



Report of the Director of Legal and Democratic Services

Standards Committee

Date: 21st December 2006

Subject: Adjudication Panel for England Annual Report

Electoral Wards Affected:

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. The purpose of this report is to advise Members of the Committee of the contents of the Adjudication Panel's Annual Report for the year ending 31st March 2006.
2. This is the second Annual Report from the Adjudication Panel. The first report was published in March 2005 and concentrated on the early years of the Panel's work.
3. The second Adjudication Panel Annual Report concentrates on several aspects of the Panel's work:
 - Casework
 - Appeals against local standards committee determinations
 - Work with external parties
 - Complaints against the Adjudication Panel
 - High Court appeals
4. Members of the Committee are asked to note the contents of this report.

1.0 Purpose Of This Report

- 1.1 To advise Members of the Committee of the contents of the Adjudication Panel's Annual Report for the year ending 31st March 2006.

2.0 Background Information

- 2.1 This report is the second Annual Report from the Adjudication Panel. The first report was published in March 2005 and concentrated on the early years of the Panel's work. The Annual Report can be downloaded from the Adjudication Panel's website http://www.adjudicationpanel.co.uk/documents/pdf_annual_report_2006_for_website2.pdf or alternatively a hard copy is available from the author of this report.
- 2.2 The second Adjudication Panel Annual Report concentrates on several aspects of the Panel's work:
- Casework
 - Appeals against local standards committee determinations
 - Work with external parties
 - Complaints against the Adjudication Panel
 - High Court appeals
- 2.3 The report also has a series of appendices which provide advice as to sanctions, casework statistics and the Adjudication Panel's recommendations regarding amendments to the Code of Conduct.

3.0 Main Issues

Casework

- 3.1 The bulk of the Adjudication Panel's workload for the past year has arisen from references from Ethical Standards Officers. But the year has also involved case tribunals dealing with appeals against decisions by local standards committees. It is anticipated that matters of this kind will assume an increasing proportion of the Adjudication Panel's workload in future years.
- 3.2 During the year March 2005 – March 2006 66 references were received from Ethical Standards Officers compared with 82 in the previous year.
- 3.3 Whilst there has been no significant change in the amount of cases which resulted in a finding that there was a breach of the Code of Conduct, there has been an increase in the proportion of cases which have resulted in a decision not to impose any sanction. This change in turn has led to less Members being subject to a period of disqualification or suspension.
- 3.4 The reasons for this change are partly that the case tribunals were satisfied that the Member was unlikely to repeat the failure to follow the Code and had shown genuine remorse for their actions. A second reason is that case tribunals have heeded decisions from the High Court which have tended to discourage the use of the sanction of disqualification.
- 3.5 A breakdown of the types of cases considered show that there has been a decrease in the number of cases alleging disclosure of confidential information and an increase in the number involving allegations that the conduct of the Member has

brought his or her office into disrepute. According to the Adjudication Panel this supports the argument for amending paragraph 4 of the Code so as to limit its operation to actions taken in a Members' official capacity but subject to making some specific provision to allow consideration of whether criminal conduct by a Member should result in suspension or disqualification.

- 3.6 The casework statistics (Appendix D of the Annual Report) show that the majority of cases considered by the Adjudication Panel this year concerned Parish or Town Councils (62%), followed by District, Borough and City Councils (26%). The majority of complaints considered were made by Monitoring Officers (32%), followed by fellow Councillors (30%). Finally the largest proportion of complaints came from the South East of the country (21%) which has the largest population of the regions, followed by the South West (17%) which has the largest geographical area. Yorkshire and Humberside only accounted for 6% of the cases considered.

Appeals against local standards committee determinations

- 3.7 18 applications for appeals were received by the Adjudication Panel this year compared with 8 previously. As a percentage of total standards committee determinations, the applications for appeal have increased from 11% to 32%. Only 11 of these were allowed to proceed, and the Appeals Tribunal determined 6 of these. Of those 6, half were upheld.
- 3.8 However it is also of note that these cases have represented the first decisions taken by the standards committees concerned, some of whom seem to be having difficulty coming to terms with procedural issues and how to produce a reasoned decision. Some 38% of appeals have cited alleged procedural irregularity by the standards committee as a ground for appeal.
- 3.9 According to the President of the Adjudication Panel the early evidence suggests that there should be a requirement for the hearings by standards committees to be chaired by a lawyer who is familiar with the Competency Framework for Chairmen and Members of Tribunals. Regarding the make up of the committees, the President suggests that there is unlikely to be public confidence in the procedures unless the number of independent members on the committee is at least equal to the number of Councillors. Although he also acknowledges that due to the local nature of standards committees it may be impossible to avoid the impression of apparent bias even though it may not exist.

Work with external parties

- 3.10 In the last year the President of the Adjudication Panel for England has met regularly with the Chief Executive of the Standards Board for England, has liaised with his counterpart in Wales and Scotland and taken part in joint training sessions, and attended some training for members of local standards committees as well as speaking directly to some Councillors.
- 3.11 The Adjudication Panel has also responded to the consultation on the amendments to the Code of Conduct. A copy of their response is Appendix C to the Annual Report.

Complaints against the Adjudication Panel

- 3.12 The Adjudication Panel for England received 12 complaints in total in the last year. 9 of these were dismissed as having no substance as the complaints were made by Councillors who were unhappy with either the sanction that had been applied to them, or the outcome of their High Court appeal.
- 3.13 Other complaints were largely related to the choice of location for the case tribunal and the facilities available in the hearing room.

High Court appeals

- 3.14 Members who have been found in breach of the Code of Conduct by a case tribunal are able to appeal to the High Court. 6 appeals have been lodged in the last year. Two of these were dismissed by the High Court, one was struck out, and two had the sanctions amended.
- 3.15 A full list of every appeal which has been lodged, the outcome and a brief summary is available in the Annual Report.

Guidance on decisions to be made by a case tribunal where a Member has been found to have failed to comply with the Code of Conduct

- 3.16 Appendix A of the Annual Report provides updated guidance from the President of the Adjudication Panel on sanctions to be imposed by case tribunals.
- 3.17 When considering the sanction to be applied, case tribunals are asked to consider if there are any mitigating or aggravating factors. The guidance provides a list of such factors, which can be seen below:

Mitigating factors:

- An honestly held (although mistaken) view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.
- A Member's previous record of good service.
- Substantiated evidence that the Member's actions have been affected by ill-health.
- Recognition that there has been a failure to follow the Code; cooperation in rectifying the effects of that failure; an apology to affected persons where that is appropriate; self-reporting of the breach by the Member.
- Compliance with the Code since the events giving rise to the determination.
- Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.

Aggravating factors:

- Dishonesty.
- Continuing to deny the facts despite clear contrary evidence.
- Seeking unfairly to blame other people.
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
- Persisting with a pattern of behaviour which involved repeatedly failing to abide by the provisions of the Code.

- 3.18 The case tribunals are also asked to bear in mind their aim of upholding and improving the standard of conduct expected of Members, as part of the process of fostering public confidence in local democracy. The sanction should be such as to discourage the Member from any further breaches of the Code and to prevent similar breaches in others. The sanction should also take into account the consequences of the breach and the possible consequences if there were none.
- 3.19 Suspension is recommended where the circumstances are sufficiently serious to give rise to the need to impress upon the Member the severity of the matter and the need to avoid repetition. Partial suspension is judged to be more appropriate in circumstances where the Member is judged to have difficulty in understanding the limitations that the Code places on them in relation to certain areas, but that this difficulty does not prevent them from acting properly in other areas.
- 3.20 Factors which may lead a case tribunal to impose a lesser sanction than those above, or no sanction at all, include:
- An inadvertent failure to abide by the Code of Conduct.
 - An acceptance that despite that lack of suspension or partial suspension, there is not likely to be any further failure to comply on the part of the Member.
 - The absence of any harm having been caused or the potential for such harm as a result of the breach of the Code.

4.0 Implications For Council Policy And Governance

- 4.1 The Adjudication Panel's advice with regard to sanctions provides useful guidance for future local determinations, and promotes good governance by introducing a level on transparency and consistency in the sanctions applied nationally.
- 4.2 The President of the Adjudication Panel's recommendation that standards committees should be chaired by a lawyer when conducting hearings is contrary to the Council's current arrangements. In order to comply with this advice amendments would have to be made to the make up of the Standards Committee and the Parish and Town Council hearings sub-committee.

5.0 Legal And Resource Implications

- 5.1 The various High Court appeals which are summarised in this Annual Report provide useful case law for interpreting the Code of Conduct.
- 5.2 There are no resource implications to this report.

6.0 Conclusions

- 6.1 The Adjudication Panel have published their Annual Report for the year ending March 2006. The report provides details on useful case law and guidance on the Code of Conduct and how to apply sanctions.
- 6.2 The President of the Adjudication Panel's has recommended that standards committees should be chaired by a lawyer when conducting hearings, which is contrary to the Council's current arrangements. In order to comply with this advice amendments would have to be made to the make up of the Standards Committee and the Parish and Town Council hearings sub-committee.

7.0 Recommendations

7.1 Members of the Committee are asked to note the contents of this report.