

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER **F112**

TO: STANDARDS COMMITTEE

DATE OF MEETING 27 October 2006

MEMBERS CODE OF CONDUCT CASE REPORTS

1. **SUMMARY**

This report updates members on recent case reports arising from investigations of alleged breaches of the Members Code of Conduct. It highlights 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 **SELECTED CASE TRIBUNAL DECISIONS**

4.1.1 **CLLR L (APE0353) – Failed to Declare an Interest at Meetings**

Town Councillor L appealed against the Standards Committees finding that she had failed to declare a personal and prejudicial interest and leave the room during meetings of the Town Council at which a planning application was discussed.

Cllr L stated that she received no training and that she had not deliberately breached the Code. She also maintained that she had not acted dishonestly.

The Appeal Tribunal held that, there had been more than one breach of the Code, Cllr L had remained reluctant to accept that she should take responsibility for those breaches and that there was a clear and strong interest in protecting the planning process from being brought into disrepute by those who had a prejudicial interest. Whilst there was no question of dishonesty, the breach was nevertheless serious and that there was nothing to suggest that the Standards Committee had applied the incorrect sanction. Furthermore, the breaches in respect of the planning application should have been obvious even to a councillor without any training. The Appeals Tribunal therefore, upheld the sanction of three months suspension imposed by the Standards Committee.

4.1.2 **CLLR A (APE0345) – Failed to Declare an Interest at Meetings**

Town Councillor A appealed against the Standards Committee findings that he had failed to disclose personal and prejudicial interests and failed to withdraw from Town Council meetings, and alleged procedural and substantive unfairness.

The Appeal Tribunal held that, although it was satisfied that Cllr A did not deliberately breach the Code and did seek advice which was in part misleading, it should have been obvious to a Councillor of his standing that his interest at certain meetings would amount to a prejudicial interest. The fact that there were two similar breaches of the Code, the continued absences of any recognition of this and of any acceptance of error on Cllr A's part, persuaded the Tribunal that this was an appropriate case for a period of suspension. The Tribunal therefore upheld the Standards Committees findings.

4.1.3 **CLLR W (APE0349) – General Conduct Matter**

Parish Councillor W appealed against the Standards Committee's findings that he failed to adhere to the Councils Code of Conduct, in that he was persistently threatening to persons, was disruptive and used insulting and intimidating behaviour during a meeting.

The Appeal Tribunal recognised that Cllr W raised some legitimate questions concerning council business at both council meetings, but found his tone and manner to be wholly inappropriate and brought his office into disrepute. The Appeal Tribunal further found that Cllr W did fail to treat others with respect by repeatedly obstructing and delaying council business by making unnecessary challenges to the minutes having already been approved as a true record and disregarding the Chair's ruling. The Appeal Tribunal held that the sanction imposed was therefore, correct and appropriate in the circumstances.

4.1.4 **CLLR P (APE0336) - General Conduct Matter**

Town Councillor P was alleged to have breached paragraph 4 of the Code of Conduct, in that, Cllr P was responsible for ensuring that the Town Council's Civic Hall was appropriately covered by Public/Employers liability insurance and gave assurances to the board that this was the case. However, after a function at the hall, the hall keeper was attacked and £2,365.45 was stolen and it then transpired that the Trust was not insured.

Furthermore, as company secretary, Cllr P was responsible for submitting annual returns to Company House. He was fined £500 for providing incorrect information. Cllr P was also interviewed by the Inland Revenue in respect of unpaid tax and national insurance contributions for staff employed by the council, he provided incorrect figures, and as a result, he was charged £1,092.00 for unpaid tax and national insurance contributions.

Cllr P advised the board that a Public Entertainment License was held for the Councils Civic Hall, this information was incorrect, and as a result, he was fined found guilty and fined by the local magistrates court.

The Tribunal held that there were many aggravating factors, i.e., Cllr P refused to accept responsibility for his actions or acknowledge that he should have acted differently, and rather than accepting responsibility, he sought to blame others. In the circumstances, the Tribunal considered a three months suspension order.

4.1.5 **CLLR P (APE0354) – Inappropriate Behaviour**

Town Cllr P had been alleged to have sexually harassed the Town Clerk by pressing her to go on holiday with and handing her an envelope containing £500 for her to accept if she refused the holiday. Cllr P acknowledged that he had given the Town Clerk a written warning on her job performance in revenge for her making a complaint to the Standards Board. He also made improper comments in a press release when announcing his resignation as Mayor, and as such failed to comply with the Code of Conduct. The Tribunal considered a 9 month period of disqualification would adequately reflect the seriousness of the breach.

4.1.6 **CLLR S (APE0339) – Individual Voluntary Arrangement**

Borough Councillor S was alleged to have brought his office or authority into disrepute when he became party to an Individual Voluntary Arrangement with his creditors at the date of his election to the Council. Section 80(1)(b) of the Local Government (1972) states that a person shall be disqualified from being a member of a local authority if he is “a person who has been adjudged bankrupt, or made a composition or arrangement with his creditors”.

The Tribunal took into account Cllr S’s confusion about Individual Voluntary Arrangements; it accepted that he believed that entering into an arrangement of this nature did not disqualify him from office and that he had no advice before he was elected.

Furthermore, there was no evidence of his deliberately concealing the arrangement to retain his office. The Tribunal also accepted that at the relevant time, he had significant medical problems, which may have affected his actions. The Tribunal also took into account Government advice that an Individual Voluntary Arrangement is less serious than other forms of insolvency.

Taking the above into consideration, the Tribunal found that there was no breach.

4.1.7 **CLLR J-C & CLLR M-C (APE0356 & 0357) – General Conduct**

Town and District Councillor J-C was chair of the School Board of Governors that had agreed an option to sell land to a developer for housing in return for extra leisure facilities for the school. During consideration of adoption of the District Council’s Local Plan, it was proposed that the land be excluded which would effectively end the agreement between the School and developer. Cllr J-C participated in discussions at both Town and District Council meetings to discuss exclusion of the land and advocated inclusion of the land to the benefit of the school. At a full Council meeting, Cllr J-C declared a personal interest and proceeded to propose inclusion of the site. He was found to have failed to declare a prejudicial interest and to have sought improperly to influence the decisions.

He was further found to have failed to record his appointment as Chair of the Board of Governors in his Register of Interests. The Tribunal rejected his argument that the fact that a public position is not specifically referred to in the Code or any publications excludes it from registration.

The Local Plan deliberations also included a proposal for a bypass to relieve traffic from a road a relatively short distance from Cllr J-C’s home and that of his son. Cllr J-C had been appointed as Town Council representative on an Alliance Group that was opposed to the bypass. He had no voting rights and considered himself as a mere conduit between the Town Council and Group. The fact that he was on the Group, irrespective of his capacity, was something that the public should have known and been registered. The cumulative level of his interests should have been declared as a prejudicial interest.

Additionally, Cllr J-C's home was in the vicinity of a sports ground considered within the Local Plan. His reliance upon a particular road to gain access to his home may be impaired if the sports ground were developed and volume of traffic increased. This gave him an interest greater than other members of the local community and should have been declared as a personal interest.

Cllr M-C, wife of Cllr J-C and also a Town and District Councillor had also participated and voted on the same matters. She had the same level of interest by virtue of her marriage. In addition, both Councillors had applied to the Standards Committee for a dispensation in respect of the bypass, but Cllr M-C had attended the Standards Committee meeting when she had a prejudicial interest in the matter.

Cllr J-C was given a warning and recommended to undertake further training whilst no action was taken with respect to Cllr M-C. In mitigation account was taken of the short time span in which the incidents took place, that the breaches arose from one set of circumstances, the exemplary record of public service by the councillors, that there had been no further breaches and the breaches had occurred soon after the Code was implemented.

4.1.8 CLLR H (APE0325) – Environmental Offences

Councillor H pleaded guilty and was convicted of two offences contrary to the Environmental Protection Act 1990 relating to unauthorised use of land in his ownership for the disposal of waste, and was fined £20,000. The offences involved the land filling of large quantities of waste soil and potatoes without a permit and which could be hazardous to human health and the environment.

Cllr H was suspended for a period of 3 months from Council and Town Council functions for bringing both his office or authority into disrepute in relation to the Council and his the office of councilor into disrepute in relation to the Town Council.

The Tribunal took into account that (i) Cllr H had been alerted by the Environment Agency to potential offences over a significant period of time (ii) he had committed an offence of "knowingly" depositing and keeping waste (iii) they were activities contrary to the Council's environmental policy and (iv) he was leader of the Council. However, the sanction was a shorter period than would otherwise have been imposed in the circumstances because (i) Cllr H had a good record of service (ii) he had taken responsibility for his actions (iii) he had apologised to the Environment Agency and (iii) pleaded guilty.

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