

**Standards Committee**

**22 November 2010**



**First Tier Tribunal and Upper Tribunal Decisions relating to Councillors Clark and Fawcett of West Rainton and Leamside Parish Council**

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**Report of Colette Longbottom, Head of Legal and Democratic Services**

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**Purpose of the Report**

1. To provide Members with a summary of the decision of the First Tier Tribunal in relation to the appeal by Councillors Clark and Fawcett against the decision of the Standards Committee and Councillor Clark's appeal against the decision of the First Tier Tribunal.

**Decision of the First Tier Tribunal**

2. On 7 and 8 December 2009 and 27 and 28 January 2010, the First Tier Tribunal General Regulatory Chamber (Local Government Standards in England) ("FTT") heard Councillor Clark and Councillor Fawcett's appeal against the decision of Durham County Council's Standards Committee dated 9 October 2009 that they had failed to follow paragraphs 3(1), 3(2)(b), 3(2)(d) and 5 of West Rainton and Leamside Parish Council's Code of Conduct and its decision that both of them should be suspended from office and before resuming duties be fully expected to undertake training in Equality and Diversity and the Code.
3. The FTT partly upheld the appeals and partly rejected the decision of the Standards Committee in their decision dated 28 January 2010.
4. The FTT were satisfied that Councillors Fawcett and Clark failed to treat the Parish Clerk with respect and acted in breach of paragraph 3(1) of the Code of Conduct.
5. In their decision the FTT said that Councillors Fawcett and Clerk had prior to the relevant meetings agreed on a strategy which included criticisms of the form of agenda and the minutes as well as the Clerk herself and a number of instances. The FTT said that whilst they were entitled to raise criticisms in the form of the agenda and accuracy of the minutes, their behaviour went beyond a legitimate challenge.

6. The FTT said it was not reasonable to persist in challenges to the Agenda, implicitly and expressly raising the competency of the Clerk after having been told at a meeting on 18 October 2007 that the Agenda followed the Local Association "Tool Kit" recommendations without ever articulating any basis for the continuing complaint.
7. The FTT found it was equally unfair, unreasonable and demeaning for Councillor Fawcett at the meeting on 15 January 2009, in public session to raise the issue of referring Mrs Briggs to a disciplinary procedure. Such matters should have been referred to only in private session as should have been obvious to the Councillors Fawcett and Clark.
8. The FTT found that it was clear from the evidence that the challenges to the Clerk were made without any consideration of the effect on her or the appropriateness of the context in which they were raised. Whilst the intention may not have been to belittle or demean her, that was the inevitable and entirely foreseeable consequence of the appellants agreed strategy.
9. The FTT were not satisfied that the behaviour attained the level necessary to support a finding of bullying and therefore found no breach of paragraph 3(2) (b) of the Code.
10. The FTT found that the behaviour of Councillors Fawcett and Clark was such, looked at objectively, as would seriously lessen confidence in their office as Parish Councillors and the Parish Council as employer and they were therefore found in breach of paragraph 5 of the Code of Conduct.
11. The FTT found that the disrespect to the Clerk was at the high end of severity and represented a serious breach of the Code and it was sufficiently serious also to breach paragraph 5 of the Code.
12. The FTT concluded Councillors Fawcett and Clark should each be suspended for a period of three months effective from the date of the decision. The FTT said that whilst Councillor Fawcett was more actively engaged in the conduct towards the Clerk, at the Parish Council meetings, the evidence was that this was the result of a jointly agreed strategy and Councillor Clark backed Councillor Fawcett up at the meetings. In these circumstances the FTT did not consider it appropriate to distinguish between the councillors in terms of sanction.

### **Decision of the Upper Tribunal**

13. Councillors Fawcett and Clark applied to appeal the decision of the FTT to the Upper Tribunal. Whilst Councillor Fawcett's application to appeal was refused, Councillor Clark's application to appeal was successful and his appeal was heard on 11 June 2010.
14. The decision of Upper Tribunal Judge Ward at that appeal was that there was no evidence on which the FTT was entitled to infer that the parties had agreed to act in concert in relation to the matters relied upon as constituting a breach of the Code. There was evidence of pre-meetings (as one would expect from

members of a political party), noting with regret that nothing had changed and there was evidence that from time to time Councillor Clark would support Councillor Fawcett, but in Judge Ward's view this falls short of establishing that they had an agreed strategy to persist in raising points "without ever articulating any basis for the continuing complaint," to suggest in public session that the Clerk needed training or to suggest, likewise in public session, that the Clerk should be referred to a disciplinary procedure.

15. In Judge Ward's view, the FTT was not entitled to rely on Councillor Clark's acceptance that challenges were made "as part of a joint enterprise"; not only because that does not go far enough in the respects identified but because Councillor Clark did not accept the evidence of a joint enterprise as the FTT's reasons records.
16. Judge Ward said that the Clerk's evidence was based on assumptions as to the basis of the involvement of the two Councillors, as she acknowledged. There was evidence suggesting that that these two councillors, the only members of the minority group, acted "in concert" and that one "aided and abetted" the other, but without identifying that the respects in which they did so extended to the matters constituting a breach.
17. In Judge Ward's view, the FTT was not entitled to rely on the failure of Councillor Clark before the FTT to disassociate himself from the actions of Councillor Fawcett as evidence of a joint enterprise to do the actions in the first place.
18. In Judge Ward's view the decision of the FTT was not sustainable and Councillor Clark's appeal was upheld.

### **Recommendations and Reasons**

19. Standards Committee is invited to note the content of this report.

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