



Report of the Assistant Chief Executive (Corporate Governance)

Standards Committee

Date: 17th February 2010

Subject: First-Tier Tribunal (Local Government Standards in England): Decisions of Case Tribunals

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. This report provides summaries of the recent decisions made by the First-Tier Tribunal (Local Government Standards in 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 First-Tier Tribunal (Local Government Standards in England) in its role of determining allegations of misconduct. Further details of specific cases are available at www.adjudicationpanel.tribunals.gov.uk

2.0 Background Information

- 2.1 Six case tribunal decisions and eight appeals tribunal decisions have been published since the last report. The decisions are summarised below, in order that Members of the Committee may consider if there are any lessons to be learned by this authority. Copies of each case summary published on the First-Tier Tribunal (Local Government Standards in England) 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

Borough, City or District Councils

Cornwall Council

- 3.1 It was alleged that a Councillor had breached paragraphs 5 and 6(a) of the Code of Conduct by using his position as a Member improperly to confer on, or secure for, himself an advantage and placed himself in a position which might reasonably lead a member of the public to believe that he was acting in such a manner by offering to advise a group of residents on a licensing application to which they objected, and to present their case at the licensing panel for a fee of £400.
- 3.2 The Council's Licensing Committee was due to consider an application by Reef Island for the variation of its premises licence. Prior to this, the Councillor discussed the application with two members of the residents group, Mr and Mrs M, who he had known for many years. He offered to give his help and advice.

- 3.3 Mr and Mrs M sent an e-mail to those organising a meeting of the residents group, in which they stated that the Councillor was prepared to provide support and advice and that he would be charging £400 for his services. The Councillor had no knowledge that this e-mail had been sent until some months later. This e-mail showed that there had been a fundamental misunderstanding of the basis on which the Councillor had offered his help and that he had indicated to Mr and Mrs M that the local licensing lawyer was likely to charge in the region of £400 for initial advice.
- 3.4 A group of local residents objected to the application and held a meeting to discuss their objections and find a way forward. The Councillor was invited to attend this meeting by Mr and Mrs M. Prior to the Councillor's arrival at the meeting, Mr and Mrs M informed everyone of his offer to represent them at a cost of £400. When the Councillor arrived at the meeting he provided advice to the residents to the effect that they had limited grounds on which to object to the Licence being granted as trading had not started yet.
- 3.5 The meeting was not noisy or rowdy, however there were little groups engaged in side conversations discussing what had been said and so there was some background noise which the Councillor found distracting and which did not assist him with hearing clearly what he was being asked or what was being said.
- 3.6 The Councillor was asked a question about the fees he would charge for representing the residents. In response he confirmed he would charge £400. The Councillor believed he was being asked what the likely cost would be of seeking expert advice. The Councillor was subsequently quoted in a local newspaper as saying that the meeting was noisy and he thought he was being asked the likely cost of representation by the local Licensing Solicitor. The Councillor claims that he did not offer to represent the residents, let alone for a fee.
- 3.7 The residents agreed that they would represent themselves, and some time after the meeting Ms I telephoned the Councillor to thank him for advice and confirmed that the residents had decided to represent themselves. The Councillor confirmed that he did receive a call and this was to thank him for his attendance and his advice.
- 3.8 The case tribunal considered that this was an appropriate matter to take forward to investigation and a hearing. The Councillor claimed that it was one huge misunderstanding arising out of one misconstrued conversation with Mr and Mrs M. There was evidence that those who had been at the meeting had either a definite recollection of what was said or varying and vague ones. However, there was more vague than certain evidence.

- 3.9 The case tribunal came to the conclusion that the evidence did not support the allegations, and therefore that there was no breach of the Code. The case tribunal advised the Councillor to take every precaution to ensure that a similar situation does not arise in the future.

Isle of Wight Council (i)

- 3.10 It was alleged that a Councillor had breached the Code of Conduct in dealings she had with Members and officers of the Council in connection with applications for planning permission which she had made to the Council.
- 3.11 The Councillor submitted an outline planning application to the Council for her home and hotel. The Council consulted the Town Council (of which the Councillor was also a Member), who considered the application. The Councillor declared a prejudicial interest and withdrew from the meeting whilst her application was being discussed.
- 3.12 At the next meeting of the Town Council, the Councillor raised questions about her application, and further discussion ensued. The Chair agreed that the additional points raised should be sent to Isle of Wight Council. The Councillor did not declare an interest at this meeting. The next day, the Councillor instructed the Town Clerk what she should write to the Council in relation to her application.
- 3.13 The Councillor was provided with advice from planning officers that her application would not attract an officer recommendation for acceptance or Member approval. However, she submitted an application in line with the original proposals.
- 3.14 The Councillor asked three fellow Group Members to speak on her behalf at the Planning Committee meeting. Two of the Members refused and one (Councillor W) agreed to speak on her behalf. Another Group Member (Councillor P) asked to speak on the Councillor's behalf as Housing and Homelessness Champion. The day before the meeting, the Councillor asked another Councillor to speak on her behalf, however he accepted advice not to speak on the day. As well as Councillors W and P, another Councillor (Councillor C) spoke in support of the Councillor's application.
- 3.15 The Planning Committee voted to approve the application, however planning consent was delayed for a 'cooling off' period to allow officers to report back to the Committee for further consideration.
- 3.16 The Councillor then began negotiations with senior planning officers to revise her application so as to attract an officer recommendation for approval of a

revised application. The Councillors' meetings with planners did not resolve the difference between the scheme she wanted and officers' concerns about overdevelopment.

- 3.17 The officer's cooling off report included a section regarding concerns about the lawfulness of the Planning Committee's decision in relation to the Councillor's application, including references to bias, breaches of the Code of Conduct and criminal offences. Senior Members and officers believed that its publication was likely to cause reputational damage to the Council. It was understood that its publication could only be avoided in the event of the Councillor permanently removing her application from the Planning Committee's agenda.
- 3.18 The Councillor withdrew her application from the upcoming Planning Committee meeting and submitted a revised application, however it was incomplete and the planning officer wrote to her agent listing the information required for the revised application to be registered and considered. The Councillor informed officers that her original application should return to the next Planning Committee meeting.
- 3.19 The Councillor was then asked to withdraw her application by the Deputy Leader which she agreed to do if her revised application could be considered at the next Planning Committee meeting. Further discussions with officers took place and the Councillor was informed that it was unlikely that the revised application could be registered and advertised in time for the next meeting. The Councillor's original application went to the Committee and was refused.
- 3.20 The tribunal considered that by speaking about her application at the Town Council meeting and interfering with the way the Town Council's position was reported to the Planning Authority, the Councillor had breached the Code of Conduct by seeking to influence a decision about a matter in which she had a prejudicial interest, not treating others with respect and using her position as a Member improperly to confer or secure for herself an advantage.
- 3.21 The case tribunal also had no doubt that the Councillor was seeking to confer an advantage on herself by asking influential Members of the Council address the Planning Committee. She also sought to confer an advantage on herself by seeking to have her revised application registered on the understanding that the required information could thereafter be brought into the office. By doing this, the tribunal also found that she had sought to compromise the impartiality of officers.
- 3.22 Finally, the case tribunal was also of the view that the Councillor's actions had the effect of bringing her own office as Councillor into disrepute and also brought the Council itself into disrepute.

3.23 The tribunal was of the view that the Councillor's breaches of the Code were serious. The Councillor was disqualified for two years.

3.24 In Leeds, the Code of Practice for the Determination of Planning Matters, which is contained in Part 5 of the Council's Constitution, advises Members that they should notify the Monitoring Officer of their own planning applications (and those of a relative or employer where known), or where they are employed as an agent. Members are also advised to consider whether it is advisable to employ an agent to act on their behalf in dealing with officers and any public speaking at the Plans Panel meeting. Members may speak at a Panel meeting in accordance with the Public Speaking Protocol either as an individual, representative or ward member. However, where they might be regarded as having a personal and prejudicial interest in the application then they may attend and speak in accordance with the protocol but only for the purpose of making representations, answering questions or giving evidence relating to the matter in the same manner as would apply to a normal member of the public. Immediately after doing so they must leave the meeting room whilst the meeting considers the proposal even though members of the public may remain.

Isle of Wight Council (ii)

3.25 It was alleged that Councillor J had breached the Code of Conduct in the dealings he had with officers of the Council, following a decision of the Council's Planning Committee to give approval to an application for planning permission which had been sought by another Member of the Council.

3.26 Councillor B submitted a planning application which was approved subject to a 'cooling off' period. The Chief Executive asked Councillor J, as Deputy Leader of the Council, to speak to Councillor B and persuade her to withdraw her application because of the damage that would be caused if the cooling off report were published. Councillor J spoke to Councillor B and she agreed to withdraw her application.

3.27 The application was re-submitted and the Chief Executive again asked Councillor J to persuade Councillor B to withdraw her application. Councillor J phoned Councillor B who said she would withdraw her application if her revised application could be considered at the next meeting. She asked Councillor J to accompany her to a meeting with planning officers, which he did. The objective of the meeting was to enable a revised application to be registered and advertised in time for the next Planning Committee meeting.

3.28 After reviewing the evidence, the case tribunal was satisfied that at some stage during the meeting the phrase 'bending the rules' or words to similar effect were used, and that the phrase was used at least once by Councillor J. He used the term in the context of allowing Councillor B's application to be registered on the

understanding that such specific supporting information as remained outstanding could be delivered within 24 or 48 hours, or further time should be given to complete the application.

- 3.29 The Councillors met with planning officers again two days later, and questioned the timetable for submitting applications. Councillor J suggested that the Planning Committee chairman could be asked to include consideration of the revised application as an urgent item. After Councillor B had left the meeting, Councillor J told one of the officers that if the matter of the revised planning application was not 'sorted out' he would have all Conservative Members withdrawn from the Planning Committee.
- 3.30 The case tribunal considered that Councillor J had given very little thought to the pitfall of being regarded as helping a fellow Member pursue a matter which she was undertaking in her private capacity. It was reckless for him to assume that because he was on a mission assigned to him by the Chief Executive no criticism could or should be attached to him for the way he conducted his pursuit which he saw as a compromise.
- 3.31 In the opinion of the case tribunal, Councillor J's actions at the first meeting with officers could reasonably be regarded as likely to compromise the impartiality of the officers with whom he was dealing. The case tribunal also considered that Councillor J had attempted to use his position improperly to confer an advantage for Councillor B.
- 3.32 Whilst the particular circumstances of this case are unlikely to recur, the case tribunal considered that there is a very considerable risk that Councillor J will maintain what appears to be a cavalier view of his responsibility to abide by the Code of Conduct, particularly in his future dealings with officers.
- 3.33 The case tribunal decided that suspension for a period of two months would be appropriate. The tribunal recommended that Councillor J is provided with training on the provisions of the Code of Conduct and the underlying principles of Standards of Conduct in Public Life.

Isle of Wight Council (iii)

- 3.34 It was alleged that Councillor C had breached the Code of Conduct by making representations to a Planning Committee on behalf of a friend who had submitted a planning application.
- 3.35 Councillor B submitted a planning application for a change of use of her hotel and home. Councillor C and Councillor B had a relationship which constituted a friendship in respect of the provisions of the Code of Conduct.

- 3.36 Councillor C agreed to speak on Councillor B's behalf at the Planning Committee meeting. The Council had a practice of allowing the applicant or some other person speaking on behalf of the applicant to address the Planning Committee meeting which was considering whether to grant a planning application. It was in this capacity that Councillor C acted.
- 3.37 A few minutes before Councillor C entered the Planning Committee meeting, the then Chair of the Council warned her that, if she spoke on the application, she might breach the Code of Conduct. At no time had she been approached with similar views by the Monitoring Officer, Planning officers, Chair of Planning or the Cabinet Member.
- 3.38 Councillor C did not seek any advice from the Monitoring Officer, or any other officer or Member on whether it was appropriate for her to speak at the Committee meeting in support of Councillor B's application.
- 3.39 Councillor C did not declare any interest at the Committee meeting.
- 3.40 Councillor C was found to have a personal and prejudicial interest which should have prevented her from taking part in the Council's discussion of the application. The personal interest arose because the Council's decision on the application would affect the financial position and wellbeing of a friend. The case tribunal judged that a member of the public with knowledge of the facts would reasonably regard the interest as so significant as likely to prejudice Councillor C's judgement of the public interest. Therefore, Councillor C was found to have breached paragraph 12(1)(a) of the Code of Conduct.
- 3.41 The case tribunal also considered that Councillor C had breached paragraph 12(1)(c) of the Code by seeking improperly to influence a decision in which she had a prejudicial interest. The Councillor was also found to have breached paragraph 5 of the Code of Conduct, as the reputation of the Council would be affected by a finding that a Councillor has improperly participated in consideration of an application from a fellow Councillor.
- 3.42 The case tribunal did not consider that Councillor C had used her position improperly to secure an advantage for another person, as that provision would usually apply where a Councillor was seeking by use of his or her office to bring about a situation that a non-Councillor could not so easily achieve, which was not the case here.
- 3.43 The case tribunal considered that, despite the time which has elapsed since the events under consideration, Councillor C has still not grasped the implications of

the Code of Conduct and therefore recommended that further training should be provided for her (and possibly others) on the Code.

- 3.44 The case tribunal was concerned that throughout the hearing, Councillor C maintained that she was not in breach of the Code of Conduct despite clear evidence to the contrary. However, the case tribunal took into account the fact that her intentions were honourable and decided that in the circumstances it was sufficient to censure her conduct.
- 3.45 In Leeds, there is specific advice available for Members involved in planning applications contained within the 'Code of Practice for the Determination of Planning Matters' contained in Part 5 of the Council's Constitution. The Code of Practice advises Members to comply with the Code of Conduct in relation to declaring personal or prejudicial interests, but also advises Members to avoid contact with applicants or their representatives, to avoid becoming involved in the processing of the application, and to report any contact with the parties to the Chief Planning Officer. Members of Plans Panels and Licensing Committee are also provided with specific training relating to interests, and predetermination and bias.**

Taunton Deane Borough Council

- 3.46 It was alleged that a former Councillor had failed to comply with paragraphs 5 and 6(b) of the Code of Conduct in that he had improperly used a Council laptop and that material of a highly offensive nature was discovered on it.
- 3.47 The former Councillor raised a request with the Council's IT department to examine his laptop. A few months later, the former Councillor was issued with a new laptop due to ongoing problems with his current laptop.
- 3.48 During preparation of the former Councillor's first laptop for use as a training machine, the Council's IT staff found offensive material on it. Following a complaint and investigation about the first laptop, the former Councillor's second laptop was examined and was found to contain material in breach of copyright.
- 3.49 The former Councillor admitted, and the case tribunal found, that he had downloaded unauthorised file sharing software and unauthorised files and had let members of his family, including his sister and his niece, use his Council laptop for their own personal use.
- 3.50 The former Councillor signed a form on receipt of his laptop stating that the equipment was not to be used for unauthorised purposes nor by unauthorised people. The former Councillor also accepted that he had received a letter from the Member's Services Manager which attached the Council's IT policy. That policy allowed occasional personal use of the Council's IT equipment and

internet, but prohibited the downloading of software for personal use. The policy also prohibited personal use that disregarded the policy, including the provisions regarding misuse and the access or development of offensive and illegal material and which would damage the reputation of the Council.

- 3.51 Some of the material downloaded by the former Councillor did not relate to Council business, some of which was obtained in breach of copyright, and some of which was of an offensive nature. The case tribunal considered that the former Councillor had not acted in accordance with the Council's reasonable requirements when using the resources of the authority, and had therefore breached paragraph 6(b)(i) of the Code of Conduct.
- 3.52 The case tribunal also found that the former Councillor had brought his office into disrepute, in breach of paragraph 5 of the Code of Conduct. A member of the public knowing that the former Councillor had not only used, but also allowed his family to use, his Council owned laptop and the purpose for which the laptop was used, would have, in the tribunal's opinion, grave concerns about his judgement, honesty and integrity.
- 3.53 The case tribunal found these to be very serious breaches involving the misuse of publicly funded Council resources in clear contravention of Council policy which the former Councillor had signed up to and fully admitted breaching.
- 3.54 As the former Councillor had resigned from the Council and was no longer a Councillor, the tribunal could only impose a censure or disqualification. The tribunal was of the view that disqualification was appropriate even if suspension were an available sanction in this case.
- 3.55 The tribunal was of the view that the gravity in which the Council treated this conduct if carried out by Council employees and the very serious consequences for employees if found guilty of this conduct, should be reflected in the sanction imposed in respect of Councillors. The tribunal therefore decided to disqualify the former Councillor for a period of two years.
- 3.56 In Leeds, IT equipment is provided to Members for use in their capacity as a Councillor. Members have to agree to abide by the Guidelines for Members Using Council ICT Equipment which is referenced in the Protocol on Member Officer Relations. The guidelines specifically list the types of websites which Members are not permitted to visit using the Council ICT equipment, and this list includes inappropriate websites, such as those showing pornography. The policy also states that Members should not download programmes from the internet, except where authorised to do so by the Chief IT Officer, and that Council and ICT equipment should not be used by anyone other than the Councillor to whom it is supplied.**

Parish and Town Councils

Compton Bishop Parish Council

- 3.57 It was alleged that a Councillor had breached the Code of Conduct by publishing and distributing three newsletters written by him and by other material printed in local newspapers. It was alleged that the Councillor had failed to treat others with respect, had been bullying and had brought his office or authority into disrepute.
- 3.58 In October and September 2008 the Councillor placed four advertisements in local papers about his role as a Parish Councillor and giving his view of the performance of the Parish Councils of which he was a Member. The advertisements referred to grating and a bench. In response, the Parish Council Members, with the exception of the subject Member, issued two factsheets putting forward their side of the story.
- 3.59 Following the issue of a Parish Council newsletter in October 2008, the Councillor decided to issue three newsletters of his own relating, amongst other things, to the grating and the bench.
- 3.60 The case tribunal considered the Councillor's alleged actions and made findings of fact, as follows:
- The Councillor wrote to the police alleging fraud in relation to the bench. He also raised concerns about the safety of it which were investigated and found to be without substance. The case tribunal found, on the basis of the signed record of the interview carried out by the Investigating Officer with the Chairman of the Parish Council, that the Councillor had seen receipts in respect of the bench and should not have had any reasonable grounds for questioning the Parish Council actions in providing the bench;
 - One of the Councillor's advertisements inferred that as a direct result of him reporting a defective highway grating the Parish Council voted him off its highways advisory group, however the Parish Council minutes show that he was removed for reasons unconnected to the grating. There was no evidence to support the Councillor's contention that reporting the grating led to his removal from the group;
 - The Councillor published three newsletters written by him and arranged for their distribution to each household in the parish. The tribunal found that a reasonable person reading the first newsletter would infer that the Parish Council had in some way dealt with the grant for the provision of the bench improperly. The tribunal further found that there were no grounds on which a reasonable person, who had the same knowledge as the Councillor, could have thought that there had been any impropriety;
 - The tribunal found that a reasonable person reading the first newsletter would also infer that both the Clerk and the Chairman of the Parish Council

- had behaved improperly in dealing with the bench and that in some way inaccurate accounting was involved on their part. The Councillor had produced no evidence to support the implications he made in his newsletter and there were no grounds on which a reasonable person with the same knowledge as the Councillor could have thought that there had been any impropriety on the part of the Clerk or the Chairman;
- In his second newsletter the Councillor stated that the Chairman was a 'very twisted man' and 'a disgrace to this Council'. The tribunal found no evidence to justify these comments in respect of the Chairman;
 - In his third newsletter, the Councillor claimed that some of the Parish Council's minutes were not accurate. He also claimed that the Council refused to add his amendments to the minutes. The Councillor gave no clue as to what his amendments were nor did he provide any support for his view that the minutes are not accurate. The tribunal therefore found that the minutes were accurate and the Councillor's allegations were without justification;
 - The Councillor placed a further advertisement in a local newspaper stating the Parish Council had purchased a bench for a lesser sum than the grant received for that purpose. A similar complaint appeared in another local newspaper a week later. The tribunal found these claims to be unreasonable;
 - In his second newsletter, and in a letter to the Chairman of the Parish Council, the Councillor claimed that the temporary Clerk to the Council had not been legally appointed. The tribunal found that the Councillor's comments about the manner of the appointment of the temporary Clerk to have no foundation in fact and to be irrational.

- 3.61 Due to his comments in relation to the bench, the Chairman's refusal to call a meeting to discuss gratings and the appointment of the temporary clerk, the case tribunal found that the Councillor had failed to treat the Chairman, the temporary Clerk and the other Members of the Parish Council with respect. The language in the newsletters was insulting and went far beyond that necessary to express his opinions about the conduct of the Parish Council and its Members.
- 3.62 The case tribunal found that the Councillor's newsletters were insulting and without justification. The sustained and personal nature of the Councillor's attacks and the lack of any basis for his views meant that his conduct breached paragraph 3(2)(b) of the Code and amounted to bullying of the other members of the Parish Council, particularly the Chairman.
- 3.63 The tribunal found that the Councillor has, without justification, implied that the Parish Council is guilty of financial impropriety, 'doctoring' its minutes, irrational behaviour in removing him from the highways advisory group, and accused the Parish Council of not properly appointing the temporary clerk. A reasonable

member of the public would conclude that a Council which indulged in such behaviour was disreputable, therefore the case tribunal found that the Councillor had breached paragraph 5 of the Code of Conduct.

3.64 The case tribunal also found that because of the number of publications produced by the Councillor, the adverse effect on the wellbeing of the other Parish Council Members was significant and amounted to the Councillor using or attempting to use his position as a Member improperly to confer on another person a disadvantage, in breach of paragraph 6(a) of the Code.

3.65 In considering what sanction to apply, the tribunal took into account the following mitigating and aggravating factors:

- The Councillor's honest but irrational view that his actions were justified;
- The fact the Councillor had made no complaints about breaches of the Code since April 2009 and the matters before the tribunal occurred before the end of 2008;
- The Councillor had eventually apologised in respect of his earlier breaches of the Code;
- The Councillor was apparently well meaning and appeared to manage to contribute to public life outside Parish Councils;
- In the three letters written by the Councillor to the Investigating Officer after he had been interviewed, he repeated many of his unsubstantiated accusations;
- The Councillor had attempted to justify his actions and he frequently repeated his groundless accusations to the tribunal;
- He had previously been suspended from the Parish Council for a period of three months in respect of conduct which was very similar in its nature to that before the tribunal;
- The Councillor had presented his accusation as arising from the fault of others when it was his own failure to ascertain and take account of the facts which was the true cause of his repeated groundless accusations;
- The Councillor had done his best to put his accusations in the public domain and to maximise the adverse impact of his accusations on the Parish Council and its Members;
- The Councillor's actions had breached a substantial number of paragraphs of the Code;
- The Councillor's conduct was repeated and over a substantial period of time.

3.66 In the tribunal's view it was necessary that a substantial sanction was imposed to demonstrate to others that the making of serious, insulting and unsubstantiated accusations over a considerable period of time was unacceptable and damaging to local government and the public's regard for members and their authorities. The tribunal decided that the disqualification of the Councillor for 18 months correctly reflected the seriousness of the case.

- 3.67 In Leeds, training is provided for Members on using public media appropriately. Members of the Standards Committee may also wish to consider whether it would be useful to include specific advice on this as part of the Code of Conduct training.**

Appeals against Standards Committee decisions

South Ribble Borough Council (i)

- 3.68 A Councillor appealed following a determination by the Standards Committee to censure him and require him to apologise to Councillor M in the form of a letter to be approved by the Chairman within 21 days of the hearing following a failure to comply with paragraphs 3(1) and 5 of the Code of Conduct.
- 3.69 The appeals tribunal determined that the Councillor did not breach the Code of Conduct because the circumstances of the conduct impugned did not fall within the ambit of the Code.
- 3.70 The Councillor is by profession a journalist. The matters which gave rise to the complaints considered by the appeals tribunal appeared in a small journal which the Councillor publishes and edits. This journal is not part of the business of the Council and in it the Councillor neither claims nor gives the impression of acting as a representative of the Council. While the Councillor's name frequently appears in the journal it is 'published for fun' and a member of the public would be in no doubt that the publication of this journal was not a matter which was the business of the authority.
- 3.71 Therefore, the appeals tribunal overturned the finding of the Standards Committee.
- 3.72 In Leeds, members of the Assessment Sub-Committee use the Code Matrix which ensures that the Sub-Committee considers whether the subject Member was acting, claiming to act, or giving the impression they were acting in their official capacity during the incident, and if not, no further action would be taken on the complaint.**

South Gloucestershire Council and Bitton Parish Council

- 3.73 A Councillor appealed against a determination of the Standards Committee to censure him for a failure to comply with paragraph 3(1) of the Code of Conduct.
- 3.74 The Councillor was given permission to appeal because:

- The Standards Committee's findings on breach seemed to be based on the view that the Councillor's comments were unreasonable and that is not the same as determining whether there was a failure to treat others with respect, and the link between the two findings is not clearly expressed in the decision; and
- The Standards Committee's decision contained no explicit reference to the right of freedom of expression enshrined in the European Convention on Human Rights, although it did appear to have considered whether the comments merited the higher protection given in English Law to the expression of political views.

3.75 The allegations against the Councillor were that he had breached the Code of Conduct at two Parish Council meetings:

- On 18th April 2008 it is alleged that the Councillor raised his hand and said 'I object to Councillor S being Chair as he is dishonest and totally untrustworthy'; and
- On 20th June 2008 the Councillor directed the following remarks to Councillor S:
 - (i) That he was dishonest;
 - (ii) That he had contempt for the Council; and
 - (iii) That he should resign.

3.76 The Councillor accepted that he had said the words alleged and the appeals tribunal therefore found as a fact that he had used the words and expressions set out above.

3.77 In the tribunal's view, by the April meeting things broadly stood as follows from the Councillor's point of view:

- He had good evidence that Councillor S was both in breach of planning conditions and of his personal undertaking to comply with these conditions;
- His parishioners were pressing him, in strong terms, to take action;
- There appeared from his discussions with the Clerk to be no way in which the Councillor could bring the matter before the Council for debate;
- The 'block voting' of the Liberal Democrats stifled discussion; and
- He believed himself to be under an obligation to raise the concerns of his parishioners at the Parish Council meeting.

3.78 Normally, the appeals tribunal would expect to find that an accusation of dishonesty breached paragraph 3(1) of the Code as a failure to treat a person with respect unless there were circumstances which justified the use of the word.

3.79 In the tribunal's view the following factors indicated that there had been a breach of the Code at the April meeting:

- On their face the words used by the Councillor are disrespectful;

- The meeting was open to the public and it would not be obvious to the public to what the Councillor was referring in order that they could form their own view as to whether Councillor S was dishonest; and
- The matter could have been pursued by way of a Code of Conduct complaint and there was arguably no need to raise the matter at the meeting.

3.80 However, in the tribunal's view, these factors were outweighed by the following matters:

- The Councillor had good grounds to question Councillor S' honesty;
- The breach of the conditions was a planning matter and related to the role of Members, although often informally, in drawing breaches of planning control to the attention of the authority;
- A person's honesty is relevant to their suitability to act in a position such as chairing a Council meeting;
- The breach of the condition was raised by the Councillor's parishioners and was not apparently a personal grudge against Councillor S;
- There was considerable frustration on the Councillor's behalf at the apparent impossibility of getting the matter discussed by the Parish Council;
- The Councillor was not asked to explain his allegations, which he would have been happy to do so if he had been given the chance; and
- The Councillor was relatively inexperienced in local government.

3.81 Although close to the line the tribunal came to the judgement that in these circumstances the words used by the Councillor at the April meeting did not amount to a breach of the Code and were just about acceptable as part of the 'rough and tumble' of local politics.

3.82 In deciding whether the Councillor's comments at the June meeting were a breach the tribunal took into account that this was a second attack on Councillor S and the Councillor must have been aware by this time that other Councillors considered his comments unacceptable. In the tribunal's view, more neutral language could have been used to make the points the Councillor wished to raise.

3.83 However, the Councillor's comments were a response to being denied a full debate about a matter that was on the agenda, and it was widely known that this was a matter which the Councillor and others wished to discuss.

3.84 The tribunal concluded that the Councillor's response had been borne out of frustration, that his frustration was understandable, and that his comments were made in large part as a spur of the moment response when he realised that there was to be no debate about Members' conduct.

- 3.85 It was a fine judgement with strong factors indicating that the Councillor had breached the Code, however the tribunal considered that the factors it had identified as in the Councillor's favour outweighed those which indicated that the Code had been breached.
- 3.86 The tribunal therefore overturned the finding of the Standards Committee.
- 3.87 This case highlights the importance of the Hearings Sub-Committee providing clear reasons for finding a breach of the Code of Conduct, and explaining why the Member's behaviour constitutes a breach of each of the relevant paragraphs.**

Epping Forest District Council and Nazeing Parish Council

- 3.88 A Councillor appealed against a determination of the Standards Committee to censure, require her to apologise and receive training in relation to the Code and in particular its requirements relating to personal and prejudicial interests for a failure to comply with paragraphs 3(1) and 5 of the Code of Conduct.
- 3.89 The appeals tribunal determined that the Councillor did fail to follow these provisions of the Code. At three separate Planning Committee meetings, the Councillor said that Councillor O should declare a personal and prejudicial interest at all Planning Committee meetings as she is a property developer. At a Parish Council meeting she also read from a prepared statement, and illustrated her point with a contentious analogy. This led to letters being published in the local newspaper, including one from the Councillor in which she stated that she had referred to an analogy to illustrate a situation of a property developer chairing a Planning Committee. She also stated that she considered such a situation to be untenable with the potential to impact upon the integrity of the Parish Council and the possibility of unsafe outcomes on planning applications.
- 3.90 The appeals tribunal agreed with the Standards Committee's finding that the Councillor had failed to treat Councillor O with respect on three occasions. However it did not agree with the Standards Committee's finding that the Councillor did not bring the Parish Council into disrepute, because it was the Councillor's intention to draw attention to Councillor O's membership and role on the Planning Committee that brought the matter into the public arena. Further, the Investigating Officer concluded that the Councillor's comments at the Parish Council meeting and the resultant press coverage meant that the standing in which members of the public regarded members of the Council was adversely affected and that public confidence in Members being able to act in the public interest was similarly affected. The appeals tribunal therefore concluded that the Councillor's actions and comments at the Parish Council meeting, and the resultant publicity, had brought the Parish Council into disrepute.

- 3.91 The appeals tribunal decided that the action which is appropriate is for:
- The Councillor to be suspended from the Parish Council and its Committees for a period of three months;
 - The Councillor to be required to participate in an appropriate conciliation process through the Monitoring Officer and within 28 days to issue a personally signed written apology to Councillor O, and for a copy of the letter to be sent to the Monitoring Officer; and
 - If the Councillor complies with the action above then the suspension from the Parish Council and its Committees will cease.

- 3.92 In coming to this decision, the appeals tribunal took the following mitigating and aggravating factors into account:
- The Councillor had not followed guidance on the implications of the Planning Protocol and the Code of Conduct and had chosen to continue with her line of reasoning. The tribunal did not consider her actions to be dishonest, however they were misguided;
 - There is no evidence of previous complaints or breaches of the Code by the Councillor;
 - There has been no recognition by the Councillor that her actions have breached the Code of Conduct;
 - There is no evidence that the Councillor's actions have had a beneficial effect;
 - There is clear evidence that the Councillor has continued to deny the impact of her actions despite contrary evidence to this effect;
 - There is no evidence that the Councillor has tried to move the blame for her actions on others;
 - There is clear evidence that the Councillor has not followed guidance given on the provisions of the Code and their importance. She also repeated her position on personal and prejudicial interests on four separate occasions in a public arena;
 - The appeals tribunal cannot discount from its consideration that a personal element was behind the confrontation and has exacerbated the friction within the Parish Council;
 - The Councillor was described in warm terms by two of her Parish Council colleagues.

- 3.93 The appeals tribunal also noted the fact that the Councillor had already received training on the terms and implications of the Code of Conduct, had received further guidance during the incidents that led to the complaint, and in her view she was fully conversant with its terms and impact. The tribunal therefore came to the conclusion that there was little point in the Councillor undertaking further training on the Code of Conduct.

Teignbridge District Council

- 3.94 A Councillor appealed against a determination of the Standards Committee to censure her for a failure to comply with paragraphs 5 and 6(1)(a) of the Code of Conduct.
- 3.95 The Councillor had written a letter to the Chairman of the Trustees of the Information Centre requesting salary which she was owed. In the letter she acknowledged that this payment could put a strain on the Centre's finances and suggested that the Trust could apply through her for £500 from her Councillor's Community Fund.
- 3.96 In this case the Standards Committee rejected the Investigating Officer's opinion that there had been no breach of the Code. However, in rejecting the Investigating Officer's reasoning the Standards Committee simply said it did not accept his reasoning because its members were unable to construe the letter as meaning anything other than that the Trust could apply through the Councillor herself for monies from the Council's Councillors' Community Fund which would then enable the Trust to pay her submitted account, thereby using her position as a Member improperly to confer an advantage upon herself.
- 3.97 The Standards Committee gave no reason for finding that it was 'unable to construe' the letter as meaning 'anything other', and in the tribunal's view that undermined the Standards Committee's decision. In the tribunal's view, a reasonable Standards Committee would have acknowledged the strength of the Investigating Officer's reasoning and provided strong and clear reasons for rejecting his conclusion of no breach.
- 3.98 The following factors led the tribunal to find that the letter did not amount to a breach of the Code:
- The Councillor told the Investigating Officer that at no time did she seek to use her position improperly, for financial gain or to secure an advantage in anything. The tribunal considered that these protestations should not be dismissed, because the Councillor is acknowledged to be of good standing, to be a long serving Councillor, to have held the position of Chairman of the Council and is assessed by the clerk to Bovey Tracey Town Council as very strict in the way she approaches standards requirements;
 - The tribunal placed little weight on the comments which were critical of the Councillor's performance because there was a background of local politics and interests involved;
 - The amount of money involved was small and it is unlikely that the Councillor would have risked her good name over such a minor matter;
 - Her desire to help the Information Centre needed no further justification than her years of support for the centre as an employee;

- She had been open about her desire to help the Information Centre with the clerk to Bovey Tracey Parish Council and her letter referred to that earlier discussion;
- It is obvious that if the application through the Councillors' Community Fund was successful there would be an advantage to the Information Centre, but it would require strong evidence to lead to the next step that the money from the Fund was in fact to be used to pay the Councillor otherwise she would not be paid. Neither the Investigating Officer nor the tribunal found any such evidence nor did the Standards Committee beyond its reliance on the words of the letter; and
- If the Standards Committee had diligently assessed the reasoning of the Investigating Officer and grappled with finding convincing reasons for rejecting his report, there was a very real possibility that its decision would have been different.

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

Leicestershire County Council

3.100 A Councillor appealed against the Standards Committee's decision to impose a sanction of one month suspension, censure and training in relation to equalities and requiring the Councillor to pay the first £250 of the cost of that training, following a finding of failure to comply with paragraph 5 of the Code of Conduct. The appeal was limited to the sanction imposed.

3.101 In considering whether the sanction was fair, the tribunal took into account the following factors:

- The points made by the Councillor's representative about the impacts that the Standards Committee's decision had already had on the Councillor, and, while making no decisions as to their merits, his criticisms of the Standards Committee;
- The Councillor had been returned by the electorate when his comments which are the subject of the appeal were in the public domain, although the Standards Committee had not by then reached its decision;
- The Councillor had accepted his breach of the Code and the imposition of censure;
- In a statement, the Councillor accepted that his comments amounted to a lapse of judgement which he bitterly regrets and he has, at his own expense, undergone training. However the tribunal considered that his breach merited the imposition of a period of suspension to mark both the seriousness of the breach and to encourage others to keep the Code in mind when dealing with highly charged political issues;

- A Councillor with the experience and training of the subject Member should have been aware before the meeting of the likely prejudices that would be aired; and
- His comments were substantial and not a mere slip of the tongue which occurred in a relaxed jovial atmosphere.

3.102 The tribunal concluded that the suspension of the Councillor for one month was an appropriate sanction even against the background of the losses of the Councillor and taking into account his re-election.

3.103 In the tribunal's view, the Councillor's statement demonstrated that he accepted that he should not have made the comments, that he did now understand why they were objectionable, that he genuinely regretted his comments, and that the chances of him breaching the Code in this way again were negligible. The tribunal therefore found that no useful purpose would be served by the Councillor being required to undertake further training, and varied the sanction imposed by the Standards Committee by removing the requirement that the Councillor undertake further training in relation to equalities.

3.104 The tribunal therefore did not need to consider the view of the Standards Committee that, as there was no power under Regulation 19(3) of the Standards Committee (England) Regulations 2008 to require the Councillor to pay the first £250 of any training fee, the suspension should be increased to six weeks in order that the allowances lost by the Councillor could be put towards the costs of training. If the tribunal had considered this argument it would have rejected it because it would have been an attempt by another means to impose a sanction not provided for by Parliament.

3.105 This case highlights the importance of the Hearings Sub-Committee being aware of the sanctions that it can impose under the Regulations, which are listed in the Standards Committee Procedure Rules.

South Ribble Borough Council (ii)

3.106 A Councillor appealed against the Standards Committee's finding that he had failed to follow paragraph 4 of the Code of Conduct when comments he made which were published in local newspapers disclosed information of a confidential nature concerning the Council. The Councillor also appealed against the sanction applied, which was to suspend him for three months, and prior to resuming his duties, require him to undergo appropriate training on the current Code of Conduct, such training to be agreed with the Monitoring Officer and to include specific training on the issue of disclosure of confidential material.

- 3.107 The Councillor made some comments to the press about a large industrial site in his ward that has lain derelict for some years and has been the subject of discussions between the property owner and the Council. The Councillor is quoted as saying 'We could do a compulsory purchase on the land but then we could be looking at £10m to get it, it is all about negotiation'.
- 3.108 The Investigating Officer's report stated that 'The article contains reference to information contained in an exempt report dated 7 May 2008. All members had access to that report'. There is no indication of what that information actually is, and since elsewhere the Investigating Officer concedes that the figures quoted are not contained in the confidential report, and the background information that the problem had been in existence for some time can not be confidential, the tribunal was left to consider 'We could do a compulsory purchase on the land'. The tribunal considered that this is a general statement of the statutory powers of a local authority that are well known. The statement quoted does not necessarily imply that the Council has the intention of exercising these or any other powers in respect of the site in question or any other site.
- 3.109 Therefore, the tribunal rejected the finding of the Standards Committee.

Tonbridge and Malling Borough Council and East Peckham Parish Council

- 3.110 Two Councillors (Councillor C and Councillor G) appealed against the Standards Committee's finding that they had failed to declare a personal and prejudicial interest at several meetings, at which matters relating to a company of which they had been appointed as Directors (by the Parish Council) were discussed. The Councillors also appealed against the sanction applied which was to require them to submit a written apology and undertake mandatory training within 6 months.
- 3.111 At one of the meetings, the 2002 Code of Conduct was in force. The appeals tribunal found that the Councillors had a personal interest in any matter relating to the company of which they were Directors, however they failed to disclose the existence and nature of that interest. The appeals tribunal did not consider that this was also a prejudicial interest because paragraph 9(2)(c) of the 2002 Code applied here, as the matter related to a company of which the Councillors were appointed as Directors as representatives of the Parish Council, and therefore they were entitled to regard themselves as not having a prejudicial interest.
- 3.112 At the other meetings, the 2007 Code of Conduct was in force. The appeals tribunal found that the Councillors had a personal interest in matters relating to the company of which they were Directors. The tribunal noted that at one of the meetings, the Councillors did declare an interest in some of the items relating to

the company, but did not disclose the nature of that interest. At all of the other meetings they made no such declaration.

- 3.113 The appeals tribunal also found that the Councillors' personal interest was a prejudicial one as it was an interest which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it was likely to prejudice their judgement of the public interest. The exemptions set out in paragraph 10(2) of the 2007 Code did not apply.
- 3.114 Therefore, the tribunal found that the Councillors had breached paragraph 8 of the 2002 Code, and paragraphs 9 and 12 of the 2007 Code. The tribunal noted that the Investigating Officer had not found that the Councillors acted with any malice or intent to deceive or obtain any personal advantage. He also found that these breaches did not result in any financial harm to the Parish Council. It also appeared to the tribunal that the Councillors' mistaken interpretation of the Code had been condoned by their Parish Council colleagues and by implication the District Council, assuming that the Parish Council had received basic monitoring from the District Council as it should have done.
- 3.115 The appeals tribunal concluded that in the circumstances a letter of apology served no purpose and would not be reasonable. However, training on the Code of Conduct was clearly necessary, not as a punishment but as a useful tool to assist the Councillors in preventing any further breaches of the Code and to assist them in carrying out a difficult job.
- 3.116 **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.**

Coventry City Council

- 3.117 A Councillor appealed against the Standards Committee's decision to suspend him for three months and require him to submit a letter of apology for failing to comply with the Code of Conduct. The Councillor had no recollection of the alleged incident and therefore disputed that he had breached the Code.
- 3.118 As Lord Mayor of the Council, the Councillor hosted a community party. The appeals tribunal found, on a balance of probabilities, that sometime during the evening the Councillor, who had been drinking, had a collective dance with Ms X and some of her work colleagues. When Ms X left the dance floor and went to sit next to the complainant, the Councillor joined them. A conversation then took

place between the Councillor, Ms X and the complainant, some of which was of a sexually explicit nature.

- 3.119 On the facts found, the tribunal were of the view that the conversation that the Councillor had with the complainant and Ms X was highly embarrassing, offensive and disreputable. It would have offended anyone who heard it and was totally inappropriate. The Councillor failed to treat both Ms X and the complainant with respect and therefore he failed to comply with paragraph 3(1) of the Code of Conduct.
- 3.120 In addition, the appeals tribunal was of the view that by this disgraceful conduct, the Councillor had brought his office and authority into disrepute. Therefore, the Councillor had also failed to comply with paragraph 5 of the Code of Conduct.
- 3.121 The appeals tribunal was of the view that the Standards Committee's sanction was reasonable and proportionate and decided to uphold its decision to suspend the Councillor for 3 months and to require him to submit a letter of apology in a form specified by the Committee.

4.0 Implications For Council Policy And Governance

- 4.1 There are no implications for council policy.
- 4.2 By continually monitoring decisions made by the First-Tier Tribunal (Local Government Standards in England) 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 First-Tier Tribunal (Local Government Standards in 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 First-Tier Tribunal (Local Government Standards in England) 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>)