

BABERGH & MID SUFFOLK DISTRICT COUNCILS

<u>FROM:</u> THE MONITORING OFFICER	<u>REPORT NUMBER</u> M35
<u>TO:</u> JOINT STANDARDS COMMITTEE	<u>DATE OF MEETING:</u> 7 June 2012

MEMBERS CODE OF CONDUCT CASE REPORTS

1. Purpose of Report / Main Issues

- 1.1 This report informs committee members of a recent High Court decision concerning application of the Code of Conduct for Members.

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

Calver v. Adjudication Panel For Wales & Public Services Ombudsman For Wales 2012

- 7.1 Councillor Calver applied for a judicial review of the decision of the Adjudication Panel to dismiss his appeal against the decision of the Standards Committee finding him in breach of the Code of Conduct for comments posted on his blog concerning Manorbier Community Council.

- 7.2 The Adjudication Panel determined that 13 comments were either disrespectful and/or brought the Council into disrepute. The comments were as follows:-

(1) "Manorbier Community Council does not seem to understand the limits of its role. This lack of understanding is difficult to comprehend following the advice received from Lawrence Harding the Pembrokeshire County Council Monitoring Officer."

(2) "Anybody who attended the October meeting would have great difficulty in relating the actual events to the draught [sic] minutes above. Anybody looking at these minutes at some time later, such as next year, would not have any ideas to what was agreed, discussed or expenditures approved. The draught [sic] has just blown the facts away. There are more holes in the Draught [sic] Minutes than in Swiss Cheese."

(3) "Ms Gourlay has tried many times to be elected by ballot and failed. She has succeeded in becoming a Councillor as no ballot was had".

(4) "Disgraceful manipulation of children [by Mr Wales – now ex Councillor] to influence a lawful planning application. Mr Wales...has now left [Manorbier Community Council] leaving the Council in a mess."

(5) "Councillor Gourlay at this stage state that she was an expert on declarations of interest. It is not known where Councillor Gourlay acquired her expertise (or her present place of employment?."

(6) "Manorbier Community Council as a ship will sail on until members of the Community realise how much of their money has been wasted over the last year and how much dealing has been carried out in secret meetings."

(7) "... the past two and a half years in the absence of a competent clerk has proved very costly to the ratepayers of Manorbier."

(8) "Manorbier Community Council both in the recent past and in the present seems to live in the land of secrecy with many skeletons in the cupboard which will eventually come out."

(9) "The staffing committee has with the indulgence of other past Councillors...cost the charge payers of Manorbier in excess of £55,000."

(10) "Manorbier Community Council meeting, Monday 1st September Manorbier Councillors through its Chairman strive to stop this website publishing draft minutes of Council meetings...the reason this website published the draft minutes is to show their poor quality and it will not be browbeaten by anyone who wishes to inflict censorship...Cllr Hughes informed Cllr Calver that he was not prepared to supply him with signed corrected minutes using the feeble excuse that somebody might forge his signature...perhaps both Cllr Hughes as Chairman and Cllr Williams, the deputy chairman (who is believed to have been an ex-headmaster) should have been concerned about the standard of the draft minutes that were being displayed on this website and described by Mr Crocker as being of poor quality. One can only wonder at the statement by the chairman that the council would have collapsed had Ms Gourlay not volunteered for the role where she acted firstly as the Proper Officer and secondly as the writer of the minutes...resigning as Proper Officer in her letter to the council."

(11) "For a Chairman of a Community Council who has just had the benefit of being trained to suggest that he would not provide signed copies of council meetings to fellow councillors beggars belief, perhaps he beliefs (sic) that he is above the law of the land which states that the minutes of council meetings have to be signed 'as being a true and accurate record of the meeting' and then become placed in the public domain and open to inspection by any member of the public."

(12) "The website will of course continue to publish both draft and the agreed signed minutes with or without the co-operation of the Council."

(13) "...In regard to the 'backdoor' method of becoming a Councillor...not one Councillor, so far, has actually been elected to represent the people."

- 7.3 The Adjudication Panel had upheld the decision of the Standards Committee to censure Cllr Calver and to require him to attend training with the Monitoring Officer within 3 months.
- 7.4 The Court concluded that the comments were sarcastic and mocking and the Panel was entitled to take a cumulative view of the effect of the councillor's postings. Further, the Panel was entitled to conclude that the tone of the postings "publicly ridiculed his fellow members".
- 7.5 The Court rejected the argument that the "concept of rudeness" has no place in the performance of political duties. In principle, such regular conduct over a long period of time did bring the councillor's office into disrepute.
- 7.6 The Court went on to say that there is clear public interest in maintaining public confidence in local government, but in assessing what conduct should be proscribed and the extent to which sarcasm and ridicule should be, it is necessary to bear in mind the importance of freedom of political expression.
- 7.7 Whilst it was difficult to see that comments (3), (5) and (12) were political expression, many of the others were comments about the inadequate performance of Councillors in their public duties which would fall within the term "political expression". There was a "need for politicians to have thicker skins."
- 7.8 The Court held that in light of the strength of the right to freedom of expression and the fact that the majority of the comments were directed at other councillors, the Panel's decision that those comments broke the Code was a disproportionate interference with the councillor's rights to freedom of expression under Article 10 of the European Convention of Human Rights. The Panel's decision was set aside.

8. Appendices / Background Documents

- R (on the application of Lewis Malcolm Calver) v. Adjudication panel For Wales & Public Services Ombudsman for Wales [2012] EWHC 1172 (Admin).

Authorship: Kathryn Saward
Monitoring Officer

01473 825729 /01449 724679
Kathryn.saward@babbergh.gov.uk