

	
<b>STANDARDS COMMITTEE</b>	25 June 2010
Report of the Monitoring Officer	

## Cases before the First Tier Tribunal

### Summary

1. This report identifies some key messages for cases which have been decided recently by the First Tier Tribunal.

### Background

2. The First Tier Tribunal (Local Government Standards in England), which was formerly called the Adjudication Panel, deals with appeals from the decisions of local Standards Committees and also hears cases at first instance where these have been referred to them by an Ethical Standards Officer or a Standards Committee.
3. Until the end of May, nineteen decisions of the Tribunal had been reported in 2010. All of these appear on the Tribunal's website at: <http://www.adjudicationpanel.tribunals.gov.uk/Public/Decisions.aspx>. Many of the decisions are fact specific and they do not operate as formal precedents. However, they can be interesting in their own right and a number of lessons can be learned.

### Maintaining Relations

4. As a general observation, it is noteworthy how many of the cases which attain this level of seriousness seem to have started with poor relations between the subject Member and other Members or Officers. Standards for England have promoted the use of mediation in the past to address these kinds of difficulties.

### Official capacity?

5. Ever since the Livingstone case a standard defence to an allegation that the Code has been breached has been to claim that the Councillor was not acting in his or her official capacity. The Code only applies where the Councillor:
  - (a) *conducts the business of the Authority (which, includes the business of the office to which he or she is elected or appointed)*  
or

(b) *acts, claims to act or give the impression he or she is acting as a representative of the Authority*

6. One of several recent cases where this issue has been raised came up in a case involving a Barking and Dagenham Councillor. The allegation against the Councillor was that:

*“On 24<sup>th</sup> September 2008 a video appeared on Richard Barnbrook’s blog and on Youtube which really appeared to focus/criticise the Borough and press articles more importantly in the latter part of the video he claims that ‘in the last three weeks a young girl had been murdered in an educational establishment in Barking and Dagenham and in the last two weeks two men had been murdered in Barking and Dagenham’. These two statements are lies. There have been no recent murders in the Borough”*

7. The issue arose as to whether he was conducting the business of the Authority when he made the video. The Tribunal noted that the High Court had said:

*“These are ordinary descriptive English words. Their application is inevitably fact sensitive and so whether or not a person is so acting inevitably calls for informed judgement by reference to the facts of a given case. This also means that there is potential for two decision makers both taking the correct approach, to reach different decisions.”*

8. The Tribunal set out its own approach to the decision . The Tribunal thought it relevant that the Appellant was:
- making this video on behalf of the BNP with its primary purpose being party political;
  - not identified as a councillor for Barking and Dagenham;
  - not taking forward an issue relevant primarily to that London Borough;
  - not taking forward an issue on behalf of an individual constituent; and,
  - the video dealt with a range of issues and the Appellant did not concentrate upon issues within the Barking and Dagenham Borough.

The Tribunal was drawn to the conclusion that the making of the video was not proximate enough to the Appellant’s role of councillor as to bring him into the ambit of ‘acting in his capacity as a councillor’. The Tribunal felt that a case could be argued that he was giving the impression that he was acting as such but on balance decided that he was not.

9. By way of contrast, a Parish Councillor from Shropshire was found not to be acting in his official capacity when he referred six fellow Councillors to the police alleging that false statements had been made in an official return.
10. The Tribunal found against him noting that in the first sentence of the letter he referred to West Felton Parish Council *“of which I am a member”* and that he then states: *“It was approved by six Councillors at our meeting on 28 June 2007”*. Although it was true that he could have written to the Police in his private capacity, the whole tone and content of the letter suggested, in the Tribunal’s view, that he was writing as a councillor.
11. The difficulty in over reliance on these cases as precedent is though well illustrated by the fact that two months earlier another Tribunal in a case involving Astley Village Parish had stated:

*“The report to the Police was not a breach of the Code of Conduct. In the absence of evidence of malice, wasting police time or other aggravating feature, the Tribunal does not accept that a report of any suspicion of criminal activity, no matter how unreasonably held, to the Police can be a breach of the Code of Conduct.”*
12. A number of cases deal with the issue of freedom of speech. In another case from Shropshire the Tribunal considered in some detail the law in this area and, in particular, the grounds for interfering with the freedom of expression rights contained in Article 10 of the European Convention. The Tribunal recognised:

*“that the threshold for breaches of this nature had to 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 is consistent with the objective of maintaining proper standards in public life. However, this was to be balanced with the rights of others, including the right to protection of reputation.”*
13. In that case the public criticism of a junior officer was unacceptable. The Tribunal in another case involving Blaby Parish Council put it quite simply:

*“The Appellant’s use of some of the words contained in her report of the 13 April 2009 about the Parish Clerk, such as “incompetent”, “abysmal” and “totally inadequate” could not be construed as political or quasi political comments attracting a high level of protection. These comments were in the nature of personal abuse and personal criticism of an officer.”*

14. The East Peckham Parish Council case illustrated a trap for the unwary. The Parish Council owned playing fields and a multi-purpose hall in the village of East Peckham. The Parish Council resolved to set up a separate company limited by guarantee to take over the management and control of the playing fields and hall. The Appellants were appointed as two of the directors of the Company as representatives of the Parish Council. They were therefore in a position of general control or management of the Company, needed to register the interest and had a personal interest in the matters relating to the Company when they were discussed and decisions made at the meetings. That interest ought to have been declared by the Directors. They failed to do so at several meetings of the Council.
15. Perhaps less obviously, the Appeals Tribunal found that the Appellants' personal interest was also a prejudicial one as it was an interest which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it was likely to prejudice their judgment of the public interest. The Company ran the hall and playing fields which were rented out. It received grants from the Parish Council for that purpose. The outcome of this case was a direction for Members to receive training.
16. A different trap faced the Councillor who was a member of the Hampshire Police Authority. She took a call from a local news reporter within her role as Chair of the Authority. During her conversation with the reporter the Appellant indirectly confirmed the identity of a person who had made a complaint to the Authority, not by mentioning a name but by confirming the use of the name by the reporter. This breached the requirements of the Code to maintain confidentiality of information provided in confidence. In the circumstances the Tribunal's decision to direct media training was surely the right one.
17. A number of cases deal with the right sanction to impose. The Tribunal regularly refers to its own guidance documents and that produced by Standards for England. In a case where a prejudicial interest had not been declared Bury Standards Committee gave no reasons for deciding the sanction imposed (3 months suspension) and there was no record in the minutes of their proceedings that they took account of the guidance issued by the Standards Board for England. The Council's Monitoring Officer has subsequently confirmed that account was taken of the guidance. The Tribunals said that it would have been good practice to record all the factors taken into account, as well as any which were disregarded. The Tribunal considered that the principal purpose of a sanction in this case was the 'need to impress upon the Appellant the severity of the matter and the need to avoid repetition.' The Guidance suggests that a suspension of less than a month is not likely to have such an effect. However, there was no

evidence of any aggravating features which merited a suspension of more than one month.

18. The Lord Mayor of Coventry had reason though to thank his Standards Committee. He was found to have brought his office into disrepute by having engaged in a sexually explicit conversation at an official function.

The Adjudication Panel for England guidance provided:

*“Suspension is likely to be appropriate where the Respondent has been found to have brought his or her office into disrepute...”*

The Standards Sub Committee had suspended him for three months. The Appeals Tribunal stated that it may well have imposed a longer period of suspension than that imposed by the Standards sub-committee considering the aggravating factors but accorded appropriate deference to the decision of the Standards sub-committee with its knowledge of the local circumstances and which had the benefit of hearing oral and written evidence.

### **Recommendations**

19. That the Standards Committee note the report and determine whether they would like to see similar reports from time to time

Reason: In order to ensure that the Committee is aware of current good practice.

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			<input type="checkbox"/>

**Background Papers:**

**All relevant background papers must be listed here.**

Letter from Standards for England dates 1<sup>st</sup> June 2010