

BABERGH DISTRICT COUNCIL

FROM: Monitoring Officer

REPORT NUMBER: H141

TO: STANDARDS COMMITTEE

DATE OF MEETING: 17 November 2008

MEMBERS CODE OF CONDUCT CASE REPORTS

1. PURPOSE OF REPORT

- 1.1 To advise Members of recent decisions of the Adjudication Panel Appeals Tribunal. The report is produced for information and training purposes.

2. RECOMMENDATION

- 2.1 That the Committee note the content of this report.

The Committee is able to resolve this matter.

3. FINANCIAL IMPLICATIONS

- 3.1 None

4. RISK MANAGEMENT

Not applicable to this report.

5. KEY INFORMATION

5.1 COUNCILLOR B - APE 0405 (DUTY OF RESPECT)

- 5.2 Councillor B appealed against the decision of the Council's Standards Committee to suspend him for three months for failure to comply with paragraph 3 of the Code of Conduct to treat others with respect.

- 5.3 Councillor B had attended a twin-bin project group meeting that was attended by a number of members and officers. At this meeting Councillor B became angry, raised his voice and responded aggressively to an officer when she provided an opinion that did not accord with his own.

- 5.4 Approximately a month later, Councillor B responded to an e-mail from a local resident to say that he had forwarded the email to the officer (who had attended the twin-bin meeting) so that she could provide them both with an "excuse" as to why the Council's website did not contain certain information sought by the resident.

- 5.5. A further two weeks later Councillor B attended a Council organised training session on media skills which was opened with a short presentation by the same officer. Before the training session commenced, Councillor B apologised to the officer for his behaviour at the twin-bin meeting. However, once the officer started her presentation, Councillor B informed her that he did not want to listen to the presentation and in so doing used offensive language. Councillor B declined the

officer's offer of the option to leave the room during her presentation. Throughout the course of the short presentation Councillor B interrupted with a relentless stream of questions and comments. He then became increasingly angry and confrontational. Another councillor sought to intervene to get Councillor B to moderate his behaviour, but Councillor B did not do so and continued to interrupt the officer when she tried to continue the presentation. Eventually the officer burst into tears and fled the training room.

5.6 Later the same afternoon Councillor B sent the officer an e-mail purporting to apologise for his behaviour.

5.7 Councillor B appealed the Standards Committee decision asserting that full consideration was not given to his mitigating circumstances namely that:-

- He had hearing problems which might have caused him to speak louder than a normal person.
- He had suffered a heart attack and due to high blood pressure his face becomes red when he is under stress.
- The Monitoring Officer's letters and e-mails to potential hostile witnesses were biased and leading.
- He had publicly apologised to the officer concerned.
- He had enrolled upon an anger management course.
- He had admitted to treating the officer with disrespect.

5.8 Councillor B also expressed concern that the three month suspension was a punishment for his constituents who had voted for him rather than a punishment for the error of his ways. He also believed that the decision was open to challenge under human rights legislation. The Appeals Tribunal considered that there was little merit in the mitigating factors bullet pointed above. The Standards Committee had expressly stated in their decision letter that they had taken into account all the representations received including explanations as to hearing problems, heart problems and voluntary attendance at anger management classes. In any event, the factors did not stand close scrutiny. The clear evidence before the Standards Committee was that Councillor B actually was angry and had acted in a bullying and disrespectful manner towards the officer which caused distress and humiliation. The letters from the Monitoring Officer did appear to have pre-judged the issue, but there was no evidence that this influenced witnesses or the Standards Committee. The Monitoring Officer, as complainant, took no part in the proceedings before the Committee. Further, the apology was somewhat hollow and Councillor B had launched a further attack on the officer at the same meeting.

5.9 Attendance at an anger management course and admitting a breach of the Code did not excuse Councillor B's actions but they did disclose insight which is an appropriate factor to take into account when determining a sanction.

5.10 Councillor B was unable to say which of his constituents' human rights had been breached or how they had been breached. The Appeals Tribunal examined the Human Rights Act 1998 and found none which Councillor B might predicate a sustainable case. In any event, Councillor B represented a ward which had another elected Member and the constituents would not be prejudiced by any sanction taken against him. There was no evidence that the effects of Councillor B's suspension would be any different from those of any other Councillor in any other Council. The

Appeals Tribunal therefore dismissed Councillor B's appeal and upheld the decision of the Standards Committee.

6. **COUNCILLOR W – APE 0404 (RESPECT AND DISREPUTE)**

6.1 Town Councillor W appealed against the Standards Committee's finding that he failed to follow paragraphs 2 and 4 of the Code of Conduct by bullying and intimidating the Town Clerk. At a Council meeting, Councillor W had asked the new Mayor if he still felt that *"the problems with the Council are up there"*. At the same time he gestured. The Tribunal was satisfied that some of those present recognised this as a reference to the Town Clerk. The Town Clerk raised a grievance against Councillor W and the grievance was investigated by two other Town Councillors. The outcome of the grievance was reported at a Town Council meeting and a resolution was passed calling for Councillor W to apologise to the Clerk. Despite clear efforts on the part of Councillor W and other Councillors, there was no notification of the basis upon which the grievance was upheld nor of any specific criticism of Councillor W's conduct. Councillor W did not apologise and was suspended from membership of all committees.

6.2 The Appeals Tribunal concurred with the finding of the Standards Committee that there was evidence to suggest a friendship between the Town Clerk and one of the Councillors who conducted the grievance investigation. The Tribunal determined that Councillor W did not fail to follow the provisions of the Code because:

- Councillor W's conduct at the Council meeting was a question or challenge to a fellow Councillor and a reference to the views of that Councillor.
- His comment was not expressed in temperate or abusive terms about the Councillor or the Town Clerk.
- It was a remark made in the heat of the moment at a time of high political tension and did not cross the boundaries set by the Code.
- A Town Clerk must expect that robust debate will sometimes bring their actions and position into play.
- The Tribunal further found that the failure of Councillor W to apologise to the Town Clerk was not in itself a breach of the Code for three reasons:-
 - (a) A finding of breach in the failure to apologise risks extending the Code beyond its proper bounds.
 - (b) It is not appropriate to require a Councillor to apologise in circumstances where he had not been notified of the reasons for requiring the apology or the specific conduct for which he should apologise.
 - (c) A failure to apologise cannot, in the view of the Tribunal, amount to treating the Town Clerk disrespectfully or bring the Council into disrepute.

7. **COUNCILLOR S – APE 0403 (DECLARATION OF INTERESTS)**

7.1 Prior to his election as a Parish Councillor, Councillor S had written to the District Council to oppose the development of land adjacent to a boundary of his house. The owner of the development site had suggested that he might like to purchase Councillor S's property but Councillor S had said that he was not interested. His representations to the District Council did not relate to the effect of the development on his property but re-laid concern of some people in the village about the possibility of damage to protected trees in the nearby churchyard.

- 7.2 Planning permission was granted and the following year a further planning application was made. Councillor S wrote a letter of complaint to the District Council and objected to the application. Again, there was no objection on the grounds that the proposals would affect his property. Planning permission for the second application was granted and Councillor S then made a complaint to the Ombudsman. The Ombudsman found in favour of his complaint that there had been a failing in how the planning permission was granted.
- 7.3 A further two years later Councillor S was appointed to the Parish Council and at his first meeting there was an item on the agenda to consider a condition attached to the second planning permission. Councillor S declared an interest, but it was not apparent from the minutes whether this was a personal or a prejudicial interest. It was the Council's practice not to write down the type of interest. Councillor S attested that he had intended to declare a personal interest only and that he had taken advice from the Clerk. It was unclear whether or not the Clerk had advised that he had a prejudicial interest. Councillor S did not withdraw from the room and took part in the discussion.
- 7.4 The Appeals Tribunal found that Councillor S had failed to follow paragraph 10 of the Code by virtue of failing to withdraw from the room when he had a prejudicial interest. The Tribunal noted that Councillor S had not been speaking at the meeting on his own behalf but rather for the local residents and as a result of parish wide concern. Moreover, that he had not been motivated by financial gain. The Tribunal wished however to emphasise the point that it was an objective test that applied to whether a member has a prejudicial interest. This required Members to try and step into the shoes of the reasonable member of the public appraised of the relevant facts and to ask what he or she would think. Members must not only act fairly to the best of their intentions but also be seen so to act. This ensures that high standards of conduct are maintained and that the public have confidence in those standards. In certain circumstances, this will require a member to accept that whatever his or her intentions, a reasonable member of the public may think that they had a personal or prejudicial interest. To maintain public confidence Members must be alive to the appearance of conflicts of interests and act accordingly. Councillor S had applied the incorrect test in asking himself whether he could be financially advantaged and completely overlooked the wellbeing test within the Code.
- 7.5 Applying an objective test, the Tribunal had no hesitation in concluding that Councillor S had a personal interest on the basis of his sharing a boundary with the development site taken with the fact that he had personally made the Ombudsman complaint and objections to the planning applications. These factors had to be looked at cumulatively and led to the conclusion that a reasonable person would consider it likely that Councillor S' wellbeing was affected more than other residents in the Authority's area. While other members of the parish shared his concerns over the development, they did not live right next-door and had not taken so great a role in objecting to the development.
- 7.6 The Tribunal had no doubt that under the Code this personal interest would also be prejudicial. It concluded that a reasonable person appraised of the relevant facts would be likely to think that Councillor S's personal interest was so significant that it was likely that his judgement of the public interest would be prejudiced. Albeit that the three factors (shared boundary, Ombudsman complaint, objections) had to be taken together it was the location of his property which was most important.

7.7 The Tribunal took into account that this was Councillor S' first meeting since his appointment and that it was not clear whether the Clerk had advised that he had a prejudicial as well as a personal interest. The Tribunal further noted that had the case been heard under the revised Code it may not have resulted in a breach. The Tribunal upheld the decision of the Standards Committee that no action be taken as a result of the breach.

8. **APPENDICES**

None

9. **BACKGROUND PAPERS REFERRED TO:**

Decisions (APE 0403,0404,0405) of the Adjudication Panel for England

CONTACT: Kathryn Saward

EMAIL: kathryn.saward@babbergh.gov.uk