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

### Standards Committee

Date: 16<sup>th</sup> December 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 Three case tribunal decisions and seven appeals tribunal decisions have been published since the last report, however two 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 case tribunal decisions, and those which are appeals against local standards committee decisions, for ease of reference.

## **3.0 Main Issues**

### **Case Tribunal Decisions**

#### **Suffolk County Council**

- 3.1 It was alleged that a former Councillor had brought their office or authority into disrepute by voting twice on the same motion using the Council's electronic voting system. It was alleged that she had used her own delegate unit and then the unit of another Member who was not present at the time and who had not given his consent or permission.
- 3.2 The case tribunal considered that, by voting twice on the same motion and by using another Member's vote without his permission, the former Councillor had undermined the whole integrity of the democratic process. This conduct would reduce public trust and confidence in the former Councillor, and her integrity and judgement would be severely damaged. This conduct also impacted on the confidence that the public would have in the decisions of the authority as a whole and would seriously harm the reputation of the Council. The case tribunal therefore concluded that the former Councillor had breached Paragraph 5 of the Code of Conduct.
- 3.3 The case tribunal was of the view that this breach of the Code of Conduct was a serious one which undermined the integrity of the democratic process. As the respondent was no longer a Member of Suffolk County Council, only censure and/or disqualification were available as possible sanctions.
- 3.4 The former Councillor did not appear before the case tribunal and there was nothing in the papers before the tribunal which provided mitigating factors for the tribunal to

consider. An aggravating factor was that the former Councillor had denied the fact despite clear contrary evidence.

- 3.5 The case tribunal concluded that, in order to restore public trust and confidence in the local democratic process, a period of disqualification for one year was fair, reasonable and proportionate for this breach.
- 3.6 **In Leeds, Members are provided with electronic voting pads in full Council meetings. Members are allocated a seat prior to the meeting, and are asked to use the voting pad from their allocated seat only. The Chief Executive reminds Members to check that they are in their allocated seat before a recorded vote is taken.**

#### Forest Heath District Council

- 3.7 It was alleged that Councillor M had used his position as a Councillor improperly to secure an advantage for former Councillor W's son in relation to his planning application, and in doing so had brought his authority into disrepute.
- 3.8 It was also alleged that former Councillor W had:
- (a) used his position as a Councillor improperly to secure an advantage for his son in relation to his planning application and to influence the decision in relation to that application;
  - (b) treated the Senior Planning Officer in a bullying and disrespectful manner, compromising his impartiality and using his position as a Councillor improperly to gain an advantage for himself and his family; and
  - (c) brought his office or authority into disrepute.
- 3.9 The son of former Councillor W submitted a planning application in relation to a proposed development of new houses, situated in former Councillor W's ward. Former Councillor W and his son asked Councillor M to become involved in the planning application, as they were '*having troubles with planning*' and '*getting the application through to Committee*'.
- 3.10 Councillor M attended a delegation panel meeting at which the application was discussed, and requested that it be determined by the Planning Committee.
- 3.11 Former Councillor W's son made a complaint as to the Council's procedural handling of his application, which resulted in a meeting in the Chief Executive's office. Former Councillor W attended the meeting, at which he was also complaining more generally about the conduct of the planning department and in particular about the Senior Planning Officer. He also accused the Senior Planning Officer of telling lies in relation to the his pre-application discussions with his son's planning agents.
- 3.12 Prior to the Planning Committee meeting, former Councillor W asked Councillor M to attend as his substitute for the item relating to his son's planning application (as he would have to withdraw due to his prejudicial interest). In the event, Councillor M substituted for a different Councillor, for the whole meeting. Councillor M spoke in support of the application and moved a recommendation that the application be approved. However, he then withdrew this proposal, to allow instead the application to be deferred for further investigations to be undertaken by officers.

- 3.13 The planning application was considered at a further Planning Committee meeting. Councillor M was not in attendance. The Planning Committee decided it was minded to approve the application, the decision being deferred in order that officers might prepare a further report for the Committee to consider. This was normal practice where members were minded to vote against an officer recommendation.
- 3.14 Further to this, a second meeting was held in the Chief Executive's office with regards to former Councillor W's son's complaint. Councillor M also attended, as he had been invited by former Councillor W to attend as a witness. The day after this, the Audit and Complaints Manager (who had investigated the complaint), sent an e-mail to the Senior Planning Officer following a telephone call from former Councillor W. This stated:
- 'Councillor W has just rung and wasn't satisfied with the outcomes of the meeting yesterday... and he asked me to tell you that he will prove that you lied at Cttee and if you want to take him to standards he will look forward to it.'*
- 3.15 Councillor M attended the next Planning Committee meeting as a substitute for former Councillor W when the application was discussed again. He again spoke in support of the application and voted in favour of it. The application was approved.
- 3.16 Further to evidence provided by two members of the public who had attended the meeting, and by the Senior Planning Officer, the case tribunal found that there had been some kind of non-verbal communication which may have been by way of gesture, a smile or mouthed words on the part of Councillor M and at least one other Councillor indicating to former Councillor W's son and his planning agent their support for the way the debate had gone.
- 3.17 The case tribunal further found that Councillor M shook former Councillor W's son's hand at the end of the Planning Committee partly for the purposes of congratulating him on the successful approval of the application.
- 3.18 Former Councillor W made further accusations of the Senior Planning Officer lying in letters to the Leader of the Council. The Leader asked the former Councillor to provide evidence to support his accusations, but he failed to do so.
- 3.19 Following this, the Senior Planning Officer attended former Councillor W's home, as they had agreed to a 'clear the air' meeting. The Senior Planning Officer made a note of the meeting which stated that former Councillor W said *'the Waters have lots of land and property and connections to others and that there would be things coming across my desk in future and that if you put one foot out of line I'll have you'*. The former Councillor also told him that he was *'prepared to bet me anything I wanted, from £10 to £10,000 that he could get me out of my job'*. He also told the Senior Planning Officer that he knew where he lived. He referred to an earlier standards investigation which resulted in his suspension and said he would welcome another investigation. He said he thought he would be exonerated and felt he had been re-elected by people who wanted him to *'sort out those liars at the council'*.
- 3.20 Former Councillor W went on to say that he expected to be able to discuss future planning applications with him even though he was no longer Head of Planning. The note of the meeting concluded by saying *'we parted pleasantly, shaking hands'*.

- 3.21 The case tribunal found that former Councillor W had used his position as a Councillor improperly to secure an advantage for his son and to influence a decision in relation to his planning application. The meetings with the Chief Executive were, in the case tribunal's view, an attempt by former Councillor W to place pressure on officers to deal with his son's planning application in a more favourable way.
- 3.22 The case tribunal saw former Councillor W's requests for Councillor M to substitute for him at the Planning Committee and the previous requests for assistance as an attempt to get round the rules in relation to prejudicial interests.
- 3.23 Through his treatment of the Senior Planning Officer both in calling him a 'liar' repeatedly without foundation or explanation, and his comments to him at their 'clear the air' meeting, he had failed to treat him with respect and bullied him, over a sustained period. Former Councillor W had also sought to compromise his impartiality and to secure an advantage for him and his family.
- 3.24 The case tribunal considered that former Councillor W's conduct during this period had fallen far below the standards expected of elected Members. The case tribunal concluded that his conduct would reduce the public's confidence in the planning applications being fairly and properly handled and also adversely affect the reputation of Members generally. Taking all the points above together, the case tribunal was of the view that he had brought his office or authority into disrepute.
- 3.25 With regards to Councillor M, in the case tribunal's view, he had acted with mixed motivation. The case tribunal accepted that his involvement with the planning application had been partly on account of his own views that the application should exceed, partly to assist a constituent and partly in furtherance of the view of the Parish Council. Had these factors been his sole motivation, there would not, in the tribunal's view, have been a finding of breach. The facts were however that Councillor M had been drawn into acting on behalf of former Councillor W's son. The case tribunal was of the view that he ought not to have allowed himself to be drawn in this way, bearing in mind that former Councillor W had an obvious prejudicial interest in the matter. Therefore, the case tribunal was of the view that Councillor M had used his position as a Councillor improperly to secure an advantage for Councillor W's son, contrary to paragraph 5(a) of the 2002 Code of Conduct.
- 3.26 The case tribunal accepted that Councillor M had acted inadvertently and had honestly believed that what he was doing was not in breach of the Code. The case tribunal considered that, on the basis that the reasonable member of the public was aware that Councillor M had acted inadvertently, and taking into account that he was only one of ten voting in favour of the planning application at Planning Committee, it concluded that this should not amount to a breach of the disrepute provision of the Code.
- 3.27 In the case tribunal's view, whilst it was regrettable that Councillor M's non-verbal communication with former Councillor W's son took place at the public Planning Committee meeting, it concluded that this was not sufficient to give rise to a breach of disrepute.
- 3.28 The case tribunal decided that former Councillor W should be disqualified from being, or becoming a member of any relevant authority for a period of three years. This case was at the most serious end of matters given his previous breach of the

Code. That breach had similarities to the current matter and indicated that he had learned nothing from his previous sanction.

- 3.29 The case tribunal ordered that Councillor M be censured. The case tribunal accepted that Councillor M had not fully appreciated the import of his actions. However, he ought to have seen clearly that he should have nothing to do with former Councillor W's request for assistance. It was important that the rules on prejudicial interest should not be subverted by the use of other Councillors to act effectively as the voice of the Councillor with the prejudicial interest. The tribunal therefore recommended that Councillor M receive training on the Code of Conduct.
- 3.30 **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.**
- 3.31 **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.**

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

#### Pendle Borough Council and Barnoldswick Town Council

- 3.32 A Councillor appealed against the Standards Committee's decision that he had failed to treat others with respect by using the words '*It is you who owe the apology as you are the liars. The CPS got it wrong. You are the guilty ones*' in responding to a question from a member of the public at a meeting of Barnoldswick Town Council. The Councillor also appealed against the action which the Standards Committee decided to take, which was to require him to submit a letter of apology to the Council.
- 3.33 The Councillor appealed on the grounds that he did not show disrespect by the use of the words he used at the Council meeting; and there were irregularities the procedures adopted by the Standards Committee.
- 3.34 In relation to the Councillor's ground of appeal that he did not show disrespect, the appeals tribunal considered that the approach adopted by both the Investigating Officer and the Standards Committee was flawed. They considered simply whether or not the word 'liar' went beyond political expression, was rude and offensive and amounted to an expression of anger and personal abuse. They did not appear to have considered whether or not the Councillor was justified in using the word on the basis that it might be true.
- 3.35 There was insufficient evidence for the appeals tribunal to determine whether or not the Councillor's words were justifiable. The question which needed to be explored was whether the persons responsible for the publication of the leaflet (about which the Councillor had complained to the Police) deliberately and knowingly included false information in the leaflet and manipulated it for electoral gain, or simply made a genuine error which can reasonably be explained. If the persons responsible had deliberately and knowingly included false information, then no reasonable person

could consider that there had been disrespect. In the absence of relevant evidence to answer that question, the appeals tribunal decided to overturn the decision of the Standards Committee.

- 3.36 The appeals tribunal considered, however, that the use of the word 'liars' is inappropriate in the proceedings of a public body even where it does not amount to disrespect. Its use might breach the provisions of the Code of Conduct which require a Councillor not to do anything which might bring his office or authority into disrepute. This did not appear to have been considered by the Standards Committee and there was an absence of evidence and submissions on which the appeals tribunal could make a determination.
- 3.37 The appeals tribunal also had regard to the fact that the person presiding at the meeting does not appear to have called upon the Councillor to temper his language, to withdraw the remark or to apologise. There was also insufficient evidence to make an assessment of the engagement of the Councillor's right to freedom of expression.
- 3.38 Whilst allowing the appeal, the appeals tribunal noted that the investigation report made reference to the word 'liars' being deemed unparliamentary language in the House of Commons. Local authorities are not bound by the rules of debate adopted by the House of Commons, however some local authorities adopt similar rules by custom and practice. There was no evidence that there is such a custom and practice in Barnoldswick Town Council, but, whether or not there is, the appeals tribunal advised that the Councillor may wish to consider apologising to the Council for breaching the normal rules of debate by the use of inappropriate language.
- 3.39 Having found that there was no sustainable evidence upon which the Standards Committee could properly conclude that there was a breach of Paragraph 3(1) of the Code of Conduct, there was no need to reach formal conclusions in respect of the alleged irregularities of procedure. However, the appeals tribunal commented on what might be considered good practice in respect of the matters raised:
- A Standards Committee has a duty to consider any allegation of bias. It is good practice for a Standards Committee to ensure that its proceedings are free from actual or perceived bias, and should take a proactive role rather than relying on individuals to declare interests;
  - It is the Chairman's duty to exercise control and ensure that the proceedings are run smoothly and efficiently. It requires a fine balance and support from competent advisers;
  - The Standards Committee has a duty to consider the relevance of the evidence to be given by potential witnesses and to give reasons for not calling witnesses;
  - If a person does have knowledge which would assist by way of evidence or has played any material role in the circumstances given rise to the complaint, he should not be appointed as Investigating Officer;
  - The circulation of papers prior to the hearing is a fundamental requirement, as is ensuring that all persons have access to the same documentation. Paginated bundles should be prepared for all parties and members of the Standards Committee; and
  - Any investigations and consequential proceedings should be undertaken with the minimum of delay, particularly if any delay prejudices a party by the timing of a decision.

West Dorset District Council and Crossways Parish Council

- 3.40 A Councillor appealed against the Standards Committee's finding that he had failed to follow Paragraph 12 (1)(a) of the Code of Conduct by failing to declare a personal interest and failing to leave the Council Chamber during a meeting. The Councillor also appealed against the sanction imposed by the Standards Committee, which was to suspend him for three months.
- 3.41 The appeals tribunal determined that the Councillor did fail to follow the provisions of the Code because:
- An application for remission of charges for the Scout Association (of which the Councillor is a leading and long-standing member) was considered by the Council;
  - The Councillor declared a personal interest but remained in the room and did not speak; and
  - Given his long-standing and close association with the Scouts and his position of responsibility within the Crossways Scout Group a member of the public would reasonably consider that his interest was so significant that it was likely to prejudice his judgement of the public interest.
- 3.42 In deciding whether the sanction applied was appropriate, the appeals tribunal took the following points into consideration:
- The Councillor was shown advice of the Monitoring Officer on his situation at the start of the meeting, however he did not have time to consider it properly and the tribunal was satisfied that his actions in the meeting were not in deliberate disregard of the advice and were a mistaken interpretation of the position;
  - The Councillor did not seek to improperly influence the proceedings; and
  - At the time of the meeting, the Councillor had not received further training on the Code of Conduct as previously directed by the Standards Committee. He had subsequently undergone the training, learnt from it and indicated that in future whenever any item relating to his interests is raised he will declare a personal and prejudicial interest and leave the room.
- 3.43 Therefore, the appeals tribunal decided that censure was a sufficient sanction in the circumstances, rather than the three months suspension that was imposed by the Standards Committee.
- 3.44 **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. Before each meeting, officers in Governance Services compare meeting agendas with the relevant Committee Members' register of interests, and alert the Member concerned if a potential interest is identified.**



## Bristol City Council

- 3.45 A Councillor appealed the action which the Standards Committee decided to take in the light of her failure to follow paragraphs 3(1) and 5 of the Code of Conduct. The action was censure and that the Councillor be suspended for four weeks.
- 3.46 The Councillor accepted that her actions did amount to a failure to follow the Code of Conduct, therefore the appeal was limited to the question of whether the sanction was appropriate.
- 3.47 A meeting of Bristol City Council took place at which the debate was heated and fractious, and there was political tension. In response to a contribution to the debate from Councillor J, the Councillor said, *'In our culture we have a word for you...we have a word that we use and I am sure many in our city will understand...it's coconut. At the end of the day I look at you as that' and 'the water is either thrown away or drinking it'.*
- 3.48 Although the Standards Committee did not make an express finding as to the meaning of the term 'coconut', they accepted the conclusion of the Investigating Officer that:
- 'the term 'coconut' related to someone in denial of their heritage who had forgotten their roots. It had racial elements, was deeply offensive and insulting, however it was not a racist term in legal terms.'*
- 3.49 The grounds of appeal were:
- The Sub-Committee chose to go against the Investigating Officer's recommendation that no further action be taken;
  - The sanction was disproportionate in view of the Councillor's acceptance of fault and her apology and did not accord with Standards for England's guidance to Standards Committees; and
  - The impartiality of the Sub-Committee may have been prejudiced by one of its members seeking to gain political capital from the decision.
- 3.50 The appeals tribunal saw no evidence to suggest that the impartiality of the Standards Committee could reasonably be questioned on political or other grounds and it therefore rejected that contention on behalf of the Councillor.
- 3.51 In deciding whether the sanction was appropriate, the appeals tribunal had regard to guidance issued by Standards for England and the Adjudication Panel for England. It follows from this guidance that, given the Standards Committee's decision that the Councillor had brought her office or authority into disrepute, suspension was a sanction which it was both reasonable and proportionate for it to consider imposing. However, it does not follow that it was reasonable or proportionate to impose a suspension on the facts of this case. The guidance stresses that the appropriate sanction in any case requires consideration of all mitigating and aggravating factors.
- 3.52 On the side of mitigation were the following:
- The comment was a one off comment uttered in the context of a heated debate;
  - The Councillor apologised for her conduct as soon as she appreciated that it had caused offence;

- No issues of dishonesty, financial impropriety or intent to secure personal financial or other gain were involved;
- The Councillor acknowledged her wrongdoing throughout;
- The Councillor had not previously failed to follow the provisions of the Code; and
- There was no suggestion that there was any risk of future non-compliance.

3.53 The factors which may reasonably be said to have aggravated the misconduct are:

- The intention of the Councillor to insult in using the words that she did;
- The offensive and insulting nature of the words used;
- The fact that the words were uttered at a meeting of the full Council where the press and public were likely to witness them; and
- The harm which resulted to the reputation of the Council and the office of Councillor from the use of the words.

3.54 In the appeals tribunal's view, the Standards Committee's balancing of the mitigating and aggravating factors led to the imposition of an unreasonable and disproportionate sanction in this case. It was not reasonable or proportionate to conclude that suspension was the appropriate sanction where there had been a prompt and full apology for an off the cuff insult which did not itself have any aggravating feature beyond being gratuitously offensive and which was made in the context of a heated meeting when feelings were running high. Looked at objectively, whilst the Councillor's behaviour breached paragraph 5 of the Code, the effect on the reputation of the Council and the office of Councillor could not reasonably justify suspension.

3.55 The appeals tribunal concluded that the Councillor should be censured for her failure to comply with the Code of Conduct.

3.56 **This case highlights the importance of considering the aggravating and mitigating factors in each case before deciding upon the sanction to be imposed. In Leeds, the Standards Committee Procedure Rules state that the Hearings Sub-Committee must have regard to Standards for England's guidance on 'Standards Committee Determinations', which lists examples of aggravating and mitigating factors.**

West Lindsey District Council and Bardney Group Parish Council

3.57 A Councillor appealed against the Standards Committee's decision that he had failed to follow paragraph 9 of the Code of Conduct by failing to declare a personal interest in an item relating to 'Village Signage' at an Extraordinary General Meeting of the Parish Council. He also appealed against the sanction imposed which was to censure the Councillor and require him to attend training on the Code of Conduct within the next six months.

3.58 Paragraph 9 of the Code would only have been engaged in this case if the decision on village signage might reasonably have been regarded as affecting the Councillor's well-being or financial position to a greater extent than the majority of the other council tax payers, rate payers or inhabitants of the Parish.

3.59 There was no question of the decision having any bearing on the Councillor's financial position, therefore the issue narrowed to the effect on his well-being. The

appeals tribunal concluded that it is more likely than not that the contentedness and therefore well-being of the Councillor would have been affected to a greater extent by the decision of the Parish Council at its meeting than that of the majority of the tax payers and inhabitants of the Parish Council's area. He was the Treasurer of the voluntary organisation which had a longstanding project to erect the signs and he himself supported the project as demonstrated by his seconding of the motion for the acceptance of the signs. An inability to erect the signs would at the very least have led to additional complications for the Treasurer of the organisation, therefore acceptance of the signs was likely to have a greater effect on him than the majority of other tax payers, rate payers and inhabitants of the Parish.

- 3.60 The appeals tribunal therefore found that the Councillor did have a personal interest which should have been declared at the meeting, and in failing to do so the Councillor failed to follow the provisions of the Code.
- 3.61 The appeals tribunal decided that the action which is appropriate is for the Councillor to be required to undertake training on the requirements of the Code of Conduct within the next six months (if it has not already occurred in accordance with the decision of the Standards Committee). This was an unintentional and technical breach of the Code which was the consequence of a failure to understand the Code, rather than any intent to hide a declarable interest. The censure of the Councillor by the Standards Committee was disproportionate to the breach and the appeals tribunal rejected that part of the sanction.

#### Forest Heath District Council

- 3.62 A Councillor appealed against the action which the Standards Committee decided to take in the light of his failure to treat others with respect, in breach of paragraph 3(1) of the Code of Conduct. The action was to censure the Councillor and require him to write a letter of apology to Councillor C, copied to the Monitoring Officer.
- 3.63 The appeals tribunal determined that the Councillor did not fail to follow the provisions of the Code. He had stated in an e-mail "*As for Councillor C attempting to denigrate my comments 'Stating they were only Councillor M's personal opinions' how could she possibly know what I was about to say, how could anyone know until I finished, you know they used to burn witches at the stake for professing to have such abilities*". The inference drawn by the Investigating Officer that this was clearly personal to Councillor C is an inference which the tribunal concluded was not justified. The comment does not directly call her a witch; it was a far more general comment and did not pass into the realm of personal abuse.
- 3.64 The appeals tribunal also pointed out that the son of one of the members of the hearing panel is a cabinet colleague of the complainant on another authority, which could have raised doubt in the mind of an observer as to his objectivity and independence. There are also a number of common interests between the complainant and another member of the hearings panel, which could equally be perceived as raising similar questions in relation to his participation. Therefore, the overall composition of the hearings panel could have raised in the mind of a reasonable observer the question of whether there would be a fair hearing.
- 3.65 The appeals tribunal concluded that the decision of the Standards Committee should be overturned.

## Milton Keynes Council and Great Linford Parish Council

- 3.66 A Councillor appealed against the Standards Committee's finding that she failed to follow paragraphs 3(1) and 3(2) of the Code of Conduct and their decision to suspend her for six months, reduced to four months if during that period the Councillor sends a letter of apology to Great Linford Parish Council and the clerk to the Council and undertakes training on the Code of Conduct. Permission to appeal was allowed on the sanction only.
- 3.67 The Councillor's grounds of appeal were as follows:
- The Hearings Sub-Committee failed to take into account medical factors;
  - The Investigating Officer failed to request further information from the GP when invited to do so in the GP's letter. Recently her prescription for tablets which were known to affect change of personality had been discontinued by her GP;
  - The Sub-Committee had not responded to the Councillor in respect of the apology and retraining programme; and
  - The Sub-Committee added a condition to the determination when the case had already been closed.
- 3.68 In deciding whether the sanction applied was reasonable and proportionate, the appeals tribunal took the following matters into consideration:
- Standards for England's guidance on sanctions, which states that suspension may be appropriate for those cases involving bullying;
  - The matter was potentially so serious as to merit the maximum suspension available as there was a pattern of behaviour over a period of time which amounted to bullying;
  - The Councillor had not tried to argue that there was any justification for her treatment of the Parish Clerks; and
  - This type of bullying and disrespectful behaviour was not only distressing to the individuals concerned but also detrimental to the good governance of the Parish Council and was a very serious matter.
- 3.69 The appeals tribunal therefore agreed that a sanction of six months' suspension was proportionate to the breach. It then considered whether there were any mitigating factors that might point to a lesser penalty being imposed.
- 3.70 Although the Councillor had apologised to the Parish Council Clerk at the Standards Committee hearing, the tribunal gave the apology little weight as a mitigating factor, as to demonstrate appropriate contrition it should have been made much sooner.
- 3.71 The Sub-Committee addressed its mind to the issue of the Councillor's medical history, and although they did not dispute that she had long term health problems, concluded that there was no evidence to support her assertions that her behaviour was caused by her medical condition or medication. The Councillor submitted a letter to the appeals tribunal which stated that there had been some changes to her medication, however there was nothing in the letter to indicate that the medication she had taken would have contributed to the sort of behaviour that led to the finding of the breach of the Code or that would justify sustained bullying and bad behaviour. The tribunal therefore did not consider that there was substantiated evidence that the Councillor's actions had been affected by ill-health.

3.72 The appeals tribunal did not feel that there were any persuasive mitigating factors and concluded that six month's suspension was appropriate. Although they were in some doubt as to whether the Councillor should be offered the option of a reduction in suspension if she gives a written apology and undertakes training, they noted that she had apologised at the Standards Committee hearing and were prepared to give her the benefit of the doubt.

#### London Borough Richmond upon Thames

3.73 A Councillor appealed against the Standards Committee's determination that he had failed to treat others with respect, and the sanction applied which was to censure him.

3.74 The appeals tribunal determined that the Councillor did not fail to follow the provisions of the Code for the following reasons:

- The Councillor sent an e-mail expressing concerns about the Council's Planning service. Although the appeals tribunal recognised that the manner in which the Councillor raised the concerns in that e-mail was inappropriate and the language used was intemperate, it did not give rise to a breach of the Code;
- The e-mail related to the Planning Department and was not directed at an individual officer, therefore it fell within the ambit of comment that it was acceptable for a Councillor to make. Councillors should not be deterred from raising concerns with regard to Council services; and
- An earlier e-mail sent by the Councillor, which had been critical of an officer in a robust and intemperate fashion (and was copied to a member of the public and senior officers) would not have been pleasant for a relatively junior officer to receive. However, on its own, it was too insignificant to amount to disrespect and therefore a breach of the Code. Had it been coupled with other instances of inappropriate behaviour towards that officer or other individual officers it might have amounted to disrespect.

3.75 The appeals tribunal was of the view that this matter should perhaps not have passed the Council's assessment of whether a complaint should be referred for investigation – either on the grounds that if proven it would not amount to a breach of the Code or alternatively that it was too minor. The appeals tribunal had concerns that no attempts had been made to deal with this issue in a more informal way first, for instance, the Councillor being spoken to by the Monitoring Officer or the Leader of the Council.

3.76 Therefore, the appeals tribunal rejected the finding of the Standards Committee.

3.77 **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 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.

### Background Documents

(All above case tribunal decisions available at:

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