

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER **K57**

TO: STANDARDS COMMITTEE

DATE OF MEETING 9 July 2010

MEMBERS CODE OF CONDUCT CASE REPORTS

1. **SUMMARY**

- 1.1 This report updates members on recent relevant case law and decisions of the First-tier Tribunal (Local Government Standards in England) which considers Code of Conduct referrals and appeals from Standards Committee decisions. The report is produced for information and training purposes. None of the reported cases relate to members within the district of Babergh.

2. **RECOMMENDATIONS**

- 2.1 That the content of this report be noted.

3. **FINANCIAL IMPLICATIONS**

- 3.1 None.

4. **RISK MANAGEMENT**

- 4.1 Not relevant to this report.

5. **EQUALITY AND DIVERSITY IMPACT**

- 5.1 Not directly relevant to this report.

6. **KEY INFORMATION**

SELECTED CASE TRIBUNAL DECISIONS

6.1 **CLLR A. (Case no. LGS/2009/0477) – disrespect/ misuse of position/disrepute**

- 6.1.1 Prior to becoming a councillor, Cllr A had objected to an application for a public footpath to be designated across his land. He had also submitted a complaint about the partiality of the officer handling the application which had been investigated and dismissed. The application was considered at Committee and Cllr A attended with his solicitor. The application was rejected and under the Council's procedures was referred to a Regulatory Committee.

- 6.1.2 By the time the application was considered by the Regulatory Committee, Cllr A had been elected and appointed to that Committee. Cllr A circulated a letter to members of the Committee saying that as the landowner he felt particularly aggrieved at the lack of impartiality, objectivity and independence shown by the officer handling the case and her biased reporting. Cllr A signed the letter as a councillor. He declared a personal and prejudicial interest at the meeting and left the room prior to the Committee's consideration.
- 6.1.3 The Tribunal found that Cllr A was acting in his official capacity as he had signed the letter as a councillor and also made reference in the letter to "our codes of conduct", "our meeting" and "fellow councillors".
- 6.1.4 The Tribunal recognised that freedom of expression is one of the most fundamentally important rights and may only be interfered with if there are convincing and compelling reasons to do so. It also considered whether the language used by Cllr A could constitute legitimate expression within the legitimate concern of Cllr A or whether it amounted to expressions of personal abuse and malice which could not be afforded protection. The Tribunal further stipulated that the threshold for this type of complaint should be set at a level that allowed for the passion and fervour of political debate relating to the efficient running of a council and which allowed for appropriate and robust criticism of the performance of a council function. This then needed to be balanced with the rights of others, including the right to protection of reputation.
- 6.1.5 The Tribunal concluded that the criticism of the officer could not be construed as political or quasi-political comments. They were a personal attack and criticism of a junior member of staff who had no right of reply. The comments could have been made in a more objective, moderate manner without making personal comments. It amounted to a failure to treat the officer with respect.
- 6.1.6 In circulating the letter which also contained inaccurate and misleading information on the facts, Cllr A had attempted to use his position to secure an advantage for himself by persuading the Committee to decide on a personal matter in his favour.
- 6.1.7 Whilst Cllr A had the right to address the Committee before the debate commenced, this was restricted to making representations, answering questions or giving evidence. There was no right to submit written evidence let alone one which undermined the integrity and professionalism of an officer. The persistent, personal attack on a junior officer and the attempt to inappropriately persuade the Committee would seriously lessen confidence in Cllr A's office and the council bringing both into disrepute.
- 6.1.8 These were serious breaches aggravated by Cllr A not having shown any insight into the effect upon the officer or his Council and in fact continued to blame the officer throughout the standards investigation. The Tribunal took account that Cllr A came from a single member ward, but the breaches warranted suspension for 6 months. Cllr A was further required to apologise to the officer within 14 days and to undertake training before resuming his duties.

6.2 **CLLR. W (Case no. LGS /2009/0483) – disrespect/bullying**

6.2.1 In April 2007, the Council's Chief Executive had emailed Cllr W about the tone and volume of emails to the Council's Street Services Department which had become a regular pattern and caused at least one member of staff to be off work with stress.

6.2.2 Later that year a new Chief Executive was appointed, who, following further complaints from staff, sought to put in place arrangements for Cllr W to email a specific email address for answer by senior officers within the department. Cllr W ignored the arrangements and in emails and at council meetings referred to the CEO as a liar, a cheat and a hypocrite and also questioned whether he intended to resign.

6.2.3 The approach taken to determine the complaint was to look at:-

- (1) Was Cllr W acting in his official capacity?
- (2) If so, were his comments afforded any protection under the Human Right Act 1998?
- (3) Whether Cllr W had failed to treat others with respect, and/or
- (4) Whether his conduct could be regarded as bullying, and/or
- (5) Whether his conduct could reasonably be regarded as bringing his office or Council into disrepute.

6.2.4 The Tribunal found that Cllr W was acting in his official capacity because all emails had been sent using his Council email address, he had used the title of "Councillor" in the communications and other comments had been made in Council meetings.

6.2.5 The Tribunal recognised that the freedom of expression under the Human Rights Act is one of the most fundamentally important rights in a democratic society which may only be interfered with where there are convincing and compelling reasons. Consideration was needed as to whether the words used constituted expression relating to matters within the legitimate concern of the member as a councillor. If the words could be regarded as political comment they would attract a higher level of protection. The threshold needed to be set at a level to allow for robust debate and appropriate criticism of the performance of a council function.

6.2.6 It concluded that Cllr W's remarks were not political comments but were purely unsubstantiated personal remarks that amounted to no more than expressions of anger and personal abuse which did not attract higher level of protection. The emails and comments were disrespectful to the CEO and sought to damage his reputation. The comments during a council meeting were made in a public arena where they would receive maximum publicity. Whilst Cllr W was able to challenge the conduct of officers this was not an appropriate or measured way of doing so.

6.2.7 The Tribunal also found that the persistent and pestering communications with some officers and the complete disregard for the attempts to control his communications, had the effect of bullying more junior staff. Further, in questioning the honesty and integrity of the CEO and also the Monitoring Officer and by copying derogatory emails sent to senior officers to members of the public and making personal attacks on officers in public, brought Cllr W's office and authority into disrepute.

6.2.8 Councillor W was disqualified for 12 months.

HIGH COURT DECISION

6.3 CHEGWYN v. STANDARDS BOARD FOR ENGLAND 2010

6.3.1 The councillor had been disqualified from public office for 2 years by a Case Tribunal appointed by the Standards Board. The councillor had held office as a county and borough councillor. The disqualification followed the councillor participating at a Council meeting in a debate concerning the licence fee for a music festival that was charged to a company of which he was sole director. The councillor failed to declare any interest and was found to have misused his position for personal gain in breach of the Code of Conduct. The councillor challenged the decision.

6.3.2 The High Court ruled that because the councillor had maintained that he had honestly held the view that he did not have to withdraw from the meeting, the Tribunal should have provided reasons if it did not accept that view. Disqualification is the most severe penalty and should only be used where a councillor has abused their position for personal gain or had deliberately breached the Code so as to be entirely unfit for public office. An honestly held mistaken view was a mitigating factor. The appropriate sanction was suspension for 2 months.

6.3.3 The Court also held that in disqualifying a councillor, the Tribunal has a discretion whether or not to apply that disqualification to every local authority in which the individual held or could hold office.

7. APPENDICES

None

8. BACKGROUND PAPERS

First-tier Tribunal and High Court decisions listed in the report.

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