

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer **REPORT NUMBER** **J164**
TO: STANDARDS COMMITTEE **DATE OF MEETING** 22 January 2010

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 APPEALS TRIBUNAL DECISIONS

5.1 **CLLR R. (Case no. APE 0452) – sanction for bullying and disrespect**

5.1.1 This case provides useful guidance on the imposition of sanctions and the need to be prescriptive if requiring a councillor to apologise or undertake training.

5.1.2 Parish Councillor R appealed against the finding of the Standards Committee that she had breached paragraphs 3(1) and 3(2)(b) of the Code (failure to treat others with respect and bullying) and the sanction of 6 months suspension reduced to 4 months if she provided a letter of apology to the Parish Council and Clerk. She was further required to undertake training. The Tribunal gave permission to appeal against the sanction only.

5.1.3 The Standards Committee had found that there had been a pattern of behaviour over a period of time which amounted to bullying. The Tribunal considered that the matter would not have been so serious if the breach had consisted of poor behaviour on a single occasion. The evidence showed that Cllr R had shown disrespect and bullying behaviour to the current clerk and the previous clerk along with Parish Council members and members of other councils. The Tribunal considered that the type of bullying and disrespectful behaviour was not only distressing to the individuals concerned, but was also detrimental to the good governance of the Parish Council.

- 5.1.4 The Tribunal agreed that the sanction was proportionate to the breach. It noted that Cllr R had apologised to the Clerk at the Standards Committee hearing, but gave the apology little weight as a mitigating factor. To demonstrate appropriate contrition it should have been made much sooner.
- 5.1.5 Cllr R had argued that the Standards Committee failed to take into account her medical history (and letter from her GP) which she maintained affected her behaviour. However, it was clear from the Standards Sub-Committee determination that it had addressed its mind to the issue, but concluded that the evidence did not support Cllr R's assertions that her condition or medication had affected her behaviour.
- 5.1.6 The Tribunal dismissed Cllr R's argument that the Investigating Officer should have sought further evidence from her GP. The onus was on Cllr R to provide proper evidence.
- 5.1.7 The Tribunal had doubt that Cllr R should have been offered a reduction in suspension if she gave a written apology, but gave her the benefit of the doubt.
- 5.1.8 Clarification was provided in respect of the apology. Cllr R was required within 28 days of the decision to send a letter of apology to the Chair of the Parish Council and to the Clerk. The letter should include the following "*I apologise for what I did or said which offended you and other members of the Parish Council (as appropriate)*", and "*I acknowledge that my behaviour was unacceptable*". A copy of the letter should be sent to the Monitoring Officer.
- 5.1.9 The Tribunal recognised that Cllr R would benefit from training as she had had no official training. Cllr R was required to attend appropriate training as arranged by the Monitoring Officer within 4 months of the decision. In the event that the Monitoring Officer failed to offer training within that time frame, Cllr R would be deemed to have complied with that part of the sanction.

5.2 **CLLR. C (Case no. APE 0456) – disrespect**

- 5.2.1 Borough Councillor C appealed the decision of the Standards Committee to censure him for disrespect towards officers of the Council's Planning Department in relation to emails circulated criticising the handling of a planning application.
- 5.2.2 Cllr C had been approached by two constituents who were aggrieved over the rejection of their planning application and refusal by the Case Officer to have a meeting to discuss the matter. Cllr C emailed the Case Officer and copied it to the applicants and three senior officers including the Chief Executive asserting that the refusal to meet was wholly unacceptable and saying that "*I cannot recall such arrogance from an Officer of the Council*". A reply was sent by a more senior officer supporting the position of the Case Officer.
- 5.2.3 The applicants then submitted a revised planning application. The application was on track to be determined within the 8 week target period, but before expiry Cllr C emailed the applicants and copied in the Director and Chief Executive saying that he was outraged and shocked by the inertia of planning officers and that it was "*a damning indictment on the appalling service our planners are providing*".

- 5.2.4 The Tribunal found that there had been no breach of the Code. Cllr C had not bothered to make enquiries of planning officers to ascertain whether the applicant's complaints were well founded and he should have raised his concerns in a different more temperate way and not copied in a member of the public. Further, the accusation of "arrogance" by the Case Officer was inappropriate. The Planning Department was entitled to conclude that a meeting was not a good use of officers' time. However, on its own and in the absence of other instances of inappropriate behaviour towards officers, the first email was too insignificant to amount to disrespect.
- 5.2.5 The second email was not directed at an individual officer and fell within the ambit of comment that it was acceptable for a councillor to make. It was of the utmost importance that councillors should not be deterred from raising concerns with regard to Council services.
- 5.2.7 The Tribunal commented that the matter should not perhaps have passed the Standards Committee's assessment of whether the complaint should be referred for investigation. Further, the matter could have been dealt with in a different more informal way first, for instance, by the councillor having been spoken to by the Monitoring Officer or the Leader of the Council.
- 5.2.8 Comment: It is unclear in the above case who had made the complaint and whether there was opportunity before its submission for intervention by the Monitoring Officer/Leader. Members will be aware that there has been wide discussion on the informal handling of complaints and the problem has remained that there is no legal provision to enable the Monitoring Officer to address grievances informally once a complaint has been made. The statute provides that complaints once made must be considered by the Standards Committee.

SELECTED CASE TRIBUNAL DECISIONS

- 5.3 **CLLR. W (Case no. APE 0455) – disrepute & misuse of Council resources**
- 5.3.1 This case was referred by the local Standards Committee to the Adjudication Panel for England for determination.
- 5.3.2 Cllr W was issued a council owned laptop in order for him to perform his duties as a councillor. He signed a form accepting the conditions governing use of the laptop which provided that the laptop could only be used by authorised persons for authorised purposes. A letter was subsequently circulated to all members attaching the Council's Information Technology Policy. The letter stated that whilst the Policy applied to staff it contained principles which were equally helpful to members. This Policy permitted occasional personal use of the internet, but prohibited any use involving downloading of software for personal use or which entailed access to or development of offensive and illegal material.
- 5.3.3 Cllr W asked the Council's IT Department to examine the laptop as it was slow to boot and had virus warnings. He was issued with a new laptop. During preparation of the laptop for use as a training machine, IT staff found offensive and pornographic material including a number of film titles. Cllr W's new laptop was then examined which was found to contain material obtained in breach of copyright.
- 5.3.4 Cllr W admitted to downloading unauthorised software and files and letting his family, including his sister and niece, use the laptop for their personal use.

- 5.3.5 The Case Tribunal found a clear breach of paragraph 6(b)(i) of the Code in misusing Council resources. It also found Cllr W to have brought his office into disrepute. In considering disrepute, it looked at the Oxford English Dictionary definition of “lack of good reputation or respectability”. It concluded that disrepute is anything which could reasonably be regarded by an objective observer as diminishing a member’s office or authority or which harms or could harm the reputation of the member or his authority.
- 5.3.6 The Tribunal stated that a member of the public knowing Cllr W had not only used but allowed his relatives to use council property and for the particular purposes, would have grave concerns about Cllr W’s judgement, honesty and integrity. The conduct would certainly reduce public trust and confidence in Cllr W.
- 5.3.7 As Cllr W had resigned from office, the only sanctions available were censure or disqualification. The Tribunal took the view that it had responsibility not only to deter Cllr W and others from committing similar breaches, but also to foster public confidence with local democracy and to maintain public trust and confidence in the local democratic process. It disqualified Cllr W for 2 years from the date of the decision.

STANDARDS FOR ENGLAND DECISIONS

- 5.4 Standards For England (formerly the Standards Board) has published summaries of certain complaints that have been investigated by ethical standards officers following referral by local standards committees. A sample of these summaries is attached.

6. APPENDICES

Appendix 1. – Standards For England decisions.

7. BACKGROUND PAPERS

Adjudication Panel decisions listed in the report.

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Case Summary - West Felton Parish Council

Case no.	SBE05849
Member(s):	Councillor Chris Lovell
Date received:	08 May 2009
Date completed:	08 Oct 2009

Allegation:

The member failed to treat others with respect, bullied other people, and brought his office or authority into disrepute.

Standards Board outcome:

The ethical standards officer found that the member did not breach the Code of Conduct.

Case Summary

The complainants alleged that Councillor Chris Lovell bullied the West Felton parish clerk through overbearing supervision and undermined him through constant criticism of his work, and that Councillor Lovell called the clerk a liar in a meeting in August 2008, during a debate about the clerk's news reports. It was further alleged that Councillor Lovell also bullied and intimidated the locum clerk by sending him numerous emails lacking in respect and courtesy, and that he continually challenged the locum clerk's advice to the council, insinuated that the locum clerk lied to the council on two occasions, and added words to an official council notice without authorisation.

The Code of Conduct does not prevent members from raising issues of legitimate concern, disagreeing with officers and other members or questioning their performance. However, members should not act in a way that is unfair, unreasonable or demeaning. In this case, the complainants cited the volume of contact was the main way in which Councillor Lovell's conduct became bullying.

The ethical standards officer found that the member did not demonstrate disrespectful or bullying conduct. There was substantial evidence that Councillor Lovell was engaged in the reasonable pursuit of council business, trying to fulfil his responsibilities as a councillor and attempting to ensure that the council operated properly and lawfully. The ethical standards officer considered that there was a legitimate reason for the contact between Councillor Lovell and the parish clerk, regardless of the volume of such contact, although the ethical standards officer appreciated that the clerk had limited hours in which to deal with Councillor Lovell's requests.

In relation to the August meeting, the ethical standards officer considered conflicting oral evidence, taking into account that people involved in a debate may take away different things from what may have actually been said. The ethical standards officer considered that the context of the meeting was of one in which various terms were used to describe the clerk's reports as inaccurate, but describing someone's work as inaccurate is not the same as calling them a liar.

The ethical standards officer looked at an email that the clerk sent to a number of councillors, asking for their views on the draft August minute, noting that those selected councillors were also presented with alternative drafts of this minute. The clerk referred to a sentence in one draft, containing the 'liar' remark, by saying that he had been advised to record what Councillor Lovell "actually said". In the alternate version, which he described as the 'actual' August minute, the 'liar' remark was omitted.

It is common practice for a clerk to send the council chair a draft copy of minutes, in order to identify and correct errors and so on. The ethical standards officer would usually take the minute as a persuasive account of a meeting. However, in this case there were alternate versions circulated to some members prior to finalisation. The ethical standards officer saw no evidence that any of the members came back to the clerk to say which version was more accurate. The markedly different versions of the minute meant that the ethical standards officer could not rely on it as conclusive proof of Councillor Lovell's words.

The ethical standards officer, having considered the amount of uncertainty about the evidence, including the conflicting witness accounts, gave the subject member the benefit of the doubt and did not find, on the balance of probabilities, that Councillor Lovell made the alleged remark at the meeting.

In relation to the complaint about Councillor Lovell's conduct towards the locum clerk, the ethical standards officer did not consider the incidents cited to be offensive, intimidating, malicious, insulting or humiliating. Neither were they based on an abuse or misuse of Councillor Lovell's power. Councillor Lovell had questioned the locum clerk's advice and taken independent advice, as any councillor might properly do. The ethical standards officer did not, therefore, consider Councillor Lovell's actions to be bullying or disreputable, although she accepted that the situation may have been uncomfortable or embarrassing for the locum clerk.

Finally, the ethical standards officer concluded that the display of official council notices was a long-standing and well understood arrangement, whereby Councillor Lovell would display the notices on the clerk's behalf in order to save the clerk time and the council money. There was no evidence that Councillor Lovell was not acting in good faith when he displayed the council notice, recording the time and date at which he put the notice up.


Relevant paragraphs of the Code of Conduct

The allegations in this case relate to paragraphs 3(1), 3(2) and 5 of the Code of Conduct.

Paragraph 3(1) states that a member must "treat others with respect".

Paragraph 3(2) states that a member must not "bully any person".

Paragraph 5 states that "a member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute".

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Case Summary - Essex County Council

Case no.	SBE06045
Member(s):	Councillor Lord Hanningfield
Date received:	18 Jun 2009
Date completed:	10 Nov 2009

Allegation:

The member failed to withdraw from a meeting in which he had a prejudicial interest and failed to complete his register of interests.

Standards Board outcome:

The ethical standards officer found that the member failed to comply with the Code of Conduct, but in the circumstances of the case, no further action needed to be taken.

Case Summary

The complainant alleged that Councillor Lord Hanningfield, of Essex County Council, participated in council decisions that resulted in the Academies Enterprise Trust (AET), of which Councillor Lord Hanningfield was both patron and director, taking control of five secondary schools in Essex. It was further alleged that Councillor Lord Hanningfield failed to declare his association with AET at five public meetings held to discuss the future of secondary education in Colchester. The complainant also alleged that Lord Hanningfield had failed to register his links with AET in the council's register of interests.

Councillor Lord Hanningfield is the leader of Essex County Council.

In 2007 a federation of three academy schools in Witham and Hockley was created, under a scheme in which high-performing secondary schools act as sponsors to low-performing partner schools, enabling both high-performing and low-performing schools to become academies. An organisation was set up called the Academies Enterprise Trust (AET). The AET was set up as the operating division of the Greensward College Trust, Greensward College being the former name of the sponsor academy in the federation, now known as Greensward Academy.

Following the decision of the Department for Children, Schools and Families (DCSF) that the Greensward College Trust would sponsor the new academies, Councillor Lord Hanningfield was approached with a proposal that he become patron of the soon-to-be-established AET and agreed, although he stated that he had never expected that he would participate actively.

Documentation from Companies House showed that on 19 March 2008, Councillor Lord Hanningfield signed paperwork in respect of the AET, registering him as a director, at the time at which the AET was incorporated as a private limited company on 19 June 2008. When the company was later registered as a charity in August 2008, Councillor Lord Hanningfield was listed as a trustee.

On 28 January 2009, Councillor Lord Hanningfield amended his register of interests to include his patronage of the AET, but did not include any reference to his role as a director or trustee.

Councillor Lord Hanningfield told Standards for England that he had not registered his patronage straight away because he had not at first been aware of the need to do so. When asked why he had not included his role as director of the AET, he told the investigator that he had not been aware of it until very recently. Although he had signed the form consenting to be a director of the Trust, he stated that he did very little of his own paperwork and relied on people providing him with the correct forms when his signature was required.

David Triggs, the AET's chief executive, stated that all communications with Councillor Lord Hanningfield had only been in relation to him becoming a patron, and that it was not clear how or why he had been registered as a director.

He also confirmed that Councillor Lord Hanningfield had received no payment from the AET – he was not paid any sort of salary and had claimed no expenses. Neither had he attended any board meetings. None of the AET's documents refer to him in any other capacity than patron.

In August 2009, following the complaint about his conduct in relation to his role with the AET, Councillor Lord Hanningfield resigned as both patron and director.

In May 2008 and June 2009, Councillor Lord Hanningfield attended cabinet meetings relating to the proposals for the Witham and Hockley academy federation. He declared a personal interest as a patron of AET, and remained in the room while the matter was discussed, as someone with a personal interest is entitled to do under the members' Code of Conduct.

During 2008 and 2009, Councillor Lord Hanningfield had attended and chaired a number of public meetings about proposed changes to secondary education in Colchester. One of the proposals was to close a local arts college and re-establish it as an academy. However, witnesses told Standards for England that there had never been any intention for AET to be its sponsor.

In September 2008, the DCSF, in consultation with senior officers, decided to appoint AET as the sponsor for another proposed academy in Clacton-on-Sea. Councillor Lord Hanningfield played no part in this decision.

Councillor Lord Hanningfield signed an expression of interest document in the Clacton proposal in November 2008 to create the Clacton Coastal Academy. The ethical standards officer considered that this was not inappropriate, given his status as cabinet member for schools and early years.

The ethical standards officer took into account that the funding arrangements between the DCSF and academy sponsors do not allow the sponsor to profit financially from their management of schools, and this was also reflected in AET's memorandum of association, which confirms that the income and property of the Trust cannot be used to benefit any of its directors.

The ethical standards officer noted Councillor Lord Hanningfield's explanation that he had not initially appreciated the need to register his patronage and that he had not known that the forms he had signed for AET authorised his agreement to become a director and trustee. However, it was ultimately Councillor Lord Hanningfield's own responsibility to know the full range of interests he needed to register and to record them accordingly, and although the ethical standards officer accepted that Councillor Lord Hanningfield relied heavily on others in respect of the forms he had signed, she did not consider that this excused him from the need to register his status as a director and trustee of AET. Therefore she found that Councillor Lord Hanningfield's failure to register his patronage of AET on time, and his failure to register his directorship at all, were technical breaches of the Code of Conduct.

With regards to Councillor Lord Hanningfield's participation in meetings relating to proposals for academy schools while a patron and director of AET, the ethical standards officer found no evidence that he had acted improperly. He declared his personal interest as a patron, and so was clearly not attempting to conceal it. The public meetings that he had chaired were not meetings of the council as defined by the Code, which meant that he was not, in any case, required to declare interests at all in those instances.

Councillor Lord Hanningfield did not stand to gain financially from any decisions made at the cabinet meetings at which he was present, and as a councillor he was not responsible for appointing or recommending the sponsor for the proposed academy schools: this was in fact the role of the DCSF.

Consequently, the ethical standards officer found that the only breach of the Code that had occurred was the failure to register interests correctly. These breaches were not intentional and there was no evidence to suggest that Lord Hanningfield had ever attempted to conceal his interests deliberately. Consequently she found that no further action was necessary.

Relevant paragraphs of the Code of Conduct

The allegations in the case relate to paragraphs 6(a), 9, 12 and 13 of the Code of Conduct.