



Briefing Report No: **122/2009**

Public Agenda Item: **Yes**

Title: **The Adjudication Panel**

Wards Affected: **All Wards in Torbay**

To: **Standards Committee**

On: **11 June 2009**

Contact Officer: **Keith Stevens**

☎ Telephone: **01803 207481**

✉ E.mail: **Keith.Stevens@torbay.gov.uk**

1. Appeal Tribunal Results

- 1.1 In the last 12 months, three findings of local authority Standards Committees have been overturned on appeal (APE 399, 404 and 414) and, in a further two, Adjudication Panel tribunals have imposed a different sanction to the one determined by the Standards Committee (APE 400, 401). Eight Standards Committee decisions have been upheld.
- 1.2 The purpose of this report is to indicate reasons why the Tribunals disagreed with the Standards Committee of the individual local authority. This should be helpful to members of the Torbay Council Standards Committee in furthering its objective of making sound and equitable decisions.

2. APE 399 : Shepway District Council

- 2.1 The Councillor appealed against the Committee's findings that he had failed to follow paragraphs 2(b), 2(c) and 4 of the Code. The Councillor had made the comment at a meeting that the Public Rights of Way officer had found the Town Clerk "difficult to get on with" and that "many people say that when they try to contact the Town Clerk he is rude to them". There was no dispute that this was what was said by the Councillor.
- 2.2 The Investigating Officer had been able to listen to a tape recording of the meeting and concluded that the Councillor's comments were not made in a malicious or bullying manner. The Tribunal concluded that the Councillor honestly believed the comments made to him by other people and which he repeated at the Committee were fine and was simply reporting them; in the Tribunal's view this did not amount to treating the Town Clerk with disrespect.
- 2.3 The Tribunal also concluded that there was evidence to suggest that the Town Clerk had not been intimidated by the Councillor's comments in subsequently being able to fulfil his job properly.

2.4 The Tribunal expressed the following view:

“In the Appeals Tribunal’s view, it is important that members should be able to express in robust terms concerns that they have about any aspect of the running of the council and that this can include expressing disagreement with officers and can include criticism of the way in which an officer handles particular matters. During the 20 July meeting the Town Clerk chose to publicly question Councillor Capon about a letter that she believed should have been passed to her (it is interesting to note that the minutes of the meeting suggest that the letter had been previously circulated, a fact seemingly corroborated by the statement made by the Town Mayor during the verbal exchange that the letter made ‘some quite startling statements’).

Councillor Capon then made the first of the two undisputed comments that is the subject of this Appeal. The Appeals Tribunal considers that the threshold for a failure to treat another with respect has to be set at a level that allowed for the passion and frustration that often accompanies political debate and the discussion of the efficient running of a council and within the context of those involved in the exchange. The Appeals Tribunal is of the opinion that the Town Clerk, who had been in post since the middle of 1999 and was clearly very experienced in her dealings with councillors chose to debate the letter with Councillor Capon, and given her seniority within the administration of the council, was entirely able to defend her position. In the transcript of the tape recording of the relevant part of the meeting the Town Clerk sought an apology, did not receive one and then Councillor Carroll suggested that he be allowed to put forward a motion that Councillor Capon apologise or leave the room. At this point Councillor Capon refused to apologise, made the second undisputed comment and then left the room. The Appeals Tribunal sees nothing in the evidence submitted to suggest that Councillor Capon conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute. He was engaging in political debate, and in doing so was simply publicly expressing the opinion of others about their ability to engage with the Town Clerk in a manner which was acknowledged to be neither bullying nor malicious. Whilst this was undoubtedly uncomfortable for the Town Clerk and it could be argued that it might have been better expressed in a more appropriate forum, the Appeals Tribunal does not believe that a reasonable objective observer of the proceedings would think that the comments would bring the office of councillor or the authority into disrepute. Consequently, the Appeals Tribunal dismisses the finding of the Standards Committee that Councillor Capon was in breach paragraph 4 of the Code.

2.5 The Tribunal also recorded that it asked the Standards Committee to consider two procedure flaws in the way they appeared to have dealt with the matter. The relevant extract is as follows:

“It is important that the hearing (including the evidence of witnesses and their cross examination) is heard in public, subject to the usual caveats in respect of confidential or privileged evidence, and that access by the public to the hearing venue is facilitated by clear signage and appropriate notice. Where a hearing or part of a hearing is to be convened in private the reasons for so doing should be clearly expressed to the public present and preferably reduced to writing.

Where the facts of the case are undisputed and the case is being heard in the absence of the respondent councillor on the basis of papers served on him or her before the hearing, further evidence should not be introduced to the Committee without giving the respondent councillor the opportunity to have sight of the substance of that evidence so that a decision could be made whether or not he/she should attend the hearing to rebut the evidence or to make written representations in respect of it.

From the documentation presented to the Appeals Tribunal it appears that the Shepway District Council Standards Committee chose not fully to follow the guidance produced by the Standards Board to Monitoring Officers and Standards Committees in respect of the conduct of hearings and the pre-hearing process. Whilst The Appeals Tribunal acknowledges that Standards Committees are free to regulate their own procedures, following the guidance provides a firm procedural foundation for the hearings of the Committee. Not doing so in respect of Councillor Capon's case this may have led to a degree of unfairness at the hearing on 20 February 2008.

- 2.6 This case probably turns on the fact that it was the Town Clerk who lead the exchange but it contains a useful insight into the factors taken into account.

3. APE 404 : Wealden District Council

- 3.1 This case clarifies the limitations of the Code of Conduct regarding its application to situations where a member has been asked to apologise by the council itself. The key part of the decision is set out below:

The Tribunal found that the failure of the Appellant to apologise to the Town Clerk in accordance with the resolution of the Town Council was not in itself a breach of the Code of Conduct for three reasons. First, the Standards Committee had itself upheld a finding of the Investigating Officer that the conduct of the Appellant at the appraisal was not in breach of the Code of Conduct. While the Investigating Officer criticised aspects of the Appellant's behaviour at the appraisal, since the substantial issue, conduct at the appraisal, was not a breach, finding a breach in the failure to apologise risks extending the Code of Conduct beyond its proper bounds. Secondly, in the Tribunal's view it is not appropriate to require a councillor to apologise in circumstances where he had not been notified of the reasons for requiring the apology or the specific conduct for which he should apologise. Thirdly, the argument put forward by the Standards Committee that it was the will of a democratically elected body that the Appellant should apologise and that the failure to respect that expression of will in itself brought the Appellant's office or authority into disrepute is unsustainable. It is entirely possible for a democratically elected body to fall into error and act unreasonably. In the circumstances of this case the failure to apologise cannot, in the view of the Appeals Tribunal amount to treating the Town Clerk disrespectfully or bring the council into disrepute.

Keith Stevens
Monitoring Officer