

Recent Decisions Of The Adjudication Panel For England
Standards Committee, item 7

Committee: STANDARDS COMMITTEE
Date: 22 March 2010
Title: RECENT DECISIONS OF LOCAL
GOVERNMENT STANDARDS IN ENGLAND
Author: Michael Perry Assistant Chief Executive
01799 510416

Agenda Item

7

Item for
information

Summary

- 1 This report is to inform Members of the decisions of Local Government Standards in 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

Local Government Standards in 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 First Tier Tribunal to the Upper Tribunal on a point of law with the permission of the First or Upper Tier Tribunal.
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

- 2 Since the last meeting of this Committee there have been 10 cases published on the Adjudication Panel's website which are summarised below:-
- 3 Cllr Bishop
 - a. In the last report I dealt with the case of Cllr Churchman of Isle of Wight District Council. His case and 3 others involve complaints regarding the conduct of Members regarding an application for planning permission made by Cllr Bishop. The references were made by an Ethical Standards Officer. Cllr Bishop was also a Member of Shanklin Town Council and the complaint related to her conduct at that Council also.
 - b. Cllr Bishop's planning application was a substantial one which would have brought her considerable benefit. She clearly had a personal and prejudicial interest. At the meeting of the Town Council when the matter was discussed she declared her interest and left the room, as did another Councillor who was a personal friend of Cllr Bishop.
 - c. The remaining Members of the Town Council having all declared personal interests then discussed the proposal. No summary was made of the comments and as was customary no vote was taken. The Town Clerk was instructed to write to the District Council with the Town Council's views. The letter sent indicated opposition to the application and reflected the discussion as minuted.
 - d. Cllr Bishop subsequently heard a recording of the discussion of her application. She engaged in discussion on her application under matters arising. She did not declare an interest. Another comment was remembered which was not opposed to the proposal. The Chairman said that the clerk would write to the District Council with the additional comments but no attempt was made to reconcile these with the minutes which had already been approved as accurate.
 - e. The following day the Town Clerk e-mailed Cllr Bishop with details of the procedures used to take minutes. Cllr Bishop responded with suggested changes to the procedures and instructed the clerk what she should write to the District Council regarding the application.

Recent Decisions Of The Adjudication Panel For England

Standards Committee, item 7

- f. Subsequently another Member of the Town Council reported to the District Council's planning committee comments which were only favourable to Cllr Bishop's application.
- g. With regard to the District Council instead of leaving the planning application in the hands of her agents Cllr Bishop dealt with officers directly via e-mail and face to face meetings.
- h. Accepting she had a prejudicial interest Cllr Bishop approached a number of Members to speak on her behalf. Some sought advice from the Monitoring Officer who advised them that this would not be appropriate. The Monitoring Officer also contacted Cllr Bishop to advise her that she should not ask other Members to speak on her behalf and offering to discuss this advice with her. Cllr Bishop did not respond.
- i. In the event 3 Councillors agreed to speak on Cllr Bishop's behalf and did so. Members of the planning committee voted against officer advice to approve the application.
- j. Under the District Council's constitution this triggered a "cooling off" period to allow officers to report back to the Committee for further consideration. During that period the Monitoring Officer wrote to Cllr Bishop advising her not to ask other Members to speak for her when the matter returned to and asked for her confirmation that she would not do so. Cllr Bishop did not respond.
- k. Senior planners did not consider that Cllr Bishop's application could be dealt with in accordance with policy. Accordingly they worked with her to produce a scheme which would accord with policy and would attract an officer recommendation for approval. In order for this to be considered by the meeting Cllr Bishop wished the application had to be fast tracked. This was done because of pressure on officers from Cllr Bishop.
- l. In the meantime the Monitoring Officer again reminded Cllr Bishop that she should not lobby other Members and warned her of the consequences of lobbying. Cllr Bishop did not respond.
- m. Throughout her dealings with the Council regarding the planning application Cllr Bishop described herself as

Recent Decisions Of The Adjudication Panel For England

Standards Committee, item 7

“Councillor” and she made use of her official e-mail for communication purposes.

- n. The Case Tribunal found that Cllr Bishop had breached the Code of Conduct for Shanklin Town Council by failing to declare an interest and failing to withdraw from the meeting when she should have done so. They also found she had breached the Code of Conduct of the Isle of Wight District Council by using her position improperly to endeavour to secure an advantage for herself, bringing her office as councillor into disrepute and bringing her council into disrepute. Notwithstanding significant mitigation the Tribunal found the breaches to be so serious as to warrant disqualification and she was disqualified from being a member of any relevant authority for a period of 2 years.

4 Cllr Joyce

- a. This is another reference to the Tribunal by an Ethical Standards Officer in connection with Cllr Bishop’s application for planning permission above. Cllr Joyce was a member and deputy leader of Isle of Wight District Council.
- b. Cllr Joyce was not considered to be a friend or close associate of Cllr Bishop. His first involvement with the planning application came when he was asked by the Leader to put pressure on Cllr Bishop to withdraw her initial planning application which could have caused embarrassment to her group if it progressed. Subsequently the Chief Executive asked him to speak to Cllr Bishop regarding the application.
- c. Although not requested to do so either by the Leader or the Chief executive Cllr Joyce attended meetings with Cllr Bishop and senior planners to try and find a way forward. During those meetings he suggested that officers should “bend the rules” to allow an earlier consideration of Cllr Bishop’s application. He also said that if a certain course of action was taken by officers he would withdraw members of his group from the planning committee.
- d. The Tribunal found that these acts amounted to an attempt to compromise the impartiality of officers and the use of his position improperly to seek to gain an advantage for another. Although there was some mitigation the Tribunal felt that the breaches warranted a suspension and suspended

Recent Decisions Of The Adjudication Panel For England

Standards Committee, item 7

Cllr Joyce from being a member of Isle of Wight District Council for 2 months.

- e. There are 3 interesting factors in this case.
 - i. The ESO did not consider that Cllr Joyce had brought his office or council into disrepute. The Tribunal disagreed with that assessment but stated it would not make a finding to that effect as it was the other breaches of the Code of Conduct which brought the office and the authority into disrepute.
 - ii. One of the allegations (not upheld) was that Cllr Joyce had not had regard to the advice of the Monitoring Officer under paragraph 7(b) of the Code of Conduct. That was dismissed as the advice which Cllr Joyce had received (and ignored) was from the Interim Director of Legal Services and not the Council's Monitoring Officer. Whilst this may be technically correct the requirement to have regard to the advice of the Monitoring Officer only applies when the MO is exercising his statutory duties and in any even the Code only requires Members to have regard to the advice, not necessarily to accept it.
 - iii. This was said to be a finely balanced case. The fact that this was so does not affect the sanction. The Tribunal stated that it may be finely balanced in terms of considering the evidence and coming to a decision as to whether there was a breach but if a breach was established it was not rendered any less severe merely because the fact of a breach had been difficult to determine.

5 Cllr Sutton

- a. This is the last of the cases to involve Cllr Bishop. Cllr Sutton was the Leader of Isle of Wight District Council. The Tribunal determined that he and Cllr Bishop were friends.
- b. Cllr Sutton met with planning officers and Cllr Bishop to discuss the application and tried to influence what they should put in their report. He also attended the first meeting of the planning committee which considered Cllr Bishop's application. He failed to declare an interest and although he did not formally speak during the consideration of the item but he did at various times express disagreement with

Recent Decisions Of The Adjudication Panel For England

Standards Committee, item 7

statements being made by officers. The Chairman of the planning committee said he was persuaded to vote for the application by Cllr Sutton's behaviour.

- c. The Tribunal held that the interest arising from his friendship with Cllr Bishop was prejudicial and Cllr Sutton should therefore have withdrawn from the meeting.
- d. The Tribunal did not find that his attendance at the meeting breached the requirement not to improperly seek to influence a decision on a matter where a prejudicial interest arises. I find that a surprising conclusion in the light of high court decisions which have held that the mere presence of a Member in a room can infringe this provision. The rational appears to be that there was no evidence that Cllr Sutton intended to improperly use his position to gain an advantage for Cllr Bishop and the word "seek" implies intent. However he did breach this provision of the Code in his meetings with officers. At such meetings he also sought to compromise the impartiality of officers. The content of the meetings was not such as to amount to bullying or disrespect but Cllr Sutton's failure to distance himself from the planning application of a friend did bring his office and authority into disrepute.
- e. The Tribunal noted that Cllr Sutton had not thought he was in breach of the Code at the time, that he had reported himself to the Standards Board, that he had resigned as Leader of the Council and had therefore lost a significant sum of money. However it concluded that some aspects of the breaches were so serious that a suspension was required. Cllr Sutton was suspended from being a member of the District Council for 6 months.

6 Cllr Bickerton

- a. On 6 January 2010 the Tribunal considered a reference alleging that Cllr Bickerton had breached the Code of Conduct of City of Wakefield Metropolitan District Council in that his conduct in dealings regarding the possible sale of land owned in connection with redevelopment of the area was inappropriate and threatening, he did not make a full disclosure of an interest and he made an inappropriate remark in relation to the planning process.

Recent Decisions Of The Adjudication Panel For England

Standards Committee, item 7

- b. Rival developers were looking to construct a supermarket in the ward for which Cllr Bickerton was a Member and Town Councillor. For some reason which is not clear from the report Cllr Bickerton favoured one party more than another.
- c. During the course of negotiations Cllr Bickerton put unreasonable pressure upon the land owners to sell to his preferred bidder. This pressure included a threat that the Council would use its powers to compulsorily purchase the land. A similar threat was made to a representative of the developer not favoured by Cllr Bickerton.
- d. When the application for planning permission by the non-preferred developer was first considered Cllr Bickerton was a member of the relevant committee. He declared an interest in that he had had a meeting with the applicant and other Councillors at the applicant's request to discuss layout and what was on offer for the residents of the town. He remained and spoke during the meeting but did not vote as the matter was deferred.
- e. The site owners wrote to the Monitoring Officer expressing concern that Cllr Bickerton had not disclosed his involvement with the other developer. The Monitoring Officer tendered certain advice to Cllr Bickerton regarding his future conduct. Cllr Bickerton attended one further committee meeting where the item was on the agenda but did not speak as the application was again deferred. He thereafter resigned from the committee.
- f. The Tribunal found that in his dealings with the landowners Cllr Bickerton had used undue pressure and had bullied them in breach of the Code. His threat of the use of compulsory purchase powers to achieve his desired ends also gave the impression that he could use the Council improperly for this purpose and he therefore brought the Council into disrepute.
- g. The Tribunal also found that in his dealings with the landowners and the rival developers on the facts Cllr Bickerton had breached numerous paragraphs of the Council's Planning Code. Whilst breach of that Code would not necessarily be a breach of the Code of Conduct the number and seriousness of the breaches were such as to be likely to have diminished public confidence in the Council's ability to deal fairly and properly with planning applications. This also brought the Council into disrepute.

Recent Decisions Of The Adjudication Panel For England

Standards Committee, item 7

- h. Although there was nothing to suggest that Cllr Bickerton had a prejudicial interest in the matter the Tribunal found that he had pre-determined the application and that this had also brought the Council into disrepute. I have reservations about this finding. In its guidance on prejudicial interests and predisposition the Standards Board (as it was then known) said that the latter was better left to the courts rather than the Standards Board or Standards Committees. A Member who has indicated predetermination should not vote on that matter but providing the Member does not seek to use his position to improperly secure an advantage or disadvantage for himself or another I do not see how a Member expressing genuinely held views brings the Council into disrepute.
- i. Strangely the Tribunal found that Cllr Bickerton had used his position improperly to try and secure an advantage for one prospective developer and a disadvantage for another which is a breach of the Code but did not consider that this breach brought the Council or his office into disrepute.
- j. Although he declared an interest at one meeting the Tribunal considered that Cllr Bickerton did not have a personal interest in the planning application. There was no breach of the Code for failing to declare his involvement with the other prospective developer. However the Tribunal said that he ought to have done so. This is an unhelpful gloss on the Code of Conduct.
- k. Cllr Bickerton's term of office expires in May 2010. The Tribunal had considered disqualification but decided to suspend Cllr Bickerton for the remainder of his term of office to allow the electorate to decide whether he should remain as their councillor.
- l. The Tribunal also recommended that the Council consider adopting a policy that required members to undertake appropriate training before they are allowed to take part in planning matters.

7 Cllr Rayment

- a. On 26 January 2010 the Tribunal considered an appeal against the decision of Hampshire Police Authority that Cllr Rayment had breached that authority's Code of Conduct by making an unauthorised disclosure of confidential information. The Standards Committee had directed that Cllr Rayment receive training in dealing with the media.

Recent Decisions Of The Adjudication Panel For England

Standards Committee, item 7

- b. An Assistant Chief Constable was subject to an investigation by another police force and in the light of that investigation had resigned from the force. According to the policy of the Authority his name should have remained confidential.
- c. Cllr Rayment as Chair of the Police Authority was contacted by a local newspaper for an interview. She was told that the newspaper had been given the name by two other sources and asked how she felt that a serving ACC was under investigation. She replied that the officer was not a serving officer which she acknowledged to the Tribunal could indirectly identify him.
- d. Notwithstanding the fact that the identification was indirect the Tribunal upheld the finding of breach of confidentiality. It also agreed with the Standards Committee that although it seemed that there had been a leak as to the officer's identity from inside the force the extent on knowledge of the officer's identity was such that the information at that stage had not come into the public domain and it therefore retained its confidential status.
- e. The Appellant took a procedural point the decision on which is helpful. Although the allegation related to breach of confidentiality the investigating officer considered whether the disclosure also brought the Authority or the office into disrepute. Although the Standards Committee did not make a finding of disrepute the Appellant challenged the entitlement of the investigating officer to consider breaches not referred for investigation.
- f. There are apparently conflicting authorities from the Adjudication Panel (as was). What this case clarifies is that an investigating officer is limited to investigating the allegations made insofar as the facts are concerned but having investigated those facts it is a matter for the investigator to determine which provisions of the Code (if any) have been engaged without limitation by the terms of reference for enquiry.

8 Cllr Lynch

- a. On 20 January 2010 the Tribunal considered an allegation that Cllr Lynch of Eden Bridge District Council broke that Council's Code of Conduct by disclosing confidential information, namely information contained in exempt reports where the press and public had been excluded from the

Recent Decisions Of The Adjudication Panel For England

Standards Committee, item 7

discussion under s.111 I and Sch 12A Local Government Act 1972.

- b. The Council were engaged in a regeneration project with a construction company. The company got into financial difficulties and ceased work.
- c. Sainsbury's made a proposal to the Council which would involve that company assuming the role of the developer. A report was prepared to be considered in Part II of a meeting of Full Council. The Part II report was sent to Members by the Monitoring Officer with a letter reminding Members of the need for confidentiality with regard to the contents of the report.
- d. The day he received the letter and report Cllr Lynch expressed concerns to the Chief Executive and the Monitoring Officer that the report was to be considered in Part II. Both gave clear advice to the effect that disclosure could prejudice the Council.
- e. The week after the Council meeting Cllr Lynch asked the Chief Executive what information he could release to the press. The Chief Executive said that no information set out at the meeting could be disclosed and that Cllr Lynch was bound by the duty of confidentiality. The Chief executive also expressed the view that disclosure would place Cllr Lynch in breach of the Code of Conduct.
- f. Soon thereafter an article appeared in the local paper quoting confidential information that had been supplied to the paper by Cllr Lynch. The information at that time had not come into the public domain.
- g. Cllr Lynch was reported to the Standards Committee and the complaint was passed for investigation. Cllr Lynch was informed of that fact.
- h. Thereafter the Monitoring Officer wrote to Cllr Lynch asking for an assurance that he would not disclose information to be contained in a confidential report to be considered by the Council the following week. Cllr Lynch responded that he would not be at the meeting and he would not disclose information to be contained in the report.
- i. Cllr Lynch subsequently received a copy of the minutes of the meeting including the exempt minutes. At a later meeting

Recent Decisions Of The Adjudication Panel For England

Standards Committee, item 7

with Monitoring Officer Cllr Lynch undertook not to disclose information contained in the exempt minutes.

- j. Thereafter the local paper printed a letter from Cllr Lynch giving details of a proposal from Sainsbury's (which had not come into the public domain) which the Council had rejected.
- k. Ultimately the Council went public with details of the various proposals it had considered in order to consult the public on preferred options. The Tribunal found that at no time had Cllr Lynch asked the Chief Executive of the Council's plans for consultation.
- l. In the light of the second disclosure the Standards Committee referred the case to Standards for England for determination by the Tribunal.
- m. Cllr Lynch sought to rely upon the "public interest" exemption for disclosing confidential information. The Tribunal held that none of the exemptions applied although unfortunately it failed to specify why. In my view the Tribunal has a duty to give reasons for its decision and in the absence of such there are grounds for appeal to the high court. It found that Cllr Lynch had breached the Code by disclosing confidential information on 2 occasions. It further found that he had brought his office into disrepute in that having given his word to the Monitoring Officer that he would not make further disclosures he did so by a letter to the press. The disclosures had also brought the Council into disrepute by undermining its credibility as an authority able to maintain confidence.
- n. The Tribunal ordered that Cllr Lynch be suspended from being a Member of the Council for 6 months. He was to apologise in writing to the Council and personally to the Monitoring Officer for his breaches of confidentiality. If he failed to apologise within 28 days there was to be a further suspension of 6 months to be consecutive to the first. He was also required to undergo training in accordance with a programme arranged by the Monitoring Officer not exceeding 20 hours. If the training was not completed within 6 months there was to be a further suspension of 6 months to be consecutive to the first.
- o. I doubt the legality of the sanction. There is clear power to suspend a Member for a period which can be reduced in the event that the Member apologises, undergoes training etc.

Recent Decisions Of The Adjudication Panel For England

Standards Committee, item 7

However the legislation does not appear to permit a requirement for an apology or training to be visited by a sanction in the event of non-compliance. Such a sanction is not in respect of the breach of the Code but for failing to comply with the requirement imposed and as such appears to be outside the statutory powers of the Tribunal.

9 Cllrs Clark and Fawcett

- a. On 28 January 2010 the Tribunal concluded an appeal by Cllrs Clark and Fawcett against a decision of the Standards Committee of Durham County Council that they had both breached the Code of Conduct of West Rainton and Leamside Parish Council by failing to treat the parish clerk and others with respect, by bullying the parish clerk, by seeking to compromise the impartiality of a council employee and by bringing the Council into disrepute. The sanction imposed was that the members should be suspended and before resuming their duties were expected to undergo training in Equalities and Diversities and the Code of Conduct. No length of time for the suspension is referred to in the report. Unlimited suspension until training has been received, whilst according with one interpretation of the legislation, is unlikely to be lawful.
- b. The case is very fact specific and do not lend themselves to summary and no new points of principle are raised. However if any Member wishes to see an outstanding example of how a dysfunctional parish council operates the full case of 25 pages may be worth a read.
- c. The Tribunal upheld the findings of the Standards Committee with the exception of the allegation of seeking to compromise the impartiality of a council employee which the Standards Committee did not seek to defend. It substituted a suspension of 3 moths each as a sanction.

10 Cllr Joseph of L.B. of Brent Council

- a. On 9 February 2010 the Tribunal heard an appeal by Cllr Joseph against a sanction of 6 months suspension imposed by the Standards Committee of the L.B. of Brent for bringing her office or authority into disrepute, for using her position as a member to improperly secure an advantage for herself and for failing to register a gift to a value of over £25 in the Members Register of Interests within 28 days. Cllr Joseph did not appeal against the findings of fact, only the sanction.

Recent Decisions Of The Adjudication Panel For England

Standards Committee, item 7

- b. At the relevant time Cllr Joseph was Mayor. During her year in office she solicited sponsorship from local businesses and received donations of £400 and £500 from 2 local concerns which she said she used to buy clothing and accessories for her term of office. These were not registered until over 7 months after her year of office came to an end.
- c. Cllr Joseph put forward various mitigating factors none of which found favour with the Tribunal. However the Tribunal did make one interesting comment. It agreed that the fact that Cllr Joseph had not admitted the wrongdoing was not an aggravating factor but said that it meant that she could not plead an early acceptance of her breaches as a mitigating factor.
- d. In the circumstances the Tribunal upheld the Standards Committee sanction of 6 month suspension whilst acknowledging that due to delays on the part of the Standards Committee in dealing with this matter and the fact that her term of office was coming to an end she would not serve the full 6 months. (Under the legislation a suspension automatically comes to an end at the cessation of a Member's term of office).

11 +Cllr Barnbrook

- a. On 10 February 2010 the Tribunal heard an appeal by Cllr Barnbrook of the London Borough of Barking and Dagenham against the findings of the Standards Committee of that Council that he had brought his authority or office into disrepute by posting a video on his weblog in which he made statements of crimes occurring in the borough which were false. The Standards Committee had required a written apology to be on the website for 4 months and also suspended Cllr Barnbrook for one month.
- b. Cllr Barnbrook was a member of the GLA as well as being a member of the London Borough of Barking and Dagenham. He was a member of the BNP. In the video he introduced himself as a member of the GLA and BNP but did not associate himself with Barking and Dagenham. Although he referred to alleged murders in Barking and Dagenham (which had not in fact taken place) he also gave examples from elsewhere in the country, including Manchester.
- c. The Tribunal analysed the definition contained in the code to see if Cllr Richards could have been said to be acting in an

Recent Decisions Of The Adjudication Panel For England

Standards Committee, item 7

official capacity. Although residents in the borough may recognise him as a councillor the Tribunal found as facts that he was not conducting the business of his authority when he made and posted the video, he was not representing the Council, he did not claim to be acting on behalf of the Council nor did he give the impression he was so doing. In the circumstances he was not acting in an official capacity and the Code of Conduct was not engaged. The decision of the Standards Committee was therefore reversed.

- d. This case illustrates the importance Members and indeed Councils place on findings of Standards Committees. By the time of the hearing Cllr Richards had apologised and served his suspension. He had also accepted that so far as the GLA was concerned he had breached the Code and had been dealt with by the Standards Committee there. Notwithstanding this he saw the appeal through instructing an eminent Q.C. to represent him. The London Borough of Barking and Dagenham were not outdone in the quality of its legal representation at expense to its council tax payers.

12 Cllr Richards

- a. On 16 February 2010 the Tribunal considered an appeal by Cllr Richards of Blidworth Parish Council against a decision of the Standards Committee of Newark and Sherwood District Council that he should be suspended for 6 months for failing to treat the parish clerk with respect, bullying the parish clerk and bringing his authority or his office into disrepute. The Committee also required Cllr Richards to make a written apology to the parish clerk.
- b. Most of the facts of the case were not disputed. The only factual disputes concerned the appellants conduct on 2 visits to the community centre where the parish council had its offices. The Tribunal held that where there was a dispute on facts the burden of proof was on the Standards Committee and the standard of proof was the balance of probabilities.
- c. On the 2 occasions when there was a dispute of fact it was common ground that Cllr Richards had remonstrated with the parish clerk because he believed the parish notice board was not up to date. Cllr Richards believes he acted reasonably. The parish clerk and parish councillors who were present described Cllr Richards as being red faced, shouting and lunging at the parish clerk. He called the clerk "useless" and said that he "should be sacked".

Recent Decisions Of The Adjudication Panel For England

Standards Committee, item 7

- d. The Tribunal found that this was a failure to treat the parish clerk with respect. However it decided that as the incident was of short duration and arose because Cllr Richards lost his temper it did not amount to bullying. Although the report indicates that there were other instances of failing to treat the parish clerk with respect these are not particularised. However the Tribunal found that together these matters amounted to harassment but not bullying. I find it hard to make a distinction. However it seems that in the view of this Tribunal at least harassment is disrespect, not bullying.
- e. The Tribunal also held that Cllr Richards conduct would not lessen the public's confidence in the Council or his office and he had therefore not brought either into disrepute.
- f. In terms of sanction the Tribunal felt that the seriousness of the breach was such that a suspension was justified, all the more so because Cllr Richards had failed to show any contrition or acknowledge that what he had done was wrong. A suspension was the only way to impress upon him that his behaviour was unacceptable. It therefore imposed a suspension of 2 months. It also required Cllr Richards to make a formal apology to the parish clerk in a form given by the Tribunal. This was to be done within 2 months and if he failed to do so there would be a further suspension of 4 months to run concurrent. Again I question the legality of imposing a sanction not for a breach of the Code but for a failure to comply with a direction of the Tribunal.

Risk Analysis

There are no risks associated with this report.