

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER **J219**

TO: STANDARDS COMMITTEE

DATE OF MEETING 7 April 2010

MEMBERS CODE OF CONDUCT CASE REPORTS

1. **SUMMARY**

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 district of Babergh.

2. **RECOMMENDATIONS**

That the content of this report be noted.

3. **FINANCIAL IMPLICATIONS**

None.

4. **RISK MANAGEMENT**

Not relevant to this report

5. **KEY INFORMATION**

SELECTED APPEALS DECISIONS

5.1 **CLLR J. (Case no. LGS/2010/0475) – improper use of position/declaring gifts**

5.1.1 Borough Councillor J, appealed the sanction imposed by the local Standards Committee to suspend her from office for 6 months for (1) bringing her office or authority into disrepute (2) using her position improperly to secure an advantage for herself and (3) failing to provide within 28 days notice of receipt of a gift exceeding £25.

5.1.2 The background to the complaint was that during her period in office as Mayor in 2006/07, Cllr J solicited sponsorship from local businesses which resulted in contributions of £500 and £400 which she spent on clothing and accessories for use during her term of office. The gifts were not registered by Cllr J until November 2007.

- 5.1.3 The Tribunal expressed astonishment at the delay in commencing the investigation and its conclusion before the Standards Committee in October 2009. Since a term of suspension automatically comes to an end at the expiry of a councillor's term of office, the delay meant that there was insufficient time for the suspension to be served before expiry of Cllr J's current term of office.
- 5.1.4 Cllr J submitted that the Standards Committee failed to give due account that she had honestly believed that her actions were permitted. Her solicitors quoted case law that supported the argument that clothing purchased for business use which could also be used in the individual's private life could be regarded as a personal benefit for tax purposes. The Tribunal dismissed this argument on the basis that just because clothing purchased primarily for business use may be tax deductible does not mean that it was reasonable for someone in Cllr J's position to solicit and use money to purchase a ball gown to wear at a Charity Ball.
- 5.1.5 The Tribunal further stated that it did not need to determine whether Cllr J had acted dishonestly because this is not a term that appears in the Code. Had there been dishonesty, it would have expected the complaint to have been referred to itself and the sanction to have been greater than 6 months suspension.
- 5.1.6 The absence of dishonesty was a mitigating factor, but one that was offset by recklessness as to the propriety of her behaviour. The delay in the matter reaching a hearing before the Committee was not justification for a shorter period of suspension nor was the context of Cllr J's actions being an event to benefit her chosen charities.
- 5.1.7 The sanction was entirely appropriate even allowing for the many years of public service which Cllr J had given to her community.

5.2 **CLLR. R (Case no. LGS/2009/0480) – disrespect/bullying/disrepute**

- 5.2.1 Parish Councillor R appealed the decision of the Standards Committee to suspend him for 6 months and make written apology to the Clerk for disrespect and bullying behaviour towards him.
- 5.2.2 Cllr R had entered the Parish Council offices and in front of other councillors lost his temper and challenged the clerk over what he claimed were incorrect notices on the Parish Council notice board and told the Clerk that he was useless and should be sacked.
- 5.2.3 A few days later Cllr R had entered the offices and again challenged the Clerk about the correctness of the information on the notice board. The Clerk had taken Cllr R outside and explained to him that the information was correct and Cllr R had left.
- 5.2.4 The Tribunal found that whilst Cllr R's own perception of his behaviour may have been that he was "reasonable", this was not borne out by other witnesses. The Tribunal concluded that Cllr R had been rude, offensive and intimidating during the first incident.
- 5.2.5 In relation to the second incident there was inconsistency in the evidence of the witnesses and the Tribunal was not therefore satisfied that on the balance of probabilities Cllr R's conduct amounted to anything more than a repeat complaint.

5.2.6 Cllr R's visits were made as a Parish councillor and he was therefore acting in his official capacity. Cllr R's right to freedom of expression did not extend to rude, intimidating and insulting comments and behaviour. It was not within the remit of the Tribunal to decide on whether or not Cllr R's view of the competency of the Clerk was justified, but the manner in which Cllr R had dealt with the Clerk was wholly inappropriate and unacceptable. In so doing, the Tribunal referred to page 31 of the Standards For England Case Review which provides:-

"It is important that Members raise issues about poor performance in the correct way and at the proper forum, such as in a private meeting with a senior manager, and not in a public meeting or through a published attack in the media".

5.2.7 The Tribunal further stated that the threshold must be set at a level that allows for the passion and fervour that often accompanies political debate relating to the efficient running of a council and which allows for appropriate and robust criticism of the performance of a council function.

5.2.8 In this instance, Cllr R was seeking to raise an issue of legitimate concern to him, but chose to do so in a way that was unreasonable and demeaning. The public expression of criticism of an employee in a rude, offensive and intimidatory manner strayed well beyond what is legitimate within the Code. It was therefore satisfied that Cllr R had failed to treat the Clerk with respect.

5.2.9 The Tribunal did not however accept that Cllr R's plainly inappropriate behaviour attained the level necessary to support a finding of bullying. On the evidence Cllr R had lost self-control for a short period and was not quite of such seriousness to constitute bullying. Whilst there had been a pattern of conduct towards the Clerk, this was most appropriately categorised as harassment rather than bullying. Further, when looked at objectively whilst Cllr R's forthright and assertive manner, his continual challenges and requests and the manner in which they were made strayed beyond the acceptable, and in light of Cllr R's motive to correct perceived wrongs, the behaviour would not seriously lessen confidence in Cllr R's office as a parish councillor.

5.2.10 The sanction of 6 months suspension was reasonable and proportionate for the failure to treat the clerk with respect given the serious nature of the breach.

6. **APPENDICES**

None

7. **BACKGROUND PAPERS**

First-tier Tribunal decisions listed in the report.

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