



Report of the Assistant Chief Executive (Corporate Governance)

Standards Committee

Date: 22nd April 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 Three case tribunal decisions and five appeals tribunal decisions have been published since the last report. Councillors can appeal to the High Court against a decision made by a case tribunal. One such appeal has also 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, and the full High Court judgement 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 a high court judgement, case tribunal decisions, and those which are appeals against local standards committee decisions, for ease of reference.

3.0 Main Issues

High Court Judgement

- 3.1 A Member of Gosport Borough Council appealed against a decision of a case tribunal which disqualified him for a period of two years. The Councillor, who had a great interest in live music festivals and had organised folk music festivals in various places in Hampshire, had determined to hold a festival in Gosport. The organisation of the festival was to be effected through a company of which the Councillor was the sole director and the funding of the company was achieved through ticket sales for the festival.
- 3.2 At two applications, respectively for a licence to approve a place to hold the festival and for a licence to sell intoxicating liquor, made before separate Committees of the borough council, the Councillor appreciated that as a Member of the Borough Council he would have to negotiate with it at arms' length and he declared his company interests. The Committees approved the applications.
- 3.3 Three weeks before the festival was due to take place a motion was heard before the full Borough Council as to the appropriateness of the fee charged for the place licence; the motion placed the occurrence of the festival in jeopardy.

The Councillor did not declare his interests and participated in the motion. He was subsequently interviewed by an ethical standards officer for alleged breaches of the Code of Conduct.

- 3.4 The Councillor maintained that he had not withdrawn from the motion as he wanted to represent festival ticketholders and local businesses who would suffer if the motion was passed. He further maintained that he did not stand to personally gain or lose through the festival. The Councillor also stated that any loss on paper to the company did not represent the true picture as it was commonplace that the losses and gains from organised festivals were set off from one year to the next. The ethical standards officer formed the view that the Councillor had breached the Code of Conduct and referred the matter to the First-Tier Tribunal.
- 3.5 The tribunal agreed that the Councillor had sought to misuse his position for his personal gain and that he had blatantly and deliberately breached the Code of Conduct such that it was appropriate to disqualify him from public office. The Councillor accepted that he had made a gross error of judgment and breached the Code but argued that the tribunal had failed to give adequate reasons for its findings; and that the tribunal's sanction was disproportionate.
- 3.6 The appeal was allowed for the following reasons. The Councillor had maintained that at the time of the motion he had honestly held the view that he did not have to withdraw. Accordingly, for the tribunal to find that he had not held such a view, as it had effectively done, it had to give reasons for such a decision. The tribunal had not done so.
- 3.7 Disqualification was the most severe penalty and should only be imposed where a public representative had deliberately abused his position for personal gain or had deliberately breached a Code of Conduct such that he was entirely unfit for public office. In the circumstances of the instant case the Councillor could not be said to be such an individual. Many of the mitigating features contained in guidance issued by the Borough Council as to its Code of Conduct were present, such as honestly held mistaken view, whilst none of the aggravating features, on the material before the tribunal, were present.
- 3.8 Accordingly, the appropriate sanction was suspension from the Borough Council only for a period of two months from the date of the instant hearing and not disqualification.
- 3.9 **This case highlights the need for the Hearings Sub-Committee to provide full reasons for its decisions. The Hearings Sub-Committee procedure requires the Chair to confirm the Sub-Committee's decision and reasons for it at the end of the hearing. The reasons should also be included in the hearing decision notice.**

Case Tribunal Decisions

Borough, City or District Councils

Isle of Wight Council

- 3.10 It was alleged that Councillor S had failed to comply with the Code of Conduct in his involvement with an application for planning permission which had been sought by another member of the Council.
- 3.11 Councillor B submitted a planning application, about which she contacted several Councillors, including Councillor S. Councillor S asked the Head of Planning to ensure that the application was dealt with correctly, and drew his attention to Councillor B's partner's terminal illness. He also asked the Head of Planning to visit the site. The application was considered by the Planning Committee, and Councillor S attended the meeting but did not declare an interest in the application and did not speak during discussion of it. However, he did at various times express disagreement with some statements that were being made by officers. The application was approved, subject to a 'cooling off' period, to allow further consideration to be given at a later meeting.
- 3.12 Councillor S then attended a meeting with Councillor B, with the Head of Planning and the Director in relation to her application. At this meeting, Councillor S said 'Are we really going to let this whole thing blow up for four metres one way or another?', or words to that effect.
- 3.13 The case tribunal found that the two Councillors were friends, and therefore that Councillor S had a prejudicial interest in the matter and should not have been present at the Planning Committee meeting. He was therefore in breach of paragraph 12(1)(a) of the Code of Conduct. However, the case tribunal did not find that he was seeking to influence the decision. Although his behaviour may have had that effect, the word 'seek' means that there must have been an intention on his part. The case tribunal was not satisfied that there was such an intention. Nor did the case tribunal find that Councillor S' improper attendance at the meeting was to confer an advantage upon Councillor B.
- 3.14 The case tribunal did find that Councillor S' initial conversation with the Head of Planning was intended to influence him, and was therefore a breach of paragraph 12(1)(c) of the Code of Conduct. Councillor S should have realised that his friendship with Councillor B meant that he should keep himself well away from any involvement in the matter.
- 3.15 The tribunal also found that Councillor S' remark about the four metre distance carried overtones which were liable to compromise the impartiality of the officer to whom the remark was made. Therefore, he was also found to have breached paragraph 3(2)(d) of the Code of Conduct.
- 3.16 The case tribunal was of the view that Councillor S' conduct should not be classified as bullying or failing to show respect. However, by failing to distance himself from the application, the case tribunal found that Councillor S had undoubtedly brought his office and authority into disrepute, contrary to paragraph 5 of the Code of Conduct.

- 3.17 The tribunal decided that Councillor S should be suspended from being a member of Isle of Wight Council for six months, after balancing the mitigating factors and the fact that the breaches were at the more serious end of the spectrum. The tribunal also recommended that further training should be provided for members of the Council on the Code of Conduct, concentrating on enabling Councillors to recognise when they have personal and prejudicial interests, and the interaction between Members and officers of the Council.
- 3.18 **In Leeds, the Code of Practice for the Determination of Planning Matters advises Members not to become involved in applications where they have a prejudicial interest, and not to put pressure on officers to put forward a particular recommendation.**

Wakefield Metropolitan District Council

- 3.19 It was alleged that a Councillor had breached the Code of Conduct because:
- His conduct in dealings regarding the possible sale of land owned in connection with redevelopment of the area was inappropriate and threatening;
 - He did not make a full disclosure of an interest; and
 - He made an inappropriate remark in relation to the planning process.
- 3.20 Mr and Mrs G owned a significant piece of land, and decided to sell it for development. They were approached by Lidl in March 2007, who wished to purchase the land for supermarket development. During Summer 2007, Netto made contact with the Councillor in respect of development opportunities in the local area. The Councillor approached Mr and Mrs G about this, and a meeting took place with Netto. Netto were advised that the land was not yet for sale.
- 3.21 The Councillor remained in touch with Mr and Mrs G between Summer 2007 and Spring 2009, the purpose of which related almost entirely to the development of their land. The tribunal found that the Councillor had phoned Mr G and said he was unhappy about the prospect of Lidl being the successful developer and was adamant that Netto should be the supermarket. Mr G told the Councillor that they would continue with their existing business, to which the Councillor responded 'We can compulsory purchase'.
- 3.22 In October 2008, Mr and Mrs G informed Lidl that they were ready to proceed towards the sale of the land. In November 2008, a planning application was submitted by Lidl. In late November, Lidl contacted the Council to express concern about comments the Councillor had made.
- 3.23 In January 2009 the Planning and Highway Committee met to consider Lidl's application. The Councillor declared a personal interest, and spoke at the meeting. He did not vote at the meeting as the matter was deferred.
- 3.24 Mrs G spoke with the Councillor after the meeting, as she was concerned about his failure to mention his involvement with Netto. Mr and Mrs G wrote to the Council in February raising concerns about the Councillor's association with Netto.

- 3.25 In February 2009, the Planning and Highway Committee considered Lidl's application again and it was deferred. The Councillor attended this meeting but since then played no further part in the Committee's business. He subsequently resigned from the Committee.
- 3.26 The tribunal considered that the Councillor had bullied Mr and Mrs G, contrary to paragraph 3(2)(b) of the Code of Conduct. They felt that the Councillor wanted his own way in respect of the Netto supermarket, and even though he did not necessarily intend to bully Mr and Mrs G, he exerted undue pressure on them as people in a weaker position.
- 3.27 The tribunal considered that the Councillor's actions and behaviour in bullying Mr and Mrs G, given his threats of compulsory purchase, his position on the Planning Committee and the implication that he could make this happen as Councillor would have brought both the Council and office of Councillor into disrepute.
- 3.28 The tribunal also considered that the number and seriousness of the breaches of the Council's Planning Code by the Councillor would in this case result in disrepute, given the conduct underlying the breaches. The tribunal was satisfied that the Councillor had a closed mind when he attended the Planning Committee meeting in January 2009. In these circumstances, the Councillor's actions in attending and speaking at consideration of the Lidl planning application while having predetermined the application was disreputable and contributed to his breach of paragraph 5 of the Code of Conduct.
- 3.29 The Councillor had attempted to use his position to confer an advantage on Netto and a disadvantage on Lidl. The tribunal considered that this was improper in that he had used his public position to promote commercial private interests in an unfair and unreasonable way and without taking account of proper planning considerations and processes.
- 3.30 In deciding what sanction to apply, the case tribunal took the following factors into account:
- This was potentially an appropriate case for disqualification as it involved several breaches of the Code, including that of improperly conferring a disadvantage on someone;
 - The Councillor's expressed cavalier attitude to the Code of Conduct and the Council's Planning Code of Conduct, and his failure to take up training opportunities;
 - Evidence from the Council's previous Monitoring Officer that the Councillor's behaviour may on occasion have breached the Code; and
 - Nothing that the Councillor did was for his personal gain and he believed that he was acting in the best interests of his constituents.
- 3.31 Having regard to the fact that the Councillor's term expires in May 2010, the tribunal decided to suspend the Councillor from being a member of Wakefield MDC for the remainder of his term of office. If the Councillor was re-elected, there would be need for significant training on the Code. The tribunal also recommended to Wakefield MDC that they consider introducing a policy whereby no person should be allowed to take up an allocated place on the Planning Committee unless they have undertaken appropriate training.

- 3.32 **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 compulsory training relating to interests, and predetermination and bias. The Code of Conduct training provided to Members will also explain that a breach of a Local Code could result in disrepute, and therefore a breach of the national Code of Conduct.**

Eden District Council

- 3.33 It was alleged that a Councillor had breached the Code of Conduct by disclosing to the press exempt information contained in reports to the Council, following resolutions by the Council to exclude the press and public from the meetings while the reports were considered.
- 3.34 The Monitoring Officer wrote to all Members enclosing a copy of a confidential report regarding a development site. The letter reminded Members of the need to respect the confidentiality of the contents of the report. The Councillor spoke with the Chief Executive and the Monitoring Officer to express concerns about the contents of the report and also that it was intended that it be considered in private rather than in public.
- 3.35 The Council met to consider the confidential report, and the Councillor moved an amendment to the motion that the press and public be excluded, proposing that consideration of the report be adjourned for 7 days to give Members more time to consider its content. His amendment fell, and it was resolved that the press and public be excluded.
- 3.36 The following week the Councillor again spoke to the Chief Executive informing him that he was considering writing to the local paper and asked what information from the report he could disclose. The Chief Executive said that he could not disclose any information that had been set out in the meeting.
- 3.37 Following this, a local newspaper ran a story with a number of quotes from the Councillor, which contained some of the confidential information.
- 3.38 The Council met again, and considered a further confidential report on the development. The Councillor did not attend the meeting, but subsequently received a copy of the minutes, including the exempt portion of the meeting.
- 3.39 The Councillor spoke to the Monitoring Officer regarding the contents of the latest report, and undertook not to disclose confidential information from the exempt minutes that he had received. A letter from the Councillor was subsequently published in a local paper, which disclosed confidential information from the minutes.

- 3.40 The case tribunal considered that the Councillor had breached paragraph 4(a) of the Code of Conduct (you must not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature) by twice disclosing information given to him in confidence by the Council about discussions with a potential developer by means of two letters he wrote to the local newspaper.
- 3.41 Although the Councillor belatedly apologised to the Monitoring Officer at the hearing, he said that he would repeat aspects of his conduct should the situation arise. The case tribunal considered that this showed him to be untrustworthy and therefore that he had brought his office into disrepute, contrary to paragraph 5 of the Code of Conduct. His actions were also found to have brought his authority into disrepute by undermining its credibility as a body to be able to maintain confidentiality.
- 3.42 The case tribunal took the following factors into account in deciding what sanction to apply:
- This was a particularly serious set of breaches of the Code;
 - The Councillor's actions were pre-meditated;
 - He ignored the accepted channels for addressing his concerns;
 - He repeated his breach of confidentiality despite a personal and specific undertaking not to do so;
 - His decision involved making disrespectful assumptions about his colleagues on the Council and Council officers as to their likely conduct and motivation, without any justification or proper understanding of or inquiry into the process which would be followed in formulating a new planning scheme;
 - He knew that his conduct on the first occasion had been brought into question when he breached his undertaking and repeated the breach of confidentiality; and
 - While he acted for what he considered to be the public good, he lacks insight and showed bad faith, considerable arrogance and very poor judgement with respect to his relations with Council officers and Members.
- 3.43 The tribunal seriously considered whether the Councillor was fit to serve as a Member, and therefore whether he should be disqualified. However, having considered all the circumstances, the submissions of the parties and the guidance on sanctions, that on this occasion suspension for a period of six months, an apology and a requirement for training were the appropriate sanction. If the apology is not submitted within 28 days or the training not completed within six months, the Councillor would be suspended for a further six months.
- 3.44 **In Leeds, the Access to Information Procedure Rules (which are contained within Part 4 of the Council's Constitution) inform Members that they are required to contact the relevant Director if they wish to disclose confidential information. The Director can refuse the request if they decide that in the event that the Council received a Freedom of Information request, the Council would not be obliged to disclose that information.**

Appeals against Standards Committee decisions

Durham County Council and West Rainton and Leamside Parish Council

- 3.45 Two Councillors appealed against the Standards Committee's finding that they had failed to treat others with respect, bullied the Parish Clerk, compromised the impartiality of those who work for, or on behalf of, their authority, and brought their office and authority into disrepute. They also appealed against the sanction imposed which was to suspend them from office and before resuming duties to be expected to undertake training in Equality and Diversity, and the Code.
- 3.46 The tribunal was satisfied that the Councillors did fail to treat the Parish Clerk with disrespect. Prior to the relevant meetings they agreed on their strategy which included criticisms of the form of agenda and the minutes as well as the Clerk herself in a number of instances. Whilst they were entitled to raise criticisms of the form of agenda and accuracy of the minutes, their behaviour went beyond legitimate challenge.
- 3.47 One of the Councillors expressed in public sessions on two occasions, that the Clerk needed training. Any concerns about the form of agenda and training issues should have been dealt with in private session. The appeals tribunal also considered that it was unreasonable for one of the Councillors to raise at a public meeting the issue of referring the Clerk to a disciplinary procedure. The Clerk had no right of reply in Parish Council meetings to such criticisms and public sessions were an inappropriate forum within which to raise such matters.
- 3.48 The tribunal was not satisfied that the Councillors had bullied the Clerk, as they were not offensive, malicious or intimidating towards her to the extent that their behaviour amounted to bullying for the purposes of the Code.
- 3.49 The tribunal found that the Councillors did bring their office and authority into disrepute as their behaviour would seriously lessen confidence in the office of Parish Councillor and in the Parish Council as an employer.
- 3.50 The tribunal considered that there was no evidence to support a finding that the Councillors had compromised the impartiality of those who work for, or on behalf of, their authority, and the Standards Committee chose not to sustain that part of its findings.
- 3.51 The tribunal found that the disrespect shown towards the Clerk was at the high end of the spectrum of severity and represented a serious breach of the Code. The Councillors showed no recognition that their damaging conduct was in any sense inappropriate and there was no apology for it. The tribunal therefore concluded that there is a significant risk of further breaches of the Code by the Councillors.
- 3.52 The appeals tribunal decided that the Councillors should be suspended for a period of 3 months. The finding of the Standards Committee was therefore partly upheld.
- 3.53 **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.

London Borough of Barking and Dagenham

- 3.54 A Councillor appealed against the Standards Committee's findings that he had brought his office and authority into disrepute by making false statements in an interview that a young girl had been murdered in Barking and Dagenham and that a further two people were killed in a knife attack on the streets of Barking and Dagenham. The interview was included within a video film and then posted on the internet. The Councillor also appealed against the sanctions imposed which were:
- To suspend the Councillor for a period of one month;
 - To require him to publish an apology on his personal blog;
 - If no apology is published in an agreed form, to extend the period of suspension until such apology has been posted; and
 - The apology should remain on the Councillor's personal blog for a period of at least four months.
- 3.55 The appeals tribunal identified that the key issue was whether the Councillor was acting in his official capacity at the time of the incident. The tribunal considered the individual elements of the relevant provisions of the Code, as follows:
2. *(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—*
- (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or*
- (b) act, claim to act or give the impression you are acting as a representative of your authority,*
- and references to your official capacity are construed accordingly.*
- 3.56 The tribunal considered that there was no evidence to support the position that the Councillor was conducting the 'business of the Council' whilst making the video.
- 3.57 The tribunal concluded that the Councillor was:
- making the video on behalf of the BNP with its primary purpose being party political;
 - not identified as a Councillor for the London Borough of Barking and Dagenham;
 - not taking forward an issue relevant primarily to the Council;
 - not taking forward an issue on behalf of an individual constituent; and
 - the video dealt with a range of issues and the Councillor did not concentrate upon issues within the Council.

- 3.58 Therefore, the tribunal decided that the making of the video was not proximate enough to the Councillor's role of councillor as to bring him into the ambit of 'acting in his capacity as a councillor'.
- 3.59 The tribunal then considered whether the Councillor was acting, claiming to act or giving the impression he was acting as a representative of the authority. There was no evidence that he was acting in that capacity at the time of the incident.
- 3.60 The Councillor did not mention his involvement with the Council either in the video or on his website link. There was therefore no evidence to suggest that he was claiming to act as a representative of the Council. The Councillor had introduced himself as a Greater London Authority (GLA) assembly member, and it followed that using this term would naturally be construed by a viewer as referring him to exercising his elected powers within the GLA. The Councillor was also critical of those involved with the Council, which further supports the view that he was, on this particular occasion, standing outside of the Council and expressing an independent view.
- 3.61 The tribunal concluded that the Code was not engaged and therefore that there was no breach of the Code of Conduct.
- 3.62 A separate complaint was made to the GLA in relation to this incident, which was investigated and referred to the GLA's Hearings Sub-Committee. The Hearings Sub-Committee found that the Councillor had breached the Code of Conduct and decided that he should be censured, required to submit an apology and undertake training on ethics and standards in public life. The Councillor did appeal this decision, but during the appeal he sought permission to withdraw his appeal, which was accepted by the tribunal on the understanding that:
- The Councillor accepted that he had acted in his capacity as a GLA Assembly member and had accordingly been in breach of the GLA Code of Conduct;
 - That the Councillor accepted his censure for this breach; and
 - In light of the admissions made by the Councillor, the explanations he had given for his actions, and the publication of an apology, the GLA requirement for the Councillor to undertake training on ethics and standards in public life was no longer to be pursued by the GLA.
- 3.63 **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.**

London Borough of Brent

- 3.64 A Councillor appealed against the sanction imposed by the Standards Committee following a finding that she had:
- Brought her office and authority into disrepute;
 - Used her position as a member improperly to secure for herself an advantage; and

- Failed to provide within 28 days notice of receiving a gift of a value of more than £25.
- 3.65 These findings relate to the Councillor's actions in soliciting sponsorship from two local businesses during her period in office as Mayor. She received two contributions of £500 and £400 from two local businesses and says she used the money to buy clothing and accessories for use during her term of office.
- 3.66 The tribunal considered that the Councillor had solicited gifts from more than one person and failed to account properly for them. The repeated lack of credibility on the part of the Councillor influenced the tribunal against accepting her submission that she appreciates the severity of the matter and that there will be no repetition. The decision of the Standards Committee to suspend the Councillor for 6 months was upheld.
- 3.67 **In Leeds, guidelines are provided to the Lord Mayor and Deputy Lord Mayor in relation to appropriate expenditure on clothing, gifts, etc. The Lord Mayor's office also keeps a record of any gifts/hospitality received by the Lord Mayor and Deputy Lord Mayor, which is provided to Governance Services on a regular basis in order that it can be added to the register of interests.**

Hampshire Police Authority

- 3.68 A Councillor appealed against the Standards Committee's finding that she had disclosed confidential information, contrary to paragraph 4(a) of the Code of Conduct. The sanction imposed was to require the Councillor to undertake suitable training in dealing with the media.
- 3.69 An investigation was undertaken into allegations that the complainant and a junior colleague had breached the Official Secrets Act. The formal position of the authority in considering those items was that the complainant's name should not be disclosed. Following consideration of the investigation at a Committee meeting, the Councillor took a call from a reporter at a local newspaper, within her role as Chair of the authority. The Councillor indirectly confirmed the identity of the complainant, not by mentioning a name but by confirming the use of the name by the reporter.
- 3.70 The tribunal considered that the Councillor had received the information relating to the investigation in confidence, and she ought reasonably to have been aware that it was of a confidential nature. She had therefore breached paragraph 4(a) of the Code, unless any of the exemptions applied.
- 3.71 The exceptions in paragraphs (i) to (iii) clearly did not apply. The tribunal considered whether paragraph (iv) applied, i.e. was the disclosure reasonable and in the public interest, and made in good faith and in compliance with the reasonable requirements of the authority. They took the view the disclosure was not reasonable or in the public interest given the impact of the release on the complainant and his family, the fact that he had retired, and the fact that the allegations against him were unsubstantiated. The tribunal also concluded that the disclosure, although inadvertent, was not in compliance with the reasonable requirements of the authority, given the existence of a media policy which the

Councillor was clearly aware of and felt bound by. The tribunal therefore concluded that the exception in paragraph (iv) did not apply.

3.72 In considering the appropriate sanction to apply, the appeals tribunal noted the following factors:

- The complainant was genuinely aggrieved about the release of the information and it caused distress to his family;
- There could have been serious consequences for his future career;
- The Councillor's confirmation of the facts made the publication of the newspaper article more likely;
- The Councillor should have refused to comment when pressed by the reporter;
- The disclosure took the form of indirect confirmation of the complainant's name;
- It was an inadvertent slip by the Councillor when put under pressure by the reporter;
- The Councillor had had no malice or intent;
- She should be commended for her honesty during the investigations; and
- She had not received training in dealing with the media.

3.73 The tribunal concluded that this was not a case where suspension was appropriate. Given that the Councillor had made it clear that she intended to have, and would like, media training, the tribunal decided not to change the sanction imposed by the Standards Committee.

3.74 In Leeds, media training is provided for Members as part of the personal development programme. 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.

Newark and Sherwood District Council and Blidworth Parish Council

3.75 A Councillor appealed against the Standards Committee's finding that he failed to follow paragraphs 3(1), 3(2)(b) and 5 of the Code of Conduct and against its determination that he be suspended for a period of six months and make a written apology to the Parish Clerk in respect of his actions and words.

3.76 The Councillor was sent a letter from the Parish Council which banned him from entering the parish office due to his harassment of the Clerk in July 2007. He was also sent a letter in July 2007 by the community association banning him from entering the community centre except for organised events.

3.77 On 26 June 2008, the Clerk was at the parish office (which is situated within the community centre) and in conversation with three Councillors. The Councillor arrived at the community centre and looked at the parish notice board. He then entered the building and challenged the Clerk about the notices on the board, stating that they were incorrect notices for that time. In front of the other Councillors, he told the Clerk that he was useless and should be sacked.

- 3.78 On 30 June 2008, the Clerk was at the parish office when the Councillor entered the community centre after having looked at the parish notice board. He again challenged the Clerk about the correctness of the board.
- 3.79 The tribunal found that the Councillor did fail to treat the Clerk with respect by his conduct on 26 June 2008. Although the Councillor was seeking to raise an issue of legitimate concern to him, he chose to do so in a way which was unreasonable and demeaning. The public expression of criticism of a council employee in a rude, offensive and intimidatory manner as a consequence of a loss of self-control strays well beyond the realm of what is legitimate within the scope of the Code.
- 3.80 The tribunal found that the Councillor did not fail to treat the Clerk with respect on 30 June 2008, as he did nothing other than raise a complaint about the content of the notice board.
- 3.81 The tribunal was not satisfied that the Councillor's behaviour attained the level necessary to support a finding of bullying in this case. The tribunal was satisfied from the evidence it had seen, particularly the description by the Clerk, that the behaviour is most appropriately categorised as one of harassment rather than bullying.
- 3.82 The tribunal concluded that, on an objective view and in the light of all the circumstances, in particular the motive for the Councillor's actions which was to right perceived wrongs, that the threshold for a finding of disrepute was not reached in this case.
- 3.83 The tribunal took the following aggravating and mitigating factors into account:
- The Councillor's underlying motive was to right wrongs. He saw that as his overriding duty as a Parish Councillor and believed his conduct to be justified;
 - The Councillor's word and conduct were seriously disrespectful towards the Clerk;
 - The Councillor's behaviour occurred in a public place and in front of other Parish Councillors;
 - The Councillor has failed to acknowledge any fault on his part or to appreciate how inappropriate his conduct was. There has been no hint of contrition or an apology;
 - The previous finding by an ESO indicates that the incidents were not a one-off incident but a pattern of disrespectful behaviour towards the Clerk;
 - Their view that there is almost an inevitability that the Councillor will commit further breaches of the Code in his dealings with the Clerk.
- 3.84 The tribunal considered that the appropriate sanction was for the Councillor to be suspended for a period of two months and for the Councillor to be required to make an apology to the Parish Clerk in the form specified. In the absence of the Councillor sending an apology in the specified form before the expiry of the suspension, he will be suspended for a further period of four months.
- 3.85 **In Leeds, Members are provided with guidance on how to communicate with officers through the Protocol on Member Officer Relations, contained in Part 5 of the Council's Constitution. The Protocol states that the basis**

of the Member Officer relationship should be mutual confidence and trust, and warns against more extreme forms and behaviour and emotion which are rarely conducive to establishing mutual respect. The Protocol also asks that any dealings and correspondence between Members and Officers observes standards of courtesy.

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>