



Briefing Report No: **58/2010** Public Agenda Item: **Yes**

Title: **The Adjudication Panel**

Wards Affected: **All Wards in Torbay**

To: **Standards Committee** On: **11 March 2010**

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1. Appeal Tribunal Results

- 1.1 Since November 2009, two findings of local authority Standards Committees have been overturned on appeal (APE 463 and 469) and, a further one, Adjudication Panel tribunal has imposed a different sanction to the one determined by the Standards Committee (APE 461). Seven 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.

461 – Epping Forest District Council

The Tribunal disagreed with one of the findings of fact by the Standards Committee. The Committee had sought to take a narrow view of whether the reported attempts by the appellant to question the absence of a declaration of interest by another member had brought the office of a councillor into disrepute. The Tribunal agreed with the Investigating Officer's conclusion that the standing in which members of the public regarded members of the Council was adversely affected and that public confidence in members being able to act in the public interest was similarly affected. The appellant's remarks were also held by the Tribunal to be about form and process and were not therefore protected by the freedom of political expression provisions in the Human Rights Act 1998 Article 10. It also weighed against the appellant that she had repeatedly made her remarks in defiance of

rulings from the Chair and reinforced the conclusion that her remarks were abuse rather than healthy political banter or remarks. The Tribunal agreed with the Standards Committee's decision to exclude evidence from 3 witnesses for the appellant on the basis that they were not witnesses of fact but simply supporters.

The Tribunal amended the Standards Committee sanction by imposing a three month suspension conditional on the appellant making an apology in a form decreed by the Tribunal and engaging in conciliation to discourage and prevent the appellant from any future non-compliance and to discourage others from similar action.

463 – Teignbridge District Council

The Tribunal criticised the Standards Committee for rejecting the Investigating Officer's reasoned conclusions without providing any reasons for doing so. In the Tribunal's view, if the Standards Committee had diligently assessed the reasoning of the Investigating Officers and grappled with finding cogent reasons for rejecting the Investigating Officer's report, there was a very real possibility that its decision could have been different. The Investigating Officer had based his conclusions on a series of reasons; the Committee provided no reasons at all for disagreeing with him. The Standards Committee's decision was annulled.

464 – Leicestershire County Council

A county councillor attended a meeting organised by a Parish Council about a prospective travellers' site during which he made a series of strong views about travellers in abusive language. The Standards Committee imposed a requirement to undergo equalities training and that the Councillor should meet the first £250 of any cost involved. The Tribunal decided that no useful purpose would be served in imposing a training requirement because the Appellant had indicated he agreed his comments were unacceptable, he genuinely regretted them and in view of his own and representations made on his behalf, the chances of his breaching the Code again in this way were negligible. The Standards Committee had agreed that, if the Tribunal were to find that the Committee had no power to impose the £250 requirements, the suspension should be extended to 6 weeks from the Committee's decision of one months in order to help fund the training. The Tribunal upheld the one month suspension and stated that if it had had to consider the Standards Committee's argument, it would have soon rejected it because it would have been an attempt to impose by other means a sanction not provided for by Parliament.

465 – Durham County Council

This case concerned a Parish Council. The Tribunal said “Whilst there was a right to freedom of expression, and it was perfectly legitimate for councillors to raise legitimate objections and to express views, they needed to be mindful of the feelings of others. Conduct which amounted to a personal attack on another exceeded the bounds of the right to freedom of expression”. The Councillor was being attacked on a matter outside the public arena and on matters very personal to him. Failure to treat others with respect can occur when unfair, unreasonable or demeaning behaviour is directed by one person against another. The following should also be taken into account: Where the conduct occurred, who observed it, the character and relationship of the people involved and the behaviour of anyone who prompted the alleged disrespect. The case contains other helpful summaries of the law on freedom of expression. The decision of the Standards Committee was upheld in part.

469 – South Ribble Borough Council

A fairly rare case on breach of confidentiality. Turned on its facts. Held that the disclosure was not of anything which could justifiably be considered confidential as a matter of fact. Standards Committee decision and sanction overturned.

472 – Tonbridge and Malling District Council

A Parish Council had established a management company to run its playing fields and hall. The appellants had been appointed as 2 of the directors of the company as representatives of the Parish Council. On a number of occasions the members declared but did not indicate the extent of their interest and on other occasions speeches were made in the council meeting debates on the company but no declarations were made.

The tribunal decided that the appellants’ mistaken interpretation of the Code over a long period had been condoned by their Parish Council colleagues and by implication, the District Council assuming that the Parish Council had received basic monitoring from the District Council as it should have done. The Tribunal decided that a requirement to apologise would serve no useful purpose and would not be reasonable. However, the tribunal endorsed the Standards Committee decision that the appellants should receive training and recommended that the Monitoring Officer should endeavour to ascertain whether such training could be useful to other Parish councillors for whom the District Council was responsible and arrange accordingly.

474 – Coventry City Council

The tribunal found that the conversation the appellant (who was the Lord Mayor) had had with two females at his major fund raising event was highly embarrassing, offensive and disreputable and constituted a breach of the Code. The tribunal was concerned that the appellant, in conducting his defence, had attempted to malign the reputation of the complainant who had done no more than their duty in making the complaints. It was tempted to impose a higher sanction than the Standards Subcommittee but accorded appropriate deference to its decision in view of the subcommittee's local knowledge and hearing of the evidence. Three months suspension and requirement to apologise upheld.

475 – Brent LBC

Case concerned the receipt by the Mayor of £900 from local businesses as sponsorship to buy clothing and accessories. The tribunal stated that it found it extraordinary that it had taken more than 2 years for the Standards Committee to make its decision. The tribunal decided that it did not need to determine whether or not the appellant's actions were dishonest as that was neither used in the Code nor appeared in the Committee's decision. The tribunal stated that it did not attach weight to the argument from the appellant's solicitor that it is difficult to justify a long period of suspension in view of the long period of time taken to deal with the matter. The tribunal found that the appellant solicited gifts and failed to account properly for them. The tribunal agreed with the appellant that the fact she did not admit to any wrongdoing is not an aggravating factor. The tribunal concluded that the appellant had repeatedly lacked credibility and that the remainder of her six months suspension originally imposed by the Standards Committee but then stayed, pending the outcome of the appeal, should take immediate effect.

479 – Hampshire Police Authority

The case concerned an alleged confidentiality breach by the chairman under paragraph 4(a). Tribunal agreed with mitigating factors found by the Standards Committee and that no suspension was appropriate and upheld the requirement to undergo media training. Tribunal also stated it was entirely proper for investigator to consider whether on facts more than one paragraph had been breached even though complainant had not specifically mentioned a particular paragraph and the allegation related only to breach of confidentiality and did not include any mention of disrepute.

462 – Eden District Council

Another breach of confidentiality case which was referred to the ESO and then the tribunal because both the Chief Executive and the

Monitoring Officer were witnesses. The respondent was suspended for 6 months with a requirement to apologise and undergo training; failure to do so would attract a further consecutive 6 months suspension.

457 – Wakefield MDC

The tribunal found that the respondent had breached the bullying and disrepute provisions in the Code over a planning application matter on some aspects of which he was found to have a closed mind. The respondent had not attended planning training sessions but the tribunal decided he had not acted for personal gain. Suspended for the remainder of his term of office.