

BABERGH DISTRICT COUNCIL

FROM: Acting Head of Legal and Administrative Services

REPORT NUMBER **E262**

TO: **STANDARDS COMMITTEE**

DATE OF MEETING **3 February 2006**

MEMBERS CODE OF CONDUCT CASE REPORTS

1. **SUMMARY**

This is the first report of what is intended to become a standard item on the agenda to consider recent case reports arising from investigations of alleged breaches of the Members Code of Conduct. The case reports will pick up on any relevant court cases, findings of the Adjudication Panel of the Standards Board for England along with significant local determinations.

2. **RECOMMENDATIONS**

That the content of this report be noted.

The Committee is able to resolve this matter.

3. **FINANCIAL IMPLICATIONS**

None.

4. **KEY INFORMATION**

4.1 **RECENT CASE LAW**

4.2 Adami v The Ethical Standards Officer of the Standards Board for England (2005), was on 21st November 2005. Here, an Adjudication Panel held that a Councillor had breached the Code of Conduct, and disqualified the Councillor from office, adopting the reasons set out in the Ethical Standards Officer's ("ESO") report. The Councillor appealed to the High Court, which quashed the decision on the basis that the panel had given inadequate reasons for its decision. The ESO appealed to the Court of Appeal, contending that the High Court judge was wrong, in that the case should have either been remitted back to the panel for it to set out its reasons, or remitted back for the decision to be taken again. The Court of Appeal agreed with the ESO, and held that the findings and disqualification in this case should be set aside, and referred back to the panel for reconsideration.

4.3 This report highlights the need for adequate reasons to be set out by the decision-making body itself, and also how a lack of adequate reasons should be dealt with, procedurally.

4.4 **ADJUDICATION PANEL HEARINGS**

4.5 Members may have read in the national papers about a case tribunal which sat on 13th and 14th December, to consider a complaint made to the Standards Board that Mr Ken Livingstone, The Mayor of London, made an offensive comment to Mr Oliver Finegold, a journalist. The exchange between the two men was made whilst Mr Livingstone was leaving a function at City Hall.

- 4.6 As a first point, the tribunal held that as Mr Livingstone was leaving a function, he was not at that time conducting the business of his office. This means that at the time of the exchange, he was not required to abide by the provision in the Code of Conduct which requires him to treat others with respect.
- 4.7 This is because paragraph 1(2) of the Greater London Authority's Code (which follows the model code) provides that apart from paragraphs 4 and 5(a) of the Code, it shall not have effect in relation to the activities of a member undertaken in other than an official capacity. "Official capacity" means when the member is conducting the business of the authority or the office to which he has been elected or acting as a representative of the authority.
- 4.8 The issue, which remains for consideration by the panel, is to decide whether Mr Livingstone has failed to follow the provisions of paragraph 4 of the Code. This states that a member "must not in his official capacity, or in any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute". However, the case has been adjourned on this point, so as to allow Mr Livingstone time to file a skeleton argument to support his reasoning that there has not been such a failure. We await a further decision.

4.9 **LOCAL HEARINGS**

- 4.10 There was a local hearing by the Standards Committee for Forest Heath District Council on 16th November 2005. In this case, the allegation was that a Councillor of the Brandon Town Council, Mrs Silvester, failed to comply with paragraph 2 of the Brandon Town Council's Code of Conduct, in that she had shown disrespect to the Clerk to the Council.
- 4.11 Paragraph 2 of the Code states that a member must
- a) promote equality by not discriminating unlawfully against any person
 - b) treat others with respect and
 - c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority
- 4.12 Mrs Silvester did not dispute the facts and the Committee found that she had breached paragraphs 2(b) and 2(c) of the Code. A sanction of three months suspension would have been normal in a case such as this, but in view of the fact that Mrs Silvester had apologised to the Clerk, and other mitigating factors in relation to the Town Council, the Committee imposed a suspension of six weeks.
- 4.13 The complaint had been referred to the Standards Board and the Ethical Standards Officer had referred the matter to Forest Heath's Monitoring Officer for investigation. In fact, the Deputy Monitoring Officer conducted the investigation, and the Monitoring Officer provided legal advice to the Committee.

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