

Committee: STANDARDS COMMITTEE

Agenda Item

Date: 21 March 2011

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Title: RECENT DECISIONS OF THE FIRST TIER
TRIBUNAL LOCAL GOVERNMENT
STANDARDS IN ENGLAND

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Item for information

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

- 2 Members note this report

Background Papers

- 3 First Tier Tribunal - Local Government Standards in England's website
www.adjudicationpanel@tribunals.gov.uk.

Impact

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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

5 Since the last meeting of this Committee there have been 6 cases published on the First Tier Tribunal's website which are summarised below:-

6 Cllr Ellwood

- (i) On 24 November 2010 the tribunal received a reference from an Ethical Standards Officer alleging that Cllr Ellwood of Hailsham Town Council had breached that council's Code of Conduct by using inappropriate and offensive language about a member of the public; using inappropriate and offensive language about a reporter; using inappropriate, offensive and racist language in expressing a view about a request from a person seeking to arrange a continental market event; using inappropriate and offensive language about another member of the council; inappropriately sending several text messages to an officer of the council containing jokes of an offensive, obscene or racist nature; seeking to intimidate an officer of the council who had made allegations of a breach of the Code of Conduct and improperly participating in negotiations between the council's previous Public Information's Officer and the council regarding her compromise agreement for the termination of her employment.
- (ii) Cllr Ellwood declined to participate in the proceedings and the tribunal determined to proceed in his absence.
- (iii) On the facts the tribunal found the allegations to be proved and determined that Cllr Ellwood had breached the Code of Conduct by failing to treat others with respect, causing the authority to breach the equalities legislation, intimidating a person involved in a standards complaint, failing to disclose a prejudicial interest, using his position improperly to confer on another an advantage and conducting himself in a manner which could reasonably be regarded as bringing his authority or office into disrepute.
- (iv) Prior to the tribunal hearing Cllr Ellwood had resigned his membership of all relevant councils. The tribunal was of a view that it would have suspended him for the remainder of his term of office for each of the breaches of the Code of Conduct it had found. In the light of his resignation however, the tribunal decided to disqualify Cllr Ellwood from being a member of any relevant authority until 4 May 2011.

7 Cllr Fazackarley

- (i) On 14 December 2010 the tribunal considered a reference from the Ethical Standards Officer that Cllr Fazackarley of Portsmouth City Council had failed to comply with that council's Code of Conduct in that he had cashed 8 personal cheques in the council's staff club which

were not honoured by the bank. In respect of this matter Cllr Fazackarley had reported himself to the Council's Standard Sub Committee. During the course of the investigation the Ethical Standards Officer became aware of another potential breach in that it was alleged that Cllr Fazackarley submitted an incorrect tax coding notice to the council in respect of his member's allowance.

- (ii) The social club was run by the council for its employees and members of the council. It was also available for use by members of the public who were ex-employees or who were guests or visitors. One of the club's facilities was to cash cheques for all members and guests of the club. Eight cheques totalling £280 were not honoured by Cllr Fazackarley's bank due to insufficient funds being in his account. Cllr Fazackarley believed he had sufficient funds to meet the cheques. The monies were subsequently repaid by Cllr Fazackarley by way of a deduction from his allowance with his consent.
- (iii) With regard to the tax coding there was a mix up with regard to the code which should have been applied to Cllr Fazackarley's member's allowance. Cllr Fazackarley took the matter into his own hands and completed a form P6 which he had obtained from HM Revenue & Customs without authority for him to do so.
- (iv) The tribunal found that the fact that the social club was open to members of the public and that Cllr Fazackarley used the club in a social capacity so that he was not acting in an official capacity when he took advantage of the facility to cash cheques. In the circumstances, the Code of Conduct did not apply and allegation 1 was dismissed. With regard to the issue of the tax code however, the tribunal considered that Cllr Fazackarley was acting in an official capacity as his actions related directly to his member's allowance. He did not however make any personal gain over and above his legitimate entitlement and the tribunal found as a fact that Cllr Fazackarley's conduct amounted to an unauthorised shortcut to the adjustment of his tax code. Notwithstanding this the tribunal came to the conclusion that an objective observer would conclude that Cllr Fazackarley's actions had brought his office as councillor into disrepute.
- (iv) The tribunal acknowledged that Cllr Fazackarley had no improper motive in adjusting his tax code although his conduct amounted to a serious error of judgement. The tribunal found it to be a one-off incident which was out of character which led to no harm to anyone other than himself. The tribunal were satisfied that its finding would be sufficient to ensure there was no risk of a future breach on the part of the respondent and in the circumstances decided to take no further action.

8 Cllr Winters

- (i) On the 6 January the tribunal heard an appeal by Cllr Winters of Little Downham Parish Council against the decision of the East

Cambridgeshire District Council's Standards Committee that he had breached the Code of Conduct of the parish council and that he had failed to treat others with respect and had conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute. The sanction of the Standards Committee was that Cllr Winters be partially suspended for 6 months.

- (ii) The allegation was that at a meeting of the council, Cllr Winters indulged in a shouting match with the chairman in front of other parish councillors, the parish clerk, a district councillor and a member of the public. Cllr Winters did not answer a question posed by the chairman, tried to speak over the chairman, failed to acknowledge the chairman's authority, would not listen to what the chairman was saying and kept interrupting in a loud voice. The tribunal found the applicant's conduct caused the meeting to degenerate into disorder with one councillor walking out and two other councillors following shortly thereafter.
- (iii) The events and subject of the allegation took place during a public forum item on the agenda after the formal business of the council meeting had been adjourned. Notwithstanding this the tribunal found that Cllr Winters was acting in an official capacity as he was present at the meeting in his capacity as a councillor.
- (iv) The tribunal upheld the finding that Cllr Winters' conduct was rude, unreasonable and disrespectful. They found he was responsible for the breakdown of the order at the meeting of the council and as such he had failed to treat those attending the meeting with respect and had brought his office as councillor into disrepute. However, the tribunal decided that the sanction of 6 month partial suspension was not appropriate. It substituted suspension for 2 months and required Cllr Winters to give a written apology in terms specified by the tribunal. In the absence of such an apology the tribunal determined that a further suspension of 4 months to run consecutively should apply. The tribunal also recommended he undertake training.
- (v) This is another example of the tribunal imposing a sanction which I consider it does not have power to impose. It is open to the tribunal to impose a sanction which can be reduced in the event of an apology being made. The tribunal does not however have power to impose an additional sanction in the event of an apology not being given as that sanction arises from a failure to give an apology rather than from a breach of the Code of Conduct.

9 Cllr Law

- (i) On the 14 January the tribunal considered a reference from the Standards Committee of Rotherham Metropolitan Borough Council alleging that Cllr Law of Wales Parish Council had breached that council's Code of Conduct by being disrespectful to and bullying the parish clerk and bringing the council into disrepute.

- (ii) The complaint was made by the parish clerk who cited 20 events during January and February 2010. The most significant of these were allegations that in his dealings with the parish clerk he raised his voice; threatened that she could lose her job; was angry and aggressive; ignored statements by the clerk to the effect that she felt harassed by him; made comments indicating that he thought the clerk was incapable of doing her job; he told the clerk she had been 'very very obstructive'; that he belittled correspondence from the parish clerk; he criticised the minutes taken by the parish clerk; that he said to the parish clerk 'I am a damned good ally but not a very good enemy'; on another occasion he said 'you'll be isolated – by the time you've finished you won't have a job to respond to' and 'we'll tie you in bloody knots by the time we've finished'.
- (iii) The tribunal found that Cllr Law's conduct was disrespectful to the parish clerk and that his conduct amounted to bullying. The tribunal further found that as the incidents took place in the presence of witnesses Cllr Law had brought his office as councillor into disrepute. The tribunal considered that disqualification in the circumstances would be disproportionate but that a suspension was appropriate. The respondent's term of office expires in May 2011. The tribunal had no power to suspend beyond that date and the tribunal therefore decided to suspend the respondent until the 30 April 2011.

10 Cllr Earle

- (i) On the 17 December 2010 the tribunal considered an appeal by Cllr Earle of Mendip District Council against a decision of the Standards Committee of that council that he had breached the council's Code of Conduct in failing to treat others with respect. The sanction imposed by the Standards Committee was a suspension for two months with a requirement for Cllr Earle to provide a written apology and attend training on the Code of Conduct.
- (ii) Unfortunately the facts of the case are not clear from the decision notice. It is apparent that Cllr Earle was prepared to give a written apology in a form acceptable to the tribunal and also to undertake re-training with regard to the Code of Conduct. The tribunal determined that the sanction imposed by the Standards Committee did not give sufficient credit for the fact that the matters giving rise to the complaint concerned a single and isolated incident in an otherwise unblemished career as a local councillor. The tribunal also felt that the fact that Cllr Earle was ready and willing to apologise and to undertake re-training should be given due weight. Whilst retaining the requirement for an apology and re-training the tribunal substituted the suspension with a formal censure.

11 Cllr Blenkinsopp

- (i) On the 13 January 2011 the tribunal considered an appeal by Cllr Blenkinsopp of Aycliffe Town Council against a decision of Durham County Council's Standards Committee that he had breached the town council's Code of Conduct by acting in a disrespectful manner towards the complainant and using foul language. The decision of the Standards Committee was that after Cllr Blenkinsopp declined to submit a written apology that he should be suspended for a period of 3 months.
- (ii) At the hearing Cllr Blenkinsopp sought to introduce new documentary evidence with a view to casting doubt upon the credibility of a witness. The tribunal considered that Cllr Blenkinsopp had the opportunity of introducing such evidence during the Standards Committee investigation and at the hearing. It decided that to seek to introduce the evidence on the day of the hearing before the tribunal was not acceptable and the tribunal declined to consider it.
- (iii) Cllr Blenkinsopp accepted that the words he used did show a lack a respect to a fellow councillor but disputed that the Code of Conduct applied as the conversation took place before a council meeting had formally begun. It seems there was a dispute as to the seating arrangements at the town council meeting as he wished to have a conversation with the leader of the council. The discussion with the leader would have been in his capacity as a councillor and the discussion regarding seating was therefore held to also be in that capacity and the Code of Conduct therefore applied. The finding of the Standards Committee as to the breach of the Code of Conduct was therefore upheld.
- (iv) However, the tribunal considered that the length of suspension was too severe. It stated that a 3 month suspension is very much towards the serious end of the range of actions open to a Standards Committee and was disproportionate. The tribunal therefore reduced the period fo suspension to 1 month.

Risk Analysis

- 9 There are no risks associated with this report.