

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER **F221**

TO: STANDARDS COMMITTEE

DATE OF MEETING 20 April 2007

MEMBERS CODE OF CONDUCT CASE REPORTS

1. **SUMMARY**

This report updates members on recent national 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. The report is produced for training purposes.

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 D (APE 0366) – Disrepute / Failure to Treat Another with Respect**

Cllr D appealed against the Standards Committee’s finding that he had failed to comply with the parish council Code of Conduct by:

1. failing to treat another with respect at the Community Association AGM by accusing a colleague of editorial bias;
2. bringing his office or authority into disrepute by publishing the allegation of bias in a political party pamphlet and also in repeating that allegation at the Community Association AGM.

The allegation of editorial bias arose out of the colleague’s decision as editor not to publish a letter in the Community Association’s publication, written by Cllr D on the subject of the new proposed Parish Council.

The Standards Committee had decided to censure Cllr D and to require him to send a letter of apology to his colleague. The Case Tribunal approached the appeal in the following way:

- a) it considered Cllr D’s contention that the panel of the Standards Committee hearing the matter was biased as it was not politically balanced.

The Case Tribunal took the view that the panel of the Standards Committee could not be impugned on the grounds of bias, either on account of the political composition of the panel or the fact that two members had declared personal interests (as opposed to prejudicial interests).

- b) It determined whether there were any material disputes as to the facts in the original complaint.

The Case Tribunal considered that there were no material disputes as to the facts before them. It was their view that the facts of the case were fairly captured by the panel of the Standards Committee in its written decision.

- c) It decided whether or not to uphold the findings of the Standards Committee panel in relation to the original complaint.

The Case Tribunal considered that Cllr D had not breached the Code. It took the view that the matters before it were illustrative of the normal rough and tumble of local parish life and the level of political debate one might find in a small community.

The Case Tribunal made no finding as to whether or not in fact the accusation by Cllr D had been justified. It was of the view that Cllr D had reasonable grounds to consider that his colleague had not acted impartially in refusing to publish his letter. In particular it took into account the fact that two other of Cllr D's letters had been published and that a letter giving the contrary view on the creation of the new parish council had been included. It noted further that Cllr D's colleague's response to the Cllr D's query as to why the letter had not been published was less than helpful and may have contributed to an impression that he was not being treated fairly.

The Case Tribunal also took into account that his colleague belonged to another political party who had in fact stood against Cllr D in an earlier election.

Cllr D accused his colleague of being biased in the way in which he edited the publication. From the evidence before the Case Tribunal, it appeared that the words used were not in and of themselves offensive. He had not used abusive words and whilst, by his own admission his complaint had been vociferous and forceful, it did not appear that Cllr D had behaved in a particularly aggressive manner.

The Case Tribunal did not therefore uphold the findings of the Standards Committee, whose decision ceased to have effect from the date of the hearing.

4.1.2 **CLLR B (APE 0365) – Disrepute**

Cllr B allegedly failed to comply with the Town Council's Code of Conduct by bringing his office or authority into disrepute by pleading guilty to a number of charges of false accounting under section 17(1)(A) of the Theft Act 1968, for which he received a 12 months conditional discharge, together with an order for payment of costs and compensation.

The Case Tribunal considered the facts of the case, which were essentially undisputed. It noted that Cllr B chose not to make any substantive representations other than to opine that he had already been punished for his conduct by the criminal courts.

It was the judgment of the Case Tribunal that Cllr B, who was convicted of fifteen charges of false accounting arising out of the conduct of his horticultural business, was at the time of the commission of the offences neither acting in his official capacity as a councillor nor performing the functions of his office as a member of the Town Council, and that consequently there was no breach of paragraph 4 of the Code of Conduct. The offences were committed in connection with Cllr B's horticultural business which had no connection to his role as a councillor. Further, in the

recently decided High Court case of *Livingstone v Adjudication Panel for England* [2006]. Mr Justice Collins indicated that unlawful conduct is not necessarily covered. A councillor who commits a criminal offence was not, in his judgment, caught by the Code of Conduct 'if his offending had nothing to do with his position as a councillor'. The Case Tribunal also noted that Cllr B was convicted of offences of false accounting which arose out of his dealings with a Housing Association in the course of his horticultural business. The Case Tribunal was satisfied, on the evidence, that Cllr B's offending had nothing to do with his position as a councillor as there was no link between the conduct and his membership of the Town Council. The Case Tribunal, therefore, concluded that Cllr B's conduct fell outside the definition of 'any other circumstance' in paragraph 4 of the Code of Conduct.

CONTACT: Kathryn Seward

DIRECT LINE: 01473 825729