

**BABERGH DISTRICT COUNCIL**

**FROM:** The Monitoring Officer

**REPORT NUMBER** **J55**

**TO:** STANDARDS COMMITTEE

**DATE OF MEETING** 10 July 2009

**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 B. (Case no. APE 0422) – disrespect to officer**

5.1.1 District Councillor B appealed against the decision of the Standards Committee to suspend him for 3 months (being the maximum sanction available to it at that time) for failure to treat others with respect contrary to paragraph 2(b) of the 2002 Code of Conduct

5.1.2 There was no appeal against the finding of breach and the Tribunal was satisfied that there was a very clear breach. Cllr B had entered the planning office (an officer only area) and permitted a planning agent to enter with him. He identified the planning case officer and when the agent started to argue with the officer Cllr B intervened with a series of abusive and insulting expressions about planning officers and the planning department generally. An officer who witnessed the incident concluded that Cllr B's intervention caused the agent to become more verbally aggressive and obscene.

5.1.3 Cllr B maintained that the sanction was disproportionate; it was an isolated incident, he had apologised, offered to attend appropriate training, promised to abide by the Code in future and there had been no formal complaint made against him in over 2 years since the incident occurred. Cllr B also submitted a number of case examples from the Standards Board in which the Ethical Standards Officer had decided that no action should be taken and which he considered reinforced his case.

5.1.4 The Tribunal shared the view of the Standards Committee that this was a serious incident and even if isolated it was of such severity that a sanction ought to be imposed. The Tribunal noted the mitigating factors of a long history of good service, subsequent proper behaviour and the apologies. The case histories were not of particular assistance and focused on the actual conduct of the individual case. The 3 month suspension was upheld as appropriate to reflect the severity of the matter and to improve the standard of conduct of others.

5.2 **CLLR B (Case no. APE 04186)- bullying, improper use of position, disrepute and disrespect**

5.2.1 This case concerns the 2007 Code. Parish Councillor B appealed against a decision of the Standards Committee to (i) suspend him for 3 months (ii) require him to submit an apology to the Parish Council, and (iii) attend training on procedures at council meetings and the role of parish councils.

5.2.2 There was no dispute as to the findings of fact and therefore full details of the complaint are not published. The main thrust of the complaint appears to be that there was bullying and unsubstantiated allegations of corrupt practice made by Cllr B against persons in public life. Cllr B had made over 170 complaints to the District Council since May 2008 and none had been upheld.

5.2.3 Other behaviour included a comment during a Parish Council meeting about the manager of a local wildlife reserve that "I can't work with that \*\*\*\*\* woman". He had sworn at the Chairman in a telephone conversation with the Chairman of the Parish Council before slamming the receiver down. At a Parish Council meeting Cllr B had refused to accept the minutes of the previous meeting, ripped them up in front of the press and public and threw them on the table.

5.2.4 The Appeals Tribunal considered that there had been a breach of the Code which caused harm to others. It found the bullying and unsubstantiated allegations of corruption to have serious impact and be inherently harmful. The decision of the Standards Committee was reasonable, proportionate and sustainable. The Tribunal dismissed the appeal and amended the wording of the sanction providing for training "within 3 months and prior to [Cllr B] recommencing his duties as a councillor of the Parish Council" so that the sanction could not be indefinite in period.

5.3 **CLLR G (Case no. APE 0423)- disrespect and disrepute**

5.3.1 Parish Cllr G appealed against the determination of the Standards Committee that he had failed to treat others with respect and brought his office or council into disrepute and the sanction that he (i) send a suitably worded letter of apology to an individual and (ii) undergo one to one training on the Code.

- 5.3.2 The Standards Committee found as a fact that during a Public Question and Answer Session of a meeting of the Parish Council that an exchange took place between Cllr G and a member of the public which amounted to breaches of paragraphs 3(1) and 5 of the Code. However, in its decision the Committee made no findings of fact as to what was said nor did it provide any reasoning as to why what was said amount to a breach. In the absence of this necessary and relevant information in the decision notice, the Tribunal decided to proceed with the appeal as a rehearing.
- 5.2.3 At the Public Q&A session, Cllr G stated that he had been in contact with the County Council about introducing a traffic regulation order on vehicles entering the centre of the village. The Managing Director of a company running a vehicle repair and petrol forecourt in the centre of the village attended the session and expressed concern over the issue and stated that if such an order prohibited lorries using the garage then he would lose his business and livelihood.
- 5.2.4 The MD had complained that Cllr G had challenged him during the session by saying "What are you going here?". Cllr G disputed this. The MD was upset and embarrassed by the question and since it was a public meeting, it should not have mattered why he was there. The Clerk was unable to add to what was contained in the minutes and a member of the public who had been present throughout made a statement to say that they could not recall the question being asked.
- 5.2.5 The Appeals Tribunal applied the civil standard of proof, the onus being on the Standards Committee to prove that it is more likely than not that Cllr G had uttered the words in dispute.
- 5.2.6 The Tribunal was not satisfied that it was more likely than not that Cllr G had uttered the words "What are you doing here?" particularly on the evidence of the member of the public who could not recollect the words and who had said she could hear everything being said at the meeting.
- 5.2.7 Another parish councillor had given evidence that there had been an altercation between Cllr G and the MD with Cllr G being rude to him and not allowing the MD to make his point and speak. This was not, however, part of the complaint made against Cllr G and could not be considered.
- 5.2.8 The Tribunal determined that there was no factual basis to support a finding of breach of the Code and the Standards Committee decision immediately ceased to have effect

6. **APPENDICES**

None.

7. **BACKGROUND PAPERS**

None.

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