

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER **K184**

TO: STANDARDS COMMITTEE

DATE OF MEETING 21 January 2011

MEMBERS CODE OF CONDUCT CASE REPORTS

1. **SUMMARY**

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**

That the content of this report be noted.

3. **FINANCIAL IMPLICATIONS**

None.

4. **RISK MANAGEMENT**

Not relevant to this report.

5. **EQUALITIES AND DIVERSITY**

Not relevant to this report.

6. **KEY INFORMATION**

SELECTED CASE TRIBUNAL DECISIONS

CLLR C (Case no. LGS/2010/0510) – declaration of interests

6.1 The Parish Council intended to dispose of its old village hall to a development company in exchange for the company building a new one. The developer signed a planning obligation with the District Council undertaking to build the new village hall as part of its wider development and to transfer the new hall to the Parish Council.

6.2 Some 2 years later Cllr C joined the Parish Council. Shortly afterwards Cllr C was made the subject of a Court Order following an action brought against him by the developer for defamation. The following year Cllr C became Chairman of the Parish Council and around the same time he made a written offer to purchase the old village hall, which he then withdrew 2 months later. He continued to attend Council meetings and write emails concerning the village hall in the meantime.

- 6.3 The allegation that Cllr C had breached the Code of Conduct was referred to the Tribunal by the Standards Committee.
- 6.4 The Tribunal found that Cllr C did have a personal interest in matters concerning the developer arising from the proximity in time of the Court Order and the events giving rise to the complaint. It noted that Cllr C had ‘declared a prejudicial interest in connection with any matters referring to [the developer]’. However, since the business relating to the village hall and the developer did not affect Cllr C’s financial position, he could not have a prejudicial interest and he had not therefore breached the Code.
- 6.5 Whilst finding no breach, the Tribunal recommended that the Parish Council produce clear guidelines for members advising them on the need to disclose both the existence and nature of personal and prejudicial interests. Further, that such disclosures should be recorded in full by reference to the subject minute number, rather than the practice of reference to an agenda item number. The Local Government Act 1972 provides that minutes shall be received in evidence without further proof and it was therefore necessary for the minutes to record the nature of the interest and not just the type of interest.

SELECTED APPEAL DECISIONS

CLLR. G (LGS/2010/0508) – test for failure to treat others with respect

- 6.6 Parish Cllr G appealed against the finding of the Standards Committee that he had failed to treat others with respect in a presentation at a meeting on behalf of the Parish Council in which he indicated that signatories to a petition had been obtained by coercion. The organisers of the petition and a signatory took offence and had complained about the use of the word “coercion”.
- 6.7 The Standards Committee had relied upon a compact dictionary definition of coercion as meaning to “persuade an unwilling person to do something by using force or threats”. The Tribunal, however, was not satisfied that this definition adequately captured the full range of day to day use of the word. The relevant test that should have been applied was what the impartial observer with knowledge of the circumstances would conclude rather than the subjective views of the complainants.
- 6.8 The Tribunal noted that both the Parish Council and the complainants were robustly engaged in opposite sides of the public debate. The fact that they held divided views on the key matter of concern was relevant. It was also important to bear in mind the need for open debate in public matters “and the chilling effect of excessive controls on such debate and the harm that such controls can do to the proper conduct of public affairs”.
- 6.9 In all the circumstances, the Tribunal could not be satisfied that there had been a failure to treat others with respect.

CLLR H (LGS/2010/0524) - bullying/disclosure of confidential information

- 6.10 Cllr H appealed against the decision of the Standards Committee to require him to submit a letter of apology to the complainant and in the absence of a suitably worded letter, he should be suspended from duties for 6 weeks. He was further required to undertake training on the Code of Conduct.

- 6.11 The complainant was the clerk to the Parish Council who was informed that confidential information had been given to one of the Parish Council's employees. All councillors denied passing on the information. The employee confirmed that the information had been disclosed by Cllr H. The Clerk notified the Chairman who invited Cllr H to attend a meeting with him. Having received the letter, Cllr H telephoned the Clerk on 4 occasions in rapid succession and when the Clerk returned the calls he was met by a torrent of speech which was abusive and threatening.
- 6.12 The Clerk reported the matter to the Police who acknowledged the seriousness of the harassment and provided advice to the Clerk on the options. The Clerk decided to give Cllr H opportunity to apologise, but an incident followed in which the Police were then called and Cllr H was issued with a warning.
- 6.13 Cllr H denied any misconduct or that there had been any threatening or abusive behaviour.
- 6.14 The Tribunal concluded that on the balance of probabilities there had been an abusive telephone call culminating in the statement by Cllr H "*I don't take any ****; I'll put you in hospital*". An incident of this nature involving the loss of temper, intimidation and threat amounted to bullying of the Clerk. The finding of the Standards Committee was upheld.

7. APPENDICES

None

8. BACKGROUND PAPERS

First-tier Tribunal (Local Government Standards in England) decisions listed in the report.

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