

Committee: STANDARDS COMMITTEE

Agenda Item

Date: March 20, 2006

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Title: MEETING OF THE ADJUDICATION PANEL
1 MARCH 2006

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Summary

- 1 On 1 March 2006 some members of the Standard Committee along with Mr Purkiss and myself attended a hearing of the Adjudication Panel for England at the Five Lakes Resort, Tolleshunt D'arcy when the Panel considered an allegation of a breach of the Code of Conduct by Councillor Reisberg of Maldon Town Council. The purpose of the attendance was to enable members to experience the operation of the Adjudication Panel in anticipation of being required to deal with allegations at local level.

Background Papers

- 2 The Adjudication Panel for England's website www.adjudicationpanel.co.uk

Impact

Communication/Consultation	None
Community Safety	None
Equalities	None
Finance	None
Human Rights	None
Legal Implications	The Standards Board has made it clear that pending the proposed revision to the legislation, it will expect a far greater number of cases to be referred to Monitoring Officers for local investigation and determination. Decisions of the Standards Committee are susceptible to appeal to the Adjudication Panel for England and thereafter to the High Court. It is therefore important that Members are prepared to deal with such cases justly.
Ward-specific impacts	None

Workforce/Workplace	None
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Situation

1. This report has been presented to Members to inform them of the procedure adopted by the Adjudication Panel and the outcome of the proceedings.
2. The Adjudication Panel comprises three members. These are a legally qualified Chairman and two lay people. The Panel are all appointed by the Lord Chancellor. The Standards Committee for this Council has eight members. It may be that a tribunal of eight would be intimidating and not give the impression of a fair hearing. Members may wish to consider therefore whether in the event of a complaint being referred for local hearing, they would wish to appoint a sub committee to deal with the allegations. A sub committee must comprise at least three members. At least one member of a sub committee would need to be an independent person. In the event that the allegation was against a town or parish councillor then at least one member of the sub committee must be a town or parish council representative.
3. Save for one minor possible discrepancy, the facts as ascertained by the Ethical Standards Officer were agreed. In conversations with the Ethical Standards Officer's representative, we were informed that in some cases where the facts are agreed no summary of the facts is given. In other instances a summary is read out. Apparently the Panel has received some criticism from members of the public attending Panel hearings where details of the factual basis of the complaint are not made public. Where the press and public are not in attendance at meetings of the Standards Committee, the report of the Investigating Officer will be a publicly available document. Members may in those circumstances feel able to consider the facts as having been read. Where the press or public are present however, members may consider that it would be preferable for a summary to be read out at the hearing.
4. The Panel Chairman appeared to be inexperienced. She was asked by the representative for the Councillor how she wished to be addressed. She responded 'you can call me what you like. Miss X will be OK'. In my view, adjudications on allegations of breach of the Code are serious occasions and should be conducted with due formality. In the context of the Adjudication Panel I believe the correct form of address for the Chairman should be either Sir or Madam. For hearings for the Standards Committee, I would recommend that the appropriate form of address be Chairman.
5. Another apparent lapse on the part of the Chairman was that the representative for the Councillor concerned had made it clear that whilst the Councillor agreed the facts and accepted that there had been a breach of the Code, he wished to make submissions in mitigation on her behalf. The Panel questioned the representative as to why the Councillor concerned had accepted that the allegations did constitute a breach. Having heard his

representations the Chairman announced that the Panel would retire to consider whether there had been a breach of the Code and if so, what action to take. The representative reminded the Panel that he wished to make representations in mitigation and the Chairman confirmed that the Panel would return to hear such representations. However, such a comment could easily be construed to suggest that the Panel may make up its mind before hearing the mitigation. Such comments should be avoided. The Chairman of the Standards Committee should make it quite clear at the outset and remind the parties during the course of the hearing that the procedure is in three stages:

- i) to determine the facts
- ii) having reached findings of fact to hear submissions as to whether the facts constitute a breach of the Code and to reach a decision on that point
- iii) if the Committee concludes there is a breach of the Code to determine what sanction (if any) is appropriate.

- 6 The Adjudication Panel invited submissions from the Ethical Standards Officer's representative as to the appropriate sanction. The Panel then heard the mitigation on the part of the Council. The Chairman then asked the Ethical Standards Officer's representative if she had any further comments to make. The representative did not accept that invitation. Whilst this is established procedure before the Adjudication Panel and recommended for Standards Committees this procedure does cause me concern. The Ethical Standards Officer's representative set out what she considered to be aggravating features in the case. She did not refer to any previous Panel decisions. I also consider it inappropriate for the 'prosecution' to have the last word. In my opinion, Members of the Committee should receive advice from the lawyer servicing that Committee as to the range of sanctions, which may be imposed, the guidance given by the President of the Adjudication Panel and any similar cases, which have been determined by the Adjudication Panel or (where known) other Standards Committees. Such advice should be given after the mitigation has been heard and it should not be open to the Ethical Standards Officer's representative or the Investigating Officer to make representations as to the appropriate sanction.
6. The Adjudication Panel does not have a legally qualified clerk to advise on the law. The reason for this is presumably that it is not necessary because the Chairman of the Panel is legally qualified. It was not clear to me that if legal advice was required by the lay members of the Panel that such advice would have been given in public session. The Committee will of course be serviced by a solicitor. The Committee has previously decided that it would want all legal advice to be given in public session and I believe this policy should be endorsed.
7. Although the parties had agreed that there had been a breach of the Code the Panel made it clear that it was not bound by that agreement. Members of the Panel questioned the Councillor's representative as to why the

concession had been made and then independently reached their own conclusion. Whilst in this case the Panel decided there had been a breach there has been at least one reported case where a Councillor believed that he had breached the Code of Conduct and made a self referral. The case was passed to an Ethical Standards Officer who concluded that there had been a breach and before the Adjudication Panel the Councillor accepted that finding. Nevertheless the Adjudication Panel found that the facts as agreed did not amount to a breach of the Code and the Councillor was therefore exonerated. When considering cases Members of the Committee will have before them a report from an Ethical Standards Officer or an investigating officer (who will be me as Monitoring Officer or someone appointed by me). That report will state what the findings of fact of the author are and whether the author considers the facts establish that there has been a breach of the Code. Members should remember that they are not bound by either of those findings and should reach their own conclusions having heard all the evidence and submissions even where on the face of it the facts and conclusion are agreed.

7. The allegation against the Councillor concerned was that she had brought her Council into disrepute by having been convicted of an offence of benefit fraud. Her mitigation was that she had made a genuine mistake at a time when she was under a great deal of personal pressure. The Panel took a view that it was satisfied that the Councillor was unlikely to commit the same offence again and in the circumstances decided that no further action was required. This flies in the face of all decisions made by the Adjudication Panel previously where Councillors convicted of benefit fraud had been disqualified from office. I heard nothing to persuade me that the case before the Panel was significantly different from the other cases I have read on the Adjudication Panel's website. I would suggest that it is important that there is consistency in the level of sanction imposed where there has been a breach of the Code. Where the Committee decide for good reason to depart from what may be regarded as 'the tariff' it is important that clear reasons are given which illustrate both that the Committee are aware of the usual sanction and why sanction is not appropriate in the instant case.