

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER G128

TO: STANDARDS COMMITTEE

DATE OF MEETING 9 November 2007

MEMBERS' CODE OF CONDUCT CASE REPORTS

1. **SUMMARY**

This report updates members on recent national case reports arising from investigations of alleged breaches of the Members' Code of Conduct. It highlights any relevant court cases, findings of the Adjudication Panel of the Standards Board for England along with significant local determinations. The report is produced for training purposes.

2. **RECOMMENDATION**

That the content of this report be noted.

The Committee is able to resolve this matter.

3. **FINANCIAL IMPLICATIONS**

None.

4. **KEY INFORMATION**

SELECTED ADJUDICATION PANEL DECISIONS

4.1 **CLLR H (APE 0377) – Disrepute / Failure to Treat Another with Respect**

4.1.1 Cllr H was disqualified as a borough councillor for 18 months with immediate effect after a tribunal found that he had failed to treat others with respect and brought the council and his office into disrepute, under paragraphs 2 and 4 of the Code.

4.1.2 Cllr H had accused council officers of collusion, lying to and deliberately misleading councillors, incompetence and perjury. Cllr H further complained to the Local Government Ombudsman, misusing a legitimate route to continue to make an accusation that had already been demonstrated to have no substance.

4.1.3 On another occasion Cllr H stated in a council meeting, in the presence of the public and the media, that he had seen and heard "four people with connections to this council mislead the court" when they were called as witnesses in a criminal trial. Despite making this serious accusation of criminal behaviour, he stopped short of reporting his allegation to the police.

4.1.4 Cllr H also used a subordinate officer to convey a message to his line manager which implied that Cllr H would seek the line manager's resignation if a case went against the council.

4.2 **CLLR S (APE 374) - Disrepute / Failure to Treat Another with Respect**

- 4.2.1 City Councillor S was disqualified from being councillor for three months at a hearing of the Adjudication Panel following findings in an investigation by the Standards Board that Cllr S failed to treat others with respect by being aggressive and threatening during a meeting. He also used threatening language in an email beforehand that undermined the professionalism of council officers.
- 4.2.2 It was alleged that when a council officer suggested that he might need to declare a personal interest in the matter being discussed, Cllr S subjected the officer to a long and angry outburst, accusing her of telling him "how to run [his] life", and threatening to have the officer disciplined and ordering her to leave the meeting.
- 4.2.3 When Cllr S became aware that he was the subject of a Standards Board investigation, he wrote to the council's monitoring officer threatening to email every member of staff on the council warning them to "have no faith" in the complainant and her department and demanding to know why the council still employed her.
- 4.2.4 The Adjudication Panel concluded, among other matters, that Cllr S had breached the Code of Conduct by failing to treat others with respect and bringing his office and authority into disrepute. Cllr S told the Adjudication Panel that he was attending anger management classes.

SELECTED STANDARDS COMMITTEE APPEAL DECISIONS

4.3 **CLLRS B & S (APE 0379 and 0380) – Declaration of personal interest**

- 4.3.1 Two parish councillors appealed against a determination by the Standards Committee to censure them and require them to send an apology to the clerk of the Parish Council in respect of their failure to declare a personal interest under the Code.
- 4.3.2 The case before the Standards Committee related to a former land quarry and land adjoining it. The parish councillors were brother and sister whose mother owned a piece of land adjoining the quarry. It was proposed that the quarry be used for community use and planning permission had been obtained for that purpose. Three parish councils had agreed to work together to acquire the quarry land for the community use. When their Parish Council met to discuss the joint acquisition of the quarry land neither Cllr B nor S declared an interest in the item.
- 4.3.3 The Standards Committee found that the members had inadvertently failed to comply with paragraph 8 of the Code of Conduct by not declaring a personal interest. It determined that both councillors should be censured and required to send a written apology to the Clerk of the Parish Council.
- 4.3.4 The councillors appealed against the sanction. They argued that they had not received formal training on the Code of Conduct although they recalled that the Parish Clerk had sent them a booklet about it. The breach was inadvertent and made after seeking advice from officers at the Borough Council as to what constituted a personal or prejudicial interest. The information they received was that because the adjoining land was not in the area of the Parish Council, they should not have to register it as an interest on their declaration of interest forms. They believed this advice and considered that the Standards Committee had not given sufficient weight to that.
- 4.3.5 The Standards Committee however did not think that the members had taken every reasonable step to conform with the Code. There was no evidence of advice having been taken in relation to the declaring of interests. It was noted that the councillors continued to show a lack of understanding about the difference between disclosure and register of interests despite having been through the process of the hearing on the subject.

- 4.3.6 The law allows the Standards Committee to require an apology without also referring to a suspension or partial suspension.
- 4.3.7 The Tribunal upheld the sanction imposed by the Standards Committee. It was of the view that the combination of censure and a requirement for an apology was appropriate. The breach was at the lower end of seriousness and the sanction was appropriate given that the breach had been inadvertent and there had been no adverse consequences from the breach. There was clearly a personal interest which should have been disclosed. It should have been apparent that the councillors' mother's interest in the adjoining land would affect her well-being to a greater extent than other inhabitants of the authority's area.
- 4.3.8 The decision includes a reminder about the meaning of the term "well-being" which can be described as a condition of contentedness, healthiness and happiness. Anything that can be said to affect a person's quality of life, either positively or negatively, is likely to affect their well-being. It is not restricted to matters affecting a personal financial position. The range of personal interests is, accordingly, likely to be very broad.
- 4.3.9 The advice that the councillors had sought with regard to the need to register the land was not directly relevant. It was a separate matter, but did not excuse the councillors from considering the second option of the personal interest test. The councillors should have sought advice from officers and failed to do so. Therefore, there should be some sort of sanction at the lower end of the scale.

4.4 **CLLR A (APE 0384) – Failure to treat another with respect**

- 4.4.1 Cllr A appealed against a decision of the Standards Committee that he had failed to follow paragraphs 2(b) and 4 of the City Council's Code of Conduct through his interaction with a member of staff during a visit to a children's home. Specifically, the comments he made about another elected member during this visit, as well as his overall behaviour whilst on the premises. The councillor appealed against the sanction of censure and requirement that he write two letters of apology.
- 4.4.2 Cllr A's conduct was described at the visit as demanding, demeaning, overbearing and threatening. A great deal of his behaviour could be described as bullying. Cllr A had visited the children's home at 7.30 pm without having made an appointment before the visit.
- 4.4.3 It was also found that Cllr A had said to another councillor that he was "all mouth and no action" or similar words to the same effect.
- 4.4.4 The Tribunal found that a visit to the home without appointment was not a breach of the Code, nor did the councillor's demeanour and behaviour go so far as to constitute bullying or threatening behaviour. However, the comment "all mouth and no action" was disrespectful and a breach of the Code.
- 4.4.5 As the councillor was no longer in office, the Tribunal could not consider a suspension or partial suspension which might have been otherwise imposed. It upheld the Standards Committee decision to censure Mr. A and the requirement that he should give a written apology to the other councillor.

4.5 CLLR S (APE 0376) – Failure to treat another with respect

- 4.5.1 The Tribunal received an allegation that Cllr S had failed to comply with the Borough Council’s Code of Conduct by writing a disrespectful letter to the Council’s Head of Housing. Cllr S had also written in the same terms to another councillor, about the same officer. He intimated that he had telephoned the officer concerning a constituent saying that the officer had let him down and that he was sick of her and would complain to the Chief Executive. Cllr S also complained publicly in a radio interview that nothing had been done about his constituent’s case, giving the officer’s name and job title and saying that she was not interested in the matter.
- 4.5.2 Cllr S had also sent faxes which were critical about senior officers to a general council fax number so that it was possible that the contents could be read by junior officers. It was alleged that these actions breached paragraphs 2(b) of the Code of Conduct.
- 4.5.3 The Tribunal found that there was a sustained attack on the particular officer using language and behaviour which was inappropriate, intemperate and threatening. There was a failure to treat the officer concerned with respect in breach of paragraph 2 of the Code. In reaching the conclusion, the Tribunal took into account the fact that a senior officer could be expected to withstand a degree of robust language in dealing with councillors, but this pattern of language went beyond what was acceptable.
- 4.5.4 These were serious breaches and the Tribunal decided that if the respondent were still a member of the Council, a period of suspension would have been appropriate. However, the councillor had resigned and so suspension was not available. It was decided, therefore, that the respondent should be disqualified for a period of three months from being or becoming a member of the relevant authority or any other relevant authority.

4.6 CLLR H (APE 0385) – Register of Interests/Scope of Investigation

- 4.6.1 The Tribunal considered an appeal from Cllr H against a Standards Committee finding that he had failed to follow the Code of Conduct by failing to register an interest as a member of the Campaign for an English Parliament (“CEP”)
- 4.6.2 Cllr H was referred to the local Standards Committee for failing to register his role as Branch Co-ordinator of CEP. The appeal was granted on the ground that Cllr H had been found in breach of the Code for a different matter from that which formed the basis of the complaint and referral to the Monitoring Officer.
- 4.6.3 The Register of Interests is intended to provide the public with transparency of information on issues which may affect a councillor’s independence and judgement. The Register is to identify those interests which go beyond a general level of participation or interest in an issue. It is not merely holding a few shares in a company but holding so many shares or being so involved in the day to day running that one has general control of or management in that company. It is not having a passing interest in an issue but by demonstrating commitment and support for a campaign by taking membership.
- 4.6.4 Paragraph 14 (d) of the Code requires a councillor to declare “membership of or position of general control or management in any body whose principal purposes include the influence of public opinion or policy”. Cllr H was certainly a member of CEP and this membership should have been registered. The issue as identified by the Monitoring Officer was whether his role as Branch Co-ordinator should also have triggered a registration. In this instance it was not a mere membership issue and so if this role was registerable it was because it was a role which was caught by the term ‘general control and management in’. There was no evidence before the Tribunal as to how large the CEP was or how complex its management was. The Tribunal therefore had to assume that it was similar to many other political organisations.

- 4.6.5 The CEP documentation stated ‘the overall aim of a CEP local Branch Co-ordinator is to recruit members of the CEP; raise funds for the CEP and raise awareness of the CEP’. This role included writing to members of the public and preparing articles for the press; both activities with the objective of influencing public opinion or policy. Raising funds is a core activity of membership, although the Tribunal noted that Cllr H did not actually hold funds.
- 4.6.6 It could be argued that all those who took an active step in the membership group were involved in the general management and control of the organisation. This would distinguish them from merely passive members. However the Tribunal was of the view that the level of activity that was envisaged in the Code is greater than being a willing helper.
- 4.6.7 In the Tribunal’s view a prudent councillor would take steps not only to register their membership but also any position they hold in any organisation: in this way they avoid any criticism. Passive membership is obviously not the same as active and displays a further level of commitment to the cause. An entry such as ‘member and officer’ or ‘member and local co-ordinator’ gives more of an insight into the level of support and activity that a councillor is giving to an organisation.
- 4.6.8 As correctly identified by the Monitoring Officer, the role of Branch Co-ordinator was not one that gave Cllr H a position of ‘general control of or management in’ the CEP and so his additional duties as branch co-ordinator did not, of themselves alone, trigger a requirement to register his interest.
- 4.6.9 The Tribunal noted that someone who is a passive member of a political or quasi-political party or campaign had to register their interest although someone who was very actively recruiting members and funds for the organisation and writing on this topic for publication but was not a member would not be required to register their interest. One is passive and the other active and arguably the later activity is of more significance however the legislation as framed does not address this.
- 4.6.10 The Tribunal noted that in 2002 Cllr H had declared his membership of the Conservative Party.
- 4.6.11 The Monitoring Officer came to the conclusion that Cllr H’s role as Branch Co-ordinator was not a matter that required registration as this role did not involve the Councillor in the management or control of the body. He again correctly concluded that membership of the same organisation was a registerable interest and this was the matter that was referred to the local Standards Committee.
- 4.6.12 The first question for consideration by the Tribunal was whether the Monitoring Officer was entitled to make a finding and make a report in relation to a matter that was outside of the terms of the issue referred to him.
- 4.6.13 Guidance from the Standards Board in relation to how to conduct investigations makes clear what to do if new breaches of the Code are alleged or found, and when cases might be referred back to the Standards Board.
- 4.6.14 It was clear from the report of the Monitoring Officer that he was focused on what the issue was that he was called to investigate. He investigated this and came to a conclusion. He also came to the conclusion that there was another (underlying) breach. Whilst the Tribunal found it reasonable for the Monitoring Officer to establish facts relating to Cllr H’s relationship and role in the CEP based on the wording of the Code and the guidance, the Monitoring Officer did not have the right to bring further allegations based on that information to a Standards Committee.

- 4.6.15 Whilst it can be argued that the two matters are intertwined and one flows from the other and therefore there is little to distinguish the two elements, it was clear to the Tribunal that the two elements should have been treated differently. Indeed the guidance specifically provides the Monitoring Officer with a course of action which is to report on his findings on the specific allegation that he was charged to investigate and to bring a fresh allegation in relation to Cllr H's failure to register membership of the CEP.
- 4.6.16 Had the matter been investigated at the outset by the Standards Board undoubtedly the allegation which Cllr H would have faced at a hearing would have been that he had breached the Code of Conduct for failing to register his membership of the CEP. Had there been a fresh allegation based on his failure to register his membership of the CEP then again a hearing on this issue would have followed. In both situations Cllr H would have been found in breach of the Code. It was therefore a failing in the execution of the process that gave rise to the appeal rather than the lack of a breach.
- 4.6.17 The Human Rights Act 1998 (HRA) provides the right to a fair trial. Whilst Cllr H did not raise the issue, his rights under the HRA had been infringed by being found in breach of the Code for a matter that was different from the matter raised as a complaint. However, pleaded or not, it fell to the Tribunal to consider that issue. The Tribunal was of the view that the Monitoring Officer's report to the Standards Committee was flawed. Instead of bringing the matter to hearing he should have referred the matter back to the Standards Board. Cllr H was granted an appeal to give an opportunity of addressing all the issues afresh. The Tribunal was therefore of the view that this process of appeal had, in essence, cured that defect. The decision of the Standards Committee was quashed.
- 4.6.18 The Tribunal noted that Cllr H had taken steps to rectify his failure to register his membership of the CEP. The underlying mischief that the complaint, investigation and finding were ultimately aimed at alleviating had therefore been addressed and the Tribunal recommended that no further action be taken.

5. **APPENDICES**

None

6. **BACKGROUND PAPERS REFERRED TO**

None

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