



Briefing Report No: **255/2009** Public Agenda Item: **Yes**

Title: **The Adjudication Panel**

Wards Affected: **All Wards in Torbay**

To: **Standards Committee** On: **26 November 2009**

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## **1. Appeal Tribunal Results**

- 1.1 Since June 2009, four findings of local authority Standards Committees have been overturned on appeal (APE 423, 456, 451 and 450 (part)) and, in a further four, Adjudication Panel tribunals have imposed a different sanction to the one determined by the Standards Committee (APE 427, 436, 449 and 448). Two 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.

This Report analyses a number of cases which may assist subcommittees in assessing and hearing complaints.

## **2. 423. North West Leicestershire District Council**

- 2.1 The Standards Committee decision was reversed by the Appeals Tribunal of the Adjudication Panel. In 8, the Tribunal records that the Standards Committee made no findings of fact as to what was said by the Appellant in the exchange between himself and Mr Lawrence and nor did it provide any reasoning as to why what was said amounted to a failure to comply with the Code.
- 2.2 The case illustrates the importance of adhering to the 3 stages re findings of fact; findings of breach; sanctions with reasons clearly set out in each stage. The Tribunal applied the test of what is "more likely that not" and paid regard to consistencies and inconsistencies in the evidence and the content of original statements, their timing, and degree of support by others. The Tribunal concluded there was no factual basis in the first stage in which to support a second stage finding that the Code had been breached.

## **3. 425. Hillingdon London Borough Council**

- 3.1 An example of the Appeals Tribunal paying careful attention to the credibility and consistency of witnesses. The case concerned the expression "you're all

corrupt” at a full Council meeting which it was held brought the office of Councillor and the Council itself into disrepute and showed a failure of respect for fellow Councillors. The fact that the Councillor was being jeered and heckled by the majority group at the meeting appears to have been a factor in no sanction being considered appropriate. Breach finding upheld.

#### **4. 427. Mid Suffolk District Council**

- 4.1 Six Members of a Town Council alleged that the respondent Councillor had called another Councillor and the Deputy Clerk “proven liars” at a Council meeting (where the other Councillor was being elected Mayor) and that the Councillor refused to withdraw his remarks when asked to do so. The respondent Councillor had previously served a suspension of three months for failing to treat the same Councillor with respect and was disqualified for one year.

#### **5. 456. London Borough of Richmond**

- 5.1 An appellant councillor has accused a junior planning officer of “arrogance” in an email copied to senior officers and members of the public. Later, the appellant wrote another email to a member of the public referring to the “inertia” of the Council’s planning officers and their “appalling service”. He put forward no evidence to substantiate this; all the evidence was to the contrary.
- 5.2 The Appeals Tribunal took the view that the second email fell within the ambit of comment that a councillor was entitled to make even though it agreed that the language used was intemperate, inappropriate, lacking in substance and unpleasant. It argued the first email was just a one-off and too insignificant to amount to disrespect and a breach of the Code. However, the SFE Guidance on disrespect states that individuals should not be subject to unreasonable or excessive personal attack, particularly the public and officers. Given the Tribunal’s comments on the language used, this case may be seen as having drawn a fine line between what is disrespect and what isn’t. The Tribunal felt that, on the face of it, this matter could have been dealt with informally by the Monitoring Officer or Council Leader. The Standards Committee’s censure decision was overturned.

#### **6. 451. Forest Heath District Council**

- 6.1 The appellant had made a statement in an email which said “they used to burn witches at the stake”. In the context in which the email was written the investigating officer concluded that the appellant was inferring that he considered a particular female councillor to be a witch but the Tribunal concluded that such an inference was not justified.
- 6.2 The Tribunal also considered that the composition of the hearing subcommittee raised in the mind of a reasonable observer the question of whether the hearing could have been fair. This was because one of the hearing subcommittee’s sons was a cabinet colleague of the complainant on another authority which could have raised a doubt in the mind of an observer as to his objectivity and independence. There were also a number of “common interests” between the complainant and a member of the subcommittee which could equally be perceived as raising similar questions in relation to this participation. The Tribunal emphasised that its decision should

not be interpreted as suggesting any actual lack of integrity or improper behaviour on the part of the individuals concerned.

- 6.3 The case illustrates the need for care in the selection of the subcommittee members. The Standards Committee decision to censure and require a written apology was overturned.

## **7. 436. Forest Heath District Council**

- 7.1 Councillor was found to have treated officers in a “deplorable” manner, prepared to use the planning system for personal gain by himself and his family and was not fit to hold public office. He had previously been the subject of a sanction for a similar breach and was disqualified for three years.

## **8. 452. Milton Keynes Council**

- 8.1 The appellant had been found to have used offensive language directed at specific individuals, loudly on several occasions; her conduct was also found to be aggressive, intimidating and distressing to the individuals concerned. This pattern of behaviour appeared over a period of time to be intimidating.
- 8.2 The appeal was related only to the six months suspension. The appellant claimed that mitigating factors had not been properly taken into account ie. the investigating officer had not contacted her doctor for medical evaluation (Tribunal held this was for the appellant to have done) and that she had apologised at the hearing (Tribunal held that little weight be attached to this as it should have been done much sooner).
- 8.3 The Tribunal upheld the Standards Committee decision.

## **9. 450. West Lindsey District Council**

- 9.1 The Tribunal upheld part of the Standards Committee’s decision, which was that the appellant’s failure to declare a personal interest was a breach and that he should undergo training on the personal interests paragraphs. The Standards Committee’s “Censure” was not upheld because the breach was unintentional and technical and a consequence of a failure to understand the relevant paragraph which was clear from his representations on the appeal.

## **10. 449. Bristol City Council**

- 10.1 The Tribunal substituted a censure for a one month suspension. During a heated debate, the word “coconut” was used by a councillor in respect of a Councillor Jedwa. The Committee had found that in the circumstances the words were offensive and insulting but were not racially abusive. There had been a full apology two days afterwards when the appellant claimed she came to realise that her remarks had caused offence. The Tribunal viewed it as an off the cuff insult whilst feelings were running high.

## **11. 448. West Dorset District Council**

- 11.1 The Tribunal substituted a censure for a three month suspension. The appellant had a prejudicial interest in an item at a Parish Council meeting but declared only a personal interest and remained in the room but did not speak. The Tribunal was satisfied that he did so under a mistaken interpretation of

the position, although he was shown advice from the Monitoring Officer at the start of the meeting. Since the incident the Councillor had undergone further training, said he now understood and would always declare a prejudicial interest in such circumstances in the future and leave the room.

**12. 441. Pendle Borough Council**

- 12.1 The appellant had used the expression “liars” in a Town Council meeting. The Standards Committee had found him to be in breach of paragraph 3(1) of the Code and required him to apologise. The appeal was allowed, principally because the Committee did not consider whether the description was justified. “The Committee should have assessed whether or not the untruths could properly be described as lies by exploring whether or not they were deliberate falsehoods. If they were, the description “liars” would have been apt and justifiable, albeit unpleasant.” The Tribunal indicated that the Committee should have considered whether there had been a breach of the disrepute provision in the Code. The Tribunal also had regard to the fact that the person presiding did not call upon the appellant to temper his language, withdraw the remark or to apologise.