



Walsall Council

Standards Committee

17 October 2011

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 Considerations:

Financial:

None arising from this report

Legal:

None arising from this report

Staffing:

None arising from this report

Citizen Impact:

None arising from this report

Community Safety:

None arising from this report

Environmental:

None arising from this report

Performance and Risk Management:

Risk:

None arising from this report

Performance Management:

None arising from this report

Equality Implications:

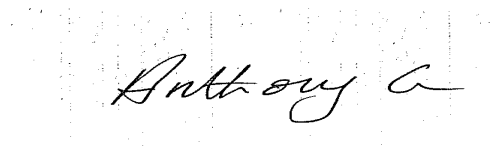
This report complies fully with the Council's policies on equality and diversity

Consultation:

None arising from this report

Background papers

All published



Signed:

Tony Cox

Head of Legal & Constitutional Services & Monitoring Officer

Date: 5 October 2011

Contact Officer

Jo Whitehouse

Senior Constitutional Services Officer

☎ 01922 652025

✉ whitehousejl@walsall.gov.uk

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 Standards for England (SfE) 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.standardsforengland.gov.uk or www.adjudicationPanel.co.uk.

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

Three recent decisions are detailed below for member's information.

Case Study 1

Councillor George Dunning – Redcar and Cleveland Council

It was alleged the member lied at a ward meeting about his decision making role in the closure of a local school.

At a ward meeting that was held to discuss the proposed amalgamation of two local schools, Councillor Dunning stated that the decision as to whether the schools would be amalgamated or not was a decision for the Secretary of State for Education to make and not him.

It was alleged that this was a lie. Councillor Dunning was Leader of the Council and the decision whether to amalgamate the two schools was for him and the Council's Cabinet to make.

It was also alleged that he did not tell the truth at the meeting because it was a heated meeting and he did not want to have the discussion with the people who were in attendance.

The Ethical Standards Officer found that, at the time of the ward meeting, Redcar and Cleveland Council had begun a consultation on the proposed amalgamation. At the same time the Council had applied to the Secretary of State for the two schools to merge to become one Academy. One of the two schools had applied in its own right to become an academy without the other school. Consequently, while the decision to press ahead with the proposal to merge the two schools would be taken by the cabinet, the final decision on whether the two schools would merge, would be a matter for the Secretary of State. If the Secretary of State approved the school's solo application, then the Council would not be able to merge the two schools as a joint academy.

The Ethical Standards Officer found that Councillor Dunning had not lied at the ward meeting when he said the decision to merge the schools rested with the Secretary of State. Consequently, as Councillor Dunning had not lied, he had not contravened Paragraph 5 of the Code of Conduct, which states that members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute. Councillor Dunning, therefore, did not breach Redcar and Cleveland's Code of Conduct.

Case Study 2

Councillor Jim Allan – North Tyneside Metropolitan Borough Council

It was alleged Councillor Allan used the services of a Council Officer improperly for political purposes, contrary to paragraph 6(b)(ii) of the Code of Conduct, failed to use the council's resources in accordance with the council's requirements contrary to paragraph 6(b)(i); that he compromised the impartiality of the Officer, contrary to paragraph 3(2)(d) and used or attempted to use his position improperly to gain an advantage contrary to paragraph 6(a). It was further alleged that by so doing he brought the Council into disrepute, contrary to paragraph 5 of the Code.

The complainant alleged that Councillor Allan, in the summer of 2008 when he was Deputy Mayor, used the services of a Council Officer to produce leaflets in support of the Labour Party. These services included editing the leaflets and arranging their printing and distribution.

The Ethical Standards Officer considered that Councillor Allan had not compromised the impartiality of the Officer, or used or attempted to use his position improperly to gain or confer an advantage. She considered that he had failed to use the council's resources in accordance with the council's reasonable requirements, used the Officer's services improperly for political purposes and by so doing had brought the Council into disrepute.

The Ethical Standards Officer referred the matter to the Standards Committee of North Tyneside Council for determination.

The Standards Committee heard the case on 5 August 2011 and found that Councillor Allan had failed to comply with paragraph 6(b)(i) and paragraph 6(b)(ii) of the Code of Conduct.

The Standards Committee found that Councillor Allan had implicitly authorised the use of the Council's resources for party political purposes and in so doing failed to comply with paragraph 6(b)(i) of the Code of Conduct. They also found that he failed to ensure resources were not used improperly for political purposes and therefore failed to comply with paragraph 6(b)(ii) of the Code of Conduct.

The Committee considered that the actions of Councillor Allan were not of such magnitude as to damage his ability to perform his duties or damage public confidence in the reputation of the Council, and therefore he had not failed to comply with paragraph 5 of the Code of Conduct.

The Standards Committee imposed the following sanctions:

1. A letter of censure be issued to Councillor Allan in relation to the breaches of the Code of Conduct for Members that they had found;
2. Councillor Allan be required to apologise in writing to the Council for the breach of the Code. The letter of apology must be sent within 30 days to the Council's Chief Executive for publication on the Standards Committee's web page; and
3. A letter be sent to all Members of the Council by the Monitoring Officer advising Members of the role of officers and explaining how the rules of political restriction affect officers.

Case Study 3

Councillor Peter Gibson – Wyre Borough Council

It was alleged Councillor Gibson failed to treat the Leader of the Opposition Group with respect and, in so doing, brought his office and the authority into disrepute.

Four similar complaints were made against Councillor Gibson, the Leader of Wyre Borough Council. These were that he had failed to treat a political opponent with respect during the Council meeting on 21 October 2010, falsely accusing him of a breach of confidence, breaking an undertaking regarding the calling of a by-election, having a poor attendance record at Council meetings and being opportunistic and having a negative approach. He was also accused of showing

disrespect to members of the public who had attended the meeting to present a petition regarding the placing of memorials in Council cemeteries. It was alleged that the disrespect shown to his political opponent brought both his own office as a councillor and the authority into disrepute.

Councillor Gibson explained why he considered that there had been a breach of confidence and explained the undertaking regarding the by-election. Any undertakings given were made in the course of a private conversation and could not be verified.

The Ethical Standards Officer considered that it was plausible that Councillor Gibson had formed the view that there had been a breach of undertakings given.

The DVD recording of the Council meeting showed that there had been robust exchanges between both parties. However, the Ethical Standards Officer took the view that Councillor Gibson's language and the content of his remarks fell within what a reasonable observer might regard as in keeping with normal political debate. The Ethical Standards Officer found nothing improper in Councillor Gibson's views or in the way in which they were expressed.

The Ethical Standards Officer did not find that Councillor Gibson had failed to treat his political opponent with respect. Given that finding, he did not consider that Councillor Gibson's conduct had brought either his office or the authority into disrepute and had not breached the Code of Conduct.