

Recent Decisions Of The Adjudication Panel For England  
Standards Committee, item 5

**Committee:** STANDARDS COMMITTEE  
**Date:** 24 JANUARY 2011  
**Title:** RECENT DECISIONS OF THE FIRST TIER  
TRIBUNAL LOCAL GOVERNMENT  
STANDARDS IN ENGLAND  
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Agenda Item

**5**

Item for  
information

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### Summary

- 1 This report is to inform Members of the decisions of the First Tier Tribunal 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](mailto: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
Ward-specific impacts	None
Workforce/Workplace	None

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**Situation**

- 2 Since the last meeting of this Committee there have been 7 cases published on the First Tier Tribunal's website which are summarised below:-
- 3 **Cllr J. Brookes**
- a. On 26 October 2010 the tribunal gave its decision regarding a number of allegations that Cllr Brookes of Defford and Besford Parish Council had breached that council's code of conduct following a 2 day hearing. The matter had been referred to the tribunal by the Standards Committee of Wychavon District Council as the committee considered that its powers of sanction would be insufficient. The Standards Committee made the reference to the tribunal with a recommendation that Cllr Brookes should be disqualified for 1 year.
  - b. The allegations (which were 8 in number) fell into the categories of failing to treat others with respect, bringing the council or office of councillor into disrepute and intimidating potential complainants of a breach of the code of conduct.
  - c. With regard to the allegations of failing to treat others with respect the tribunal firstly considered whether items of correspondence relating to the village hall were sent in an official capacity and then what items of correspondence attracted a high degree of protection under article 10 European Convention on Human Rights (right to freedom of expression).
  - d. The village hall was run by a management committee which was distinct from the parish council. However the parish council were the custodian trustees of the village hall and also owned land which the management committee wished to acquire for the purpose of providing a new village hall.
  - e. Although in some cases it was self evident that communications were sent in an official capacity (e.g. where the respondent had signed himself as "chairman of the parish council") in others it was not quite so clear. The tribunal found on the facts that even where Cllr Brookes had not indicated in the correspondence complained of that he was a councillor nevertheless he was conducting the business of his authority. Councillors have an interest in the efficient running of their authorities and other public bodies and correspondence dealing with such matters is likely therefore to be judged as being sent in an official capacity so that the code of conduct is engaged.

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- f. The high court has determined in a number of cases that the code of conduct places restriction on the right to freedom of expression and allegations of a breach of the code which engage that human right have to examine whether on the facts of a particular case interference with that right is justified. In reaching a conclusion the tribunal declined to consider individual phrases contained in correspondence but considered each item of correspondence as a whole. The tribunal then considered which items of correspondence attracted a high level of protection and where a high level of protection was deemed justified it considered whether notwithstanding that protection the tenor of the communication was such as to be a breach of the code.
- g. The first correspondence complained of was regarding the failure of a land deal crucial to the development of a new village hall. This was a matter of local importance which reflected on the competence of both the management committee and the parish council. It was therefore a legitimate subject for public debate and a high level of protection under Article 10 was justified. Although the language used by Cllr Brookes was robust and his communication contained direct attacks on the competence of certain individuals his words were not mere vulgar abuse and no breach of the code was found.
- h. Cllr Brookes had also accused the publisher of the parish news letter or misrepresenting the minutes of parish council meetings both in documents and at a council meeting. The tribunal found that there was no factual basis for the allegation and as Cllr Brookes had not taken appropriate steps to verify the facts his statements were not afforded a high degree of protection and he was found to have failed to treat the publisher with respect. Similarly, when Cllr Brookes made remarks to the publisher at a council meeting relating to the publisher's faith these were not connected with the conduct of council business but were personal expressions of anger and therefore not protected under Article 10. However when the publisher reacted inappropriately to these remarks and Cllr Brookes told him to "shut up" and threatened to have him ejected by the police if he did not cease this was not disrespectful as Cllr Brookes had a duty as chairman to control the meeting and in the context of events he was entitled to say what he did.
- i. Cllr Brookes had written to the local planning authority regarding the planning application for the new village hall, signing himself as chairman of the parish council. Insofar as he dealt strictly with planning considerations this was given a high level of protection under Article 10. Other parts of the letter however dealt with matters not relating to planning. These were not afforded the same degree of protection. In including these remarks the tribunal found that Cllr Brookes had brought his office into disrepute and in

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signing himself as chairman of the parish council before the council had considered the application he had implied that he was authorised to make the representations on the council's behalf which brought the authority into disrepute.

- j. The local vicar wrote to all parish councillors expressing concern at the delay in the village hall project moving forwards. Cllr Brookes responded. Complaint was made that he had not consulted fellow councillors before replying and that the tone of the letter was disrespectful. The tribunal found that although he replied in his capacity as a councillor it was apparent from the communication that Cllr Brookes was replying personally and not on behalf of the council and that he had no duty to consult before doing so. Parts of his letter were in defence of his position and attracted the protection of Article 10 but other passages were in excess of what was required for Cllr Brookes to express his views forcibly and amounted to disrespect.
- k. Cllr Brookes convened a meeting of a committee of the council. The legality of the arrangements for that meeting were doubtful to say the least but the tribunal proceeded on the basis it was a valid meeting. Although the committee comprised only 3 members of the council all members, except 2, were invited to attend and all members except 1 did in fact attend. On the facts the tribunal decided that the failure to invite the non-attending member amounted to treating him with disrespect.
- l. Cllr Brookes had information suggesting that a meeting had taken place between interested parties and the district council's planning department regarding the planning application for the village hall. He wrote to the district council raising a number of issues regarding that meeting. The tribunal formed a view that he was entitled to do so and that such communication merited a high level of protection under Article 10. However the tone of the letter was such that a third party reading it would have thought that it alleged impropriety on the part of persons attending although there was no evidence that any such impropriety existed. For that reason the tribunal found this to be a breach of the code for failing to treat those referred to in the letter with respect.
- m. It was further alleged that Cllr Brookes had unreasonably delayed dealing with documents to facilitate the disposal of the old village hall and it was suggested that he did so purposely to frustrate the transaction. On the facts the tribunal found that Cllr Brookes did not unreasonably delay in dealing with the documentation.
- n. The parish council having approved plans for the siting of the new village hall Cllr Brookes instructed the council's solicitors to alter the siting. There was no suggestion that Cllr Brookes did so from any improper motive and the tribunal found that Cllr Brookes was entitled to have concerns regarding the siting of the village hall

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and to express those concerns. However he was bound by the council resolution approving the siting and by acting contrary to that motion without authority he brought his office into disrepute.

- o. With regard to the allegation that Cllr Brookes had intimidated potential complainants he wrote to the management committee confirming that it could have the land subject to conditions one of which was to withdraw all complaints against parish councillors. The tribunal found this to be a breach of the code.
- p. In terms of sanction the tribunal found that where it had found breaches of the code with one exception the breaches were all minor. The exception was the letter to the vicar. Had Cllr Brookes expressed contrition at its wording it appears that he would have escaped with a censure. However the tribunal were concerned that he failed to appreciate that the letter was a breach or why it was considered so. In the circumstances it determined that a short suspension was necessary and a 3 month suspension was imposed. Cllr Brookes request for the suspension to start the following day to enable him to attend an important parish council meeting that evening was refused and the suspension had immediate effect.

#### 4 Cllr C. Roberts

- a. On 27 October 2010 the tribunal considered an appeal by Cllr Roberts of Cotswolds District Council and Fairford Town Council against a decision of the Standards Committee of Cotswolds District Council that she had breached the code of conduct of both of her councils by failing to treat others with respect, bringing her authority and office into disrepute and using her position to improperly secure an advantage or disadvantage for herself or another.
- b. The tribunal accepted all but 1 of the findings of the Standards Committee and upheld the sanction. There is nothing new to learn from this case compared to previously reported cases.

#### 5 Cllr P. Harries

- a. On 29 October 2010 tribunal considered an appeal by Cllr Harries of Hungerford Town Council against a decision of the Standards Committee of West Berkshire Council that he had breached the code of conduct by bullying the town clerk.
- b. The decision is brief but it can be inferred that there were issues regarding the town clerks ability. Cllr Harries is said to have been overly involved in work which would normally have been the function of the town clerk but in doing so was acting from the best of motives and seeking to be helpful The tribunal found that this did not amount to bullying or even failing to treat the parish clerk

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with respect although it did say that his actions were inappropriate.

- c. In the circumstances the decision of the Standards Committee was quashed.

### 6 Cllr J. Kitcat

- a. On 3 November 2010 the tribunal heard an appeal from Cllr Kitcat of Brighton and Hove City Council against a decision of the Standards Committee of that council that he had breached the code of conduct by failing to treat a fellow councillor with respect and had improperly used council resources for political purposes.
- b. Cllr Kitcat had posted five clips from webcast council meetings on YouTube.
- c. The tribunal found that although he had used his personal computer for providing links to the clips on YouTube his motive in part was to keep his constituents informed of events. He was therefore acting in an official capacity.
- d. Although one clip at least could have had the effect of ridiculing one councillor the tribunal found that this was no more than within the bounds of the local political cut and thrust and senior politicians can expect "brickbats of this kind"
- e. As Cllr Kitcat had used his own computer the allegation regarding misuse of resources referred to the council's webpage and web recording. However this was available for the public to use without restriction. The use of the material did not cause the council to suffer any financial loss and a non-council member could have done precisely what Cllr Kitcat had done without suffering any consequences. As a result the tribunal determined that there had been no breach of the code.
- f. The decision of the Standards Committee was quashed.

### 7 Cllr B. Aspinall

- a. On 5 November 2010 the tribunal considered an appeal by Cllr Aspinall of Brentwood Borough Council against a decision of the Standards Committee of that council that he had breached that council's code of conduct by bringing his authority into disrepute. The Committee had suspended Cllr Aspinall for 7 weeks. Cllr Aspinall appealed on the basis that the Standards Committee was biased because it included a councillor from a different political group and 2 other persons who were known to be supporters of that group. Permission was also granted by the presiding judge on the ground that the Standards Committee had not considered Cllr Aspinall's rights under Article 10 European Convention on Human

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Rights. Finally the tribunal also considered whether in publishing an election leaflet in support of his bid for re-election to Essex County Council Cllr Aspinall was acting in an official capacity so far as Brentwood Borough Council was concerned.

- b. Cllr Aspinall was at the material time a member of both Brentwood Borough Council and Essex County Council. In the lead up to the county council elections in May 2009 Cllr Aspinall published election material which was clearly critical of Brentwood Borough Council. The investigating officer was of the view that the comments could reasonably be regarded as reducing public confidence in Brentwood Borough Council being able to perform its functions thereby bringing the council into disrepute. The Standards Committee accepted that finding.
- c. On the issue of bias the tribunal found that there was nothing inherently improper in councillors of different political persuasions sitting on standards committees. The tribunal found as a fact that no bias existed but was critical of the approach taken by the Standards Committee when the allegation was raised. The tribunal held that where an allegation of possible bias is raised the Standards Committee should listen to the allegations, give them due consideration and if the decision is that the hearing is to proceed with the members summonsed to give reasons for that decision.
- d. The tribunal also upheld the guidance from Standards for England that a person standing for re-election is acting in a private capacity as it is not the function of a councillor to get re-elected. The investigating officer drew a distinction between that guidance and Cllr Aspinall's position as Cllr Aspinall was not seeking re-election to Brentwood Borough Council but to a different authority. The tribunal rejected that distinction. It held that it is not the function of a member of one council to campaign either for his or her own election (or the election of another person) to another council. Further, if the distinction were upheld it would give rise to an anomalous situation whereby a councillor seeking re-election to a council could criticise that council in his election material but could not criticise another council. Thus Cllr Aspinall was not acting in an official capacity when publishing the leaflet and the code was not engaged.
- e. Notwithstanding that finding the tribunal went on to consider the Article 10 point and was critical of the Standards Committee for having failed to do so. The tribunal found that the criticisms of Brentwood contained in the leaflet were party political issues and as such enjoyed the protection of Article 10. The infringement of that right could not be justified in the present case.
- f. For both of these reasons the tribunal considered that there had been no breach of the code but even so the tribunal felt compelled

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to comment on the fact that despite having been given advice on sanctions by the monitoring officer the committee failed to give reasons for its decision that Cllr Aspinall should be suspended.

- g. The decision of the Standards Committee was quashed although it appears from the decision that the suspension had already been served.

### 8 Cllr A. Perrow

- a. On 18 November 2010 the tribunal considered a reference from the Standards Committee of Craven District Council that Cllr Perrow of Cowling Parish Council had breached its code of conduct by taking part in matters when he had a prejudicial interest.
- b. On the facts the tribunal found no prejudicial interest existed and the reference was therefore dismissed.

### 9 Cllr J. Hogg

- a. On 18 November 2010 the tribunal considered an appeal by Cllr Hogg of Wingate Parish Council against a decision of Durham County Council's Standards Committee that he had breached his council's code of conduct by bullying the parish clerk during a telephone conversation and disclosing confidential information regarding his terms of employment. Permission to appeal was limited to the first ground only as the judge considering the application for permission considered that the appeal against disclosure of confidential information stood no reasonable prospect of success. The sanction imposed by the Standards Committee was a suspension for a period six weeks unless Cllr Hogg gave a written apology in terms acceptable to the Committee. Cllr Hogg was also required to undergo training with regard to the code of conduct.
- b. The tribunal found as a fact that Cllr Hogg had subjected the clerk to 2 hostile, abusive and threatening telephone calls such that the matters had been reported by the parish clerk to the police.
- c. The decision of the Standards Committee was upheld although the time for Cllr Hogg to give an apology was extended.

### Risk Analysis

There are no risks associated with this report.