

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER

H67

TO: STANDARDS COMMITTEE

DATE OF MEETING 11 July 2008

MEMBERS CODE OF CONDUCT CASE REPORTS

1. **SUMMARY**

This report updates members on recent decisions of the Adjudication Panel Appeals Tribunal (against decisions of Standards Committees) and Case Tribunal. The report is produced for information and training purposes.

2. **RECOMMENDATIONS**

2.1 That the content of this report be noted.

The Committee is able to resolve this matter.

3. **FINANCIAL IMPLICATIONS**

3.1 None.

4. **RISK MANAGEMENT**

4.1 Not relevant to this report

5. **KEY INFORMATION**

SELECTED APPEALS TRIBUNAL DECISIONS

5.1 **CLLR C (Case no. APE 0399) – disrespect/disrepute /compromise impartiality**

5.1.1 During a meeting of the Charity Trustees, Town Councillor C had commented that a County Council officer had found the Town Clerk ‘difficult to get on with’ and that ‘this is also the view of many towns’ people who say that when they try to contact the Town Clerk she is downright rude to them.....’. The Tribunal considered whether Cllr C had failed to comply with paragraphs 2(b), 2(c) and 4 of the Code of Conduct.

5.1.2 The Tribunal found that Cllr C was simply reporting the opinions of other individuals. There was no evidence to suggest that his conduct was unfair, unreasonable or demeaning towards the Town Clerk. The comments were not made in a malicious or bullying manner. Cllr C had not therefore failed to treat the Town Clerk with respect.

5.1.3 In considering whether Cllr C had compromised the impartiality of the Town Clerk in breach of paragraph 2(c), the Tribunal noted that the County Council officer and Town Clerk had been ‘very’ friendly towards each other at a subsequent site visit and determined that Cllr C’s comments had in no way inhibited dealings between them. There was no evidence to suggest that the comments had inhibited the Town Clerk in fulfilling her other functions.

- 5.1.4 The Tribunal then considered whether Cllr C's conduct had brought his office or authority into disrepute by refusing to apologise to the Clerk when asked to do so. In considering disrepute it looked at the Oxford English Dictionary definition being a 'lack of good reputation or respectability'. Anything which diminishes public confidence in either a member's office or their authority, or which harms, or could harm, the reputation of an authority, will bring that office or authority into disrepute.
- 5.1.5 It was the Tribunal's view that it is important that members should be able to express concerns about any aspect of the running of the council in robust terms. This could include expressing disagreement with officers and can include criticism of the way in which an officer handles particular matters. The threshold for a failure to treat another with respect has to be set at a level that allows for the passion and frustration that often accompanies political debate and discussion on the efficient running of the council and must therefore be seen in context. Given that the Clerk was very experienced in her dealings with councillors, had chosen to publicly question Cllr C about a matter which had led to the comments and she also held a senior position within the council, she was entirely able to defend her position. Whilst Cllr C's comments might have been better expressed in a more appropriate forum, a reasonable objective observer would not think that the comments brought his office or authority into disrepute.
- 5.1.6 The Tribunal also provided comment on procedural matters for the Standards Committee to consider for future hearings:-
- It is important that the hearing, including witness evidence and cross-examination, is heard in public subject to caveats about confidential and privileged evidence.
 - Access by the public to the hearing venue is facilitated by clear signage and appropriate notice
 - Where a hearing, or part of a hearing, is in private, the reasons for so doing should be clearly expressed to the public present and preferably reduced to writing
 - Where the facts of the case are undisputed and the case is being heard in the absence of the councillor, further evidence should not be introduced without giving the councillor sight of the evidence and the opportunity to attend.

5.2 **CLLR M (Case no. APE 0400)- disrespect**

- 5.2.1 City Councillor M was approached by a constituent who was facing problems with the council funding his skateboard park. Cllr M was impressed by the constituent's plans as they involved preserving a historic building and providing activity for young people. Cllr M proceeded to raise a number of enquiries with officers concerning the property adjacent to the proposed skateboard park and requested that a planning 'stop notice' be issued in respect of the neighbour's building.
- 5.2.2 Cllr M was a member of the Planning committee and continued to take a keen interest in the planning issues surrounding the neighbour's premises. When Cllr M was further approached by the constituent requesting assistance with the actions of his neighbour, Cllr M visited the neighbour with his constituent. The meeting was videoed and posted on YouTube by Cllr M with a link on his website. At the meeting, Cllr M identified himself as a councillor and commented that the state of the building was a disgrace.

- 5.2.3 The neighbour made complaint that Cllr M had not treated him with respect. Cllr M contended that he was acting as a campaigner or politician outside of his official capacity and the Code of Conduct did not therefore apply. The Appeals Tribunal found that Cllr M was acting in his official capacity. This was supported by the 'councillor enquiries' made of officers and the creation of the video was an integral and ongoing part of supporting a constituent in order to promote action by the council. Further, Cllr M's membership of the Planning Committee inextricably linked him to acting in his official capacity.
- 5.2.4 Cllr M asserted that the definition of 'respect' in APE 0374 Shaddock is uncertain and unlawful, namely 'failure to treat others with respect will occur when unfair, unreasonable or demeaning behaviour is directed by one person against another'. The Tribunal disagreed. The concept of respect is perfectly capable of being applied by a reasonable person (*Sanders v Kingston (no. 1) 2005 EWHC*). In determining the issue of respect, the circumstances are relevant, the place where the behaviour occurred, who observed the behaviour, the character and relationship if the people involved and the behaviour of the person who alleges the disrespect.
- 5.2.5 Cllr M was found to have failed to treat the neighbour with respect by:-
- Trespassing on his land and failing to respond to requests to leave (evidenced from the video) until a time of his choosing. His actions were described as 'foolhardy and potentially dangerous to himself and possibly actionable in the civil courts'
 - From the tone and content of the video, it was intended to show the neighbour in a poor light
 - Cllr M not dissociating himself from comments made by his constituent or seeking to temper them, established that Cllr M was content to adopt the comments (that the building was dangerous, full of rats, pigeons and sewerage and stinks all summer long)
 - Posting the video on YouTube it demonstrated that he was happy to be associated with the comments. It was unfair and unreasonable to publish through the means of a video on the internet an unsubstantiated account of the neighbour's activities. It was unnecessary to continue to publish the video once it had achieved its aim in getting the Planning Department to take action
 - Failing, after initial editing of incorrect information, to continue editing or posting corrections once new information came to light.
 - Failing to correct inaccurate information on the 'Blog' that accompanied the video.
- 5.2.6 The Tribunal upheld the sanction imposed by the Standards Committee of one month suspension, but varied to no longer offer the option of an apology to avoid suspension.

SELECTED CASE TRIBUNAL DECISIONS

5.3 CLLR D (Case no. APE 0398)- improper influence/compromise officer impartiality

- 5.3.1 The brother of District and Town Councillor D was a planning consultant who submitted a planning application on behalf of clients for a detached dwelling. When the Town Council's Planning Committee considered the application, Cllr D declared a "non-pecuniary interest" and did not take part in the discussion. Cllr D proceeded to write to the Development Control Team Leader arguing for the application to be approved without referral to the Development Control Committee. Having become concerned that the application would be refused, Cllr D then wrote to a fellow district councillor suggesting that he propose the application be approved at Committee.
- 5.3.2 Cllr D did not attend the Development Control Committee but wrote to members of the Committee ahead of the meeting urging them to disagree with the officer's recommendation of refusal. The letter was on official council headed paper and included his official title.
- 5.3.3 In relation to another planning application by the same applicants, Cllr D responded to a consultation letter sent to him as ward member by saying that he had an interest in the application because of his position as Company Secretary to the applicant's companies. He had in fact attended a meeting 3 years previously with the applicants and council officers as the applicant's representative to discuss the proposals
- 5.3.4 Cllr D again declared a "non-pecuniary interest" and took no part when the Town Council considered the application. He then emailed the Planning Case Officer referring to the meeting 3 years previous and asking that a decision on the application be delayed.
- 5.3.5 The Case Tribunal found that Cllr D had a prejudicial interest in the applications and should not have been involved. The letters to the fellow councillor and members of the Development Control Committee on the first application and the email to the Case Officer on the second constituted a breach of the Code of Conduct by bringing his office into disrepute and seeking improperly to influence a decision in which he had a prejudicial interest. The communications had been written with the clear intention of influencing the discussions on the planning applications and Cllr D was using his position as a councillor to confer or secure an advantage for the applicants.
- 5.3.6 The email to the officer was written in the capacity of councillor and there was a clear attempt to influence the conduct of an officer and in so doing compromised the impartiality of that officer in breach of paragraph 3(2)(d) of the Code.
- 5.3.7 In disqualifying Cllr D for being or becoming a member of a relevant authority for 1 year, the case Tribunal took into consideration the aggravating factors that:-
- Cllr D continued to deny the facts despite clear contrary evidence
 - Cllr D sought unfairly to blame other people
 - Cllr D failed to heed advice and warnings

- There had been a persistent pattern of behaviour involving Cllr D repeatedly failing to abide by the Code. Cllr D had been suspended by the Standards Committee for 1 month only a matter of months before for seeking to influence the vote of four members of the Town Council on a planning application.

6. **APPENDICES**

6.1 None.

7. **BACKGROUND PAPERS**

7.1 None.

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