

Committee: STANDARDS

Agenda Item

Date: 18 July 2011

8

Title: FIRST TIER TRIBUNAL UPDATE

Author: Michael Perry, Assistant Chief Executive – Legal, 01799 510416 Item for decision

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

- 4.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	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.
Ward-specific impacts	None
Workforce/Workplace	None

Situation

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

6. Cllr J Beesley

- (a) On the 11 March the tribunal considered a reference from the Standards Committee of Bournemouth Borough Council alleging that Cllr Beesley of that council had breached the Council's Code of Conduct by failing to declare prejudicial interests and failing to withdraw from meetings where such interests existed.
- (b) The investigating officer had found there to be a breach of the Code. Cllr Beesley was deputy Leader of the council and chairman of the Planning Board. He had an admitted close association (within the meaning of the Code) with a planning agent. When planning applications submitted by the agent were considered by the Planning Board Cllr Beesley generally declared a personal interest and thereafter took a full part in the meeting.
- (c) On one occasion, the agent appeared in support of an application made by Bournemouth Football Club. Cllr Beesley considered that he had a personal and prejudicial interest arising from a relationship which he had with Bournemouth Football Club. He declared the existence and nature of that interest and withdrew from the meeting. He did not declare his personal interest arising from his association with the agent. On another occasion Cllr Beesley declared a personal and prejudicial interest in respect of an application made by a former client of his and again withdrew from the meeting. He did not however, declare a personal interest arising as a result of his association with the agent.
- (d) It was further alleged that Cllr Beesley had received hospitality from the agent. Cllr Beesley indicated that no hospitality had exceeded a value of £25. However, at the instigation of the investigator he recorded cumulatively all hospitality received from the agent in his register of interests. He did not however, at the various planning meetings prior to that time declare hospitality had been received.
- (e) Cllr Beesley had sought advice from the council's Monitoring Officer. The Monitoring Officer had distinguished between cases where the agent was acting as an agent for a third party and cases where the agent was making an application for planning permission or objecting to an application in a personal capacity. The Monitoring Officer advised that the former would not be prejudicial but that the latter would. Cllr Beesley accepted and acted upon this advice.
- (f) The tribunal adopted the advice given by the council's Monitoring Officer and accepted by Cllr Beesley. It found therefore that there was not a prejudicial interest. With regard to the incidences where Cllr Beesley had declared a personal and prejudicial interest arising from

other connections and had failed to declare the personal interest arising from the association with the agent, the tribunal did not express a view as the Standards Committee of the council did not ask for adjudication on this point. It did however make a statement to the effect that it “may” be best practice to declare all interests that arise even where a member leaves the room having declared a prejudicial interest. In this connection I would mention that Cllr Beesley submitted that having declared the personal and prejudicial interest and having left the meeting he was no longer conducting the business of the council and the need for any further declarations did not arise. My view is that there is a great deal of weight behind this submission.

- (g) The tribunal made a further recommendation which arose from the fact that as well as being deputy Leader of the council, Cllr Beesley was the portfolio holder for Resources. The tribunal recommended that the council should consider whether the combination of regulatory and executive functions with respect to planning and property should be combined in one portfolio. Such a combination of functions is not prohibited by the Local Government Act 2000 nor any regulations made there under. However, insofar as applications may be made by the council for planning permission, my view is that a portfolio holder with responsibility for property (and by extension therefore the applicant for planning permission) would have a prejudicial interest and would need to withdraw.
- (h) In the circumstances the tribunal concluded that Cllr Beesley had not breached the Code of Conduct.

7. Cllr S Quarrell

- (a) On the 19 May the tribunal considered a reference from the Standards Committee of Hart District Council alleging that Cllr Quarrell formerly of Odiham Parish Council had breached that council’s Code of Conduct by treating the parish clerk and fellow councillors with disrespect, bringing his office into disrepute, bullying and misleading other councillors during council debate and bullying the parish clerk and deputy clerks. Prior to the hearing Cllr Quarrell had resigned from the council and declined to take part in the proceedings.
- (b) The outcome of the investigation turned upon its facts. The tribunal had the benefit of a fully detailed Monitoring Officer’s report of the investigation and found that Cllr Quarrell had breached the Code of Conduct by failing to treat the parish clerk with respect, had bullied the parish clerk and as a result of these actions has brought his office and his authority into disrepute.
- (c) The matter had been referred to the tribunal in the light of Cllr Quarrell’s resignation which meant that the only sanction available to the committee would have been a censure. Given the repeated breaches of the Code of Conduct, the Standards Committee were of a view that Cllr Quarrell was unfit to hold public office and should be disqualified.

The tribunal agreed with that view and disqualified Cllr Quarrell for a period of one year. The decision notice does not state whether this relates only to a potential re-election to Odiham Parish Council or whether it relates to all relevant authorities.

8. Cllr Dhillon

- (a) On the 4 May the tribunal handed down its decision upon an appeal by Cllr Dhillon of Slough Borough Council against a decision of the Standards Committee of that council that he had breached the council's Code of Conduct by failing to treat others with respect at a meeting of the Health Scrutiny Panel of the council. The sanction imposed by the Standards Committee was a two month suspension and for Cllr Dhillon to undergo approved training.
- (b) The appeal was dealt with by way of written representations rather than an oral hearing.
- (c) Much of the decision is fact specific but it is notable that one of the factors leading to the decision was that Cllr Dhillon had challenged the authority of the chairman of the meeting by failing to abide by his reasonable requests, refusing to listen to the chairman and that he undermined the chairman's attempt to bring order to a meeting which had fallen into disarray.
- (d) The tribunal found that Cllr Dhillon breached the Code of Conduct by failing to treat others with respect and bringing his office or the council into disrepute. The tribunal accepted the findings of the Standards Committee that although Cllr Dhillon had apologised for upsetting people at the meeting he did not appear to have any insight as to how his conduct was inappropriate and that in submissions to the tribunal he continued to claim that he was provoked into behaving as he had. The tribunal was concerned that this lack of insight may result in breaches in the future. In the circumstances, a tribunal was satisfied that a two month suspension allied with training was an appropriate and proportionate sanction.

Risk Analysis

- 9. There are no risks associated with this report.