

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER **H171**

TO: STANDARDS COMMITTEE

DATE OF MEETING 23 January 2009

MEMBERS CODE OF CONDUCT CASE REPORTS

1. **SUMMARY**

This report updates members on recent decisions of the Adjudication Panel. The report is produced for information and training purposes. None of the cases relate to councillors within the district of Babergh.

2. **RECOMMENDATIONS**

That the content of this report be noted.

The Committee is able to resolve this matter.

3. **FINANCIAL IMPLICATIONS**

None.

4. **RISK MANAGEMENT**

Not relevant to this report

5. **KEY INFORMATION**

APPEALS TRIBUNAL DECISIONS

5.1 **CLLR R (Case no. APE 0407) – disrespect/disrepute**

5.1.1 County Councillor R appealed against the sanction imposed by the Standards Committee of (i) censure (ii) suspension from the office of cabinet member (iii) submission of a written apology to the complainant (iv) training (v) conciliation, subject to the agreement of the complainant.

5.1.2 Since Cllr R did not dispute that he had failed to comply with the Code of Conduct, the full findings of fact have not been reported in the Appeals Tribunal decision. However, it is apparent that a complaint was made by a member of staff that Cllr R had behaved inappropriately towards her at a training session at which 6 people were present including one other councillor. No members of public were present.

5.1.3 In his grounds of appeal, Cllr R stated that on the day in question he was “flying on a cloud of adrenaline and totally at peace with the world” because of a series of events that had occurred to him and he was happy to pass on his feelings of goodwill to anyone in his company. When the complainant, whom he had never met before, first greeted Cllr R she had appeared nervous and he had endeavoured to make her feel at ease. Cllr R maintained that his endeavours were misinterpreted and this was demonstrated clearly from video footage taken at the training session. It was because the complainant was very knowledgeable on the subject to which he had a portfolio brief that he had focused attention on her. Nobody had commented on Cllr R’s behaviour until after the “kiss” (which Cllr R considered was a “peck”) that the witnesses had judged his behaviour inappropriate.

5.1.4 The Standards Committee had unanimously decided that the behaviour to a relatively junior member of staff over the course of a day was uncalled for, objectionable and embarrassing. It found that he had failed to treat the complainant with respect and brought his office as a cabinet member into disrepute.

5.1.5 The Appeals Tribunal found, and the Appellant accepted, that censure was appropriate. The Appellant had acted wholly inappropriately towards a newly appointed member of staff, both in terms of the conduct itself and in light of the position of authority he held. It also upheld the requirement for appropriate training even though he was no longer a cabinet member. The conduct showed a lack of insight into the delicate relationship between councillors generally and council staff. It did not matter that Cllr R was no longer a cabinet member because he was still a councillor. What Cllr R regarded as informality, was particularly inappropriate in the work place as he was likely to be perceived by a member of staff as having considerable power and influence over them.

5.1.6 The Appeals Tribunal further upheld the one month suspension from the office of cabinet member as it was conceivable that Cllr R could become a cabinet member again. It was also possible that Cllr would come into contact and work with the complainant and it was therefore appropriate for him to participate in conciliation in a manner determined by the Monitoring officer and Chair of the Standards Committee.

CASE TRIBUNAL DECISIONS

5.2 MR. D (Case no. APE 0406) - disrepute

5.2.1 Former Borough Councillor D was convicted in the Crown Court of 3 counts of making indecent images of a child and 4 counts of possessing indecent images of a child. One of these counts referred to 13 images found on a computer that had been provided to Cllr D in his capacity as a councillor. He was sentenced to a 3 year community rehabilitation order and a 5 year sexual offences prevention order. An application for leave to appeal to the Court of Appeal was refused.

5.2.2 The Tribunal firstly considered an application by the former councillor for the case to be heard in private. It decided that the case be heard in public for the following reasons:-

- Article 6 of the European Convention on Human Rights states that everyone is entitled to a fair and public hearing

- It was a very clear principle that proceedings in tribunals should be heard in public. The right of the public and press to attend and report hearings was a key element in ensuring that the public had confidence in the administration of justice. Cases involving the code involved a significant element of public interest. Convincing evidence would be needed that there was substantial harm to either the individuals involved or to the public interest generally before holding a hearing in private.
- It was material that the Tribunal's decision would be a matter of public record. It did not consider that any appeal in the criminal courts would be prejudiced by what was said in the standards proceedings.
- There were no exceptional circumstances to warrant the hearing being held in private although it decided not to disclose Cllr D's home address.

5.2.3 It was accepted that Mr D was not acting in his official capacity when committing the offences for which he was convicted. However, one of the convictions related to his use of a computer provided to him by the council. It fell to the Tribunal to determine whether the conduct could come within paragraph 4 of the 2002 Code which provided that "a member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute".

5.2.4 The Tribunal found that whilst the conduct could not be said to be within an official capacity, there was a link between the conduct and membership of the authority because the images were found on a council computer which had been given to him to assist him in carrying out his duties as a councillor. Therefore, paragraph 4 applied as the conduct came within the phrase "any other circumstance". Further, for a councillor to be involved in such conduct inevitably leads to a lowering of repute in the eyes of the public.

5.2.5 The Tribunal held that as a councillor Mr D was expected to lead by example. Possession of indecent images of children, leading to a criminal conviction, seriously undermined confidence in local councils and councillors and indicated that Mr D had not been fit to hold office as a councillor. It was also a serious matter that the breach of the Code related to the misuse of council property.

5.2.6 The Tribunal disqualified Mr D from being or becoming a member of any authority for 5 years.

6. **APPENDICES**

None.

7. **BACKGROUND PAPERS**

None.

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