

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER **K118**

TO: STANDARDS COMMITTEE

DATE OF MEETING 15 October 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. KEY INFORMATION

SELECTED CASE TRIBUNAL DECISIONS

5.1 CLLR F (Case no. LGS/2010/0504) – disrespect

- 5.1.1 The Parish Council concerned was considering a proposal from its Standing Orders Review Sub-Committee that the length of absence from Parish Council meetings which triggered a member's disqualification be reduced from six to three months.
- 5.1.2 The proposed change was queried with the Monitoring Officer who advised verbally and by email that the change would be contrary to the law. This was again confirmed in writing to Cllr F, the Parish Council Chairman, when he queried the advice with the Monitoring Officer.
- 5.1.3 At the Parish Council meeting Cllr F put forward a motion to change standing orders to the three month period for disqualification. He referred to the advice of the Monitoring Officer and questioned its basis and relevance. Cllr F further maintained that the Monitoring Officer had verbally said that the Parish Council could change its standing orders as it liked. The Monitoring Officer could not recall making any such statement.
- 5.1.4 The motion to change the standing order was lost.

- 5.1.5 On another occasion Cllr F had attended a meeting of the local Area Assembly and after the meeting sought to challenge the minutes. The Deputy Monitoring Officer replied to say why he thought it inappropriate to change the minutes. This triggered an email in response from Cllr F in which he accused the Deputy Monitoring Officer of having “idiotic paranoia”, ineptitude, and calling him an “arrogant, conceited, misconceived man”.
- 5.1.6 Cllr F then forwarded the email to a local newspaper which printed an edited version.
- 5.1.7 In relation to the first issue, the Tribunal noted that the Monitoring Officer does not have any direct role with a parish council and his advice could therefore only be opinion rather than definitive advice. It would be expected though that a reasonably diligent person, untrained in the law, would, if faced with what he believed to be conflicting advice, would have sought clarification or a second opinion rather than hazard his own interpretation.
- 5.1.8 As it happened, the motion was defeated, and even if had not been, then it would simply have been ineffective because the decision would have been unlawful. The only harm had been to Cllr F’s own reputation to take and heed good advice. In the circumstances, Cllr F’s actions were foolish, ill-thought and self-opinionated, but were not a breach of the Code.
- 5.1.9 In relation to the second issue, the Tribunal found that Councillor F was acting in his official capacity because he had recorded in the attendance sheet that he was representing the Parish Council and it was Parish Council business being referred to in the minutes. The Tribunal commented that those who are attacked have their personal reputations besmirched and could suffer considerable harm to their private lives and careers as a result. Unjust, unfair and unsubstantiated attacks undermine public confidence for two reasons; firstly, they raise unwarranted doubts about those who are attacked and secondly, they give an impression that vilification and criticism in extreme and insensitive language is the norm in public life.
- 5.1.10 Cllr F had shown no remorse and no insight into the considerable damage which his remarks could cause. He had failed to treat the Deputy Monitoring Officer with respect and also brought his office into disrepute.
- 5.1.11 The Tribunal did not accept that Cllr F’s conduct amounted to bullying, however. The Deputy Monitoring Officer was a reasonably senior officer and Cllr F had no standing in the officer’s employing authority. The remarks did not therefore cross the threshold into bullying as opposed to common abuse. It emphasised though that had the remarks been directed at a more junior officer or Cllr F been a member for the employing authority then a different view would have been taken.
- 5.1.12 Cllr F was suspended for six months. The Tribunal remarked that this period should bring it home to Cllr F the seriousness of what he had done and afford him an appropriate time to reflect on his actions and take the necessary steps to avoid a repetition of his behaviour.

SELECTED APPEAL DECISIONS

6. CLLR W (Case no. LGS/2010/0499) - disrespect

- 6.1 Cllr W appealed against the decision of the Standards Committee to suspend him for 4 months for failure to treat a member of the public with respect in an email. The member of the public had written to several councillors and the local newspaper about the council's failure to collect refuse. When the problem had been resolved two days later, he emailed an officer to thank the team and expressed disgust that none of the local councillors had replied.
- 6.2 Cllr W responded to explain that he had been away. He then proceeded to say that the member of the public (who was a local political activist known to Cllr W) was free to "slag off me and other members" and described the complainant as "enmeshed in [his] lactatious ego trip".
- 6.3 The Tribunal rejected Cllr W's argument that when councillors undertake casework it is not an official duty. The email related to council business, was sent on the council's email system and was signed off as "Councillor".
- 6.4 In assessing whether behaviour is disrespectful, the characters and the relationship of the people involved were relevant as was the behaviour of the person who prompted the alleged disrespect.
- 6.5 The email response could not be classified as political banter, but Cllr W could have dealt with what he perceived to be personal criticism in a more temperate and polite way. The tone and words could have been better chosen, but in the Tribunal's view they were neither abusive nor overtly offensive. It was not unreasonable for Cllr W in all the circumstances to regard the individual's widely circulated and critical email as both unfair and politically motivated. The findings of the Standards Committee were therefore rejected.

7. CLLR F (LGS/2010/0502) – disrespect/bullying/disrepute/compromising impartiality

- 7.1 An experienced officer of a local authority had made a presentation to a conference organised by the National Association of Local Councils. Cllr F, who was a member of the same authority, approached the officer in the corridor afterwards and in the presence of another person angrily chastised the officer for the presentation referring to the officer's "lies" and making threats. The officer and the officer's line manager complained to the Standards Committee.
- 7.2 Upon the complaint being made, Cllr F complained to the Chief Executive about the conduct of the officers.
- 7.3 Cllr F appealed the decision of the Standards Committee to suspend her for 6 months for bullying, disrespect, compromising the impartiality of the officer and for bringing her office into disrepute.

- 7.4 The Tribunal noted that Cllr F was described as a “feisty” character. It stated that if a councillor is aware that their personality tends towards angry outbursts then it is their duty to take care to ensure that they do not give way to them. The letter of complaint to the Chief Executive was an aggravating factor as it was an attempt to use the leverage to avoid investigation of the complaint against her.
- 7.5 In her appeal notice, Cllr F had appended a draft apology. This was held to be gravely inadequate as it apologised for “any distress caused” and failed to acknowledge any wrongdoing.
- 7.6 The Tribunal reduced the sanction to 3 months suspension (from both the authority and parish council) having had regard to Cllr F’s poor health and extent of her record of service.

8. **APPENDICES**

- 8.1 None

9. **BACKGROUND PAPERS**

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

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