

Walsall Metropolitan Borough Council

Case no. SBE04450
Member: Councillor Jonathan Phillips
Authority: Walsall Metropolitan Borough Council
Date received: 06 Feb 2009
Date completed: 27 Jul 2009

Allegation:

The member brought his office or authority into disrepute and misused his authority's resources.

Standards Board outcome:

The ethical standards officer found that the member did not fail to comply with the Code of Conduct.

Walsall Metropolitan Borough Council referred an allegation to Standards for England regarding the conduct of one of their then members, Councillor Jonathan Phillips.

It was alleged that Councillor Phillips attended a members' training session on 24 September 2008 and that after the session, a council officer found a USB memory stick on the floor. In order to establish whose it was, the officer looked at the material on it. The memory stick contained a letter written by Councillor Phillips, and also a picture of a young girl in an indecent pose. On 2 October 2008, Councillor Phillips resigned from the council.

Jonathan Phillips was charged by the police on 11 May 2009 with two counts of making an indecent photograph or pseudo-photograph of a child. The charges related to images on the memory stick, which was not council-owned equipment and was his personal property. Jonathan Phillips pleaded guilty on 18 May 2009 at Walsall and Aldridge Magistrates' Court and was fined £250 for each count plus costs and placed on the Sex Offender's Register for two years.

During the course of their investigation, the police seized items from his home and his council computers. No charges were brought in relation to these items.

The ethical standards officer considered that the potentially applicable paragraphs of the Code of Conduct were paragraphs 5 and 6(b)(i). Paragraph 6(b)(i) states that a member must only use the authority's resources for carrying out local authority business or other authorised activities. Paragraph 5 states that a member must not bring his office or authority into disrepute while acting in his official capacity. The ethical standards officer noted that recent amendments to section 52(1)(a) of the Local Government Act 2000 bring within its scope some conduct in a member's private capacity. However, this section is currently only in force in Wales, and does not yet apply to England. Therefore, the Code of Conduct in England does not cover members at any time in their private capacity.

The ethical standards officer also took into account the High Court ruling in *Ken Livingstone v the Adjudication Panel for England (2006)*, which determined that the Code of Conduct only applies to a member when he is "performing his functions" and this covers members acting, or appearing to act, in their official capacity. Mr Justice Collins also stated in this ruling: *"It seems to me that unlawful conduct is not necessarily covered. Thus a councillor who shoplifts or is guilty of drunken driving will not if my construction is followed be caught by the Code if the offending had nothing to do with his position as a councillor."*

The High Court decision in *Ken Livingstone v the Adjudication Panel for England* therefore limits the scope of both relevant paragraphs of the Code, and means that the ethical standards officer in Councillor Phillips' case had to be satisfied that the member was performing the functions of his authority or misusing his position as a member in order to determine whether he had failed to comply with the Code of Conduct.

The ethical standards officer considered that the evidence was clear that Councillor Phillips' conduct, which led to his criminal conviction, was carried out in his private capacity. There was no evidence that he was acting in his official capacity, performing his authority's functions or misusing his position as a councillor when he committed the offences for which he was convicted. Neither was there any link between Councillor Phillips' conduct and the council's resources. The images Councillor Phillips was convicted of making

and possessing were found on a memory stick which was his own property and not supplied or owned by the council.

Consequently, taking into account all the circumstances of the case, the ethical standards officer found no evidence that Councillor Phillips had failed to comply with the Code of Conduct.

Barrow Borough Council

Case no. SBE02573, SBE02576, SBE02578, SBE02594, SBE02595, SBE02598, SBE02599

Member: Councillor Ray Guselli

Authority: Barrow Borough Council

Date received: 06 Oct 2008

Date completed: 10 Jul 2009

Allegation:

The member failed to treat others with respect, disclosed confidential information and brought his office or authority into disrepute.

Standards Board outcome:

The ethical standards found that no further action needs to be taken.

Seven complainants alleged that in 2008 Councillor Ray Guselli had, through two letters published in a local newspaper, failed to treat the former head teacher of a local school with respect.

The letters were published as part of a debate on the newspaper's letters page involving borough and county councillors, members of the public and members of Our Schools Are Not For Sale (OSANFS), a group campaigning against school closures in Barrow and their proposed replacement with an academy. One of the participants in the debate had, until his retirement in 2003, been head teacher of a school which would be closed under Barrow Borough Council's academy proposal, and was an active member of OSANFS.

In the first of the two letters in question, Councillor Guselli stated that a particular school had failed its Ofsted inspection and was subject to special measures. He linked this with the former head teacher's performance and attacked his contribution to the academy debate, referring to this effectiveness in his head teacher's post 5 – 10 years previously. Councillor Guselli also said in his letter that he suspected the former head teacher had been "emphatically rejected" through early retirement when his school had failed.

The ethical standards officer found that Councillor Guselli's linking of the school's Ofsted failure with the former head teacher's performance was factually inaccurate. The ethical standards officer also noted that it was pointed out at the time to Councillor Guselli that the head teacher retired in 2003, after the school had passed its Ofsted inspections in 1995 and 1998, and that the school passed again in April 2004. The school did not fail its inspection until 2007.

However, in his second letter, Councillor Guselli maintained that he did not say the school had failed because of the head teacher, or while under his governance, but referred to criticisms of the school by the Local Education Authority. He quoted from a range of documents, including correspondence between the head teacher and the Local Education Authority and Ofsted, and added, "Perhaps these reminders (I have so many more) may help you understand why my assessment of success differs from yours)."

Councillor Guselli told the ethical standards officer that he had received documents anonymously through his letter box which he had used to inform his two letters to the newspaper. The ethical standards officer found no evidence that Councillor Guselli had obtained the documents improperly and considered that the information from them to which he had referred was not confidential within the meaning of the Code of Conduct.

The ethical standards officer considered whether Councillor Guselli's claim that the school had failed under the head teacher, which he had not retracted or apologised for in the second letter, was a failure to treat the head teacher with respect. He considered in particular whether Councillor Guselli's statement was defensible given his right to freedom of speech under the Human Rights Act. The ethical standards officer noted that Councillor Guselli

was engaged in a political debate of public interest with the head teacher, who was part of an organised pressure group which had successfully had members elected to Barrow Borough Council.

However, the ethical standards officer also noted that the issue in contention in 2008 was the proposed academy, and not the former head teacher's performance 5-10 years earlier. The ethical standards officer did not consider it necessary to comment on the head teacher's performance in the way Councillor Guselli had done, and concluded that by deliberately misrepresenting the head teacher's performance in the local press, Councillor Guselli had failed to treat him with respect and had breached the Code of Conduct.

The ethical standards officer also considered whether Councillor Guselli had brought his office or authority into disrepute. He noted that Councillor Guselli's two letters contained political comment and his interpretation of educational statistics. He also noted the head teacher's participation in the highly-charged and heated political debate and that Councillor Guselli's comments were made in a forum in which the head teacher and others were equally able to put forward alternative views. The ethical standards officer considered, on balance, that Councillor Guselli's comments did not bring his office or authority into disrepute.

The ethical standards officer found that in the circumstances of this case, no further action was necessary.

North Tyneside Council

Case no.	SBE04480
Member:	Councillor Glynis Barrie
Authority:	North Tyneside Council
Date received:	16 Feb 2009
Date completed:	22 Jun 2009
Allegation:	

The member brought their office or authority into disrepute.

Standards Board outcome:

The ethical standards officer found that no further action was necessary.

The complainants alleged that Councillor Glynis Barrie, a member of North Tyneside Council, invited a member of the public to a meeting on council premises when she knew that person had been barred from attending council meetings on the grounds of staff health and safety. The complainants alleged that Councillor Barrie exposed council staff to the risk of abuse, undermined the authority of officers responsible for protecting staff, and brought her office into disrepute.

Councillor Barrie is the convenor of an overview and scrutiny members' study group. The group wanted to interview a member of the public.

Councillor Barrie accepted that she asked that member of the public to attend a group meeting on council premises in November 2008. She also accepted that the council's monitoring officer had confirmed to her that this person had been banned from attending council meetings from 10 October 2008.

Councillor Barrie also knew that council officers considered the member of the public posed a health and safety risk to staff. However, her study group had doubts about the legal effectiveness of the ban and were sceptical about whether a risk really existed.

As a compromise, Councillor Barrie attempted to find an alternative venue for the meeting. At short notice, the member of the public refused to attend unless the meeting was on council premises. Councillor Barrie stated that, under considerable competing pressure from officers, fellow members and the member of the public, she decided to go ahead and invite the member of the public onto council premises. She acknowledged in hindsight that she might have made the wrong decision, but stated that she did not intend to put staff at risk or undermine officers' authority.

The ethical standards officer concluded that Councillor Barrie was acting in her official capacity when she invited the member of the public on to council premises, in breach of the ban on his attendance at council meetings. The council had exercised its general power as an occupier to revoke his licence to enter council premises for meetings, and this power was exercised further to the council's duty to protect its staff from abuse or threats. Councillor Barrie

knew why this ban was in place, and no steps had been taken to challenge it. After the meeting the member of the public wrote to the council claiming that Councillor Barrie's invitation had proved the ban worthless and that he intended to defy it again in future.

The ethical standards officer considered that councillors have a strong ethical requirement to uphold council decisions relating to significant employer responsibilities. The council has a duty to protect staff, and the decisions it takes to do so are part of its good reputation as an employer. Councillor Barrie's decision to invite the member of the public on to council premises in these circumstances would be viewed by an objective observer as undermining this reputation.

The ethical standards officer considered that Councillor Barrie's conduct would diminish public confidence in her ability to carry out her role as a councillor in supporting the council's employment responsibilities. Councillor Barrie's conduct had therefore brought her office into disrepute.

The ethical standards officer noted that there was no evidence that the member of the public had abused, threatened or harmed any member of staff when he attended the November 2008 meeting. The ethical standards officer took into account that Councillor Barrie was motivated by her desire to carry out the scrutiny work of the study group, which had been delayed. She had attempted to find a compromise, although she had been unable to do so, and had not been seeking a confrontation with officers. The ethical standards officer also noted that Councillor Barrie has been genuinely distressed by events, and has acknowledged that she may have made the wrong decision. Consequently the ethical standards officer concluded that Councillor Barrie failed to comply with the Code of Conduct, but that no further action is necessary

Scarcliffe Parish Council

Case no.	SBE03625
Member:	Councillor Malcolm Crane
Authority:	Scarcliffe Parish Council

Date received: 18 Dec 2008

Date completed: 26 May 2009

Allegation:

The member failed to treat others with respect, failed to disclose a personal interest, and failed to withdraw from a meeting in which they had a prejudicial interest.

Standards Board outcome:

The ethical standards officer found that no further action was necessary.

The complainant, a parish clerk, alleged that Councillor Malcolm Crane bullied and harassed her from July 2006 until November 2008. The complainant also alleged that Councillor Crane failed to declare consistently a personal and prejudicial interest in Hillstown Community Centre at council meetings, and also failed to declare consistently a personal and prejudicial interest in Hillstown Jubilee Club.

The ethical standards officer concluded that there was evidence of deterioration in the working relationship between Councillor Crane and the parish clerk from July 2006, following a change in the parish council's responsibilities for the Hillstown Community Centre. While there was some anecdotal evidence from other parish councillors that Councillor Crane could occasionally be aggressive and demanding, there was a lack of corroborated evidence relating to Councillor Crane's treatment of the clerk that could lead to a finding that she had been bullied.

Only where a member's conduct is unfair, unreasonable or demeaning can the paragraph of the Code that deals with bullying be relevant, and there was not sufficient evidence to suggest that this was the case. The Code of Conduct is not intended to constrain members' involvement in local governance, including the role they play in challenging and questioning a council's performance. Members are able to question performance provided they do so in an appropriate manner, and disagreements may involve criticism of the way an officer has handled a particular matter.

The ethical standards officer considered that Councillor Crane may have expressed himself in a forthright way, particularly in relation to the Hillstown Community Centre, to which he was very committed. The parish council's

management of the centre proved somewhat problematic and led to the deterioration of a number of working relationships. The ethical standards officer considered that, when matters relating to the community centre's facilities and the transfer of the centre's lease to the council arose at a meeting on 2 September 2008, Councillor Crane directed his anger and frustration at other members as well as the parish clerk.

Expressing oneself in a forthright manner does not necessarily amount to disrespect. A clerk may expect members to express their opinions forcefully and to disagree with the clerk and each other regarding the council's business. Only if such criticism or disagreement are offensive or amount to a personal attack is that conduct likely to be disrespectful. The ethical standards officer concluded that, on the available evidence, Councillor Crane was not being deliberately rude or offensive to the clerk, and that his manner in the meeting arose from his genuine concern for the community centre and frustration at how the council had handled the matter.

Councillor Crane listed his chairmanship of Hillstown Community Centre and Hillstown Jubilee Club in his registers of interests, but failed to include both roles in both registers. He has since corrected these omissions.

The ethical standards officer concluded that there is evidence that Councillor Crane did not consistently declare his personal and prejudicial interest in both organisations at council meetings. The ethical standards officer considered this to be at the lower end of the scale of seriousness, as he did sometimes declare his interests and his failure to do so in some meetings seemed to arise from confusion about what was required; a confusion reflected in his incomplete register of interests.

The ethical standards officer also took into account that the council had no procedural rules to set out what rights members of the public had to attend meetings and speak, which would then have informed the degree to which a member with a prejudicial interest would have been allowed to participate.

The ethical standards officer found that, beyond further training for Councillor Crane, no further action was necessary.