

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER

J112

TO: STANDARDS COMMITTEE

DATE OF MEETING
2009

16 October

MEMBERS CODE OF CONDUCT CASE REPORTS

1. **SUMMARY**

This report updates members on recent decisions of the Adjudication Panel Appeals Tribunal and Case Tribunal. The report is produced for information and training purposes. None of the reported cases relate to members within the district of Babergh.

2. **RECOMMENDATIONS**

That the content of this report be noted.

3. **FINANCIAL IMPLICATIONS**

None.

4. **RISK MANAGEMENT**

Not relevant to this report.

5. **KEY INFORMATION**

SELECTED CASE TRIBUNAL DECISIONS

5.1 **CLLR W. (Case no. APE 0420) – release of confidential information**

5.1.1 District Councillor W was alleged to have disclosed confidential information in breach of paragraph 4 of the Code of Conduct by divulging details of the Chief Executive's redundancy package to the press which was published in a local newspaper and correctly attributed to Cllr W. The information was contained within a report to Full Council and there had been a resolution to exclude the press and public while the report was considered.

5.1.2 Cllr W argued that he had deliberately breached confidentiality as an act of protest at what he considered to be a serious public injustice and the disclosure was in the public interest as there should be no secrecy over salaries of senior officials. He maintained that the council was financially crippled and the Chief Executive was significantly to blame and should have resigned or been dismissed.

- 5.1.3 The first issue that the Tribunal considered was a request from the former Chief Executive that the hearing should not be held in public. Cllr W felt that it should be in public. The Tribunal noted that Article 6 of the European Convention on Human Rights provides that everyone in determination of his civil rights and obligations is entitled to a fair and public hearing. However, this is a qualified right and the press and public may be excluded under certain circumstances. It also noted that in the decision in *Thomas* (APE 149) it was considered that the fact that information given in confidence had been improperly made public did not mean that it could thereafter be recited in public with impunity. The Tribunal decided to hear the case in public but without the confidential information being divulged.
- 5.1.4 The Tribunal proceeded to consider whether Cllr W had acted in his official capacity. It was relevant that the information had been obtained at a meeting of the council. The article appeared in the press under the headline “Rebel Councillor Blows Whistle on District Farce”. It was clear from his detailed statement that Cllr W was writing as a councillor. It therefore concluded that he was acting in an official capacity.
- 5.1.5 The next consideration was whether Cllr W had disclosed information of a confidential nature. If not, there could be no breach. Just because information was received in confidential session would not of itself mean it had the necessary “quality of confidence”. A key element to this is that the information must not be readily available by other means. The Tribunal did not accept Cllr W’s argument that the information was not confidential because the Chief Executive’s salary within a £10,000 band was already public knowledge. To work out the redundancy pay from a broad knowledge of the Chief Executive’s salary would need more information, such as age and years of service. Additionally, there were further elements of the settlement that had never been in the public domain.
- 5.1.6 The information had been received in closed session of the Council. The minutes showed that the Council considered the public interest in deciding that the information should be kept confidential. The Leader had also impressed upon those present that the information was confidential. It was also relevant that the Chief Executive had negotiated and been led to believe that the redundancy package would be kept confidential. It concluded that Cllr W received the information in confidence and it was of a confidential nature.
- 5.1.7 Having reached this conclusion, the Tribunal then needed to assess whether any exemption could apply. It noted that Cllr W did not have consent to disclose the information, he was not required by law to disclose it and it was not disclosed for the purposes of obtaining professional advice. On the question of whether the disclosure was reasonable and in the public interest, the Tribunal undertook a balancing exercise between disclosing the information against the public and private interests in maintaining confidentiality of the agreement between the Chief Executive and the Council.
- 5.1.8 The factors in favour of disclosure were:-
- The right to, and value of, freedom of expression
 - The right of the public to know of decisions made by their elected representatives
 - Openness and transparency in the use of public money
 - That there was clear public interest in the redundancy of the CEO, there had been no press release and it was not sufficient that a brief minute had been produced.

5.1.9 The factors against disclosure were:-

- The disclosure intruded on the CEO's privacy
- The timing could have hindered the conclusion of the agreement approved by Full Council
- The Council had resolved that it be dealt with as an 'exempt' item
- The Council and CEO were negotiating a confidentiality clause
- Cllr W had voted both for the matter to be 'exempt', but also the redundancy arrangements
- The disclosure would be likely to reduce confidence of employees in the Council's ability to protect their right to privacy
- The disclosure would be likely to reduce the ability of the Council to negotiate in confidence with employees in future to resolve employment disputes in a cost effective way
- Some of the information released was still subject to agreement of the Audit Commission

5.1.10 The Case Tribunal found that whilst there should be some transparency in relation to the Chief Executive's redundancy arrangements, however, he was entitled to some privacy in his financial arrangements. It was not in the public interest to disclose. Particular weight was given to the unanimous agreement at the meeting that the information be treated as 'exempt' having considered the public interest and Cllr W had not put forward any objection. The package had also been unanimously agreed. As a matter of good governance, there was a public interest in councils being able to rely on confidential information remaining so where proper process had been followed.

5.1.11 Cllr W could not rely upon the exemption that he had acted in good faith as he had not sought advice beforehand which could have been sought from the Monitoring Officer or his own lawyer.

5.1.12 Cllr W was suspended for a period of 3 months.

5.2 **CLLR. M (Case no. APE 0427) – disrespect**

5.2.1 Town Councillor Mason had been subject to a previous complaint in 2006 and had been found by the local Standards Committee to have been in breach of the Code of Conduct by failing to treat the Town Clerk with respect and bringing his authority into disrepute as a result. He was suspended from office for a period of 3 months (the maximum sanction available at that time).

5.2.2 During the course of that investigation and hearing, Cllr M alleged that the clerk and deputy clerk had lied about whether a telephone conversation had taken place between the clerk and Cllr M. The Committee decided that it did not need to reach a conclusion on the matter because it was not a material fact.

5.2.3 The clerk retired shortly before being elected as a member of the Town Council in 2007. A year later she was elected as Mayor and chair of the council and during the Council meeting at which she was appointed, Cllr M said that both the former clerk and the deputy clerk were "proven blatant liars".

5.2.4 Cllr M argued that it was relevant to the question of whether he had failed to treat the Mayor and deputy clerk with respect to decide who was telling the truth. He maintained that if his comments were the truth, then they were justified. The Tribunal disagreed that it was necessary to make such a finding.

- 5.2.5 Whilst the Tribunal accepted that the person who holds the office of Mayor and chairman of the council should be of good reputation and it could be argued that it was appropriate to raise the question of honesty if they were proposed for election to office, Cllr M's views were well known to the other members. The Tribunal found the true purpose was to tarnish the election of the Mayor and to reignite an unsettled dispute. Cllr M had long service as a councillor and he would have been aware that his language was unacceptable at a council meeting.
- 5.2.6 The position with regard to the deputy clerk was more serious. The councillor who had been called a "liar" could expect to be questioned by other members and was in a position to reply openly in meetings which she did. The officer did not have the same freedom. Further she was an employee and was entitled to be treated as such and challenges to the conduct of officers must be done within the framework of a normal employee and employer relationship. It would only be in exceptional circumstances that a member may challenge an employee's honesty in an open meeting. Cllr M was found to have failed to treat both the mayor and deputy clerk with respect.
- 5.2.7 As the Tribunal were retiring to consider the sanction, Cllr M announced that he had that morning resigned as a member of the Town Council. This was confirmed, which limited the sanction to censure and or disqualification. The Tribunal decided to disqualify Cllr M for 1 year. It considered that his conduct was often based on tactics with the object of causing difficulty to those who opposed his view rather than achieving an objective in the public interest. It was necessary to bring it home to Cllr M that he needed to change his ways and give a clear and public signal that disruptive conduct over a long period was unacceptable as it damaged the image and effectiveness of local government.

5.3 **CLLR. H. – disrepute (misuse of electronic voting system)**

- 5.3.1 Members are referred to the attached press release (Appendix 1.) from Standards For England reporting the outcome of the Adjudication Panel hearing against Jane Hore, former member of Suffolk County Council.
- 5.3.2 The report is self explanatory, but an interesting point that arose at the hearing was that the representative from Standards For England argued that the Adjudication Panel did not have jurisdiction to hear the complaint. SFE maintained that only the Ethical Standards Officer at SFE who had conducted the investigation could refer a complaint to the Adjudication Panel. Instead, the ESO had elected to refer the complaint for hearing before the local Standards Committee which had in turn referred the complaint to the Adjudication Panel. The Adjudication Panel rejected the argument and decided that it is open to a Standards Committee to refer a matter to them even though the ESO has decided that the complaint should be considered at local hearing.

6. **APPENDICES**

Appendix 1. – Standards For England Press Release dated 18.9.09.

7. **BACKGROUND PAPERS**

None.

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