3.157 The tribunal was satisfied that this was a throwaway remark made without malicious intent. However, it was said in a full Council meeting at which Councillors, officers and members of the public were present. The tribunal considered that by making this remark, the Councillor had failed to treat his fellow Councillors with respect, and by making an unjustified claim that the majority group of the Council was corrupt he brought the authority itself into disrepute.
- 3.158 The appeals tribunal upheld the finding of the Standards Committee that there was a breach of the Code of Conduct. The tribunal shared the view of the Standards Committee that it was appropriate to impose no sanction with respect to this conduct.

#### Waverley Borough Council and Alford Parish Council

- 3.159 The Councillor appealed against the Standards Committee’s finding that she had failed to comply with paragraph 9 of the Code of Conduct by failing to declare a personal interest at a meeting. She also appealed against the action which the

Standards Committee took in the light of the failure to follow the provisions of the Code. The Standards Committee felt that no sanction was appropriate.

- 3.160 Firstly, the tribunal considered the status of the meeting, and whether it had been formally and correctly constituted. The tribunal concluded that it was a correctly constituted meeting of the Council to discuss Council business because:
- The notice of the meeting had the name and designation of the Chairman at the bottom as the person calling the meeting, and it was displayed on official parish notice boards;
  - The notice clearly indicates that the substance of the meeting is for the Council 'to discuss and hear residents' opinions'. Inclusion of the words 'to discuss' the application makes it clear to the public that this meeting was to conduct the business of the Council rather than have a public, non-council led meeting;
  - No resolution was passed in order to allow the Chairman to convene a non-council led public meeting;
  - The Chairman and Parish Clerk were seated at a table at the front of the hall with the Councillors sat in a 'U' shape either side. Councillors also responded to questions from the public, giving the impression that this was a meeting discussing Council business; and
  - The notice of the meeting gave sufficient notice in accordance with the Local Government Act 1972.
- 3.161 The tribunal then considered whether the Councillor should have declared an interest at this meeting. The Councillor admits she had a personal interest in the planning application and that she had on previous and subsequent occasions declared this.
- 3.162 The Councillor stated that she did not declare a personal interest at this meeting as she considered that the meeting was a non-council led public meeting and one that did not require a declaration of interest. The minutes of this meeting show that no declarations of interest were sought, offered or recorded for any Councillor present.
- 3.163 The Councillor confirmed in her representations that she was at the meeting in her capacity as a Councillor. In the tribunal's view, the way she conducted herself at the meeting, including answering a question from a member of the public, further enforces this. In the minutes, there was differentiation between statements made by Councillors and those made by the public.
- 3.164 The appeals tribunal therefore concluded that the Councillor should have declared a personal interest.
- 3.165 The tribunal recommended that , whilst it makes no finding that the Councillor has a personal and prejudicial interest it would advise her to seek guidance whether this may be the case. It also noted that, given the size of the proposed development and its implications for the local community, declarations of interest might have been appropriate from other Councillors present at that meeting.
- 3.166 The appeals tribunal upheld the finding of the Standards Committee that the Councillor had breached paragraph 9 of the Code of Conduct. The tribunal accepted that the Councillor had not intentionally failed to make a disclosure, and the fact that the Chairman of the Parish Council had not invited declarations of

interest meant there was no prompt for Councillors to make such a declaration and supports the content that those present had not given thought to this issue.

- 3.167 The appeals tribunal considered that the decision by the Standards Committee not to impose a sanction was proportionate and it was therefore upheld.
- 3.168 **In Leeds, at all meetings of the Council, the Executive Board, Council Committees and Sub-Committees, Members are asked whether they have any declarations of interest as a standing item on the agenda.**
- 3.169 **The Case Review 2007 states that ‘Members are not covered by the requirement to declare interests at informal meetings, as it only applies to formal meetings of the authority, its executive or its committees or sub-committees. However, paragraph 5(a) of the Code, which prevents Members from using their position improperly, applies at all times. A Member who uses pre-meetings or informal meetings to influence a matter in which they have a prejudicial interest will probably fail to comply with paragraph 12(1)(c) of the Code. This is because they will have been improperly seeking to influence a decision.’**

#### **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 Standards 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; and
- 7.2 Members of the Standards Committee are also asked to receive reports summarising the decisions of the Adjudication Panel for England at every Standards Committee meeting, rather than on a 6-monthly basis, due to the number of decisions being published.

## Background Documents

- APE0409, Councillor Buchanan of Somerset County Council, 31<sup>st</sup> March 2009
- APE0415, Councillor Slade of Maltby Town Council, 30<sup>th</sup> April 2009
- APE0417, Councillor Buchanan of Somerset County Council, 13<sup>th</sup> July 2009
- APE0418, Councillor Byrne of Compton Bishop Parish Council (appealing decision of Sedgemoor District Council), 21<sup>st</sup> April 2009
- APE0419, Councillor Boughton of Dartmouth Town Council, 27<sup>th</sup> May 2009
- APE0420, Councillor Wicking of West Somerset District Council, 3<sup>rd</sup> June 2009
- APE0421, Councillor McTigue of Middlesbrough Council (appealing decision of same), 29<sup>th</sup> April 2009
- APE0422, Councillor Balbirnie of Tendring District Council (appealing decision of same), 24<sup>th</sup> April 2009
- APE0423, Councillor Gamble of Ellistown and Battleflat Parish Council (appealing decision of North West Leicestershire District Council), 29<sup>th</sup> May 2009
- APE0424, Councillor Chegwyn of Gosport Borough Council, 6<sup>th</sup> July 2009
- APE0425, Councillor Cox of London Borough of Hillingdon (appealing decision of same), 23<sup>rd</sup> June 2009
- APE0427, Councillor Mason of Needham Market Town Council, 21<sup>st</sup> July 2009
- APE0428, Councillor Dorrian of Boston Borough Council (appealing decision of same), 17<sup>th</sup> June 2009
- APE0429 – 0434, Former Councillor Bradley and Councillors Pound, Davies, Glaze, Newbould and Pope of Ludlow Town Council, 30<sup>th</sup> July 2009
- APE0440, Councillor Ames of Alford Parish Council (appealing decision of Waverley Borough Council), 12<sup>th</sup> August 2009

(All above case tribunal decisions available at:

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