

BABERGH & MID SUFFOLK DISTRICT COUNCILS

From: The Monitoring Officer	Report Number: L153
To: Joint Standards Committee	Date of Meeting: 17 February 2012

MEMBERS CODE OF CONDUCT CASE REPORTS

1. Purpose of Report / Main Issues

- 1.1 This report updates members on recent decisions of the First-tier Tribunal (Local Government Standards in England) which considers Code of Conduct referrals and appeals from Standards Committee decisions. The report is produced for information and training purposes. None of the reported cases relate to members within the Councils' districts.

2. Recommendations

- 2.1 That the content of this report be noted.

The Committee is able to resolve this matter.

3. Financial Implications

- 3.1 Not relevant to this report.

4. Risk Management and Legal Issues

- 4.1 This report seeks to provide Members of the Committee with current information on interpretation and application of the Code of Conduct to assist the Committee in its decision-making. The risk of misapplication of the Code is considered low, but impact could be critical.

5. Consultations

- 5.1 None

6. Equality and Diversity Impact

- 6.1 Not relevant to this report.

7. Key Information

Selected Appeal Decisions

Councillor B (Case No. LGS/2011/0560) – disrespect/disrepute

Town Councillor B attended a Pre-Community Network meeting and used the words "it's a disgrace madam clerk" as a result of her not being invited to a meeting that had been arranged with the Chief Executive of the principal council. The remark was made in front of three other councillors and officers of the principal council. The Tribunal found the comment to be a direct criticism of the Town Clerk who Councillor B blamed at least in part for the decision not to invite Councillor B to the meeting. Given the circumstances and place where the comment was made, it was unfair, unreasonable and demeaning and therefore disrespectful.

- 7.1 At a meeting of the Parish Council the following month, Councillor B made an audible comment which questioned the competency of the Town Clerk. The Mayor responded to Councillor B to say that the comments “were out of order”. The Tribunal again found the comment to be unreasonable, demeaning and unfair.
- 7.2 In arriving at this conclusion the Tribunal acknowledged that Councillor B’s rights under Article 10 of the European Convention on Human Rights were engaged. Article 10 is the right to freedom of expression including the right to hold opinions and to receive and impart information and ideas without interference by a public authority. However, in these particular instances the words were not an articulation of political comment or debate, but were personal attacks upon the Clerk in a public arena in front of others and without the Clerk having a right of reply. These were clear and compelling reasons for interfering with Councillor B’s Article 10 rights making any interference proportionate, lawful and necessary.
- 7.3 A further aspect of the complaint was that Councillor B regularly attended the Council offices without prior appointment and on occasions more than once a day. The Council had a policy regarding attendance at the Council offices which Councillor B had disregarded. The Tribunal found that the continued attendance by Councillor B at the Council offices to speak to the Town Clerk and Deputy Town Clerk without appointment disrupted the work of the officers and the everyday business of the Council. This too was conduct which was unfair and unreasonable and which showed a lack of respect.
- 7.4 The final part of the complaint concerned Councillor B attending a planning inquiry and telling the inquiry that she was there to speak on behalf of the Council even though the Town Council had resolved to neither support or oppose the application and had not resolved that anyone should speak for the Town Council. The Tribunal found that Councillor B had no authority to represent the Town Council at the inquiry. Further, she had used it as opportunity to raise her particular concerns and those of a lobby group to which she belonged rather than raising all of the concerns of the Town Council and the views of support that had also been expressed by other members of the Town Council. This was found by the Tribunal to be an attempt by Councillor B to use her position improperly to confer an advantage for herself and others in breach of paragraph 6(a) of the Code. It was also a breach of paragraph 13 of the Code for Councillor B not to have registered her interest in the lobby group.
- 7.5 Taking account of the number and nature of the breaches, Councillor B had additionally brought her office (but not her Council) into disrepute.
- 7.6 The Standards Committee’s original sanction of 3 months suspension was upheld.

Councillor G (Case No. LGS/2011/0567) – disrespect

- 7.7 The Tribunal rejected the finding of the Standards Committee that Parish Councillor G had failed to treat fellow members of the Parish Council with respect and brought the Parish Council into disrepute by sending emails alleging dishonesty and misappropriation of Council funds. One email had been sent to an officer at the Borough Council.

- 7.8 The Tribunal recognised that an allegation of misappropriation of public funds could be seen as defamatory of those about whom it is made. It is also noted that had Councillor G used the word “alleged” or “possible” before “misappropriation” then no issue at all could arise. Nonetheless, the Tribunal did not consider that the making of such an allegation of itself indicates a lack of respect and the Code should not have the effect of preventing a councillor from raising such concerns in the public interest. If the councillors referred to believed themselves to be libelled then their protection is provided by the law of defamation.
- 7.9 This case is also of note because the Investigating Officer had considered matters which arose after the date that the complaint was received. These matters should and could not be considered by the Tribunal.

8. Appendices / Background Documents

- 8.1 First-tier Tribunal (Local Government Standards in England) decisions listed in the report.

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