



Standards Committee

18 October 2010

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:



Bhupinder Gill
**Assistant Director Legal &
Constitutional Services and Monitoring
Officer**

Date: 8 October 2010

Signed:



Rory Borealis
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Date: 8 October 2010

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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 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.standardsboard.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.

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

Case Study 1

Councillor A Dorrian – Boston Borough Council

It was alleged the member failed to treat others with respect, disclosed confidential information and brought her office or authority into disrepute when she read out a statement on 8 February 2010 that included a comment about a previous employee of the Council that was both disrespectful and put the Council at risk of breaching a confidential agreement.

The Ethical Standards Officer found that on 8 February 2010, Councillor Dorrian did make a remark that was both disrespectful to an individual and that included a very limited amount of confidential information. Accordingly the Ethical Standards Officer considered that Councillor Dorrian had failed to comply with the Code. However, in coming to a finding on this matter, the Ethical Standards Officer took the view that Councillor Dorrian believed that she was in an environment within which she could raise confidential matters and that she did not make the comment in order to personally attack the individual, but rather as a misconceived way of strengthening her argument in the debate. The Ethical Standards Officer considered that no further action need be taken.

The allegations in this case relate to paragraphs 3(1) you must treat others with respect, paragraph 4 (d) you must not— (i) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where— (1) you have the consent of a person authorised to give it; (2) you are required by law to do so; (3) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or (4) the disclosure is— (a) reasonable and in the public interest; and (b) made in good faith and in compliance with the reasonable requirements of the authority and paragraph 5 you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

The Ethical Standards Officer found that the member did breach the Code of Conduct but that no further action was required.

Case Study 2

Councillor J Ashworth, Councillor S Burns, Councillor R Dennison, Councillor D Kerr, Councillor G Marsland, Councillor T Wade – Morecambe Town Council

It was alleged the members bullied and treated the Clerk without respect contrary to paragraphs 3(1) and 3(2)(b) of the Code of Conduct.

The complainant alleged that Councillors Ashworth and Dennison were rude and aggressive toward the Clerk at meetings of the Council's Finance and Management Committee in January and February 2010, that Councillors Wade and Burns were rude and aggressive towards the Clerk when they went to see her in her office in March 2010, that Councillor Kerr was disrespectful and bullying towards the Clerk in an email he sent to her in February 2010 and that Councillor Marsland used abusive language toward the Clerk in a meeting of the Council's Finance and Management Committee in February 2010.

It was evident to the Ethical Standards Officer that there were tensions in the Council regarding the correct procedures for Council and Committee Meetings and it was also evident that there was a substantial gulf between the new Clerk's understanding of her role and that of some other members. The Ethical Standards Officer considered that the comments made by Councillors at the meetings of 13 January and 9 February related to legitimate concerns which they were entitled to raise as Councillors. She did not consider that what was said was of itself offensive, unfair, intimidating, malicious, insulting or humiliating. The Ethical Standards Officer's view was that there was no evidence that any of the Councillors had bullied or treated the Clerk without respect in meetings of the Council or in their meetings with the Clerk.

The Ethical Standards Officer considered that Councillor Kerr was pursuing the legitimate responsibilities he had as a member of the Council when he emailed the Clerk and that Councillor Kerr was not disrespectful or bullying in the language he used in his email.

The Ethical Standards Officer concluded that Councillors Ashworth, Burns, Dennison, Kerr, Marsland and Wade did not breach the Code of Conduct.

Case Study 3

Councillor B Theobald – West Lindsey District Council

It was alleged Councillor Theobald failed to treat others with respect, bullied another person, attempted to compromise the impartiality of a council employee, brought their authority into disrepute, attempted to use their position improperly as a member to obtain an advantage, sought to improperly influence a decision in which they had a prejudicial interest and failed to register a personal interest in land within 28 days of buying that land.

The Ethical Standards Officer found that the member failed to treat an Officer with respect and failed to register a personal interest in land within 28 days of buying that land. The Ethical Standards Officer found that there was no failure to comply with the Code with regard to bullying, attempt to compromise the impartiality of a council employee, disrepute, attempt to use position improperly to obtain an advantage or attempt to improperly influence a decision in which the member had a prejudicial interest

The complainants alleged that Councillor Theobald improperly involved himself in the council's consideration of his own planning application and attempted to use his position as Leader and Chair of Planning to obtain planning approval.

The Ethical Standards Officer found that Councillor Theobald had appointed agents to deal with his planning application and was not directly involved in pre-application meetings with Planning Officers. He attended one site visit with Planning Officers at the request of his agent and did not attempt to influence the views of the Planning Officers at the site visit. He held meetings as Chair of Planning with a Senior Planning Officer to discuss council business on several occasions when his planning application was under consideration by that Officer. The Ethical Standards Officer accepted the evidence of Councillor Theobald and the Senior Planning Officer that they did not discuss Councillor Theobald's own planning application during those meetings.

The Ethical Standards Officer found that Councillor Theobald had not attempted to improperly influence a decision on his planning application or used his position

improperly to obtain an advantage. The Ethical Standards Officer considered that Councillor Theobald had shown a lack of judgement in meeting alone with the Planning Officer while his planning application was still under consideration, however, the Ethical Standards Officer did not consider that Councillor Theobald's conduct had brought his office or his authority into disrepute.

The complainants alleged that Councillor Theobald met with a suspended Officer under disciplinary investigation on at least one occasion and that threats were made to another council Officer's employment in that meeting. The Ethical Standards Officer found that Councillor Theobald and two other councillors had attended one meeting with the suspended Officer on 18 September 2009. Councillor Theobald did not discuss the disciplinary investigation with or in the presence of the suspended Officer and no threats were made to another council Officer's employment. Councillor Theobald's conduct at the meeting on 18 September had not compromised and was not likely to compromise the impartiality of the council Officers carrying out the disciplinary investigation.

The Ethical Standards Officer noted that the suspended Officer could not remember how the invitation to the meeting on 18 September had come about and the Ethical Standards Officer had found no evidence that Councillor Theobald invited the suspended Officer to the meeting. Councillor Theobald's conduct did not bring his office or authority into disrepute.

The complainants alleged that after Officers withdrew Councillor Theobald's planning application from consideration at a Planning Committee meeting; Councillor Theobald behaved in a disrespectful and bullying way towards Officers.

The Ethical Standards Officer found that Councillor Theobald had repeatedly and abrasively questioned an Officer during a Planning Committee meeting in August 2009 despite the Officer's explanations and assurances. The Officer felt threatened and belittled with this behaviour taking place in front of members of the public. The Ethical Standards Officer found that Councillor Theobald's conduct towards that Officer amounted to a failure to treat that Officer with respect with Councillor Theobald failing to comply with paragraph 3(1) of the Code of Conduct.

The Ethical Standards Officer found that Councillor Theobald had been critical of the decisions and performance of Officers in various private and public meetings and correspondence with Senior Officers. This conduct took place at a time when relationships between Senior Members and Senior Officers were very difficult. The Ethical Standards Officer did not consider that Councillor Theobald's conduct towards the named Officers amounted to bullying those Officers or to a failure to treat them with respect.

A complainant alleged that Councillor Theobald had bought land in the council's area in October 2008 and had failed to include his personal interest in that land in the Member Register of Interests until May 2009. Councillor Theobald accepted that he had failed to register his personal interest within 28 days of buying the land, saying that this had been an inadvertent oversight and apologised for it.

The Ethical Standards Officer found that Councillor Theobald had a personal interest in the land and had failed to register details of that personal interest within 28 days as required by paragraph 13(2) of the Code of Conduct. Councillor Theobald had failed to comply with paragraph 13(2) of the Code of Conduct.

The Ethical Standards Officer took into account that Councillor Theobald had resigned as Leader of the Council in December 2009 and had ceased to be a Councillor in May 2010.

The Ethical Standards Officer found that there had been a failure to comply with the Code of Conduct but that no further action was necessary.

Case Study 4

Councillor S Samuels – Wolverhampton City Council

It was alleged Councillor Samuels failed to act on a prejudicial interest and brought her office and the council into disrepute.

Two complainants made allegations against Councillor Samuels (who was Chair of the Wolverhampton African Caribbean Resource Centre). At a meeting of Council on 3 February 2010, there was a motion to restore funding to Wolverhampton African Caribbean Resource Centre. Councillor Samuels declared a personal interest but spoke in the debate saying "If we have to take to the streets and cause a riot out there that is what we will do". It was alleged that these words brought her office or authority into disrepute. Councillor Samuels further stayed in the chamber and voted on the motion. The complainants alleged that she had a prejudicial interest in the business and ought to have withdrawn from the debate.

The Ethical Standards Officer investigated Councillor Samuels' role as Chair of the Resource Centre. Councillor Samuels was closely involved in the running of the Resource Centre and was a Director of the company although she had not registered this interest in the Members' Register of Interests. The Ethical Standards Officer considered that Councillor Samuels had a prejudicial interest which she had not acted upon. She, therefore, failed to comply with the Code of Conduct. The Ethical Standards Officer noted that Councillor Samuels had

received incorrect advice from an Officer of the council about the need to declare an interest and so decided that no action needed to be taken against Councillor Samuels.

Councillor Samuels stated that she had inadvertently referred to causing a “riot” in her speech and that she had intended to refer to a protest. The Ethical Standards Officer discovered that she had referred to the possibility of a riot with reference to the withdrawal of funding from the Resource Centre on an earlier occasion. The Ethical Standards Officer considered that Councillor Samuels had spoken consciously and that by using the word “riot” she had brought the council and her office into disrepute. However, she accepted that Councillor Samuels had not meant her words to be taken literally. Councillor Samuels told the Council immediately that she had used the words metaphorically. Therefore, the Ethical Standards Officer considered that no action needed to be taken in relation to this complaint.

The ethical standards officer found that the member failed to comply with the Code of Conduct, but in the circumstances of the case, no further action needed to be taken.