

Committee: STANDARDS COMMITTEE
Date: 23 November 2009
Title: RECENT DECISIONS OF THE
ADJUDICATION PANEL FOR ENGLAND
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Agenda Item

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Item for
information

Summary

- 1 This report is to inform Members of the decisions of the Adjudication Panel for England in cases published since the last meeting of this Committee. The report will indicate in each case whether the matter was a hearing or an appeal.

Recommendations

Members note this report

Background Papers

Adjudication Panel for England's website
www.adjudicationpanel@tribunals.gov.uk.

Impact

Communication/Consultation	None
Community Safety	None
Equalities	None
Finance	None
Human Rights	None
Legal implications	An appeal lies from the Adjudication Panel to the High Court on a point of law with the permission of the High Court.
Sustainability	None
Ward-specific impacts	None

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Workforce/Workplace	None
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Situation

- 2 Since the last meeting of this Committee there have been 8 cases published on the Adjudication Panel's website which are summarised below:-
- 3 On 10 September 2009 the Adjudication Panel considered an appeal by Cllr Whipp of Barnoldswick Town Council against the decision of Pendle Borough Council that Cllr Whipp had breached the Code of Conduct by failing to treat a person with respect. By way of background the people to whom these words were directed had published a leaflet during an election campaign which contained false information regarding Cllr Whipp in contravention of election law. Cllr Whipp had reported this matter to the police who conducted an investigation but no prosecution ensued. At a public meeting of the Council one of the authors of the leaflet asked Cllr Whipp to apologise for having made the report to the police. It was alleged that Cllr Whipp said "It is you who owe the apology as you are the liars. The CPS got it wrong. You are the guilty ones". Cllr Whipp did not deny using the words attributed to him. The Adjudication Panel found that the Standards Committee was in error as it considered simply whether or not the word 'liar' 'went beyond political expression, was rude and offensive and amounted to an expression of anger and personal abuse.' They do not appear to have considered whether or not the Appellant was justified in using the word on the basis that it might be true. The Committee should have assessed whether or not the untruths could properly be described as lies by exploring whether or not they were deliberate or negligent falsehoods. If they were, the description 'liars' would have been apt and justifiable, albeit unpleasant. There was no evidence upon which the Panel could conclude whether the persons so addressed were liars or not. In the circumstances the appeal had to be allowed. The Panel went on to say that whilst if true the use of the word "liar" would not be disrespectful nevertheless the use of the word is inappropriate and may breach the provisions of the Code by bringing the council into disrepute although there was no evidence upon which the Panel could reach such a conclusion in this case.
- 4 On 26 June 2009 West Dorset District Council found that Cllr Brewer of Crossways Parish Council failed to declare a prejudicial

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interest when he ought to have done so and failed to leave the room while the matter was being debated. He was suspended for 3 months. Cllr Brewer appealed on the basis that the interest was not prejudicial and also appealed against the sanction. On 18 September 2009 the Adjudication Panel dealt with the appeal on the basis of written representations. The relevant interest arose because the parish council was considering a remission of charges for the Scouts Association of which Cllr Brewer was a longstanding and leading member. The Panel agreed with the Standards Committee that a member of the public with knowledge of the facts would reasonably regard this interest as being so significant as to be likely to prejudice the councillor's judgement of the public interest. The Panel took account of the fact that Cllr Brewer had declared a personal interest, that he had not spoken on the issue, that he acted under a misunderstanding of the Code and that there was no evidence that he had tried to improperly influence the decision. Since the events complained of he had undergone further training and had given assurances regarding his future conduct. In the circumstances the Panel allowed the appeal in part and replaced the sanction with a censure.

- 5 On 18 September 2009 the Adjudication Panel overturned a decision that Cllr McCloud of Forest Heath District Council had failed to treat a fellow Member with respect. Councillor McCloud in an e-mail stated "As for Councillor Chambers attempting to denigrate my comments "Stating they were only Councillor McCloud's personal opinions" how could she possibly know what I was about to say, how could anyone know until I finished, you know they used to burn witches at the stake for professing to have such abilities". The investigating officer took the view that this was a personal insult aimed at Cllr Chambers. The Panel accepted Cllr McCloud's explanation that he was merely demonstrating that what Cllr Chambers was purporting to be able to do was impossible and he was not suggesting that she was a witch or that she had such powers. The Panel determined that there were no grounds for inferring that the comments were directed at Cllr Chambers personally and whilst the use of the expression was ill advised it did not constitute a breach of the Code.
- 6 On 16 September 2009 the Adjudication Panel sitting as a case tribunal dealt with a complaint against former Cllr Hore of Suffolk County Council. Much of the report is concerned with procedural issues which are confusing as the events complained of occurred post May 2008 but the implication is that it was a case referred to the monitoring officer for local investigation by an ethical standards

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officer. The allegation (which the Panel found proved) was that Cllr Hore had voted on behalf of herself and a fellow councillor when she was not authorised or entitled to vote on behalf of the latter. The Panel decided the conduct brought the authority and office into disrepute and disqualified Cllr Hore for 1 year. The case is of little practical relevance to UDC as this was only achieved by using an electronic voting system which we do not have here.

- 7 On 24 September 2009 the Adjudication Panel heard an appeal against a sanction imposed upon Cllr Brown of Bristol City Council by that Council's Standards Committee. Cllr Brown had deliberately used an insulting expression about a fellow member during a debate at full council. The words used were not racist but did include a racial element. Bad language was not involved. The Committee censured Cllr Brown and suspended her from being a member of the Council for 4 weeks. She had in fact apologised to the Councillor who was the subject of her remarks within 48 hours of being made aware that her remarks had caused offence and made a further apology to the Standards Committee. Whilst bringing the Council into disrepute will often attract a suspension the Adjudication Panel found that the Committee had not properly balanced the mitigating and aggravating factors. Mitigation included the comment was an isolated one off comment uttered in the context of a heated debate; the Appellant apologised for her conduct as soon as she appreciated that it had caused offence; no issues of dishonesty, financial impropriety or intent to secure personal financial or other gain were involved; the Appellant acknowledged her wrongdoing throughout; the Appellant had not previously failed to follow the provisions of the Code and there was no suggestion that there is any risk of future non-compliance. The factors which may reasonably be said to aggravate the misconduct were the intention of the Appellant to insult in using the words she did; the offensive and insulting nature of the words used; the fact that the words were uttered at a meeting of the full Council where the press and public were likely to witness them and the harm which resulted to the reputation of the Council and the office of councillor from the use of the words. The Panel felt the Committee had given insufficient weight to the apology and determined that the sanction imposed was disproportionate. It therefore determined that Cllr Brown should merely be censored for breaching the Code.
- 8 On 24 September 2009 the Adjudication Panel dealt with an appeal by Cllr Hallett of Bardney Group Parish Council against a decision of the Standards Committee of West Lindsey District Council that he had breached the Code of Conduct and against the sanction

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imposed. Cllr Hallett was the Treasurer of the Bardney Development Trust, a voluntary non-charitable organisation working for the good of the parish. Cllr Hallett was a member of the trust in his own right. He had not been appointed as a parish representative. At a meeting of the Parish Council to debate the erection of some signs in the village provided by the Trust which were controversial Cllr Hallett did not declare a personal interest, he seconded the motion in favour of the signs being erected and voted in favour of the proposal which was carried. The investigating officer found that the interest was not registerable under the Code (a finding accepted by the Committee and the Panel). The interest did not impact upon Cllr Hallett's financial position. However the investigating officer concluded that the interest was nevertheless a personal one as it affected the Councillor's well-being to a greater extent than other residents in the parish. This was upheld by the Adjudication Panel who held that Cllr Hallett's contentedness (and hence his well-being) was likely to be affected to a greater extent than other residents if the Trust's objectives with regard to the proposed signs were achieved. The Standards Committee had censured Cllr Hallett and required him to undertake training with regard to the Code of Conduct within 6 months. The Panel found that this was an unintentional and technical breach arising from a misunderstanding of the Code and not from any desire to hide a personal interest. Cllr Hallett's involvement with the Trust was well known and there was no breach of the Code by virtue of him seconding the motion or voting on it. In the circumstances the Panel felt that the censure was disproportionate and that part of the sanction was quashed. However The Panel stated that in his submissions Cllr Hallett demonstrated that he had not fully grasped the provisions of the Code and the requirement for training was therefore repeated to take effect within 6 months of the date of the decision. This case highlights a number of points:-

- a. The fact that a Member's interest may be well known does not relieve the Member from the obligation to disclose that interest at meetings of the Council where matters relating to that interest are being considered
- b. Where a Member has a personal interest that is not also a prejudicial interest having declared the interest the Member may take a full part in the debate including proposing or seconding motions and voting.
- c. Where a Member belongs to a local organisation (other than as the Council's representative in which case the interest is

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registerable and is automatically a personal interest) decisions relating to that organisation may well be considered likely to have a greater effect on the well-being of the Member than others living in the ward/district so as to make the interest a personal one which needs to be declared under the Code

- d. This was a breach of the Code at the lower end of the scale. The Adjudication Panel clearly did not feel it necessary to link the sanction of requiring training with a suspension. The effect of this is that no further action could be taken if the Member fails to undergo the training but it could in my view be argued that a failure on the part of a Member to act in accordance with a recommendation of the Standards Committee brings the Council or office of Councillor into disrepute.

- 9 On 5 June 2009 the Standards Sub-Committee of Milton Keynes Council found that Cllr Rose of Great Linford Parish Council had breached the Code of Conduct by failing to treat successive parish clerks, members of the parish council and others with respect and bullying. The Sub-Committee imposed a 6 month suspension reduced to 4 months if the Councillor gave a written apology to the parish council and the current parish clerk and undertook training on the Code of Conduct. Cllr Rose sought permission to appeal against the finding and the sanction but was given permission to appeal against the sanction only. The Adjudication Panel considered the appeal on 30 September. It found that the matters complained of took place over a period of time and it was not therefore considering a "one off" incident. The Panel stated that the starting point for serious breaches of the Code, such as bullying, was a suspension. The Panel was of the view that suspension was the appropriate sanction in this case and that the matters complained of were so serious that the maximum suspension that the Standards Sub-Committee could impose was justified. Cllr Rose had not put forward any mitigating factors which would support reducing that suspension. With some misgivings the Panel agreed that the suspension could be reduced to 4 months if there were the appropriate apologies and training was undertaken within 4 months. The Panel gave some guidance on the form of the apologies.

On 15 October 2009 the Adjudication Panel heard an appeal against a decision of Richmond-upon-Thames LBC Standards Committee against its decision that Cllr Marc Cranfield-Adams of that authority had breached the Code of Conduct by failing to treat

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officers with respect and censuring him for that breach. Cllr Cranfield-Adams was approached by two constituents who were disappointed that their planning application had been refused and the case officer had refused to meet them to discuss the matter saying that it would not be an efficient use of time. Cllr Cranfield-Adams sent an e-mail to the officer copied to the constituents and 3 senior council officers (including the Chief Executive) in the following terms *“Telling a resident that a meeting will not be an efficient use of time, when you are employed to serve the public, is wholly unacceptable. I cannot recall such arrogance from an Officer of the Council. I must ask, therefore, ask [sic] that you agree to meet me and [the applicant] as soon after the date he has specified.”* A more senior planning officer replied that she considered the refusal justified as the officer had already given sufficient advice to allow a revised application with better prospects of success to be lodged. This was in fact done. However before the time for dealing with the application lapsed Cllr Cranfield-Adams sent an e-mail to his constituents copied to the Chief Executive and Director of Environment in which he said *“I am outraged and shocked that as a consequence of the inertia of our planning officers you, and your young family are having to find alternative accommodation and that this might now be in jeopardy. As you can see I have copied this e-mail into the Director of Environment and the Chief Executive, as this is a damning [sic] indictment on the appalling service our planners are providing. I can only apologise on behalf of the Council and hope that by expressing my dismay in such forthright terms some one will pull their finger out and move this problem on without further delay.”* The Adjudication Panel held there had been no breach of the Code. With regard to the e-mail directed at a named officer the Panel held that the accusation of arrogance was unjustified and that the Councillor’s concerns at the refusal of a meeting should have been dealt with in a different, more temperate way without copying in members of the public. However this e-mail was not part of a series of communications but was a “one off”. Whilst the e-mail had been robust and intemperate in its criticism of an officer it was too insignificant to amount to disrespect and therefore a breach of the Code. The second e-mail was not directed at any particular officer but was aimed at the Planning Department as a whole. It was considered by the Panel to be intemperate and inappropriate but as it was not directed at an individual it fell within the ambit of comment that it was acceptable for a councillor to make. The Adjudication Panel expressed the view that perhaps the complaint should not have been passed for investigation either because it would not have been a breach of the Code or because it was too

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minor. The Panel was concerned that no attempt appeared to have been made to deal with the matter in a more informal manner as it did not consider this type of case warranted the full weight of the standards machinery.

- 10 On 21 October 2009 the Adjudication Panel considered simultaneously allegations that Cllr McGhee and Former Cllr Waters both of Forest Heath District Council breached the Code of Conduct. Against former Cllr Waters it was alleged that he had improperly influenced a decision in a matter where he had a prejudicial interest, that he had bullied an officer of the Council and failed to treat him with respect and that he had brought his office into disrepute. Against Cllr McGhee it was alleged that he had improperly used his position to obtain an advantage for another. The factual background was that former Cllr Waters son applied for planning permission to develop land which he owned for residential use. Former Cllr Waters knew that this was a prejudicial interest and that under the 2002 Code of Conduct (which was the relevant code at the material time) he would have to leave the room while the application was being discussed. He therefore asked Cllr McGhee to act as substitute for him. Mr Waters also approached Cllr McGhee to ask for his assistance. Cllr McGhee agreed to both requests. Former Cllr Waters and Cllr McGhee both had meetings with planning officers. They also attended meetings of the planning committee at which the application was discussed (although on each occasion former Cllr Waters declared his prejudicial interest and left the room). Planning permission was granted contrary to officer recommendations. Former Cllr Waters made a complaint to the Chief Executive regarding the way in which his son's planning application had been handled. In the presence of the Chief Executive former Cllr Waters accused the officer of lying to the planning committee. He was challenged to provide evidence in support of this but no such evidence was ever forthcoming. The former councillor invited the officer to his home for a "clear the air" meeting which the officer attended. During the meeting it was again suggested that the former councillor had documentary evidence that the officer had lied. He also said (as found by the Panel) that his family owned lots of land in the area and other matters would come across the planning officer's desk. If the officer put a foot out of line the former councillor would "bucking" have him. He also said he would bet anything from £10 - £10,000 that he could get the officer out of his job and that he knew where the officer lived. The Panel found all the allegations against former Cllr Waters proved.

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By enlisting the help of Cllr McGhee he was cynically trying to circumvent the provisions of the Code relating to prejudicial interests. He attended meetings regarding the application and in doing so was attempting to influence the outcome. His treatment of the planning officer amounted to bullying and disrespect over a prolonged period of time and also amounted to trying to compromise the officer's impartiality in breach of the Code. His conduct would reduce public confidence in the way planning applications were handled and adversely affected the reputation of members generally. He had therefore brought his office or his authority into disrepute. Former Cllr Waters had previously been suspended for 9 months by the Adjudication Panel for another matter. The present panel took the view that his conduct was at the most serious end of the scale and disqualified him from being a member of any relevant authority for a period of 3 years. With regard to Cllr McGhee the Panel accepted that he had a genuine view that the development should be permitted, that he was supporting the view of his parish council and that he was acting in his representative role as a councillor. Further he had not attended every meeting when the application had been discussed and at the first meeting having proposed approval he withdrew the proposal in favour of a deferral for further information. Nevertheless the Panel held that by acting on behalf of a member with a prejudicial interest Cllr McGhee had improperly tried to secure an advantage for another. The Panel accepted that Cllr McGhee had acted in good faith throughout and that his breach of the Code was inadvertent and in the circumstances the Panel imposed a censure and recommended that he undergo training with regard to the Code. The matters raised in this case occurred between July and August 2006. For reasons which are not apparent from the report it was not dealt with by the Adjudication Panel for over 3 years. It does not appear that human rights issues were raised but it must have at least been arguable that such a delay infringed the subject members' right to a hearing within a reasonable time.

Risk Analysis

There are no risks associated with this report.