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

### Standards Committee

Date: 13<sup>th</sup> July 2010

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

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#### Electoral Wards Affected:

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

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### Executive Summary

1. This report provides summaries of the recent decisions made by the 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 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](http://www.adjudicationpanel.tribunals.gov.uk)

## **2.0 Background Information**

- 2.1 Seven case tribunal decisions and five 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 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**

##### **Shropshire Council**

- 3.1 It was alleged that a Councillor had circulated a letter to all members of the Area Regulatory Committee (South) which contained inaccurate and biased information in an attempt to influence the decision of the members of the Committee, and in doing so had:
- failed to treat others with respect;
  - brought his office and authority into disrepute;
  - attempted to use his position as a Member improperly to confer on secure for himself an advantage; and
  - sought improperly to influence a decision about business in which he had a prejudicial interest.
- 3.2 An application had been made for a footpath (which crossed the Councillor's property) to be recorded on the definitive map. The Councillor objected to this application prior to being elected. He also submitted a formal complaint about the alleged impartiality of the definitive map review officer, following which an investigation was carried out, which found that there had been no wrongdoing on the officer's part.

- 3.3 The matter was then considered by the Council's Rights of Way Committee. The Councillor attended the meeting and spoke against the application. The Committee rejected officers' recommendation that there was sufficient evidence to show that a public right of way subsisted or was reasonably alleged to subsist, therefore the matter was automatically deferred to a meeting of the Area Regulatory Committee.
- 3.4 Before the matter was considered by the Area Regulatory Committee, the Councillor was elected to the Council, and was appointed to the Area Regulatory Committee. Prior to the meeting, the Councillor circulated a letter to the members of the Committee, supporting his objections to the application. The letter stated that:
- the footpath would be one metre from his front door;
  - the officer handling the case showed a lack of impartiality, objectivity and independence, which led to the report being deferred to a later meeting of the Rights of Way Committee;
  - his complaint was unsatisfactorily closed down; and
  - the Area Regulatory Committee ruled that no public right of way existed.
- 3.5 At the meeting the Councillor declared a personal and prejudicial interest, and left the room prior to the Committee's consideration of the matter.
- 3.6 The case tribunal considered that the contents of the letter circulated by the Councillor were inaccurate and misleading. The Councillor agreed that the letter constituted a personal attack on the officer referred to, that it contained biased information and that it was an attempt to influence the decision of the Committee.
- 3.7 The tribunal considered that the words used by the Councillor were a personal attack and amounted to personal criticism of a junior member of staff, and it was inappropriate to make these comments in a letter circulated to all members of the Committee. The Councillor's arguments could have been made in a more objective, moderate manner, without making any personal comments against an officer.
- 3.8 The officer had no right of reply, no opportunity to contradict what was said about her and she was defenceless against the accusations, all of which had been investigated by senior officers and found to be unsubstantiated. The comments and the manner in which they were made were unreasonable, unfair and demeaning. Therefore the tribunal considered that the Councillor had failed to treat the officer with respect, contrary to paragraph 3(1) of the Code.
- 3.9 The tribunal also found that in circulating the letter, the Councillor had attempted to use his position to secure a personal advantage for himself by persuading the Committee to decide on a personal matter in his favour in breach of paragraph 6(a) of the Code, and sought to improperly influence a decision of the Committee about his personal business in breach of paragraph 12(1)(c) of the Code.
- 3.10 In the tribunal's view, the persistent, personal attack on a junior officer and the attempt to inappropriately persuade the Committee to vote in his favour on a personal matter would seriously lessen public confidence in the Councillor's

office and in this case, authority and would bring him and his authority into disrepute in breach of paragraph 5 of the Code.

- 3.11 In deciding what sanction to apply, the tribunal took the following factors into account:
- The action taken should be designed to discourage and prevent the Councillor from any future non-compliance;
  - The breaches were serious, bearing in mind that they involved personal advantage, undermining officers and bringing Members and the Council into disrepute;
  - The Councillor was newly elected, however he had undergone a period of training on the Code of Conduct;
  - The Councillor had an honestly held belief that his conduct did not constitute a failure to follow the Code; and
  - The Councillor had not shown any insight into the effect of his conduct on the officer or his authority. He had continued to blame her and others throughout the investigation and the hearing. The tribunal therefore thought that sanction would be inappropriate in this case.
- 3.12 The tribunal decided that a fair and proportionate sanction in this case would be suspension for a period of six months, and to require the Councillor to provide a written apology to the complainant (the officer) within 14 days of the hearing, and to undertake a further period of training before resuming his duties.
- 3.13 **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.**

#### Gosport Borough Council

- 3.14 It was alleged that a Councillor (who was Leader of the Council at the time of the alleged incidents) had brought his office and authority into disrepute when he improperly sought to pursue a grievance against two officers, in respect of evidence they had provided to an earlier investigation which had been conducted into allegations regarding the Councillor's conduct.
- 3.15 It was further alleged that, whilst his grievance was being investigated, the Councillor expressed his concerns regarding the evidence provided by the two officers in a press article. In the article it was alleged that the Councillor had made a number of very damaging and unfounded allegations regarding the conduct of officers generally and confirmed that he had asked the Audit Commission to investigate a number of officers.
- 3.16 In February 2009 an Ethical Standards Officer (ESO) issued a draft report in relation to an earlier investigation into the Councillor's conduct. A complaint had been made that the Councillor had not chaired a meeting well and had behaved in a manner which showed prejudice towards the application. The investigation report contained transcripts of interviews undertaken with Mr Paterson (Council

Lawyer) and Mr Dagens (Council officer), which supported the view that the Councillor had displayed an aggressive manner whilst chairing this meeting.

- 3.17 In responding to the draft report, the Councillor made no mention of disputing the factual accuracy of the evidence of either Mr Paterson or Mr Dagens. However, during his regular meetings with the Chief Executive, the Councillor repeatedly raised his dissatisfaction with their evidence.
- 3.18 In March 2009, the Councillor e-mailed the Chief Executive seeking to invoke the Council's grievance procedures against Mr Paterson and Mr Dagens in respect of the evidence they had provided in the earlier investigation. The Chief Executive tried to dissuade the Councillor from undertaking such a course of action, and informed him that it would be unwise to pursue the matter. The Councillor insisted that his grievance be taken forward in April.
- 3.19 Earlier in the year, the Councillor had also expressed concerns about the performance and capability of the Monitoring Officer. He insisted that she be referred to occupational health because of her illnesses and poor sickness record. Following the Monitoring Officer's medical referral, a report was produced which said that her sickness record was not unsatisfactory and some of her conditions were disabilities under disability discrimination legislation. The Chief Executive refused to provide a copy of the report to the Councillor. However, he later provided the Councillor with a form of wording he had agreed with the Monitoring Officer regarding the contents of her medical report.
- 3.20 In April, the Councillor spoke to the Audit Commission and provided brief details of a number of concerns he had regarding the Council. He was asked to put his concerns in writing, which he did in an e-mail. He ended the e-mail by suggesting that the Chief Executive and Monitoring Officer be suspended for the duration of the investigation of his allegations. The Audit Commission informed the Councillor that his concerns were not matters for them, and cautioned him against repeating his allegations outside of the confines of correct Council procedures.
- 3.21 In May, a newspaper article was published under the headline 'Leader calls for probe at "corrupt" authority'. The article included a number of quotes from the Councillor which contained a number of very serious allegations of officer misconduct within the Council. Another newspaper carried a similar article two days later, but containing no quotes from the Councillor.
- 3.22 The tribunal came to the conclusion that, on the given facts of this case the Councillor's use of the Grievance Procedure was improper and was a breach of paragraph 5 of the Code of Conduct. The Councillor stated that he had a clear objective and that was to get a written apology and/or investigation report that would show he was not rude and had not caused offence. He wanted to ensure that other officers did not 'flower up' their evidence and make things difficult for Councillors. He wanted this to be a deterrent weapon. The tribunal considered that this was an inappropriate motive for use of the Grievance Procedure.
- 3.23 The tribunal also considered that the unsubstantiated comments contained in the newspaper article relating to corruption, and the terms in which he had written to the Audit Commission, would undermine the authority and bring the Council into

disrepute. The tribunal therefore concluded that this was a further breach of paragraph 5 of the Code of Conduct.

3.24 In deciding what sanction to apply, the tribunal noted the following mitigating and aggravating factors:

- The Councillor has an honestly held belief that he had just cause to take issue with statements made by the two officers and to pursue it in the way that he did. However, in the tribunal's view he was wrong in this belief;
- The Councillor has eight years' of continuous service on the Council and has served on a large body of boards and committees, and there are no other previous matters to be taken into account;
- The Councillor at the time and subsequently has suffered from ill health. However, there was no suggestion that the Councillor's health had led to his actions which were the subject of the case;
- The Councillor has given full support to his town, and in particular to its festival to which he has given and continues to give his full support;
- The Councillor had not been totally open and honest about his actions and intentions;
- The Councillor has failed to acknowledge and understand that his actions were at variance with the Code;
- The Councillor has not taken personal responsibility for his actions;
- The Councillor's actions were personally motivated and reckless, and showed a disregard for the impact they would have on others;
- The Councillor had not issued personal apologies to the individuals involved in these incidents;
- The Councillor has continued to pursue a pattern of behaviour that is at variance with the Code and there are further investigations in train relating to additional, more recent, complaints by officers of the Council; and
- The Councillor boasted that he could have achieved a far wider and more sensational story out of this had he wished.

3.25 Given the impact that this and related complaints against the Councillor have had on the Council and its officers, the tribunal concluded that this was a case in which a suspension at the upper end of the range was appropriate and proportionate. The newspaper article has had a detrimental impact on the morale of officers and fellow councillors. It has also undermined the support and good favour of the electorate. For those reasons the tribunal imposed the maximum period of suspension which is 12 months. The tribunal also considered that the Councillor should undertake appropriate and extensive training in the Code of Conduct before he resumes his position as councillor.

3.26 The tribunal also recommended that the authority should adopt better ways of ensuring that all councillors are fully trained in, and conversant with, the terms and intent of the Code of Conduct, and it should maintain a detailed and up-to-date schedule of information relating to the training offered to, and undertaken by, councillors.

**3.27 In Leeds, officers in Member Development keep records of the training attended by Members, including the specialist training that is required to be undertaken by members of Plans Panels, Licensing Committee and Standards Committee.**

London Borough of Bromley

3.28 It was alleged that a Councillor had failed to treat others with respect, bullied others and brought his office and authority into disrepute through:

- the volume and tone of his e-mail contact with officers in the Council's Street Services department;
- continuing to contact officers directly even though the Chief Executive had informed him to send his e-mails to a separate account;
- referring to the Chief Executive as a 'hypocrite', 'liar' and/or 'cheat' in several e-mails and at several full Council meetings;
- referring to other Councillors and senior officers as 'liars' in several e-mails and at several full Council meetings;
- accusing the Monitoring Officer of being incompetent and not fit to be in public office; and
- instructing senior officers to deal with residents' complaints in a rude manner via several e-mails, into which he copied the residents involved.

3.29 The tribunal concluded that the Councillor was acting in his official capacity in all circumstances of the complaint because he sent the e-mails using his council e-mail address and the e-mails stated that they were sent "from Willetts, Colin, Cllr". He also made some derogatory comments at council meetings, which he attended in his capacity as a councillor.

3.30 In considering whether there had been a breach of the Code the tribunal considered that the threshold for failing to comply with paragraphs 3(1) (disrespect), 3(2)(b) (bullying) and 5 (disrepute) of the Code, in the case of expression of views, had to be set at a level that allowed for robust political debate relating to the efficient running of a council and which allowed for appropriate criticism of the performance of a council's function. However, this was to be balanced with the rights of others, including the right to protection of reputation.

3.31 In the tribunal's view the words used by the Councillor against the Chief Executive and the Monitoring Officer were not political comments or opinions, but were purely unsubstantiated personal remarks that amounted to no more than expressions of anger and personal abuse.

3.32 The tribunal was satisfied that the Councillor, by referring to the Chief Executive as a liar, cheat and hypocrite, in e-mails, some of which were copied to subordinate staff and at council meetings was disrespectful and sought to damage his reputation.

3.33 The tribunal was also of the view that the Councillor treated the Monitoring Officer with disrespect by referring to him in e-mails in a derogatory way and questioning his professional abilities and integrity. The Councillor's

communication with the Monitoring Officer was regularly copied to members of the public and other staff members which was demeaning and undermining.

- 3.34 The tribunal also found that the Councillor's behaviour was bullying due to the persistent nature of some of his communication, and because any attempts to channel his enthusiasm into a less pestering style were ignored. One of the Councillor's e-mails was resent on eight separate occasions, and in response to the draft report of the ESO he had provided in excess of 100 e-mails between himself and Street Services officers sent between May 2007 and May 2009. In publicly questioning the Chief Executive's and Monitoring Officer's integrity, and whether the Chief Executive should resign, the Councillor's behaviour was intimidating, insulting and humiliating, and attempted to undermine them.
- 3.35 The tribunal also found that the Councillor's persistent and pestering communication with some officers, and complete disregard for the attempts to control his communication had the effect of bullying a more junior member of staff who found this conduct overwhelming and stressful.
- 3.36 The tribunal also found that by questioning the honesty and integrity of the Chief Executive, the Monitoring Officer, and by implication the Council, by copying derogatory e-mails sent to senior officers of the Council to members of the public and making personal attacks on officers at council meetings where they had no right of reply, were all matters that could reasonably be regarded as bringing the Councillor's office and authority into disrepute.
- 3.37 In mitigation, the tribunal considered that the Councillor had been hard working, and his conduct may have been caused by medication he was taking for epilepsy (however, the Councillor had not provided medical evidence of this).
- 3.38 Weighed against this, the tribunal was also of the view that the Councillor had failed to recognise the impact of his conduct on others, had persisted with this conduct while the ESO was investigating a complaint against him and had shown no remorse.
- 3.39 As the case was heard in April, and the election was in May, the maximum period of suspension that it was possible to give in this case was 4 weeks. It was the tribunal's view that this was an inadequate sanction, bearing in mind the seriousness and repeated nature of the breaches that were found. Therefore, the tribunal decided to impose a 12 month disqualification in order to ensure that the Councillor did not return to serve as a Councillor any earlier than if a suspension was imposed.

#### Doncaster Metropolitan Borough Council

- 3.40 It was alleged that a Councillor had not acted in accordance with his authority's reasonable requirements when using his council laptop, and had brought his office and authority into disrepute by forwarding four inappropriate 'joke' e-mails, some of which were based upon religion.
- 3.41 The tribunal considered that the Councillor did fail to comply with the Code of Conduct in that he misused Council resources (a laptop and emailing facilities).



The Councillor did not seek to contest that his actions were inconsistent with the Council's IT policy and he accepted that he transmitted material which was unpleasant and inappropriate. This was contrary to paragraph 6(b) of the Code of Conduct. His actions brought the reputation of his office of councillor and of the Council into disrepute contrary to paragraph 5 of the Code of Conduct.

3.42 Taking into account the Councillor's apology, his action in standing down from the Civic Mayoralty and the letters written in his support which testify to his public service the tribunal felt that the appropriate sanction was a suspension for a period of three months.

3.43 **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 Members E-Mail Code of Practice (included as part of the guidelines) states that 'Users must not create and/or send messages and/or attachments to messages that are, or which reasonably could be regarded as being:**

- **obscene**
- **pornographic**
- **indecent**
- **of a sexual nature**
- **violent**
- **a serious attack on someone's reputation**
- **racist, sexist or otherwise discriminatory or harassing**
- **threatening or intimidating**
- **encouraging or supporting racism, sexism, violence, drug taking or gambling**

**Where Elected Members have to send email or attachments with this content, as part of their duties as elected representatives, they must have prior authorisation from the Chief Democratic Services Officer (or nominee)'.**

3.44 **Members may therefore wish to consider whether they would like to recommend that the list above also includes messages that are discriminatory on the grounds of religion.**

### **Town and Parish Councils**

#### **West Felton Parish Council**

3.45 It was alleged that a Councillor had failed to comply with paragraphs 3(1), 3(2)(b) and 5 of the Code of Conduct when he:

- **bullied the Parish Clerk by overbearing supervision, making threats or comments about job security, and undermined the Clerk's position by overloading and constant criticism of his work;**
- **brought his office and authority into disrepute by referring six Councillors to the Police and made untrue statements in a letter addressed to all Councillors, the Clerk and members of the public; and**

- showed a lack of respect to others (including the Clerk) in his letter to Councillor N, and a note to Councillor C.
- 3.46 Between January and November 2008 the Councillor wrote 15 letters to other Councillors and the Clerk on a range of subjects relating to the Council's procedures, standing orders, accounts, minutes and business. Some of these letters questioned the legality of the Clerk's appointment, and some questioned the Clerk's competence. One letter raised issues about the Clerk committing offences amounting to gross misconduct, one described him as a "skilled puppet master" and one accused him of making "a fundamental and stupid error". Six members of the public received copies of two of the letters.
  - 3.47 In January 2008 the Councillor referred six Councillors to the Police, and made that fact known to members of the public. He did this because he said that the Council's annual return contained two false statements in the annual governance statement.
  - 3.48 A Police Inspector wrote to the Councillor to say that his concerns appeared to be administrative errors about which he should contact Standards for England.
  - 3.49 In February, the Councillor complained to the Independent Police Complaints Commission (IPCC) that the Police Inspector was not going to investigate his complaint. In May, the Councillor made a public allegation that a Police Inspector was under investigation for misconduct or corruption. The tribunal found as a fact that the Councillor had some correspondence from the IPCC but totally misinterpreted that information in making the public allegation.
  - 3.50 The Chief Inspector confirmed that the Inspector was not under investigation for corruption and asked the Councillor to correct the inaccuracies, if his letter had been made public. The Councillor did not agree to retract anything he had said, but he did send a copy of the Chief Inspector's e-mail to members of the public who had received his letter.
  - 3.51 In January, the Councillor also wrote to Councillor C and stated that there was a very small chance that she may be investigated by the Police.
  - 3.52 The Councillor accepted that he was acting in his official capacity in his contact with the Parish Clerk and when writing to Councillor C. However, he disputed that he was acting in his official capacity when he wrote to the Police. The tribunal considered that the whole tone and content of the letter suggested that he was writing as a Councillor, and therefore that he was acting in his official capacity.
  - 3.53 In the tribunal's view, the Parish Council was the Clerk's employer and it was for the Council to discipline the Clerk if they felt it was necessary. It was improper for the Councillor to criticise and demean the Clerk in public correspondence. Therefore, the tribunal concluded that the Councillor showed intimidating, threatening and humiliating behaviour towards the Clerk and that this behaviour also resulted in disrespect being shown, thereby breaching paragraphs 3(1) and 3(2)(b) of the Code.

- 3.54 The tribunal also considered that to make an allegation of corruption against a Police Inspector without any real justification, given the potential damage to his reputation and career prospects, was highly disreputable. The tribunal considered that by this behaviour, the Councillor had brought the role of Councillor into disrepute and also by his unreasonable behaviour showed disrespect to the Police Inspector, contrary to paragraphs 5 and 3(1) of the Code.
- 3.55 The tribunal found as a fact that Councillor C had felt bullied and intimidated by the note she had received. The evidence was that the Councillor was reckless as to the consequences of his actions, which the tribunal was in no doubt were extremely serious as far as Councillor C was concerned. The tribunal concluded that by sending the note the Councillor bullied Councillor C and also showed disrespect, resulting in a further breach of paragraphs 3(2)(b) and 3(1) of the Code.
- 3.56 The tribunal considered that referring the six Councillors to the Police for what the Councillor himself stated at the hearing would have been at most a minor breach of the law was a highly disproportionate action based on unfounded conclusions. The tribunal felt strongly that it was entirely inappropriate and showed a profound lack of judgement on his part. However, on balance the tribunal did not find this conduct to be a breach of the Code.
- 3.57 The tribunal viewed the Councillor's breaches of the Code as serious, particularly as the involved bullying and bringing the Council into disrepute, and this was a case where disqualification could be an appropriate sanction.
- 3.58 The tribunal noted the letters in support provided by local residents and the statements of a member of the public and another Councillor, and took these into account as mitigation. They also noted that the Councillor's actions appeared to arise out of genuine concerns for the way the Parish Council was run and that he was relatively inexperienced as a Councillor.
- 3.59 However, the Councillor had shown reckless and disproportionate behaviour to Police Officers, the Clerk and fellow Councillors, and the tribunal was very concerned about his lack of judgement and insight into the consequences of his behaviour for others. They were also concerned about what they perceived to be his failure genuinely to accept that what he had done was unacceptable.
- 3.60 The tribunal concluded that the appropriate sanction in all the circumstances was to suspend the Councillor for six months.

#### Astley Village Parish Council

- 3.61 It was alleged that a Councillor had breached the Code of Conduct by:
- making persistent, unsubstantiated and defamatory statements about the Council and a Council employee to the press and external organisations;
  - using a pseudonym, posting comments on a website which contained further unsubstantiated and defamatory statements about the Council and Council employees; and
  - harassing the Parish Clerk and other members of the Council by making malicious telephone calls and sending text messages.

3.62 The tribunal found that:

- The Parish Clerk reclaims the cost of photocopying Council documents, which she copies using a photocopier belonging to her husband's business;
- On 10 November 2008, the Councillor wrote to the Borough Council to ask the Monitoring Officer to investigate the Clerk's conduct in relation to these claims. He also sent a copy of his letter to a number of external agencies and the press;
- On 15 November 2008, the Councillor wrote to the Monitoring Officer stating that he believed that the Clerk may have a conflict of interest in her roles as Parish Clerk and as a member of the Borough Council. This letter was also sent to a number of external agencies and the press;
- On 18 January 2009, the Councillor wrote to the Parish Council complaining about the Clerk's retention of Tesco Clubcard points when using her Tesco credit card to purchase Council items;
- On 2 February 2009, the Councillor reported the Clerk's use of the Clubcard as a possible theft within the Parish Council to the Police;
- On 3 February 2009, the Councillor phoned the Clerk to tell her he had received a letter from a member of the public making allegations against a third party, and told her he wanted to read the letter out at the next Council meeting. The Councillor denied any knowledge of the telephone call when the Police called at his home to make further enquiries;
- On 4 February 2009, the Parish Council agreed a motion of no confidence in the Councillor and reported his conduct as an alleged breach of the Code of Conduct;
- During an adjournment of the Parish Council meeting on 4 February, which was attended by a large number of members of the public who caused serious and sustained disruption, the Councillor made comments (which may have been audible to other people attending the meeting, although there is no evidence that they were heard by such people) about the Clerk having reported him to the Police; and
- The Councillor failed to register his position as a governor of a local school.

3.63 In relation to the Clerk's activities, the tribunal found that it would be proper for the Councillor to raise those concerns and to seek appropriate explanations and assurances. However, he lost all sense of proportion, particularly having regard to the trivial nature of some of his concerns, and his publication of those concerns in exaggerated form was a breach of paragraphs 3(1) (disrespect) and 3(2)(b) (bullying) of the Code of Conduct. The tribunal did not find that the Councillor had breached paragraph 5 (disrepute) of the Code because the issues were of a minor nature and had no lasting impact.

3.64 The tribunal found that the report to the Police was not a breach of the Code. In the absence of evidence of malice, wasting police time or other aggravating feature, the tribunal did not accept that a report of any suspicion of criminal activity, no matter how unreasonably held, to the Police can be a breach of the Code.

- 3.65 The telephone call to the Clerk on 3 February included a serious and unfounded allegation. The tribunal found that this was a breach of paragraphs 3(1), 3(2)(b) and 5 of the Code. The Clerk was embarrassed by the call and the subsequent investigation by the Police, and the other person who was the subject of the allegation was similarly affected. A reasonable person would conclude that the Councillor had brought both his office and authority into disrepute.
- 3.66 There was no reliable evidence as to what occurred at the meeting of the Parish Council on 4 February, apart from that the meeting was chaotic. Therefore, the tribunal found that no breach of the Code occurred at that meeting.
- 3.67 The Councillor admitted a breach of paragraph 13 of the Code of Conduct by failing to register that he is a parent governor of Buckshaw Primary School.
- 3.68 The tribunal considered that there had been a breach of the Code of Conduct which caused harm to others. There was bullying and unsubstantiated allegations against persons in public life. The impact of such actions is serious and inherently harmful. The tribunal considered that the Councillor's actions corresponded to those of a previous appeal in which the sanction was reduced from disqualification to suspension for six months.
- 3.69 In deciding a period of four month's suspension, the tribunal had regard to the impact on others of the Councillor's actions and the fact that he has been suspended on a previous occasion. However, no lasting damage was caused to those involved, some of the matters were of an extremely trivial nature and the Councillor has demonstrated appropriate insight and is unlikely to repeat his past indiscretions. The tribunal was of the view that a suspension for four months would bring home to the Councillor the seriousness of what he has done, and send the right message to all concerned that a serious view was indeed being taken of what he had done.

#### Campbell Park Parish Council

- 3.70 It was alleged that a Councillor had breached the Code of Conduct when she improperly sought to interfere with the award of the Certificate in Local Council Administration (CiLCA) to the Parish Clerk and that, in so doing, she unfairly disparaged his professional reputation to senior members and officers of national organisations. It was further alleged that the Councillor lied to the Clerk in saying that the circumstances of his CiLCA award had caused a furore at the National Association of Local Councils (NALC), and that the position of the official who had awarded the Parish Clerk his qualification was in some jeopardy.
- 3.71 The Parish Clerk was appointed in January 2007 and it was a condition of his appointment that he obtained the CiLCA. The Clerk submitted the necessary work in August 2007 and failed, he then resubmitted the necessary work in February 2008 and was informed that he had failed again because three sections were unsatisfactory. The Clerk appealed and the Chief Verifier awarded him a pass in relation to one of the sections in which he had failed, however the decision in relation to the other two sections was upheld. The Chief Verifier then reviewed the whole of the Clerk's work and concluded that in spite of the two failures, he had reached the required standard and should therefore be awarded the CiLCA.

- 3.72 In March 2008, the Councillor was informed that the Clerk had been awarded the qualification on appeal, together with the information that this was despite the Clerk not having passed all the portfolio sections, and that the Chief Verifier said it would be 'iniquitous' to make him submit further work.
- 3.73 A conversation took place between the Clerk and the Councillor in which she told the Clerk that she knew he had obtained his qualification on appeal, that the decision had caused a 'furore' at NALC, that he would probably receive a letter from NALC on the matter, and that the position of the Chief Verifier was in some jeopardy.
- 3.74 However, any 'furore' relating to the circumstances of the qualification did not arise until after the Councillor had herself complained about the matter, initially in an e-mail that she sent to the Chief Executives of NALC and the Society of Local Council Clerks (SLCC) on 25 March 2008, and subsequently when she addressed meetings of NALC and South East Region County Associations Forum (SERCAF) in April 2008. In the e-mail the Councillor expressed her outrage that the Clerk had been awarded the CiLCA and claimed that he was not '*up to the grade*'. She insisted that the matter was investigated and if it wasn't, that she would '*personally take this to the highest level of government*'.
- 3.75 The Clerk was confirmed in his position at the end of his six months probation , and the Councillor described the Clerk as '*...a first rate Clerk. His paperwork is good. He's organised and if he is asked to do something he does it instantly*'. Looking at the evidence overall the tribunal found that there were no grounds for the Councillor to raise any concerns about the performance of the Clerk in the context of the CiLCA in her e-mail of 25 March 2008.
- 3.76 In the tribunal's judgement the making of groundless comments critical of the Clerk's competence in the most disparaging language must in the mind of the reasonable person bring the office of the member making those comments into disrepute, and therefore found that the Councillor had breached paragraph 5 of the Code. The tribunal did not find that the Councillor had brought her authority into disrepute, as her conduct had a strong personal element and she had acknowledged that she had a fiery temperament. The tribunal considered that a reasonable person would be likely to conclude that it was essentially a personal failing which reflected badly on the member rather than their authority.
- 3.77 The tribunal also found that the Councillor's attempt to get the Clerk's CiLCA rescinded amounted to an attempt to use her position as a member to improperly confer on the Clerk a disadvantage under paragraph 6 of the Code. The Clerk had also been disparaged in very strong language to those who received the Councillor's e-mail, and these were people who were involved in professional organisations he would have to deal with and to which he was known. It was inevitable that the Councillor's views would damage the Clerk's reputation. The tribunal also found that this was also an attempt by the Councillor to use her position as a member to improperly confer a disadvantage on the Clerk.
- 3.78 The Councillor had not given any previous indication that she accepted that her conduct was wrong or that she had harmed the Clerk's reputation or owed him

an apology, however at the hearing the Councillor accepted that she had breached the Code and apologised to the Clerk.

- 3.79 The tribunal was also provided with several mitigating factors by the Councillor's representative, including:
- her long service on the Parish Council and substantial period on Milton Keynes Council;
  - she is a tireless worker for her electors;
  - her real concern has always been the quality of CiLCA as a qualification; and
  - a lesson had been learned and there was a recognition that high standards were needed in local government.
- 3.80 The tribunal also took into account the Councillor's medical condition, and that the Councillor's pain after an unsuccessful knee operation may well have had an impact on the Councillor's ability to see things in their true perspective.
- 3.81 The tribunal noted that the Clerk had gone out of his way to leave the way open to there being an effective working relationship between himself and the Councillor even if the relationship was unlikely to be a close one. This reassured the tribunal that the Councillor continuing as a member of the Parish Council was not likely to have an adverse effect on its running or on the Clerk personally.
- 3.82 As the Councillor had apologised and accepted that she had breached the Code, the tribunal found that suspension, rather than disqualification would be the appropriate sanction. The tribunal decided that a period of three months would be sufficient to make it clear that her behaviour had been unacceptable without unduly disrupting her work as a Parish Councillor.

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

#### **Allerdale Borough Council and Broughton Community Council**

- 3.83 A Councillor appealed against the Standards Committee's finding that he had failed to follow paragraphs 10(1) and 12(a) of the Code of Conduct by failing to declare and act upon a prejudicial interest he had by virtue of his chairmanship of Broughton British Legion. He also appealed against the sanction which the Standards Committee decided to impose which was six months suspension.
- 3.84 The tribunal determined that the Councillor did not fail to follow the provisions of the Code because:
- the agenda for the meeting of Broughton Community Council on 6 October 2008 had as item 18 'The British Legion Hall to discuss the future of the hall';
  - at the start of the meeting the Councillor declared a personal interest in the item; and
  - the minutes of the meeting show that this agenda item was not discussed, and there is no evidence that the consideration of this item occurred.

- 3.85 Since the meeting did not consider the question of the British Legion Hall no duty to declare the interest arose and therefore there was no breach by the Councillor, whether or not his interest was prejudicial.
- 3.86 The appeal was therefore upheld, and the finding of the Standards Committee was rejected.

#### East Lindsey District Council

- 3.87 A Councillor appealed against the Standards Committee's finding that he had failed to follow paragraph 3(1) of the Code by using the word 'bloody' in an e-mail. The finding made by the Standards Committee that the Councillor was acting in his official capacity when sending the e-mail was disputed and was therefore considered by the tribunal.
- 3.88 Firstly, the tribunal considered that the Councillor was not conducting the business of the District Council in sending the e-mail, as it related to a magazine called 'The Compass' which is a community magazine for three parishes. Other than the matter of initial funding and that some Councillors, including the Councillor in this case, were volunteers who helped with it, there was no evidence that the District Council or the role of District Councillor had any connection to it.
- 3.89 The tribunal then considered whether the Councillor was acting, claiming to act, or giving the impression that he was acting as a representative of the District Council when sending the e-mail. The tribunal noted that the Councillor used first name terms in the e-mail, and finished by saying "Cheers, Phil". The main body of the e-mail referred to the distribution of the magazine. There were only two aspects that had a connection with the District Council, namely a reference to the Councillor and a Council colleague getting the project off the ground with joint funding (the Councillor being the project leader) and also the fact that the Councillor used his council e-mail address.
- 3.90 The tribunal did not consider that these two aspects could be considered to give the impression that the Councillor acting as a representative of the Council. Although he copied the e-mail to other District Councillors, he also copied it to a number of other people who were not District Councillors.
- 3.91 The references to funding and the Councillor being the project leader, given the tone and content of the rest of the e-mail, did not in the view of the tribunal give the impression that it was an e-mail from a District Councillor. The content of the e-mail was addressed mainly to delivery of the community magazine and did not lead the reader to consider it was sent on behalf of the District Council.
- 3.92 In all the circumstances the tribunal did not consider that the Councillor acted, claimed to act or gave the impression he was acting as a representative of the District Council. Therefore, the appeal was upheld and the finding of the Standards Committee was rejected.
- 3.93 **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.**

Herefordshire Council and Walford Parish Council

- 3.94 Councillor M appealed against the Standards Committee's finding that he had used or attempted to use his position as Vice Chairman of the Parish Council improperly to confer on or secure an advantage for himself or a disadvantage for Councillor C.
- 3.95 He also appealed against the sanction imposed which was to require him to undertake training provided by the Monitoring Officer and to submit a written apology.
- 3.96 Development was taking place at a site owned by Councillor C. Councillor M believed there to be a breach of planning law but professional advice had not been sought and his view had not been endorsed. There were also concerns within the community about the development.
- 3.97 Councillor M wrote a letter to the companies occupying the site, stating "It is our view and belief that such use is not permitted on this site and that you..., are potentially committing various offences", and "We who live in the locality are considering every possible means to put a stop to this eyesore" and "Your comments would be appreciated and will be shared with the Community".
- 3.98 The companies decided to close the site, very shortly after the letters were written.
- 3.99 Councillor M argued that he wrote the letters in his private capacity, however in response to the Standards Committee's submissions he accepted that in writing the letters, he acted as a Councillor as wrote the letters as a result of complaints made to him as a Councillor. He also signed his letters as Vice Chair of the Parish Council.
- 3.100 The tribunal considered that it would have been acceptable for Councillor M to write as he did in his personal capacity and probably also as a Councillor on behalf of his constituents. What he was not entitled to do was to write seemingly on behalf of the Parish Council in the terms he did, and the tribunal considered that his actions were improper.
- 3.101 The tribunal did not consider that Councillor M wrote to the companies to secure a direct advantage for himself. What he did was to secure a disadvantage for Councillor C, whether intentionally or recklessly. He wrote to the companies, claiming the weight of the community behind him, to persuade them to stop doing business with Councillor C and to leave the site. It was clear from the correspondence that the Councillor's intervention had a strong influence on the actions of the companies.
- 3.102 Therefore the tribunal considered that Councillor M breached paragraph 6(a) of the Code of Conduct. In considering what sanction to apply, the tribunal agreed with the Standards Committee that there were mitigating factors in this case as

identified by them. The tribunal was also mindful of the fact that, although Councillor M had broken the Code by writing as he did, the Parish Council had concerns about the development, and there was no evidence that he acted for personal gain.

3.103 The tribunal therefore found that the sanctions imposed by the Standards Committee were appropriate.

#### Bury Metropolitan Borough Council

3.104 A Councillor appealed against the sanction which was imposed by the Standards Committee in light of his failure to withdraw from the room when an item in which he had a prejudicial interest was considered, and for seeking improperly to influence a decision about that business. The Councillor was suspended for 80 days. This period of suspension was chosen to allow the Councillor to prepare for and attend the Council's Annual Meeting.

3.105 The Standards Committee gave no reasons for deciding the sanction imposed and there was no record in the minutes of the proceedings that they took account of the guidance issued by Standards for England. The minutes include a number of factors which were noted or considered, but do not disclose the weight given to these or any other factors. The tribunal therefore considered the sanction afresh.

3.106 The tribunal considered that the following factors were relevant:

- the Councillor is an experienced Councillor who had previously served on the Council's Standards Committee;
- the Councillor breached the Code of Conduct on two occasions;
- the Councillor apologised for the breaches, albeit on the basis of admitting making a mistake, which discloses an element of insight;
- the subject matter under consideration was a report which '...responds to the outcome of the residential care consultation and sets out proposals that form the basis of the next consultation for modernising services that will enhance older people's housing and develop a programme for independent living'. There was no final decision expected on the issues under consideration at either meeting at which the Councillor breached the Code of Conduct;
- there was no evidence that the Councillor had previously breached the Code of Conduct or had acted otherwise in any manner which might give cause for concern; and
- there was no evidence that the Councillor had an attitudinal problem which might give rise to future misconduct.

3.107 The tribunal concluded that the Councillor's actions fell short of the threshold on which disqualification was upheld in a previous appeal. The Councillor's actions also fell short of the seriousness of those in a previous appeal where the sanction was reduced from disqualification to suspension for six months. The Councillor's behaviour was serious and inherently harmful, but no lasting

damage was caused and the Councillor is unlikely to repeat his past indiscretions. The tribunal therefore considered that it would be reasonable and proportionate to suspend the Councillor for a period of one month.

- 3.108 The tribunal therefore rejected the finding of the Standards Committee in relation to the sanction imposed.
- 3.109 **This case highlights the importance of taking appropriate guidance into account when deciding what sanction to apply, and providing reasons for deciding on the sanction imposed. Members of the Hearings Sub-Committee are provided with the relevant guidance from Standards for England and the First-Tier Tribunal in relation to sanctions, and the Hearings Sub-Committee Procedure states that the reasons must be provided for any sanction imposed.**

Blaby District Council and Blaby Parish Council

- 3.110 A Councillor appealed against the Standards Committee's finding that she had failed to follow the Code of Conduct when she submitted a written report to the General Purposes Committee which inappropriately included her views of the Parish Clerk. She also appealed against the sanction imposed which was to suspend her for a period of up to three months, which was suspended until May 2011, and submit a personal apology to the Parish Clerk and Blaby Parish Council in a form specified by the Standards Committee within three months of the full decision being delivered. It was also decided that failure to submit the written apologies would result in suspension. Blaby Parish Council was also to undertake appropriate training to be arranged by the Monitoring Officer by the end of 2010.
- 3.111 The Councillor wrote a report following a car boot sale which had been organised by the Council's Future Events Working Party. The report listed the Councillor's view on the car boot sale and included the words "Blaby Parish Clerk is paid a substantial salary to serve this parish council but clearly this abysmal and inefficient service and support is totally inadequate, inefficient and unacceptable." The report was considered by the General Purposes Committee. That meeting, and the Councillor's report, were open to the public.
- 3.112 The tribunal considered that the words used about the Parish Clerk were in the nature of personal abuse and personal criticism of an officer. They considered that it was inappropriate to make these personal comments in a report which was circulated to all members of the Future Events Working Party and the General Purposes Committee, both of which were open to the public and where the document was put in the public domain.
- 3.113 Whilst the tribunal recognised that the Clerk, as senior officer, should be prepared to accept more robust criticism than more junior officers, in this case the words used were so personal and highly critical that they should not have been made in a public arena where the Clerk had no right of reply, no opportunity to contradict what was said, and where she was largely defenceless against these criticisms. The words used and the manner in which they were made were unreasonable, unfair and demeaning.

3.114 The tribunal therefore found that the Councillor had failed to treat the Clerk with respect, contrary to paragraph 3(1) of the Code of Conduct. The tribunal also found that the Councillor had breached paragraph 5 of the Code, because making such intemperate public criticisms about the Clerk in a report, rather than using internal disciplinary procedures, would reasonably be regarded by an objective observer as diminishing the Councillor's reputation, and the reputation of her office.

3.115 In deciding what sanction was appropriate, the tribunal took the following mitigating and aggravating factors into account:

- the Councillor is hard working and is committed to serving the Parish Council and the people of Blaby;
- she is not an inexperienced new Councillor and is familiar with the Code of Conduct and the internal disciplinary procedures of the Council which she ignored in order to make her views about the Clerk widely known; and
- the Councillor continues to believe that she has done nothing wrong and that she is justified in taking the action she did. There is therefore a serious risk that in the absence of a clear indication that this behaviour is wholly unacceptable, the Councillor may breach the Code again.

3.116 Therefore, the tribunal decided that a fair, reasonable and proportionate sanction would be to suspend the Councillor for four months or until such time as she has submitted a written apology to the Clerk in a form specified by the Standards Committee.

3.117 The tribunal noted that the Standards Committee's decision notice, which gave rise to the appeal, was confusing and inadequate. It did not explain its findings of fact, apart from incorrectly concluding that it was not disputed that the Councillor's report contained inappropriate wording. It did not give adequate reasons for finding that there had been a failure to comply with the Code or whether all or part of paragraph 5 was breached. Some of the sanctions imposed were confusing and unlawful.

**3.118 In Leeds, the Hearings Sub-Committee Procedure states that the Hearing Decision must be written having regard to Standards for England's guidance, and that it must include the Sub-Committee's findings of fact, including reasons for them, the finding as to whether the Member failed to follow the Code, and the reasons for that finding, and the sanctions imposed, including the reasons for any penalties. A list of lawful sanctions is also provided within the Hearings Sub-Committee Procedure.**

#### **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>