



Briefing Report No: **150/2010** Public Agenda Item: **Yes**

Title: **The Adjudication Panel**

Wards Affected: **All Wards in Torbay**

To: **Standards Committee** On: **3 June 2010**

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1. Appeal Tribunal Results

- 1.1 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.
- 1.2 This Report analyses a number of cases which may assist subcommittees in assessing and hearing complaints.

483 Bromley London Borough

The Member reportedly questioned the honesty and integrity of the Chief Executive, the Monitoring Officer and a Junior Officer, copied derogatory emails sent to Senior Officers to Members of the public and made personal attacks on Officers at Council meetings in a pre-meditated manner. He sent over a hundred emails to one department in a two year period and repeated the same email to the Chief Executive eight times in the space of six weeks.

The case contains a useful analysis of the criteria for finding disrespect, bullying and disrepute. The Councillor had not attended any training on the Code for several years and expressed his intention to stand for election again in a few weeks time. The Tribunal was unable to implement its wish to suspend for twelve months because of the election as it considered a suspension of a few weeks to be totally inadequate. It therefore disqualified him for one year.

470 Barking and Dagenham London Borough

The Tribunal decided that the facts did not warrant a conclusion that the Code of Conduct was engaged. The Appeal against the Standards Committee's decision was therefore allowed.

The facts concerned the making of a video by the Councillor about knife crime; the Tribunal decided that the circumstances in which the video was made were not "proximate enough" to the Councillor's role as to bring him into the ambit of "acting in his capacity as a Councillor". On balance, the Tribunal also concluded that the Councillor was not acting as a Councillor, and was not giving the impression that he was representing the Authority.

482 Gosport

The Tribunal suspended the Council Leader for twelve months having held him to be in breach of the disrepute provision. The Leader had sought to involve the Council's grievance procedure against two Senior Officers who had given evidence against him during an earlier ESO investigation. He also complained to the Audit Commission. The local newspaper published an article under the headline "Leader calls for probe at "corrupt" Authority". The article carried quotes from the Member containing very serious allegations of Officer misconduct.

The Council Leader spoke with the Audit Commission and urged that the Chief Executive and the Monitoring Officer be suspended from their posts. The ESO found the advice given by Officers to the Leader had been soundly based as was the evidence of two other Senior Officers to the earlier ESO investigation. The Leader failed to heed the advice of the Audit Commission and persisted with his claim that the evidence of those two Senior Officers should be retracted and an apology published.

The Tribunal recommended that the Borough Council should adopt better ways of ensuring that all Councillors are fully trained in, and conversant with, the terms and intent of the Code of Conduct and that it should maintain a detailed and up to date schedule of information relating to the training offered to, and undertaken by, Councillors.

484 Milton Keynes

Respondent Member's suspension for six months was reduced to three months and limited to her membership of a Parish Council. The Tribunal took into account her full and public (although belated) apology at the Hearing and her long record of public service. The Tribunal noted that the Member had appealed against another finding by the Standards Committee and therefore decided to place virtually no weight on it; the events under consideration at the current Tribunal Hearing predated the events involved at the other Hearing, the result of which was due to be dealt with at Appeal. The case concerned an unjustified attack on the Parish Clerk's reputation and the anxiety caused to him.

477 Shropshire

A Councillor had objected to an application for a footpath to be recorded on the Definitive Map as it affected his property. He made this objection before he became a Councillor. He made a found complaint about alleged impartiality of the Officer recommending that the Application be approved. Prior to the matter coming before Committee, the Member (who had been appointed to the determining Committee) circulated a letter to Committee Members.

The Tribunal found the information in the letter to be inaccurate and misleading. A Senior Officer had also found the allegations of impartiality against a Junior Officer had been groundless. The Councillor had correctly declared a personal and prejudicial interest and left the room without speaking.

The Tribunal found that paragraphs 3(1), 5, 6(a) and 12(1)(c) had been breached. The Tribunal considered the Member had no right to submit written evidence in the way he did given his personal and prejudicial interest, let alone written evidence which undermined the integrity and professionalism of an Officer. Held that, looked at objectively, the persistent, personal attack on a Junior Officer and the attempt to inappropriately persuade the Committee to vote in his favour on a personal matter, would seriously lessen public confidence in the office of Councillor.

The Member was suspended for six months, required to apologise to the Officer and undertake further training.

424 **Gosport**

This case is of interest because the Tribunal's first instance decision was overturned on Appeal by the High Court. A two year disqualification was reduced to a three month suspension. The Tribunal had found that the Member had deliberately sought to abuse his position and deliberately failed to abide by the Code.

The Judge took the view that the Tribunal had not sought to explain in its decision why and on what basis they rejected the case put forward by the Appellant; there was nothing in the Decision Notice to justify the finding that the Tribunal reached as to the Member's culpability. The Judge stated that the Member's conduct was serious, a clear error of judgement and that he ought to have taken some advice, and that if he had taken advice, it is clear what it would have been. Nevertheless, on the material produced before him, the Judge considered it difficult to use the justification for rejecting the Member's account of why he acted as he did and that the Tribunal should have explained why it was taking the view that it did.

The importance of Decision Notices reflecting full and proper reasons for decisions and dealing specifically with arguments produced by parties to the decision-takers is illustrated in this case.