

Appeals Tribunal Decision

Case Ref:	APE 0421
Appeals Tribunal Date:	29 April 2009
Relevant Standards Committee:	Middlesbrough Council
Date of Standards Committee decision:	22 January 2009
Name of member concerned: <i>(Appellant)</i>	Councillor McTigue
Monitoring Officer:	Mr Richard Long
Independent Investigator:	Mrs Katharine Metcalfe
<u>Appeals Tribunal Members</u>	
Chairwoman:	Mrs Beverley Primhak
Member:	Mr Richard Enderby
Member:	Mr Chris Perrett

1. The Appeals Tribunal has considered an appeal from the Appellant about the above decision.
2. The Appeals Tribunal has considered written and oral submissions from Councillor McTigue and Mr Richard Long and has heard evidence from Mr Anthony Warren.

The decision appealed against

3. The Appellant had appealed against the Standards Committee's finding that she had failed to comply with paragraphs 3(1), 5 and 6(b)(i) of the Council's Code of Conduct.
4. The complaint against the Appellant arose from an earlier complaint by the Complainant, Ms Sharon Bawden, in relation to waste collection services at her home. That complaint was heard at a meeting of the Council's Complaints and Appeals Committee on 18 June 2008, at which both the Complainant and the Appellant were present. Subsequently the Complainant submitted a complaint in relation to the Appellant's conduct at that meeting and in the days following that meeting in respect of a series of postings by the Appellant on the forum of the Middlesbrough Evening Gazette. It is the allegations in the subsequent complaint that have led to these proceedings.
5. The Council's Standards Committee Hearings Subcommittee considered the matter on 22 January 2009. They concluded:

- 5.1. that the Appellant had failed to treat the Complainant with respect in relation to the posts on the Evening Gazette forum contrary to paragraph 3 of the Code of Conduct.
 - 5.2. that the Appellant's actions were likely to have diminished public confidence in, and harmed the reputation of, the member: consequently she had brought her office into disrepute contrary to paragraph 5 of the Code of Conduct.
 - 5.3. that the Appellant failed to use the Council's resources in accordance with its reasonable requirements; however they considered that this was merely a technical breach contrary to paragraph 6(b)(i) of the Code of Conduct.
 - 5.4. They also concluded that, in respect of the complaints relating to the Appellant's conduct at the Complaints and Appeals Committee meeting, the Appellant was not acting in an official capacity, and thus was not subject to the Code of Conduct at that meeting. In relation to allegations of bullying, intimidation and breach of confidentiality there was no case to answer. These matters are not the subject of these appeal proceedings.
6. The Appellant has also appealed against the action which the Standards Committee decided to take in the light of their decision that she had failed to follow the provisions of the Code of Conduct. That action was to suspend Councillor McTigue for two months.

Preliminary Issues

7. In her application to appeal the Appellant expressed some criticism of the way the decision of the Standards Committee was notified to her. However, even if valid, those criticisms would not affect the issue of whether the conduct which gave rise to the investigation was a breach of the Code of Conduct nor be relevant to the question of sanction. The matter was therefore not considered by the Appeals Tribunal.
8. The Appellant indicated in her appeal papers, both in her initial appeal documents and a supplementary bundle that she considered the Standards Committee process had been flawed. However, again this was not an issue that affected whether there had been a breach of the Code of Conduct and any real or apparent bias would be overreached by the appeal being heard before the Appeals Tribunal. The Chair explained that the Appeals Tribunal would be reaching its own decision on the merits and would not be considering the detail of the proceedings before the Standards Committee.

Findings of Fact

9. Councillor McTigue has been an elected Middlesbrough Borough Councillor since May 2003. She was re-elected in 2007 and currently sits on the Licensing Committee, the Community Safety and Leisure Scrutiny Panel and the Corporate Parenting Board.
10. Paragraph 3 (1) of the Code provides:

“You must treat others with respect.”
11. Paragraph 5 of the Code provides:

“You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.”

12. Paragraph 6(b)(i) of the Code provides:

“You must, when using or authorising the use by others of the resources of your authority— (i) act in accordance with your authority’s reasonable requirements;”
13. The hearing on 18 June 2008 arose from a complaint that the Complainant had raised about the standard of the wheelie bin collection from her home (the wheelie bin complaint). The complaint had been long-standing and the hearing was part of a process of trying to bring the wheelie bin complaint to resolution.
14. It was alleged by the Complainant that Councillor McTigue’s behaviour at the Complaints and Appeals Committee meeting was inappropriate. Councillor McTigue denies this.
15. On 19 June 2008 the Complainant sent an email to Councillor McTigue at her Middlesbrough Council email address expressing her views on Councillor McTigue’s actions at the Complaints hearing and including the phrase, “*Think on at the next meeting and behave like the Councillor you should be, rather than the “low life” you were yesterday. Don’t bother to reply*”. Councillor McTigue replied on 20 June 2008 acknowledging receipt of that email. She said she would not be entering into further discussions and that she had arranged for any further emails from the complainant to go directly to her junk folder, for deletion before they were opened.
16. On 20 June 2008 the first of a series of forum postings making reference to the Council’s hearing of the wheelie bin complaint was posted on forums.gazettelive.co.uk. This was an on-line forum hosted by The Evening Gazette. There followed a series of postings by different contributors on the issue until 7 July 2008. In all there were nearly 130 postings on the topic within the eighteen day period.
17. Councillor McTigue initiated the topic on the forum using the pseudonym “Indie”. She has been a contributor to the ‘gazettelive’ forum in the past under the same pseudonym.
18. The forum postings by Indie (35 of the 127) can be grouped into 3 types:
 - 18.1. General postings – not directed to any particular individual.
 - 18.2. Those directed to the complainant (after she entered the forum under the pseudonym cynic2008).
 - 18.3. Those directed to other individual forum participants (as replies to their entries). The other users are identified only by their usernames and generally no further details are known about them. Mr Warren in evidence identified himself as “Tosha”.
19. In the forum exchanges between Councillor McTigue (as Indie) and the Complainant (as cynic2008) each was aware of the other’s true identity.
20. The first posting on the topic of the wheelie bin complaint was posted by Councillor McTigue under the pseudonym “Indie” and was headed: “*The Marton woman and her wheelie bin!*”. It then went on to say: “*I attended the hearing and this woman stated that having her wheelie bin place on her drive had almost brought on a nervous breakdown and had almost brought her to her knees*”.
21. There followed a series of postings by various people, with differing views on the subject of the wheelie bin complaint, councillors, rubbish collection etc. There are

several blogs by people who were clearly concerned about the way that the public site had been used by Councillor McTigue in relation to the wheelie bin complaint.

22. Mr Warren in evidence said that he was a regular blogger and had not connected "Indie" with being a councillor. However he accepted that he became aware at one point in the series of postings that she was in fact a councillor.
23. It is clear from the postings that it was well-known that "Indie" was Councillor McTigue's pseudonym. On 25 June 2008, in the 11th posting of the forum series relating to the wheelie bin complaint, Ms Bawden posting as cynic2008 stated: *"Hey "INDIE" you obviously have not made it clear that you are actually Councillor Joan McTigue"*. The Appellant responded on the same day: *"Everyone on this site knows who I am"*.
24. The Appellant referred to the Council, other councillors and specifically her role as councillor in various ways in her postings on the forum.
25. Councillor McTigue's postings continued well after it had been made clear to her by the Complainant and other bloggers that her postings were inappropriate.

Findings as to whether the Appellant failed to follow the Code

26. The first matter to be determined is whether the Appellant was acting in her official capacity when she was engaged in the series of posts on the Evening Gazette forum. If she was not, then she would not have been in breach of the Code of Conduct in respect of these matters.
27. If it is concluded that she was acting in her official capacity, it then has to be determined whether by her actions she
 - 27.1. failed to treat Ms Bawden with respect and/or
 - 27.2. could reasonably be regarded as bringing her office into disrepute and/or
 - 27.3. when using the Council computer failed to act in accordance with the Council's reasonable requirements.

Official capacity

28. The Appellant argued that she was not acting in her official capacity as all her comments on the forum were made in her private time and all using the pseudonym of "Indie".
29. The Appeals Tribunal accepted that even if it became clear from the forum that an individual who was posting on the forum was a councillor, the Code of Conduct would not automatically be engaged. The question was whether in the postings on the forum the councillor was deemed to be, or gave the impression that he or she was, "acting in the role of councillor". This was fact-sensitive and would very much depend on the content of the postings.
30. It was noted that Councillor McTigue had used a pseudonym, and that she states in at least one of the postings that she is on the forum as a resident who just happens to be a councillor. However, taking the contents of the postings on the Evening Gazette forum as a whole the Appeals Tribunal concluded that the Appellant did give the impression that she was acting in the role of councillor and thus representing the council. Postings by "Indie" (Councillor McTigue) that resulted in this conclusion include:

- 30.1. 25/6/08: *"I was sitting next to Cllr McPartland (who gave me a sweet!) and other Labour cllrs & I assure you, if my behaviour was even in the least not acceptable I would have been reported to the S Board before my feet touched the ground".*
- 30.2. 25.6.08: *"cynic – you claimed that the council agreed with your complaint – who agreed – name them please so that I can verify it ..."*
- 30.3. 26/6/08: *"BillygangI have suggested that since the council is targeted by the Government on recycling, that we pay people as an incentive – I don't make the decisions though – those above me do & they are appointed by the Labour Group. If you are not happy about your litter situation etc – complain to the right people why don't you – you cannot blame me. Which cllrs do you know who are childish – let's have some real evidence and examples here please – I for one agree but I would be interested in your experience of this. ..."*
- 30.4. 26/6/08: *"I am a councillor as most people know I have no political banner ..."*
- 30.5. 26/6/08: *"As you can appreciate I am limited as to how I can describe what happened – if you see what I mean.*
- 30.6. 27/6/08: *"... do you know who your ward councillors are by any chance? Get to know them and then you can judge them."*
- 30.7. 27/6/08: *"Mon – the residents in my ward are not just a number – I assure you of that. When one of them comes to me with a problem, the first thing I ask them is, how long it's been going on. If they reply – months or ages, I chide them for not contacting me sooner. ..."*
- 30.8. 28/6/08: *"Every single person who uses this site could take their questions/complaints/questions and ask them in person at a full council meeting which is held every 6 weeks where they will be answered – providing the question is accepted by the Head of Legal Services. If they prefer to use this site instead – there is a chance I can answer them or perhaps the other cllrs on here who are anon.What's the difference between this and a public meeting where anything is discussed and aired, apart from the fact that you would see cllrs".*
- 30.9. 28/6/08: *"..before I put anything up here for discussion I have the sense to check first with the legal dept in the Town Hall".*
- 30.10. 29/6/08: *"...my phone is in perfect working order so anyone here can contact me day or night and I have no objections whatsoever to people calling at my home which they do on a daily basis – it helps to live on the ward in some respects.We do our cllr work when it needs doing – there are no set hours – I thought everyone knew that."*
- 30.11. 29/6/08: *"..during this hearing/tribunal/appeal whatever you wish to call it I asked the cllr sitting next to me Cllr McPartland what he thought the costs would be and he rolled his eyes heavenwards. Would you like me to find out the approx cost for you & how many man hours have been spent on this?"*
- 30.12. 29/6/08: *" ...as a councillor I cannot deal with them in the same manner. ..."*

31. This conclusion is further supported by the impression that was clearly received by other posts on the blog.

Failure to treat with respect

32. Failure to treat others with respect will occur when unfair, unreasonable or demeaning behaviour is directed by one person against another. The circumstances in which the behaviour occurred is relevant to assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurred, who observed the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompted the alleged disrespect.
33. The Appeals Tribunal accepted that the Appellant had felt wrongly accused by the complainant of bad behaviour at the Council's Appeals Committee and that she had received a strongly-worded email from the complainant which she had taken exception to. However this did not provide a justification for what she did, which was, instead of dealing with the matter privately, to choose to take the issue to a very public blog-site, run by the local newspaper. It was inappropriate for someone with a valid and accepted complaint, which had been taken seriously by the Council, to be subjected to public ridicule and demeaning statements on a public website by a member of that council. The tone of the Appellant's postings was derogatory and disparaging to Ms Bawden, including references to her as *"the wheelie bin woman"*. In addition, the Appellant's postings triggered off abusive responses directed at Ms Bawden from other people, such as: *"Do you think there might be a 'Compo case' in the offing???"*, to which the Appellant replied that he must be a mind-reader. In fact the Claimant was claiming out-of-pocket expenses.
34. The Appeals Tribunal concluded that the Appellant had not treated the complainant with respect in breach of paragraph 3(1) of the Code of Conduct.

Disrepute

35. The Oxford English dictionary defines disrepute as "lack of good reputation or respectability". A member will have failed to comply with the Code if his or her conduct could "reasonably be regarded" by an objective observer as bringing the member's office or authority into disrepute. Anything which diminishes the member's office or their authority, or which harms or could harm the reputation of an authority, will bring that office or authority into disrepute.
36. The Appeals Tribunal considered that the way that the Respondent had behaved was not that expected of a councillor and would diminish the office of councillor. It considered therefore that the Appellant had brought the office of councillor into disrepute in breach of paragraph 5 of the Code of Conduct.

Misuse of Council Property

37. The Appeals Tribunal felt that by implication using a Council computer for such purposes would constitute a breach of paragraph 6(b)(1) of the Code of Conduct. However, this was a technical breach and in itself not significant.

Human Rights

38. In considering whether Councillor McTigue breached the Code of Conduct the Appeals Tribunal has had regard to Article 10 of the European Convention on Human Rights which provides:

“(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of ..the protection of the reputation or rights of others,..”.

39. In the recent case of *Mullaney v The Adjudication Panel for England [2009] EWHC 72* (Admin) Charles J considered how the code fitted with Article 10. He stated at paragraph 101: *“I agree with Collins J in Livingstone at paragraph 34 and Wilkie J in Sanders (accepting the stance there of the Councillor) that in principle the Code satisfies Article 10(2). Also as so indicated I agree that it is important that the restraints should not extend beyond what is necessary to maintain proper standards in public life and that political expression attracts a higher level of protection.”*
40. This is a case where proper standards in public life have not been maintained. It is not a case where there is a need to protect political expression. The disrespect shown was not to a councillor or other politician but to a member of the public in a public arena. The Appellant continued with the postings even after there were clear objections to the series of postings from other bloggers on the grounds that they were inappropriate. Most importantly there was nothing to stop the Appellant from raising the issue of wheelie bins on the forum in a proper manner to elicit views without, as she did, vilifying the complainant personally.
41. The Appeals Tribunal considered therefore that Article 10 did not assist the Appellant in this case.

Sanction

42. The Standards Committee in considering a sanction took into account the mitigating circumstances of the Complainant’s behaviour towards the Appellant and the Appellant’s previous history of breaches of the Code of Conduct. It then resolved to suspend the Appellant for a period of two months, with immediate effect.
43. The Appeals Tribunal made it clear to the Appellant what the possible sanctions were and received submissions and evidence from both parties. Mr Long submitted documents relating to previous breaches of the Code of Conduct by Councillor McTigue, namely:
 - 43.1. A finding of the Adjudication Panel for England (APE 329) in 2006 that the Appellant had breached the Code by not declaring a personal interest at two meetings. No penalty was imposed, although the Tribunal stated that *“the Respondent should be left in no doubt that the Tribunal deprecated her behaviour”*.
 - 43.2. A finding by Middlesbrough Council Standards Committee on 22 May 2006 that she had not treated Council officers with respect. Councillor McTigue was required to write a letter of apology.
 - 43.3. A finding of Middlesbrough Council Standards Committee on 18 September 2007 that she had not treated a person with respect. The sanction was one month’s suspension.

Councillor McTigue had not appealed against any of these findings, although she indicated that this was because she had no faith in the appeal system.

44. Mr Long submitted that in his view the two month suspension imposed by the Standards Committee was in fact too lenient in the circumstances. Councillor McTigue made submissions as to why the previous breaches were not as serious as might have been considered; including providing a letter from a witness in one of the cases to the effect that he had been coerced to give evidence.
45. The Appeals Tribunal took all these matters into account. From the evidence before it the Appeals Tribunal was satisfied that Councillor McTigue is a committed and zealous councillor. However it was felt that this was a case where there was a fairly serious breach of the Code of Conduct, based as it was on an unwarranted personal attack against a member of the public in a series of postings on a public website. In that respect they felt that the circumstances were clearly different from the *Livingstone* case which had been referred to by the Appellant.
46. It was clear that Councillor McTigue had a significant history of involvement in proceedings for breaching the Code of Conduct. The Appeals Tribunal considered that it might be expected that she would have learnt from this and adjusted her behaviour accordingly. However this had not happened and the Appeals Tribunal considered that the two month suspension imposed by the Standards Committee was appropriate.
47. The Appeals Tribunal was not convinced that the Appellant fully appreciates the requirements of the Code of Conduct. It appears that, although training on the Code has been offered by the Council, the Appellant has not participated in it for some time. The Appeals Tribunal therefore decided to impose an additional sanction of the requirement for training on the Code of Conduct within three months of the date of the hearing, with a recommendation that this be one-to-one training if possible, to ensure that the Appellant fully understands the Code and so that any misconceptions she currently has are addressed.
48. The Appeals Tribunal has upheld the finding of the Standards Committee.
49. The decision of the Appeals Tribunal was unanimous.
50. The Standards Committee is required to impose the penalties specified at paragraph 44 and 45 above.
51. A copy of this determination is being given to the Appellant, the Standards Board, the Standards Committee, and any person who made the allegation that gave rise to the investigation.
52. This determination will be published in a newspaper circulating in the area of the relevant local authority and also published on the Adjudication Panel's website at www.adjudicationpanel.tribunals.gov.uk

Beverley Primhak
Chairwoman of the Appeals Tribunal
10 May 2009