

Report to: Standards Committee
Date: 7 December 2005
Report of: Monitoring Officer
Subject: Standards Board Case Review
Ward: All

BACKGROUND

The Standards Board has produced its annual review of determined cases, which is circulated as guidance on the approach adopted by the Board and individual standards committees to various breaches of the Code.

CONFIDENTIALITY AND PUBLIC INTEREST

In the case of a Westminster City Councillor accused of disclosing confidential information, the Adjudication Panel for England had to consider the impact of European Human Rights legislation on the rules governing disclosure of confidential information in the Code of Conduct. The member argued in his defence that he had acted in the public interest in leaking confidential documents about the Council's former leader to a BBC journalist. The documents concerned the Council's attempts to recover £27,000,000 in compensation for gerrymandering in the Homes for Votes scandal. The Panel found that paragraph 3(a) of the Code, which prohibited disclosure of information of a confidential nature unless required by law or authorised by the consent of a person empowered to give consent, failed to take properly into account the right to freedom of expression in Article 10 of the European Convention. The Panel therefore implied the existence of a public interest defence to make the Code compatible with the European Convention. The Panel balanced the public interest in disclosure to a journalist against the obligation of confidentiality. The existence of High Court orders in the particular case, restricting communication of information, appears to have been a decisive factor in the verdict that the Code had been breached, but as the Councillor did not gain financially or politically by his actions, and because the disclosure did not actually harm the Council's recovery process, no sanction was imposed.

LOCAL DETERMINATIONS

Standards Committees around the country have accepted Ethical Standards Officers' conclusions of breach of the Code in 93% of the cases heard. Most of the hearings resulted in some kind of sanction (86%). The most common sanction was censure (37%); 48% of cases led to a partial or complete suspension of between a week and three months.

The most common breach by some way has been failure to declare personal or prejudicial interests (just over 50% of cases). Bringing the office or authority into disrepute was the next most significant category, with just over 20%. Committees

appear to have made full use of the power to remove sanctions if the offending member apologised or underwent training.

In one case, the council made a mistake and sent its contractors to a councillor's house, which had previously been a council property. He only told the Council about the mistake after the work had been completed and then said he could not be charged for the work. He was suspended from his role as chair of the overview and scrutiny committee for one month. In another case, a member was suspended from being chair of the planning committee for two months after he discussed a number of planning applications with an applicant before the planning meeting, in breach of council guidelines. In a case of improper advantage, a member of a parish council was guilty of asking the parish clerk to make a payment for repairs to a private road which had not been approved by the Council. The road led to the member's allotment. He was suspended for two months, but on condition that the suspension would end if he received training on the Code.

Another case where members may feel the verdict was unduly lenient involves storage of pornographic e-mails on personal computer facilities provided by the council. Having apologised and agreed to training, the member escaped with a one-month suspension.

Failure to register interests was treated more severely. Upon re-election, a member failed to register his interests for a second time, or to confirm that there had been no change in interests. He was suspended for a maximum period of three months, with a condition that suspension would end if he registered his interests or confirmed that they were unchanged from the previous registration.

TIME LIMITS FOR HEARINGS

The Standards Committee must arrange a hearing within three months of the Monitoring Officer receiving a report from the Ethical Standards Officer confirming a breach of the Code. Did the committee automatically lose the power to deal with a referral if the three-month period had passed? The High Court took the view that substantial compliance with the regulation would be sufficient. From time to time, situations would arise where for unforeseen reasons, a hearing would be delayed beyond the three months. However, any attempt to arrange token hearings to pay lip service to the rule would not be good enough. The deadline is not simply a target which the Standards Committee should try to get as close to as is reasonable.

WELL-BEING AND PERSONAL and PREJUDICIAL INTEREST

This subject was considered in the case of Councillor Murphy who participated in consideration of an ombudsman report which had criticised his actions at planning committee. The judge approved the Standards Board Guidance, that well-being can be described as a condition of contentedness, healthiness and happiness. Anything that could be said to affect a person's quality of life, either positively or negatively, is likely to affect their well-being. It is not restricted to matters affecting a person's financial position. The range of personal interests is accordingly likely to be very broad. In this case, the councillor attempted to challenge the restriction on participation in matters where the member had a prejudicial interest by reference to Article 10 of the European

Convention of Human Rights and the Right to Freedom of Expression. The Court robustly dealt with that challenge in view of the clear need to protect the reputation of local authorities for fair decision-making.

In another case, a councillor had used council notepaper for a letter asking for a parking penalty to be cancelled. He challenged his guilty finding through the courts, but without success.

The courts made it clear that it is irrelevant whether the member knows that he has a personal or prejudicial interest. The offence does not require a guilty intention, like most offences under the criminal law. It is an objective test.

DISREPUTE

In two cases, tribunals have decided that it would be inappropriate for members to serve as councillors while they are on the sex offenders register. Whilst such behaviour might often attract a sentence of imprisonment, which would lead to disqualification irrespective of the Code, one of these cases had simply resulted in a police caution, but still appears to have led to five years disqualification.

MANIPULATION OF THE ELECTORAL PROCESS

A member of a parish council persuaded three candidates to withdraw their nominations for election. There were ten candidates for seven seats and his initiative meant that a contested election was unnecessary. He had assured the three candidates who stood down that they could be co-opted if they wished even though he was not in a position to give such an assurance. The member gained advantage by not being at risk in a contested election. He may have been motivated by trying to save the costs for the Council but he had denied the constituents the opportunity to express their opinions at the ballot box. A tribunal thought that he was genuinely trying to save money, but still disqualified him for five months.

CONFLICT OF INTEREST

The leader of the council, acting in his role as a private solicitor, represented an applicant for a taxi licence before the council's licensing committee. He was not a member of the committee and was not involved in taking the decision on the application. He thought he could separate his role as a councillor and his occupation as a solicitor. That was held to be a serious mis-judgement. The Code does not prevent members from acting as advocates for their constituents before council committees. However, in this case, the leader was being paid to represent the client, giving a clear conflict of interest between his role as a member and his attempt to represent a private client, which was likely to prejudice his judgement of the public interest. He was suspended for six months. This case gives a clear warning to members who might have been tempted to appear in a professional capacity before committees of their own authority.

OFFENSIVE STATEMENTS

A member of a borough council published a press article criticising Islam. The article was written as a member of the public, not a councillor. He did not use his official title. It was alleged that he had brought his office into disrepute. A member of the local community group had reported him to the police. The article did not incite hatred or disorder, so no offence was committed. The ethical standards officer was not persuaded that the article constituted racial discrimination or a breach of the authority's equal opportunities policy. The member had the right of freedom of expression under Article 10. Perhaps somewhat surprisingly, it was held that the member was entitled to express in a personal capacity a controversial opinion about religion, without damaging public confidence in his office or authority. The case review concludes by saying that members may express the strongest dislike or criticism of a particular ideology, religion, moral tenet, or political stance even if that expression gives offence, so long as they are not abusive, in breach of the law or in conflict with their authority's legal obligations or policies. It is an interesting decision, but the member appears to me to have been balancing on a tightrope, which I would not recommend others to attempt!

IMPLICATIONS

This report has no legal or financial implications.

COMMUNICATIONS

I propose to circulate a copy to all members of the Council and to circulate a copy to parish and town clerks within the District as part of the process of continuing training on the Code of Conduct.

RECOMMENDATION

The Standards Committee is recommended to note the contents of the report.