

Agenda item:



Walsall Council

Standards Committee

30 October 2008

Case Law Update

Summary of Report

To provide members with case summaries of a few recently decided cases to encourage debate and facilitate learning.

Recommendations

- (1) That the content of the report be noted;
- (2) That the Monitoring Officer circulates the report to all elected members.

Resource and legal considerations

None arising from this report.

Citizen impact

None arising from this report.

Environmental impact

None arising from this report.

Performance and risk management issues

None arising from this report.

Equality implications

None arising from this report.

Consultation

None

Background papers

All published


Signed:

**Assistant Director of Legal
and Constitutional Services**

Date: 20 October 2008

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Background

The Local Government Act 2000 (the Act) introduced the mandatory Code of Conduct for elected members (the Code) which was revised in May 2007.

Up until May 2008, complaints of alleged breaches of the Code were made to the Standards Board for England (SBE) which were investigated either by an Ethical Standards Officer (ESO) or if the complaint is referred for local investigation, by someone appointed on behalf of the Monitoring Officer.

The more serious breaches of the Code are heard and determined by the Adjudication Panel for England, who subsequently publish their decisions on their website. This not only indirectly comprises part of the sanction that is imposed on the member but also provides an excellent channel for the education of all stakeholders who have an interest in the Code either by being subject to its provisions or who are involved in advising on its application. Cases are decided on a daily basis and decisions can be viewed at either www.standardsboard.gov.uk or www.adjudicationPanel.co.uk.

From May 2008 onwards, this procedure has changed with all complaints of alleged breaches of the Code of Conduct being sent to Standards Committee for local determination.

Four recent decisions are attached for member's information.

Case Study 1

Councillor Mike Ward, Councillor Carl Rice and Councillor Penny Holbrook – Birmingham City Council

It was alleged that members unlawfully discriminated against others, failed to treat others with respect and brought their office or authority into disrepute.

Councillor Ward, Councillor Rice and Councillor Holbrook had been members of a Personnel Appeals Panel which heard an appeal against the dismissal of a former Birmingham City Council employee, Mr X. They did not uphold the appeal.

The complainant alleged that the three councillors treated Mr X less favourably on the grounds of his race.

The allegation arose after an Employment Tribunal concluded that, in the absence of any clear explanation of the reasons for the Appeals Panel reaching its decision, they were bound to infer that the decision to reject Mr X's appeal was a result of less favourable treatment on the grounds of his race. The

Employment Tribunal criticised the lack of documentary records to substantiate the reasoning behind the Panel's decision. The Tribunal also noted that Councillor Ward, the only member of the Appeals Panel to give evidence at the Employment Tribunal, could not recall the decision or how it had been made.

During the Standard Board for England's investigation, Councillor Ward stated that he had heard about 120 appeals before the one involving Mr X and had been unable to recall the specific details of how the Panel had made its decision in Mr X's case. He had not taken notes because it was the role of one of the council employees present to do this. He had never given evidence at an Employment Tribunal before and had not expected that he would be asked for detailed information about a decision the Appeals Panel had made several months previously. Councillor Ward rejected any suggestion that Mr X had received unfavourable treatment because of his race.

Councillor Rice stated that the Appeals Panel considered whether Mr X's managers had been fair and consistent and applied their policies equitably and reasonably. The Panel considered that they had. Councillor Ward felt that the action taken against Mr X had been justified, stating that the case concerned a series of instances of alleged misconduct. Councillor Rice felt that the managers had followed the correct disciplinary procedure first. He considered dismissal had been appropriate. Councillor Rice did not take notes during the Panel's deliberation. He stated that, had he given evidence at the Employment Tribunal; he believed he would have been able to explain the Panel's decision and convince the Tribunal that there was no racism involved.

Councillor Holbrook stated that she remembered the Panel considering whether there was enough evidence that Mr X had conducted himself in the manner alleged. She took the view that there was. She also remembered the Panel considering whether there was any evidence that Mr X's colleagues had discriminated against him on the grounds of his race and she felt that there was no evidence to suggest this. She had not taken any notes during the deliberation stage of the Appeal Hearing.

The council employee who had taken notes confirmed that Councillor Rice's and Councillor Holbrook's recollections were accurate.

The allegations in this case relate to paragraphs 2 (a), 2 (b) and 4 of the Code of Conduct.

Paragraph 2 (a) states that a member must "promote equality by not discriminating unlawfully against any person".

Paragraph 2 (b) states that a member must "treat others with respect".

Paragraph 4 states that “a member must not in his official capacity, or in any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute”.

The Ethical Standards Officer noted that her role was not to question or challenge the Employment Tribunal’s judgement and the inference they had drawn about Mr X’s treatment. Instead, the Ethical Standards Officer considered, whether, in their individual actions or omissions in making and recording their decision, Councillors Ward, Rice and Holbrook failed to comply with the Code of Conduct.

The Ethical Standards Officer concluded, based on the recollections of Councillors Rice and Holbrook and the evidence of the Council employee who had been present and taken notes at the Appeal Hearing, that the Appeals Panel had followed their procedures and properly considered the issues before them. The Ethical Standards Officer acknowledged the Employment Tribunal’s finding against Birmingham City Council, but in regard to the specific conduct of Councillors Ward, Rice and Holbrook she saw no evidence that they had discriminated against Mr X or treated him with disrespect.

The Ethical Standards Officer saw no evidence that Councillor Ward was not responding honestly at the Employment Tribunal hearing when he told the Tribunal that he could not remember the reasons for the Panel’s decision against Mr X. She did not consider that his failure to remember the details of the Appeal suggested that he was trying to conceal anything from the Employment Tribunal or that it amounted to a breach of the Code of Conduct.

The Ethical Standards Officer took the view that recording and publishing the reasons for the Appeals Panel’s decision was the responsibility of council employees not the Panel members. The Ethical Standards Officer believed that the evidence pointed towards the members having properly considered the issues before them at the Hearing, but that council employees had failed to record or publish fully the reasons for the Panel’s decision. In light of this, the Ethical Standards Officer did not conclude that Councillors Ward, Rice and Holbrook had brought their office or authority into disrepute.

The Ethical Standards Officer found no evidence that any of the three members had breached the Code of Conduct.

Case Study 2

Councillor Michael Brankin – Barnsley Metropolitan Borough Council

It is alleged the member failed to treat others with respect, compromised the impartiality of a council employee, brought his office or authority into disrepute and improperly secured an advantage or disadvantage.

It was alleged that Councillor Michael Brankin campaigned to discredit Barnsley Metropolitan Borough Council and Councillor X.

In 2000, 2003 and 2004 Barnsley Council funded some security improvements to the home of Councillor X, after criminal damage to his property, which the police believed was linked to his role as a councillor. The council's employees carried out this work.

It was alleged that in July 2004 Councillor Brankin contacted council employees at their private addresses to obtain information about the works and how they had been authorised and recorded. One of the employees Councillor Brankin contacted had been on sick leave and it is not known how he obtained contact information for this employee.

It was further alleged that Councillor Brankin raised the matter in public at a council meeting in July 2005. It was alleged that Councillor Brankin may have been motivated by a wish to embarrass Councillor X and his party for political and electoral advantage.

Councillor Brankin was approached in a local pub in March 2004 by constituents who accused him of having work done to his property by the council. He denied this, but promised that he would enquire into rumours they had heard of a councillor having publicly funded work done to his home. Councillor Brankin obtained the names of some employees who worked on Councillor X's property from a man he knew socially who also worked on the property. Councillor Brankin visited the home of one of the employees and telephoned two others.

As a result of his enquiries, Councillor Brankin spoke to the Chief Executive, in July 2004, about his concerns that the work may not have been properly authorised, was carried out in a covert way and the timesheets of the workmen may not have been properly completed. An internal enquiry was undertaken and Councillor Brankin was informed in September 2004 that the investigation had not identified any cause for concern and that the works had been properly documented, costed and charged.

In July 2005, one of the employees Councillor Brankin spoke to contacted him to say he was now prepared to make a written statement about the work he had done at Councillor X's property and his allegation that timesheets had not been properly completed. Councillor Brankin then raised the matter at a council meeting in July 2005, quoting from this statement. Following that meeting, the Chief Executive instructed that a further internal investigation be conducted.

Subsequently in April 2006, the council's external auditors who the Chief Executive referred the matter to wrote that, having considered both the legality of the Council's expenditure and whether there are any matters that might require them to consider issuing a public interest report, they were satisfied that there was no action for them to take in relation to their statutory responsibilities.

Councillor Brankin stated he made the enquiries because he had promised his constituents he would look into it. He said he did not have a strong political motive for pursuing the matter and was concerned that public money may have been spent on a councillor's property without proper authority or procedures.

The allegations in this case relate to paragraphs 2, 4 and 5 of the Code of Conduct.

Paragraph 2 states that "A member must (b) treat others with respect and (c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority".

Paragraph 4 states that "A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute".

Paragraph 5 of the Code states that "A member must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage.

The Ethical Standards Officer noted that there is a wide disparity of power between an elected member of a council and a junior council employee. She considered that in visiting the employee at home unannounced, Councillor Brankin appeared to demonstrate a lack of perception or awareness that his visit could well have been potentially unsettling or disconcerting to the employee.

In this case, the Ethical Standards Officer did not consider that, in visiting a council employee at his home, Councillor Brankin had failed to treat him with respect. Councillor Brankin had not been threatening or intimidating and his visit related to an important council matter.

The Ethical Standards Officer did not consider that, in visiting or telephoning council employees at their homes, Councillor Brankin had sought to compromise their impartiality. The employees were not threatened or intimidated into giving information and the information they provided was factual and given voluntary without any duress.

The Ethical Standards Officer did not consider that, in pursuing the matter in 2004 and again at a council meeting in 2005, Councillor Brankin had brought his office or authority into disrepute. Councillor Brankin believed those working on

Councillor X's property may have been instructed to act covertly and not to complete their timesheets properly. Given that this might have implicated their line managers, the Ethical Standards Officer did not consider it was unreasonable for Councillor Brankin to have contacted the employers at home, rather than contacting them via their line managers.

Once Councillor Brankin had obtained sufficient information to show that he had reasonable grounds to believe that the allegation warranted further investigation he contacted the Chief Executive. The internal investigation undertaken in 2004 did not address some of the issues Councillor Brankin had raised with the Chief Executive to Councillor Brankin's satisfaction and he had not had all his questions answered. Given this and the seriousness of the matter, the Ethical Standards Officer did not consider it unreasonable for Councillor Brankin to have raised the matter again at a council meeting in 2005.

The Ethical Standards Officer believed that in pursuing the matter, Councillor Brankin sought in part to make political capital at the expense of Councillor X's political group. However, she considered that Councillor Brankin's wider concern was to have the allegations of his constituents looked into and to ensure that a case of possible misuse of resources was properly and thoroughly investigated. She considered that given this, his conduct did not amount to an improper use of his position as a member to confer an electoral advantage on himself or his political group or to confer a disadvantage on the political group of Councillor X.

In these circumstances, the Ethical Standards Officer found that no action needed to be taken.

The Ethical Standards Officer noted that council employees have a right to a private home and family life and should not under normal circumstances be contacted about work related matters at home. It is the Ethical Standards Officer's view that members should exercise great caution before contacting a council employee at his or her home. However, a councillor contacting an employee at home would not necessarily, of itself, give rise to a failure to comply with the Code of Conduct.

Case Study 3

Councillor John Carter – Nottinghamshire County Council

It is alleged that the member improperly secured an advantage or disadvantage, failed to disclose a personal interest, failed to withdraw from a meeting which they had a prejudicial interest and failed to complete the "Register of Interests".

In May 2006, the District Auditor published a report indicating that Councillor Carter may have failed to comply with the Code of Conduct.

The Chief Executive of Nottinghamshire County Council had asked the Auditor to investigate following a complaint about Councillor Carter's involvement in several property transactions. The Auditor's Report concluded that there was no evidence that Councillor Carter had misused his position for personal gain but it did indicate potential failures to comply with the Code of Conduct in relation to those property transactions. He alleged that Councillor Carter had personal and prejudicial interests and that he failed to register an interest in a particular organisation while he was a Cabinet Member for Finance and Property for the authority. The matter was therefore referred to the Standards Board for England and investigated by an Ethical Standards Officer.

Councillor Carter denied any personal or prejudicial interests in the property transactions and also denied using his position improperly to his own advantage.

The allegations in this case relate to paragraphs 5 (a), 9, 12 and 14 of the Code of Conduct.

Paragraph 5 (a) states that a member "must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person, an advantage or disadvantage".

Paragraph 9 states that "a member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent".

Paragraph 12 states that a member with a prejudicial interest in any matter must "withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting" and that he must "not seek improperly to influence a decision about that matter".

Paragraph 14 states that "within 28 days of the provisions of an authority's Code of Conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his financial interests in the authority's Register maintained under section 81 (1) of the Local Government Act 2000 by providing written notification to the authority's Monitoring Officer".

Two of the property transactions related to the sale of authority owned land. In both cases the authority had acted in partnership with charities that owned adjoining land. Councillor Carter was involved in the transactions both as the Property Portfolio Holder for the council and as a trustee of the charities. He had registered only one of the trusteeships on the council's Register of Interests but correctly declared both interests in relevant meetings. The Ethical Standards Officer concluded that Councillor Carter had breached the Code of Conduct by

not having registered one of his interests although he had declared the interest at meetings. The Ethical Standards Officer concluded that no further action needed to be taken.

In a transaction relating to the authority's purchase of a private house, it was alleged that a friend of Councillor Carter had gained financially from the sale and that Councillor Carter had been involved in the purchase. The Ethical Standards Officer concluded the person who benefited from the sale was not in fact a friend of Councillor Carter and therefore Councillor Carter did not have a personal or prejudicial interest in matters relating to the transaction.

The Ethical Standards Officer also examined a further land negotiation in which it was alleged that Councillor Carter had a personal and prejudicial interest and had improperly secured an advantage for himself. It was alleged that Councillor Carter was, in his private business capacity, considering the purchase of one of the two pieces of land also under consideration by Nottinghamshire County Council. The Ethical Standards Officer concluded that Councillor Carter had considered the purchase several years beforehand and was no longer pursuing an interest in it. He used the knowledge gained from that historic event to assist the council. The Ethical Standards Officer concluded that there had been no breach of the Code of Conduct in this instance.

Case Study 4

Councillor Paul Buchanan – Somerset County Council

It was alleged that the member brought their office or authority into disrepute, improperly secured an advantage or disadvantage and misused the authority's resources.

The Ethical Standards Officer considered whether Councillor Buchanan had improperly given a council guarantee to underwrite the cost of a commercial event and whether this had brought his office or authority into disrepute.

The Ethical Standards Officer also considered whether Councillor Buchanan had worked for the organisation promoting the event and if as a result he had improperly sought an advantage for himself or his employer.

Finally, the Ethical Standards Officer considered whether Councillor Buchanan had misused council resources.

In April 2007, Councillor Buchanan was Deputy Leader of Somerset County Council and Portfolio Holder. At a meeting with the organiser of a local cycling event, in the presence of a junior council officer, he told the organiser that the council would underwrite the cost of the cycle race proposed for 2008. Both the

organiser and the officer believed that Councillor Buchanan had made an unqualified commitment on the council's behalf and that he had the power to do so.

The estimated cost of the event was higher than that permitted by Councillor Buchanan's individual power to agree as a Portfolio Holder. Such a decision could also only have been made after consultation in writing and published for Scrutiny.

From May 2007 Councillor Buchanan was no longer a Portfolio Holder.

In July 2007 the organiser asked the council to provide the "agreed guarantee". The council declined and said no binding decision had been made.

Councillor Buchanan wrote to the new Portfolio Holder stating that he had given the council's undertaking to the organiser and that the commitment should be honoured. He claimed that he had given his undertaking to the organiser under his constitutional and delegated executive authority and that he had the power to do so in April 2007.

Somerset County Council's Monitoring Officer established that Councillor Buchanan had not taken an effective Portfolio Holder's decision. Under the circumstances, the council agreed to provide a guarantee to the event organiser, but for a smaller amount and the decision was taken formally by the new Portfolio Holder.

In June 2007 the event organiser listed Councillor Buchanan as "Marketing and Communications Director" in the event's race manual. A later version of the manual named another person in this role.

Councillor Buchanan stated that he did not accept that his verbal offer had been reasonably understood by the event organiser or the council officer as an unconditional commitment, rather than something agreed "in principle". He expected officers to make the final decision later under their delegated powers, although he accepted that he had not discussed this expectation with them. He also believed that senior officers had no objection in principle to the guarantee and he had expected to continue working with the officers as the Portfolio Holder after April 2007. He accepted that he had been inaccurate in his discussions with fellow councillors when he had argued that he had given a binding undertaking on the council's behalf.

With regards his name appearing in the race manual, Councillor Buchanan stated that he had not consented to his name being used and had never worked, paid or unpaid, for the organiser. The council officer involved had also been named in the manual without permission and the organiser later confirmed that neither Councillor Buchanan nor the officer had held any position with his business.

The allegations in this case relate to paragraphs 5 and 6 of the Code of Conduct.

Paragraph 5 states that “a member must not in his official capacity, or in any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute”.

Paragraph 6 states that a member “(a) must not in his official capacity or in any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person an advantage or disadvantage” and “(b) must, when using or authorising the use by others of the resources of the authority - (i) act in accordance with the authority’s requirements; and (ii) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed”.

The Ethical Standards Officer considered that, while Councillor Buchanan had not set out deliberately to circumvent the council’s decision making processes, he had not shown sufficient competence or care when he gave his verbal commitment and was careless as to the effect of his words. In July 2007 he commented inaccurately on what he had done, which was unhelpful at a time when the council was potentially facing a claim that it had reneged on a binding decision.

However, the Ethical Standards Officer took the view that there had been other factors contributing to the uncertainty over the guarantee and the subsequent confusion. Although there had been risk to the council’s reputation, no actual reputational or financial damage occurred.

The Ethical Standards Officer considered that a reasonable member of the public would conclude that Councillor Buchanan had damaged his own reputation among officers, councillors and the event organiser. However, in light of certain facts, including the absence of any motive for private gain, Councillor Buchanan’s conduct was not serious enough to bring his office or authority into disrepute. Neither had he misused or caused the misuse of council resources. Furthermore, as Councillor Buchanan had never held any position in the event organiser’s company, he had not used his position improperly to his own or anyone else’s advantage.

The Ethical Standards Officer found no evidence of any failure to comply with the Code of Conduct.