

Recent Decisions Of The Adjudication Panel For England  
Standards Committee, item 8

**Committee:** STANDARDS COMMITTEE  
**Date:** 25 January 2010  
**Title:** RECENT DECISIONS OF THE ADJUDICATION  
PANEL FOR ENGLAND  
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**Agenda Item**

**8**

Item for  
information

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## 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](http://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
Workforce/Workplace	None

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#### **Situation**

2 Since the last meeting of this Committee there have been 12 cases published on the Adjudication Panel's website which are summarised below:-

3 Former Cllr Andrew Woolley

a. On 13 November 2009 the Adjudication Panel considered a reference from Taunton Dene District Council's Standards Committee that the above named of that authority had used Council property other than in accordance with the Council's reasonable requirements and that he had brought his office or his authority into disrepute. The inference I draw is that the referral was made as the Committee did not consider its powers of sanction would be sufficient if the allegation was proved.

b. Cllr Woolley had been supplied with a Council laptop and was made aware of the Council's policy regarding its use, namely that it should not be used by others and that occasional personal use of the internet was permitted provided it was reasonable. However it prohibited any personal use which involved the downloading of software for personal use or which entailed the access to or development of offensive and illegal material.

c. Cllr Woolley allowed members of his family to download material in breach of copyright laws. He also downloaded or permitted a friend to send to him for downloading highly offensive material.

d. Cllr Woolley did not dispute the facts as alleged nor that the facts constituted a breach of the Code of Conduct. He had resigned his position as a Councillor and expressed an intention never to stand again. However the Panel considered the breach so serious that only a disqualification would be merited. Cllr Woolley was therefore disqualified for a period of 2 years.

4 Cllr Churchman

a. On 16 November 2009 the Adjudication Panel considered a report from an Ethical Standards Officer that the above named of Isle of Wight District Council had breached the 2001 Code of Conduct in relation to events at one planning

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meeting. There were in total 4 complaints about Members conduct at that meeting 3 of which remain unresolved.

- b. Cllr Bishop applied for planning permission to the Council for a development which would have given her significant financial benefit. As she had a prejudicial interest under the old Code she was not in a position to address the Committee personally.
- c. Cllr Bishop approached Cllr Churchman who was a friend and asked her to speak on Cllr Bishop's behalf. Having satisfied herself that she was happy with the plans Cllr Churchman agreed to act as Cllr Bishop's representative.
- d. Although the Council had a policy which permitted applicants to be represented at meetings of the Planning Committee because the Councillors were friends that gave rise to a personal interest which the Panel also considered to be prejudicial. As such Cllr Churchman should have taken no part in the discussions and should have left the room when the matter came under consideration. Further by making representations she also sought to improperly influence the decision.
- e. The Panel found however that she was not using her position to try and gain an advantage for another person. Such a breach implies something which could not have been achieved save for by using her position as a Councillor and that did not apply here (presumably because Cllr Bishop could have been represented by a third party).
- f. The Panel accepted that Cllr Churchman had acted in good faith and censured her. It also recommended that she seek further training with regard to the Code.

### 5 Cllr Sharratt

- a. On 17 November 2009 the Adjudication Panel considered an appeal against a decision of South Ribble Borough Council's Standards Committee that Cllr Sharratt of that Council had breached the Code of Conduct by failing to treat a fellow Member with respect and bringing the Council or his office into disrepute. The Standards Committee censured Cllr Sharratt and required him to apologise in a form acceptable to the Chairman of the Standards Committee within 21 days.

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- b. The exact facts are not reported on the Adjudication Panel's website but it appears that the complaint concerned an article in the Idle Toad. This was the official magazine of a registered political party of the same name. Cllr Sharratt was the sole member of that party on South Ribble Borough Council. He was also the editor of the magazine which states that it is "published for fun".
- c. The article referred to another Member of the Council who had switched from the Idle Toad party to the Conservatives as a "defecator". Cllr Sharratt said this was a misprint and that the word should have been "defector".
- d. The Adjudication Panel determined that in publishing and editing the magazine Cllr Sharratt was not acting in an official capacity. The magazine is not part of the business of the Council and although Cllr Sharratt's name was frequently mentioned he did not claim to act as a representative of the Council and the magazine did not give that impression.
- e. As Cllr Sharratt was not acting in an official capacity the Code of Conduct was not engaged and the findings of the Standards Committee were therefore overturned.

### 6 Cllr Hayward

- a. On 20 November 2009 The Adjudication Panel heard an appeal from the above named of Bitton Parish Council against a decision of South Gloucester District Council that he had breached the Code of Conduct by failing to treat others with respect. Cllr Hayward was censured for the breach.
- b. It was alleged that on the 18 April 2008 Cllr Hayward had said "I object to Cllr Scawen being Chair as he is dishonest and totally untrustworthy". Further on 20 June 2008 he said during a council meeting that Cllr Scawen was dishonest, that he had contempt for the council and that he should resign". Cllr Hayward did not dispute making these statements.
- c. The Panel expressed concern that the Standards Committee had chosen not to be present or represented. It noted that the finding of the Committee was that the comments were unreasonable, not that they amounted to disrespect. Further although the decision considered the high degree of protection given in English law to the expression of political

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views there was no express reference to the Councillor's human right of freedom of expression.

- d. The Panel found that at the first meeting Cllr Hayward had good reason to believe that Cllr Scawen was acting dishonestly and that whilst normally accusing someone of dishonesty would be a breach of the Code in the circumstances of this case given Cllr Hayward's genuine and reasonably held belief which was supported by some evidence to show that Cllr Scawen may be acting dishonestly the comments were "just about acceptable as part of the rough and tumble of local politics".
- e. The matters which gave rise to Cllr Hayward's comments related to an acknowledged breach of planning control by Cllr Scawen. By the time of the second meeting this breach had been remedied. Further there had been some controversy regarding Cllr Hayward's previous remarks and Cllr Hayward should therefore have appreciated that other members considered his comments unacceptable. There were political factors in play however with the controlling group preventing a full debate on members' conduct. The Panel found that Cllr Hayward was frustrated by this and that in the context of his previous comments and his frustration whilst it was a close call his words at that meeting were also not a breach of the Code of Conduct.
- f. The Panel therefore reversed the findings of the Standards Committee.

### 7 Cllr Cooper

- a. On 25 November the Adjudication Panel considered an appeal by Cllr Cooper of Nazeing Parish Council against a decision of Epping Forest District Council that she had breached the Code of Conduct by failing to treat others with respect and for bringing her council or her office into disrepute. The Standards Committee censured Cllr Cooper required her to apologise and also to undergo training on the Code of Conduct, in particular with regard to personal and prejudicial interests.
- b. At the meeting of the Annual Council in May 2008 Cllr Cooper queried the position of the chair of the Planning Committee as that Member had an interest in a building company which Cllr Cooper felt may be a prejudicial interest.

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- c. At meetings of the Planning Committee on 14 August 2008 and 4 September 2008. Cllr Cooper raised a point of order and said that the Chairman should declare a personal and prejudicial interest in all planning matters. At the meeting on 14 August another Member and the Chairman both replied to the effect that the Chairman did not have an interest.
- d. On 25 September 2008 at Full Council Cllr Cooper read from a prepared statement and drew a contentious analogy details of which are not given in the report. Thereafter there were a number of letters to the local press including one from Cllr Cooper in which she said that she had used the analogy to illustrate a property developer chairing a planning committee. In that letter she had also stated that she considered such a situation to be untenable with the potential to impact upon the integrity of the Parish Council and the possibility of unsafe outcomes on planning applications.
- e. The Standards Committee had held that the raising of the issue at Annual Council was not a breach of the Code of Conduct but an expression of genuine concern. However when the matter was raised at the two subsequent meetings of the Planning Committee this caused the Chairman considerable embarrassment and called her character and integrity into question thereby failing to treat her with respect. With regard to the September meeting of Full Council the Committee held that having made her views known on 3 previous occasions Cllr Cooper was carrying out a sustained personal attack on the Chairman of Development Control and thereby failed to treat her with respect. Dealing with the letter to the newspaper however the Committee held that Cllr Cooper had been entitled to respond to comments about her in the press and the letter was not a breach of the Code. The Committee found that Cllr Cooper had not brought her council or her office into disrepute.
- f. The Adjudication Panel upheld the findings of the Standards Committee regarding Cllr Cooper's conduct at meetings. However it considered that Cllr Cooper's conduct at the meeting of Full Council on 25 September and the subsequent letter to the press had brought the Parish Council into disrepute.
- g. The Panel set aside the sanction imposed by the Standards Committee and suspended Cllr Cooper from the Council and its committees for 3 months. It also required Cllr Cooper to

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undergo a conciliation process through the Monitoring Officer and to issue a written apology to the Chairman of the Planning Committee to include a paragraph directed by the Panel. Subject to compliance with the requirements of the Adjudication Panel the suspension would cease.

- h. This case is of particular interest as it illustrates that although complainants have no right of appeal against a decision of a Standards Committee if a subject member appeals against a decision the Adjudication Panel appear to have power to make additional findings of a breach of the Code and power to impose a more stringent sanction. Whether those powers were correctly exercised in this case is open to doubt as the Panel dealt with the case without a hearing based on written submissions. There is nothing to indicate that the Panel gave Cllr Cooper notice that it was considering making a finding that she had brought the Council into disrepute or that it was considering imposing a greater sanction so as to give her the opportunity of making representations with regard thereto.
- i. This appears to be contrary to R (on the application of Mullaney) –v- The Adjudication Panel for England and others [2008]. In that case Cllr Mullaney of Birmingham City Council was suspended by that Council’s Standards Committee with a proviso that the suspension should cease if he apologised in a form acceptable to the Chairman of the Committee. He appealed against the decision of the Standards Committee. The Adjudication Panel dealt with the appeal based on written representations. It dismissed the appeal and substituted a sanction of a suspension which would not terminate if he apologised. The High Court held that failure to give the appellant notice that it was minded to vary the sanction and to invite submissions thereon was procedurally unfair and as such the decision to vary the sanction was quashed.

### 8 Cllr Redman

- a. On 1 December 2009 the Adjudication Panel considered a reference from Restmoral Borough Council’s Standards Committee that Cllr Redman had breached that Council’s Code of Conduct by using his official position as a member improperly to confer on, or secure for, himself an advantage and placed himself in a position which might reasonably lead a member of the public to believe that he was acting in such a manner by offering to advise a group of residents on a

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licensing application to which they objected and to present their case at the licensing panel for a fee of £400. It is alleged that Councillor Redman made the offer on two occasions.

- b. There is nothing which can be learnt from this case. The Adjudication Panel found the allegation was not supported by the evidence and found therefore that Cllr Redman had not breached the Code.

### 9 Cllr Klinkenberg

- a. On 11 December 2009 the Adjudication Panel considered an appeal by the above named of Teignbridge District Council against a decision of the Standards Committee of that Council that she should be censured for having improperly used her position to obtain an advantage for herself. The allegation centred on a letter sent to the chairman of a local information centre for which Cllr Klinkenberg worked requesting payment of salary. The letter concluded that Cllr Klinkenberg realised that payment of her salary would place a strain upon the centre's finances and suggested that the trust may apply through her for a payment of a grant of £500 from her Council Community Fund for repairs or equipment at the centre.
- b. The Investigating Officer found that the request for payment of salary and the suggestion that the centre apply for a grant were unconnected, that there was nothing improper in Cllr Klinkenberg suggesting an application for a grant and concluded that there had been no breach of the Code.
- c. The Standards Committee disagreed with the Investigating Officer's conclusion although it generally accepted his findings of fact. The Adjudication Panel found that the Investigating Officer's report was thorough and well reasoned. It ought to have been given great weight. In contrast the reasons given for departing from the Investigating officer's conclusion were inadequate.
- d. In the circumstances the Adjudication Panel agreed with the Investigating Officer that there had been no breach of the Code and the decision of the Standards Committee was quashed.
- e. Whilst a Standards Committee is not bound by the findings or conclusions of an Investigating Officer (as the



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Adjudication Panel acknowledged in this case) it is apparent that where a Committee decided to depart from those findings or conclusions clear and cogent reasons need to be given.

#### 10 Cllr Fraser

- a. On 11 December 2009 the Adjudication Panel considered an appeal by the above named of Leicestershire County Council against a decision of the Standards Committee of the Council. The Committee had found that Cllr Fraser had brought his office into disrepute by making inappropriate comments at a public meeting to discuss a proposed gypsy/traveller site. The decision of the Committee was that Cllr Fraser should:-
  - i. Be censured
  - ii. Be suspended from being a Member of the County Council for one month
  - iii. Not receive his Member's Allowance during the period of such suspension
  - iv. Undertake further training in equalities and diversity issues
  - v. Pay the first £250 costs of such training.
- b. The appeal was against the sanction only, Cllr Fraser having admitted to making the comments alleged and agreeing that they were inappropriate.
- c. In granting permission to appeal the President of the Adjudication Panel commented that he doubted that the Committee had power to require a Councillor to contribute towards the costs of training.
- d. In submissions to the Adjudication Panel the Standards Committee suggested that in the event that it did not have power to require Cllr Fraser to bear the first £250 of training costs the suspension should be increased to 6 weeks so that the cost would be met by a further loss of allowance.
- e. The Adjudication Panel agreed with the censure and also found that the matters complained of were sufficiently serious to justify a one month suspension.

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- f. However the Panel determined that the Committee did not have power to order that the Member's allowance be suspended during the course of the suspension. Whether or not the allowance was payable was a matter for the Scheme of Members' Allowances drawn up by the County Council. While under such a scheme a loss of allowances may be an inevitable consequence of a suspension (and that was a factor which may legitimately be taken into account by a Standards Committee in determining the length a suspension) the Standards Committee has no power to direct this.
- g. There was also no power within the regulations to direct that a Member should contribute towards the costs of training. In the absence of an express power the Panel held that the costs of training must be met by the body that required the training – i.e. the Council.
- h. The suggestion that the suspension should be increased to cover the costs of training was also rejected as it would have been an attempt to impose a sanction not provided for by Parliament by some other means.
- i. The Panel accepted that Cllr Fraser had already received a good deal of equalities and diversity training (some at his own expense). The Panel was satisfied that his remarks were a lapse of judgement which he regretted and had apologised for. He understood that his comments were inappropriate and why they were offensive. It was highly unlikely that he would behave in such a manner in the future and in the circumstances further training was unnecessary.
- j. The Panel therefore amended the Committee's decision by deleting the requirement for training and the requirement of the Standards Committee that the Member's Allowance be suspended.

### 11 Cllr Watts

- a. On 15 December the Adjudication Panel heard an appeal by the above named of South Ribble Borough Council against a decision of the Standards Committee of that Council that he should be suspended from being a Councillor for 3 months for disclosing confidential information.
- b. The Adjudication Panel considered that none of the exemptions which would permit the disclosure of confidential

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information applied but found on the facts that the information disclosed was not confidential. The decision of the Standards Committee was therefore overturned.

#### 12 Cllr Matchet

- a. On 23 December 2009 the Adjudication considered an appeal by the above named of Coventry City Council against a decision of the Standards Committee of that Council suspending him from being a Member of the Council for 3 months and requiring him to write a letter of apology in a form approved by the Committee.
- b. At the relevant time Cllr Matchet was Lord Mayor of the City of Coventry. The allegation was that he attended a community party in his capacity as Lord Mayor both in a ceremonial capacity and also as a fund raiser for the Lord Mayor's charity. At the function he made inappropriate and offensive comments to another guest.
- c. Although Cllr Matchet disputed the allegations the Standards Committee had been satisfied that they were proved. This finding was upheld by the Adjudication Panel. The Panel found that in making the comments alleged Cllr Matchet had failed to treat the person to whom the comments were made with respect and had brought his office of Lord Mayor into disrepute.
- d. In terms of assessing a sanction for bringing the authority or office into disrepute the starting point was a suspension. The Panel could find no reason for disagreeing with the findings of the Standards Committee and the suspension and requirement for an apology were upheld.
- e. In this case the suspension and apology were not linked so that Cllr Matchet could not have brought his suspension to an end sooner by giving the apology. The upshot of that is that if he refused to apologise there could be no further sanction. I do not criticise this approach. My view is that when determining a sanction first the Committee should consider what an appropriate sanction should be. Having reached that decision the Committee should determine whether there are grounds to reduce the sanction if a recommended course of action is adopted. It would not be appropriate to decide that an appropriate sanction would be a 3 month suspension but then to impose a 6 month suspension reduced to 3 months if an apology is made or

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mediation entered into or training is undertaken within that time.

#### 13 Cllrs Gress & Crowley

- a. On 21 December 2009 the Adjudication Panel considered appeals by the above named of East Peckham Parish Council against a decision of Tonbridge and Malling District Council's Standards Committee. The Committee had found (and indeed the allegation was uncontested) that the Members had breached the Code of Conduct by failing to declare personal interests at some meetings of the Council, declared the existence of personal interests but not the nature of the interest at other meetings and failed to act as required in relation to prejudicial interests. The sanction imposed by the Committee was a requirement for an apology and for the Members to undergo training within 6 months.
- b. The interests arose as the Parish Council had established a limited company to assume responsibility for the management of playing fields and a village hall owned by the Council. The Members concerned were appointed directors of the company as representatives of the Parish Council. As directors they were in a position of management and control. The interests were therefore registerable (there is no indication in the report as to whether the interests were registered or not). As registerable interests they were automatically personal interests.
- c. A number of the meetings considered matters relating to the financial position of the company. The Panel took the view that as such a member of the public with knowledge of the relevant facts would regard the interest as being so significant as to prejudice their judgement of the public interest. The interest was therefore prejudicial and the Members should therefore have withdrawn from the room when the matters were under discussion or, if the public had the right to speak and the Members wished to exercise their rights to speak under paragraph 12.2 of the Code, after having spoken.
- d. In mitigation the Adjudication Panel accepted the findings of the Investigating Officer that the Members did not gain personally and that they acted in good faith. Their conduct was based upon a long term misunderstanding of the Code of Conduct which the Panel said had been condoned by

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colleagues on the Parish Council and by implication the District Council “assuming that the Parish Council had received basic monitoring from the District Council as it should have done”.

- e. The Panel determined that an apology in these circumstances would serve no purpose but that training was required not as a punishment but to assist the Members observe the Code in future. The Monitoring Officer of the District Council was also recommended to ascertain what training may be helpful to other Members of the Parish Council and to provide such training.
- f. The report is silent as to what representations (if any) were made by or on behalf of the Members. Bearing in mind the company was set up by the Parish Council to manage assets which remained the property of the Parish Council on the Council’s behalf, that the Members were the Parish Council’s appointed representatives (which means that their first loyalty should be to the Parish Council rather than the company) and that there was no scope for personal gain I struggle to find reasons why a suitably informed member of the public would consider the interest to be prejudicial.
- g. I also have concern at the Panel’s comments about monitoring of Parish Councils by District Councils. By virtue of ss. 55 and 53 of the Local Government Act 2000 Standards Committees are responsible for monitoring the operation of the Codes of Conduct for the parishes for which it is responsible. Standards for England’s guidance is that this involves “monitoring how effectively Members are adhering to the Code of Conduct, the type of complaints received and how quickly they were dealt with”. The resources this Council has to monitor 55 town and parish councils are extremely limited.

### **Risk Analysis**

There are no risks associated with this report.