

Committee: STANDARDS COMMITTEE
Date: 21 JUNE 2010
Title: RECENT DECISIONS OF THE FIRST TIER
TRIBUNAL LOCAL GOVERNMENT
STANDARDS IN 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 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 aggrieved party may apply to the First Tier Tribunal for a review of its decision or may appeal to the Upper Tier Tribunal with permission of the First Tier Judge or a Judge of the Upper Tier Tribunal.
Sustainability	None

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Ward-specific impacts	None
Workforce/Workplace	None

Situation

2 Cllrs Clark and Fawcett

- a. In my report to the March meeting I stated that the Standards Committee of Durham County Council had found that that Cllrs Clark and Fawcett of West Rainton and Leamside Parish Council had both breached the Code of Conduct 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.
- b. I also reported that the tribunal upheld the decision of the Standards Committee in all respects save for the allegation of seeking to compromise the impartiality of a council employee which the Standards Committee did not seek to defend.
- c. It has been pointed out to me that this is incorrect and that the only allegation which was in fact upheld was failing to treat the parish clerk with respect in respect of which a 3 month suspension was imposed. I apologise to the Councillors concerned for any embarrassment they may have suffered as a result of this error on my behalf.

3 Since the last meeting of this Committee there have been 11 cases published on the First Tier Tribunal's website which are summarised below:-

4 Cllr Fraser

- a. On 27 March 2010 the tribunal considered a reference from an Ethical Standards Officer of an allegation that Cllr Fraser of Astley Village Parish Council had breached the code of conduct by making persistent, unsubstantiated and defamatory statements about the council and a council employee to the press and outside agencies; by using a pseudonym publishing comments on a website containing further unsubstantiated and defamatory statements about the council and council employees and by harassing the

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parish clerk and other members of the council by making malicious telephone calls and sending text messages.

- b. Cllr Fraser took exception to a practice whereby the parish clerk used a photocopier belonging to her husband's business for copying documents on behalf of the parish council and was reimbursed for the expense. Cllr Fraser wrote to the monitoring officer of the borough council asking for the clerk's conduct to be investigated and sent copies of the letter to outside agencies and the press. A few days later he again wrote to the monitoring officer alleging that the parish clerk had a conflict of interests being both the parish clerk and a borough councillor. This letter was also copied to outside agencies and the press.
- c. Cllr Fraser also objected to the fact that when the clerk purchased items for the council she retained the Tesco clubcard points. He wrote to the parish council regarding this and subsequently reported the issue to the police as suspected theft.
- d. It was also alleged that Cllr Fraser had failed to register his interest as a local school governor.
- e. As a result of Cllr Fraser's conduct the council (on the exercise of the chairman's casting vote) passed a motion of no confidence in Cllr Fraser and resolved to report his conduct to the Standards Board.
- f. The Tribunal found that although Cllr Fraser had a right to raise concerns regarding the clerk's conduct the way he had done so was entirely disproportionate and caused her unnecessary embarrassment. The Tribunal found that Cllr Fraser's conduct amounted to bullying and a failure to treat the clerk with respect. However as no lasting damage had been done and the matters concerned were trivial this did not amount to bringing the council or office of councillor into disrepute.
- g. With regard to the complaint to the police the Tribunal made a statement of principal which, whilst not binding upon future tribunals or the Standards Committee, is nevertheless persuasive. Absent evidence of malice, wasting police time or other aggravating factor the report of suspicion of crime *no matter how unreasonably held* cannot be a breach of the code of conduct.

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- h. The Tribunal made further findings of failure to treat the clerk with respect, bullying and bringing the council and office of councillor into disrepute. The Tribunal had, for reasons which are not reported, agreed to hear evidence on these matters in private and I am therefore unable to summarise these matters.
- i. Cllr Fraser admitted failing to register his interest as a school governor.
- j. The Tribunal decided that the failure to register was a minor breach and inadvertent. The other breaches of the code were more serious and the Tribunal noted that Cllr Fraser had previously been suspended for failing to treat someone with respect. The matters complained of were for the most part trivial and did not have any lasting impact. Further the Tribunal took the view that Cllr Fraser was now aware of what was expected of him and that further breaches of the code were unlikely. In the circumstances disqualification was not necessary but a period of suspension from the council for 4 months was appropriate.

5 Cllr Forsyth-Fraser

- a. On 30 March 2010 the tribunal considered a reference from an ethical standards officer that Cllr Forsyth-Fraser had breached the Code of Conduct of Campbell Park Parish Council.
- b. The parish council had appointed a new clerk subject to a condition that he should pass the Certificate in Local Council Administration (CiLCA). The clerk made two attempts to attain this qualification both of which he failed. On the second occasion he appealed and having assessed his work the Chief Verifier was satisfied that the work demonstrated that the clerk had reached the appropriate standard and authorised the issue of the certificate.
- c. Cllr Forsyth-Fraser complained to various people with an interest in the award of certificates. In her letter of complaint she referred to the council as having been foisted with a clerk who did not understand the sector or its legal structure and who was not up to grade. She also made disparaging remarks which were not true to the clerk personally at the council offices.
- d. The tribunal appears to have struggled with the issue of whether Cllr Forsyth-Fraser was acting in an official capacity as she was also a member of the local and national associations of local councils. She had used her private e-mail address for e-mails and had signed herself as a member of the national association. However the content of her communications regarding the clerk for her parish council was such that she gave the impression of representing her council and the conversation with the clerk took place on council premises and directly related to his position as parish clerk. The tribunal therefore concluded that Cllr Forsyth-Fraser was acting in an official capacity in relation to the subject matter of the complaint.
- e. The tribunal found that the conduct of Cllr Forsyth-Fraser amounted to bullying and bringing the council into disrepute. She had without justification given the impression that the clerk was incompetent whereas all the evidence (including the evidence of Cllr Forsyth-Fraser) was that the clerk was a very able person.

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- f. Cllr Forsyth-Fraser had previously been suspended for 6 months from the parish council and Milton Keynes District council of which she was also a member. That matter was the subject of an as yet unheard appeal. It was suggested that the question of sanction should be adjourned to enable the issue of sanctions to be dealt with at one hearing. The tribunal decided not to adopt this course. It indicated that due to the serious nature of the complaint it had considered disqualification. However there was powerful mitigation which the tribunal acknowledged. Cllr Forsyth-Fraser had accepted before the tribunal (although not before) that she had breached the Code and gave a full public apology to the clerk before the tribunal. She had many years of local government service and was a member of the national association. The tribunal was also influenced by the fact that the clerk did not appear to have suffered any lasting harm and felt that he would be able to have a working relationship with the councillor. However the tribunal took a view that even if she was a reformed character it was necessary for a sanction to be imposed to mark its disapproval of her conduct. It also refused to take account of the councillor's acknowledged fiery temper saying that members who possess such tempers must control them or pay the consequences.
- g. Cllr Forsyth-Fraser was suspended for a period of 3 months.

6 Cllr D. Smith

- a. On 31 March 2010 the tribunal heard a reference from an ethical standards officer that Cllr D. Smith of Gosport Borough Council had breached that council's code of conduct. The only paragraph of the code considered was bringing the council or office of councillor into disrepute. This is surprising as the tribunal clearly felt that the conduct complained of was capable of amounting to failing to treat others with respect and bullying. However as that aspect was not considered in the ethical standards officer's report the tribunal declined to make a finding to that effect.
- b. Cllr Smith had been the subject of an earlier complaint to the Standards Board concerning his conduct at a licensing committee he chaired. Two officers gave evidence to the ethical standards officer on that occasion which criticised Cllr Smith's behaviour at the meeting. The ethical standards officer made a finding that there had been a breach but that no action was required. Cllr Smith had been provided with

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the draft report along with the statements from the 2 officers concerned. He did not at that stage seek to challenge the officers' evidence.

- c. Shortly after the publication of the final report Cllr Smith challenged the evidence of the officers. He did this by asking the chief executive to instigate the council's grievance procedure. His stated aim was that he wanted a redaction of some of their evidence and a written apology. The chief executive advised against this course of action but despite that advice Cllr Smith was adamant that the grievance procedure should be used.
- d. Subsequently Cllr Smith engaged in oral and written communications with the Audit Commission in which he made unsubstantiated comments regarding the capability of certain officers including the chief executive and monitoring officer. He asked that the chief executive and monitoring officer be suspended whilst an investigation was carried out.
- e. Cllr Smith gave statements to the press which were published in which he alleged that the council was corrupt. He was also publicly critical of officer who, although not named, could be easily identified. This breached the council's protocol on officer/member relations.
- f. The tribunal found that both of these matters did bring the council and the office of councillor into disrepute and indicated that it would have considered disqualification as an option had the issues of disrespect and bullying been pursued. They had not but the tribunal took account of the impact that this "*and allied complaints against the Respondent*" had had upon the council and its officers. The maximum suspension was therefore appropriate in the circumstances and Cllr Smith was suspended for 12 months.
- g. The ethical standards officer also advanced a case of a further breach of the code by virtue of Cllr Smith's behaviour towards the chief executive and monitoring officer, in particular querying the monitoring officer's sickness record with the chief executive, requiring the chief executive to refer her to occupational health, insisting that he see the medical report and the subsequent referral to the Audit Commission. The ethical standards officer made powerful arguments as to why such behaviour also brought the council or office of councillor into disrepute. Surprisingly the tribunal made no reference to these in its decision.

- h. Apart from the apparent oversight of the tribunal in ignoring an important part of the case there are two aspects of this case which I find unsatisfactory. The first is that this tribunal appears to have shackled its ability to make findings of a breach of the code of conduct to those areas addressed by the investigating officer. In my view the tribunal (and by extension a standards committee) can take a view that other paragraphs of the code are engaged providing they inform the subject member and afford him or her the opportunity to make representations on the issue. The second concern is that the report discloses that a number of other complaints have been made by officers against Cllr Smith which are outstanding. These appear to have been taken into account by the tribunal in determining the sanction (see the words in italics in paragraph 5. f above). This is a wholly impermissible approach as no other breaches of the code have yet been found and “sentencing” should have been limited to the breaches identified on this occasion only.

7 Cllr Willets

- a. On 8 April 2010 the tribunal considered a reference from an ethical standards officer that Cllr Willets of the London Borough of Bromley had breached the code of conduct by failing to treat officers with respect, by bullying officers and by bringing his council or the office of councillor into disrepute. I infer from the report that the matter was referred to Standards for England by the standards committee because the complainant was the council’s chief executive.
- b. It was alleged that Cllr Willets had pestered staff in street services to the extent that one member of staff took time off with stress. As a result the former chief executive agreed a protocol with Cllr Willets and the leader of the council whereby Cllr Willets would only contact street services through a dedicated e-mail address. That protocol was reinforced by the current chief executive but ignored by Cllr Willets.
- c. Cllr Willets also publically questioned the honesty, integrity and capability of the chief executive and other senior officers in derogatory tones, using expressions such as “cheat”, “liar”, “not fit to hold public office” etc. He also asked a question in public at a meeting of the council as to whether the chief executive would resign from his post.

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- d. The tribunal found that Cllr Willets conduct was disrespectful to officers and amounted to bullying. The tribunal also found that Cllr Willets had brought both his office and his authority into disrepute.
- e. Cllr Willets indicated that he was intending to stand for re-election in May. The tribunal stated that it would have suspended him for 12 months (the longest suspension the tribunal can impose). However a suspension by the tribunal cannot exceed the remainder of the member's term of office. In this case this was 4 weeks. In the circumstances the tribunal decided to disqualify Cllr Willets from being a member of a relevant authority for the same period of time as it would have suspended him, namely 12 months. In doing so the tribunal acknowledged that the effect of its decision was such that Cllr Willets may not be able to sit on the council for 4 years. However it felt that a 4 week suspension was quite inadequate in the light of the seriousness and repeated nature of the breach of the code.
- f. In my view this decision is challengeable. If the tribunal were of the view that a suspension was the appropriate sanction the fact that the suspension would be short because of the legislation does not justify replacing that sanction by a disqualification.
- g. There is a further interesting point arising from this case. The powers of sanction for a tribunal expressly provide that a suspension shall not exceed the remainder of the term of office. Those words do not appear in the legislation dealing with the powers of sanction of a standards committee from which it follows that a suspension shortly before an election will continue to have effect thereafter if the member is re-elected.

8 Cllr Andrews

- a. On 26 April the tribunal heard the case of Cllr Andrews of Shropshire Council on an application by the Standards Committee of that council. The inference is that there was a local investigation and report and that in considering the report the standards committee decided that if the recommendation of the investigating officer (that there had been a breach of the code) was accepted the powers of sanction of the committee would be inadequate.

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- b. Cllr Andrews was the owner of certain land in the district through which ran a public footpath. Prior to him becoming a member of the council an application had been made for the footpath to be included on the definitive map. Mr Andrews (as he then was) lodged an objection. He also made a formal complaint to the chief executive of the council alleging bias on the part of the officer responsible for the committee report. The complaint was investigated and the reporting officer exonerated of any wrong doing.
- c. The application was referred to a committee of the council after Cllr Andrews had been elected and he was a member of that committee. At the meeting he circulated a letter to all members of the committee in which he said that he was aggrieved at the “lack of impartiality, objectivity and independence” of the case officer and referred to “the biased way that her reporting has been constructed”. The letter contained the phrase “I can assure you as a fellow councillor that this claim is totally invalid”. The letter contained references to “our codes of conduct”, “our meetings” and “fellow councillors”. It was signed Cllr Paul Andrews.
- d. Having distributed the letter Cllr Andrews declared his prejudicial interest as landowner and left the room without exercising his right to speak.
- e. The tribunal upheld the finding of the investigating officer that the letter contained inaccuracies and referred to the history of the application in such a way as to suggest that his complaint against the officer had been upheld.
- f. The investigating officer’s findings of breaches of the code of conduct were also upheld. By calling into question the integrity of the officer at a public meeting Cllr Andres had failed to treat the officer with respect. By distributing the letter Cllr Andrews had both used his position to try and gain an advantage for himself and had improperly tried to influence a decision in relation to a matter when he had a prejudicial interest. His conduct as a whole would have the effect of reducing public confidence in his office as councillor and in his authority. He had therefore brought both his office and his authority into disrepute.
- g. The decision of the tribunal was that Cllr Andrews should be suspended for 6 months, that he should give the relevant officer a written apology within 14 days and that he should undergo training before re-assuming his duties. There was

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no direction that the period of suspension should be reduced upon an apology being given and training undertaken.

- h. As imposed there is no incentive for Cllr Andrews to comply with the requirement to apologise and undergo training as it will not reduce the suspension. Should he not do so however arguably he is treating the tribunal disrespectfully by ignoring its rulings and/or that by failing to do as required he was bringing his office or council into disrepute.
- i. This case also shows that where a case is referred to the tribunal directly by a standards committee after a local investigation and report then the committee must provide representation – another job for the monitoring officer!

9 Cllr Sproat

- a. On 13 May 2010 the tribunal considered an appeal against a decision of the Standards Committee of Allerdale Borough Council that Cllr Sproat of Broughton Community Council had breached his council's code of conduct by failing to declare and act upon a prejudicial interest which arose from his chairmanship of the Broughton British Legion. The Standards Committee suspended Cllr Sproat for the maximum period of 6 months.
- b. At a meeting of the Community Council in October 2009 there was an agenda item to consider the future of the British Legion hall. At the start of the meeting Cllr Sproat declared a personal interest in the item. Although it was on the agenda Cllr Sproat stated that it was apparent some time before the meeting that it would not be discussed.
- c. Not only was there no evidence that the future of the hall was discussed but the evidence pointed to the fact that it was not. Accordingly the matter had not come under consideration and the obligations to declare an interest and to withdraw did not apply.
- d. The tribunal were critical of the investigation in that the investigating officer found that Cllr Sproat had failed to declare a prejudicial interest when an interest had been declared and further he had failed to explain in his report why he considered chairmanship of the British Legion to be a prejudicial interest.

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- e. The tribunal were also critical of the Standards Committee in that it departed from the recommendation of the investigating officer that Cllr Sproat had not behaved inappropriately with regard to a prejudicial interest without giving reasons. The Committee had also failed to give reasons for imposing the maximum sanction.
- f. The tribunal found that Cllr Sproat had not breached the code of conduct and the appeal against the decision of the Standards Committee was therefore allowed.

10 Cllr Farrell

- a. On 21 May 2010 the tribunal considered an allegation that Cllr Farrell of Doncaster Metropolitan Borough Council had breached the code of conduct of that council by forwarding 4 inappropriate e-mails to a number of people over a 3 month period using his council supplied laptop. The report indicates that the hearing followed an investigation by an ethical standards officer but not why the case was referred to Standards for England by the standards committee of the borough council. There are two possible reasons. The first is that the committee may have felt that the sanction they could impose if a breach were proven would be inadequate. The second is that Cllr Farrell held a high profile position on the council being the deputy civic mayor (who by custom would have become the civic mayor at the May 2010 annual meeting) and was also a member of the council's standards committee.
- b. Cllr Farrell admitted that his conduct was in breach of the code. The tribunal decided that he had misused council resources and that in forwarding the messages he had brought his office and the council into disrepute. The ethical standards officer had submitted that disqualification was an appropriate sanction. The tribunal did not indicate whether it considered that to be an option but did state that in the light of the mitigation (that Cllr Farrell had apologised, he had stood down from the civic mayoralty and he had a number of testimonials regarding his public service) a less severe sanction than would otherwise have been imposed was appropriate. Cllr Farrell was suspended from being a councillor for 3 months.

11 Cllr Connolly

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- a. On 25 May 2010 the tribunal considered an appeal by Cllr Connolly of Bury Metropolitan Borough Council against a decision of the Standards Committee of that authority that he had breached the code of conduct by failing to behave as required with regard to a prejudicial interest. The committee suspended Cllr Connolly for a period of 80 days specified to run between certain dates so as to enable him to prepare for and attend the annual meeting of the council.
- b. The alleged prejudicial interest arose at committee meetings where the provision of care arrangements was being discussed. Cllr Connolly declared a personal interest arising from the fact that his partner was employed as a care assistant. She could have been affected by the proposals under discussion.
- c. The Standards Committee found that the interest was prejudicial within the definition of paragraph 10 of the code. The tribunal agreed with that finding, unnecessarily as the permission to appeal that had been granted was limited to an appeal against sanction.
- d. The tribunal was critical of the Standards Committee for not having given detailed reasons for the sanction it imposed. It decided that in the absence of such reasons it would consider the issue of sanction afresh. It considered the breach to be serious but there had only been 2 breaches, the Councillor was of long standing without a history of previous breaches or attitudinal problems towards the code, he had apologised for his errors and repetition was unlikely. Further the meetings were not taking final decisions so no long term harm had resulted. In the circumstances the tribunal considered a suspension of 1 month to be appropriate and this was substituted for the Standards Committee's decision.

12 Cllr Leivers

- a. On 21 May 2010 the tribunal heard an appeal by Cllr Leivers of East Lindsey District Council against a decision of the Standards Committee of that Council that he had breached the code of conduct by failing to treat a constituent with respect. Cllr Leivers had sent the constituent an e-mail in which he used the word "bloody".

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- b. The e-mail was sent in response to a complaint regarding a community magazine which was funded by the district council but had no other connection with it...
- c. It was sent from Cllr Leivers' council e-mail address. However the council permitted members to use the e-mail account for private purposes and the e-mail carried a standard disclaimer. Cllr Leivers did not use the title "councillor" in the e-mail.
- d. The tribunal concluded that the fact that the e-mail was sent on a council e-mail account was not of itself sufficient to show that Cllr Leivers was acting in an official capacity. Having regard to the circumstances and the content of the e-mail the tribunal were of the view that the e-mail was sent in a personal capacity and that there was nothing which suggested that Cllr Leivers was acting or purporting to act in an official capacity. In the circumstances the code did not apply and it was unnecessary for the tribunal to consider whether the content of the e-mail was disrespectful. The decision of the Standards Committee was overturned.

13 Cllr Myers

- a. On 21 May 2010 the tribunal considered an appeal by Cllr Myers of Walford Parish Council against a decision of Herefordshire Council Standards Committee that he had breached the code of conduct by using his position as vice chairman of the parish council improperly to secure an advantage for himself and to secure a disadvantage for another councillor, Cllr Cole. The sanction imposed was a requirement that Cllr Myers undergo training and give a written apology in a form required by the deputy monitoring officer.
- b. Following complaints by constituents and debate at parish council regarding activities on Cllr Cole's land Cllr Myers wrote to contractors engaged there complaining of the activities, alleging the commission of various offences and breaches of planning law and seeking (successfully) to persuade the contractors to cease work.
- c. The letter gave a clear impression that it was written on behalf of the parish council and was signed by Cllr Myers as vice chairman of the council. He said that the parish council had concerns and pointed to a minute requesting him to draft a letter in conjunction with another member for further

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comment by members and then transmission to the authorities. However he acknowledged that the letter was drafted by him and that he did not have the authority to send it.

- d. The tribunal found that Cllr Myers could legitimately have sent the letter in his personal capacity or indeed as a parish councillor on behalf of his constituents. However by purporting to write on behalf of the parish council to give greater weight to his comments Cllr Myers had used his position to improperly try to secure a disadvantage for Cllr Cole. The tribunal agreed with the views of the Committee regarding sanction and the decision of the Standards Committee was therefore upheld.

14 Cllr Gutteridge

- a. On 21 May 2010 the tribunal considered an appeal by Cllr Gutteridge of Blaby Parish Council against a decision of the Standards Committee of Blaby District Council that she had breached the code of conduct by bringing her office and her authority into disrepute. Cllr Gutteridge was suspended for a period of 3 months which was suspended until May 2011. She was also required to give a written apology in a form required by the Standards Committee within 3 months of the full decision of the Standards Committee being issued and failure to do so would result in suspension. Finally she was required to undergo training with the monitoring officer during 2010.
- b. Cllr Gutteridge had various issues with the parish clerk. She had written to the chairman of the council with approximately 30 complaints regarding the clerk most of which were upheld. In return the parish clerk had lodged a grievance against Cllr Gutteridge which was not upheld.
- c. Cllr Gutteridge prepared a report concerning the outcome of a car boot sale for consideration by a working party of the parish council. In the report she was very critical of the clerk. The working party meeting was held in public. Following that meeting the report and minutes of the working party meeting were presented to a committee of the council which again met in public.
- d. The tribunal held that the nature of the comments made regarding the clerk was personal abuse and criticism which exceeded the protection of freedom of expression contained

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in article 10 schedule 1 Human Rights Act 1998. Cllr Gutteridge had therefore failed to treat the parish clerk with respect. (I would mention at this point that disrespect does not appear to have featured in the Standards Committee's decision. Correctly the tribunal gave the parties the opportunity to make submissions on this issue before reaching its conclusion).

- e. The tribunal also held that by making derogatory comments regarding the clerk in public Cllr Gutteridge had brought her office into disrepute. The report shows that the tribunal did not agree with the Standards Committee's finding that she had also brought her authority into disrepute but gives no reason for that finding.
- f. The tribunal commented that the decision of the Standards Committee on sanction was confused and that part of the sanction was ultra vires (there is no power to issue a suspended suspension). In its submissions on sanction the Committee accepted that it had exceeded its powers and suggested that a suspension was appropriate. The appellant had submitted that a censure was adequate and that she would undergo further training if it were thought necessary. The tribunal suspended Cllr Gutteridge for a period of 4 months or until she gave a written apology in a form specified by the Standards Committee.

Risk Analysis

There are no risks associated with this report.