

CASE REF: **APE 0417**

HEARING DATE: **13, 14 & 15 July 2009**

RE: **Reference in relation to a possible failure to follow the Code of Conduct**

RESPONDENT: **Mr Paul Buchanan**

RELEVANT AUTHORITY CONCERNED: **Somerset County Council**

ESO: (Ethical Standards Officer) **Jennifer Rogers**

ESO Representative **Samantha Broadfoot**

Case Tribunal Members:

Chairman: **Mr David Laverick**
Member: **Ms Alison Lowton**
Member: **Mr Peter Norris**

1 Preliminary

- 1.1 The Adjudication Panel for England received a reference from an Ethical Standards Officer ('ESO') in relation to an allegation that the Respondent had failed to comply with Somerset County Council's Code of Conduct in December 2007 and January 2008 when he made written allegations of serious misconduct by Mr Jones (Chief Executive), to the Society of Local Authority Chief Executives and Senior Managers ('SOLACE'), the Association of Local Authority Chief Executives ('ALACE') and to the County Council, and in doing so:
- 1.1.1 intimidated or attempted to intimidate Mr Jones, a complainant in a Code of Conduct investigation, contrary to paragraph 3(2)(c) of the Code.
- 1.1.2 used his position as member improperly to confer a disadvantage on Mr Jones, contrary to paragraph 6(a) of the Code.
- 1.1.3 brought the office of member into disrepute, contrary to paragraph 5 of the Code.
- 1.2 Prior to the listing of the matter for hearing on 6 May the Respondent had not indicated, despite requests from the Adjudication Panel whether he contested the facts or reasoning in the ESO's report, whether he intended to appear at that hearing, or whether he wished

to call witnesses. The Listing Direction for that hearing indicated that the matter was being listed on the basis that the facts were not in dispute but that there was a dispute as to whether there had been a failure to follow the provisions of the Code of Conduct. The view that there was still a dispute about the ESO's reasoning came from the President's reading of the papers submitted with the reference

- 1.3 In the event the Respondent did appear at the hearing, indicated that he was disputing "all the facts" and presented an extensive list of witnesses he felt should be heard. The Case Tribunal received submissions from Counsel from the ESO that she was concerned, in view of the way the Respondent had at various stages in the investigation made statements alluding to new alleged facts that could previously have been presented, to ensure that when the adjourned hearing took place she was not going to be faced with any similar process without being given an opportunity to seek evidence in rebuttal.
- 1.4 The Adjudication Panel's usual procedures are to require parties to submit an outline of evidence to be given by witnesses partly to meet the kind of concern expressed by Counsel and also to determine whether the proposed evidence was in fact relevant to the issues before the Case Tribunal.
- 1.5 The Adjudication Panel's pre-trial procedures are also designed to establish exactly what factual matters were in dispute. This assists in identifying what witnesses can give evidence relevant to determining that dispute. Where evidence is not contested the Adjudication Panel's usual practice is for Case Tribunals to receive such evidence in written form.
- 1.6 At its hearing on 6 May the Case Tribunal identified that there was a dispute about whether the Respondent had mentioned his concerns about the Chief Executive to various Senior Officers and Senior Councillors and thus had a reasonable expectation that those matters were being considered by the council. The Case Tribunal felt this would be relevant in the context of there having been a delay (in some cases considerable) between the time of the Chief Executive's alleged misconduct and the Respondent writing the letters in December 2007 and January 2008 which led on to the ESO's investigation and reference. The ESO was asked to consider arranging for the officers and councillors identified by the Respondent (and who were understood to have contradicted his assertions) to attend as witnesses and be cross examined as to that matter. There was also a dispute as to whether another officer had himself been critical of the Chief Executive and the ESO was also asked to invite that officer to give evidence.
- 1.7 The Respondent had presented a long list of suggested witnesses but with no indication of what evidence they would give. At its hearing on 6 May the Case Tribunal established that many of these witnesses were intended to give evidence about allegedly unacceptable behaviour of the Chief Executive which did not relate to the incidents that the Respondent had identified in his letters. When asked to

amplify his letter to the council of 17 December the Respondent had stated, in a letter of 2 January

“I have been told on many occasions where both staff and by members have felt themselves to have been bullied and intimidated by Alan’s behaviour.”

The Case Tribunal indicated that that it was willing to hear oral evidence (unless it was uncontested) from those members and officers on the Respondent’s list of suggested witnesses who had made the statements to which he referred in that letter. Questioning of him on 6 May established that the members concerned were Councillor Bakewell and Mochnacz. The written evidence from Councillor Mochnacz was uncontested and has been considered by the Case Tribunal. The written material already before the Case Tribunal suggested that Councillor Bakewell had contradicted the Respondent’s statement and she therefore gave oral evidence.

- 1.8 The Respondent indicated that he wished to call two members of staff who had expressed concern to the Respondent before he wrote his letters of 5, 6 and 15 December 2007. Directions given on 6 May made clear that the Respondent could call those two, previously unidentified, members of staff as witnesses subject to the Case Tribunal and the ESO being provided with statements of their evidence by 1 June. At the hearing on 6 May the Respondent had indicated an intention himself to give evidence at the resumed hearing and he was also directed, as part of a timetable of action, the dates of which were agreed, to provide a statement of the evidence he was proposing to give together with any further documents that he wished to be taken into account.
- 1.9 The Case Tribunal indicated that it was not willing to receive evidence about the conduct of the Chief Executive which post-dated the letters.
- 1.10 The Respondent complied with the first stage of the actions to be taken before the resumed hearing but did not thereafter take any of the steps identified in the directions of 6 May. Further directions were issued on 16 June indicating that as no statements of evidence had been supplied, oral evidence would not be received from the two identified members of staff or from the Respondent himself.
- 1.11 Both on 6 May and throughout the resumed hearing the Case Tribunal sought to make clear that the hearing was not a forum in which the Chief Executive was on trial. With that in mind the Case Tribunal excluded potential evidence from officers who the Respondent said could give evidence as to bullying by the Chief Executive but who were not witnesses to the specific incidents he had specified and who had not expressed concerns to the Respondent before he wrote the letters which led to the complaint and the subsequent referral.
- 1.12 At the resumed hearing on 13, 14 and 15 July the Case Tribunal heard oral evidence from two members and four officers or former officers of the council. The Case Tribunal also took account of a bundle of written material amounting to more than 500 pages. The Case Tribunal heard submissions on behalf for the ESO and from the

Respondent as to what findings of fact should be made as a result of the consideration of the oral and written evidence. The Case Tribunal then adjourned on 14 July to make those findings of fact. At the resumed hearing on 15 July the Case Tribunal heard submissions from the Respondent and from Counsel for the ESO as to whether there had been failures to follow the provisions of the council's Code of Conduct and, once that had been established as to what sanction if any should be applied.

2 Material facts and reasoning in support of their adoption

The Respondent's official details

- 2.1 The Respondent was elected to office in May 2005 for a term of four years. Between May 2005 and May 2007. The Respondent was an executive member and portfolio holder for economic development. Between May 2006 and May 2007, the Respondent was deputy leader of the council. The Respondent did not stand for re-election in May 2009.
- 2.2 The Respondent gave a written undertaking to observe the Code of Conduct on 8 May 2005.
- 2.3 The Respondent attended a training session on the Code of Conduct on 23 May 2005.

The relevant legislation and protocols

- 2.4 The council adopted a Code of Conduct on 23 July 2007 in which the following paragraphs are included. The Respondent says that he received no training or instruction about the amended Code in 2007.
- 2.5 Paragraph 2 states:

“(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

- 2.6 Paragraph 3 states:

“(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.”

2.7 Paragraph 5 states:

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

2.8 Paragraph 6 states:

“You—

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage”

Background

2.9 The Respondent was acting or purporting to act as a representative of the County Council when writing to ALACE, SOLACE, and the council to make formal complaint of several alleged serious breaches of ethics and serious misconduct by Mr Jones.

2.10 In April 2007 Mr Jones had made a number of complaints about the Respondent to the Standards Board for England. In May 2007 the Respondent lost an election for the council's leadership. Two internal investigations into complaints about the Respondent by the Monitoring Officer, Mr Corry, began in the summer of 2007 and ended in October 2007

2.11 In September 2007 the Respondent made a formal complaint to the council about Mr Jones' conduct in advising Councillor Shortland that the Respondent should be removed from the Liberal Democrat group. The council decided not to investigate that complaint.

2.12 In October 2007, Mr Jones referred one report from the council's Monitoring Officer concerning the Respondent to the ESO for possible investigation as a new complaint. Subsequently the council's Liberal Democrat group asked the Respondent if he would suspend himself from the group pending the outcome of all ongoing investigations. He declined.

- 2.13 On 5 December 2007 the Respondent was notified that his membership of the Liberal Democrat group had been formally revoked.
- 2.14 The Respondent wrote letters in identical terms to, on 5 December 2007, the Honorary Secretary of the Association of Local Authority Chief Executives and, on 10 December 2007, the Director General of the Society of Local Authority Chief Executives. The letters were stated to be formal complaints about the Chief Executive of Somerset County Council.
- 2.15 The letters stated:

There are a number of issues, which if taken individually constitute a serious breach of ethics, however taken as a whole demonstrate a pattern of behaviour that is unacceptable in the role of a Chief Executive and member of Alace/Solace:

- 1. Drunk and Disorderly conduct at work*
- 2. Inappropriate Behaviour towards female staff*
- 3 Threatening and bullying behaviour*
- 4. Disclosure of confidential information*
- 5. Interference in the political process.*

- 2.16 The Respondent also wrote, on 15 December 2007, a formal complaint to the council's Monitoring Officer which included

There are a number of issues, which if taken individually constitute a serious breach of ethics, however taken as a whole demonstrate a pattern of behaviour that is unacceptable in the role of Somerset County Council:

- 1. Drunk and Disorderly conduct at work*
- 2. Inappropriate Behaviour towards female staff*
- 3 Threatening and bullying behaviour*
- 4. Disclosure of confidential information*
- 5. Interference in the political process*

- 2.17 He was asked by the Monitoring Officer to give specific details rather than headings of the matters about which he wished to complain. He did so in a letter dated 2 January 2008.

The Respondent's choice of audience for his allegations

- 2.18 At all relevant times the Respondent was in a position to make his complaints to the council about Mr Jones' alleged misconduct as Chief Officer and employee.

Allegations of drunk and disorderly conduct at work

- 2.19 The allegations identified in the letter of 2 January 2008 related to a party hosted by the Chief Executive at the council's offices at Christmas 2005 and at a Local Government conference in 2006. The Respondent did not voice concerns about the first event to Senior Officers, or the then leader at or shortly after Christmas 2005. The Case Tribunal has seen or heard no evidence to support Mr Buchanan's contrary assertion. He has suggested that the fact the

then Leader of the council had a discussion about the party with the Chief Executive was evidence that the Respondent had raised the issue of drunken conduct with the Leader. That is absurd reasoning: that the party had taken place was common knowledge

- 2.20 The Respondent had not voiced concern about Mr Jones being drunk and disorderly at the summer conference in 2006 to Councillor Bakewell or others, before he detailed that allegation in January 2008. The Respondent's alleged eyewitnesses did not corroborate his allegations when contacted after the allegations had been made.
- 2.21 The Case Tribunal found it difficult to accept the Respondent's assertion that at Christmas 2005 or at the summer conference in 2006 he reasonably believed that Mr Jones had behaved in a drunk and disorderly manner. Before the Tribunal, the Respondent persistently argued that because Senior Officers and the then Leader considered the party inappropriate this should be seen as substantiation of his claim that the Chief Executive was drunk and disorderly. That is a *non-sequitur*. The Respondent may have formed such a belief but there was no evidence to suggest that it was reasonable for him to have done so. Such evidence as has more recently been obtained about the summer conference from witnesses suggested by the Respondent did not substantiate the Respondent's assertion. He could have established that himself.

Allegation of inappropriate behaviour towards female staff

- 2.22 At Christmas 2005, the Respondent did not raise a concern with Senior Officers or the then leader that he had seen Mr Jones molesting a female member of staff and causing her distress. Contrary to his assertions, the Respondent did not, either on the day or at any time afterwards (before making the complaints which have resulted in the reference to the Tribunal) ask the Leader or a Senior Officer to intervene, or to investigate Mr Jones' alleged conduct towards a female member of staff. There is no corroboration of the Respondent's assertion that he raised his concern with two Senior Officers. On the contrary, the evidence seen in the papers and heard orally by the Case Tribunal contradicted such an assertion.
- 2.23 If, as claimed by the Respondent, he reasonably formed the view that Mr Jones' behaviour towards female staff was so inappropriate as to amount to misconduct, it is surprising that he failed to follow up his concerns beyond, at best, a somewhat informal conversation with one member of staff. The Case Tribunal shares the ESO's view that he did not at the time, regard the alleged incidents as seriously as he now asserts.

Allegations of threatening and bullying behaviour

- 2.24 The Respondent had mentioned to Mr Crouch, around the time that the Chief Executive had made a complaint to the Standards Board, that he had felt bullied by Mr Jones. Mr Crouch offered advice and information on how the Respondent could make a complaint. The Respondent did not pursue the matter further.

- 2.25 The Respondent believes that Mr Jones has bullied him by bringing Code of Conduct allegations against him.
- 2.26 Councillor Bakewell was adamant that she did not complain of bullying behaviour by Mr Jones. She asked the Respondent to attend her meetings with Mr Jones "to keep him in the loop" and not out of any fear of Mr Jones' possible misconduct toward her.
- 2.27 Based on the evidence before the Case Tribunal as to what the Respondent saw, or heard from Councillor Bakewell regarding her relationship with Mr Jones while she was Leader, the Respondent could not reasonably have formed the view that Mr Jones was bullying Councillor Bakewell.
- 2.28 Councillor Mochnacz felt bullied in May 2007 by Mr Jones' email to him, asking him to retract certain statements attributed to him. He did not make any formal complaint. The Case Tribunal has seen or heard no evidence of concerns being generally expressed by members of the council about Mr Jones personally bullying any individual.
- 2.29 In the course of the ESO's investigation the Respondent had given a series of changing and contradictory explanations as to how he had pursued concerns from officers that they had been bullied by the Chief Executive. The Respondent had not indicated any intention to challenge the accuracy of the ESO's report that he had not raised with Senior Officers the alleged concerns of anonymous members of staff about Mr Jones bullying them. Nevertheless the Case Tribunal formed the view from the oral evidence that at one stage in the course of conversations with Mr Crouch, the Respondent had stated that some "third parties" had concerns about being bullied by the Chief Executive. Mr Crouch gave advice about how the matter could be pursued if the third parties wished to do so. Mr Buchanan indicated to Mr Crouch that he did not wish the matters formally to be pursued.
- 2.30 At the hearing on 6 May, the Case Tribunal indicated that it was willing to receive evidence of alleged bullying from officers who had, according to the Respondent, expressed their concerns to him before he wrote the letters to which reference was made at paragraphs 2.13 and 2.9. The Case Tribunal was unwilling to hear evidence from officers, if any, who had approached the Respondent only at a later date. The Respondent identified two officers who allegedly fell into the former category and the Case Tribunal issued directions on 6 May confirming that he could call them as witnesses but required statements of such evidence to be provided by 1 June. They were not provided.
- 2.31 The evidence is that the council has not been made aware of any such concerns save for one incident which was informally resolved.

Allegations of disclosure of confidential information

- 2.32 The Respondent has produced no evidence to support his assertion that he expressed concern to Mr Corry and Mr Crouch in 2006 that Mr Jones had disclosed the content and deliberations of a confidential members' panel to him. The evidence before the Case Tribunal is that the first occasion on which the Respondent expressed concern about

this alleged disclosure was on 2 January 2008. There is no evidence at all to support the Respondent's allegation that any disclosure that may have been made to him was disclosed as part of a campaign to influence the members' panel and thus in order to preserve the Chief Executive's job.

- 2.33 Bearing in mind that the Respondent did nothing about the alleged disclosure at the time it was made, the Case Tribunal does not accept that the Respondent had reasonably formed a view at that time that there was any professional misconduct by Mr Jones in talking with him about the matter.
- 2.34 The Respondent's assertion of Mr Jones' serious misconduct in his letter of 2 January with regard to an alleged disclosure of confidential information in a procurement process is not supported by the evidence. Mr Kershaw both during the investigation process and in oral evidence to the Case Tribunal emphatically denied making the statement attributed to him by the Respondent.

Allegations of interference in the political process

- 2.35 In September 2007, the Respondent did not restrict his request for an investigation to an investigation of the facts as he was later to say. He asked for a decision from the council as to whether or not there had been misconduct by Mr Jones.
- 2.36 The council responded to the Respondent's formal complaint about Mr Jones' conduct in allegedly interfering with the political process, by carrying out an enquiry to establish whether there should be such an investigation. They communicated the conclusion of that enquiry to the Respondent.
- 2.37 The Respondent believes that there has been misconduct by Mr Jones interfering in the political process. He did not accept the outcome of the council's enquiry as 'the last word' on his complaint that there had been political interference by Mr Jones.

The Respondent's additional preamble allegations

- 2.38 Issues were raised with Mr Jones through his appraisal process that related to his style at meetings and to his relationships with District Council Chief Executives and others while the unitary bid process was underway.
- 2.39 Contrary to the Respondent's assertions, Mr Jones was not required to attend anger management coaching. He was not set a target of moderating his aggressive personal behaviour from 2006 to 2007, which he then failed to meet, leading to concerns escalating about his behaviour.
- 2.40 The Case Tribunal heard evidence that concern had been expressed by representatives of South Somerset District Council about Mr Jones' behaviour. This arose out of a public meeting as part of the unitary process. Although the then Leader had become involved and secured a halt to an exchange of emails between the respective Chief Executives, the matter was not treated as a formal complaint. Other

than that, the Case Tribunal has seen no evidence to support the Respondent's assertion of 'a number of concerns' having been allegedly raised about Mr Jones' behaviour, both by members and partner organisations, in 2006 and 2007.

- 2.41 The Respondent was aware in January 2008 that the issues that had been raised with Mr Jones through the appraisal process in 2006 and 2007 were not issues about aggressive personal behaviour.
- 2.42 The Respondent has knowingly exaggerated the facts about issues of style and performance in order to strengthen his allegations of serious misconduct against Mr Jones.

The Respondent's use of language in his letter of 2 January 2008

- 2.43 The Respondent does not dispute that he imitated the language and content of Mr Jones' letter to the Standards Board setting out concerns about the Respondent. He reflected back almost identical alleged behaviours by Mr Jones to those alleged about him in April 2007.
- 2.44 The ESO suggests that the Respondent was reckless as to whether he could or could not substantiate the allegations he was making when he set out his preamble allegations. The Respondent suggests that he acted only with careful consideration. That may be so, but in the Case Tribunal's view such consideration was still reckless

The Respondent's argument for cumulated misconduct in December 2007

- 2.45 In 2005, 2006 and 2007 the Respondent did not repeatedly raise concerns about Mr Jones' conduct, nor were repeated concerns raised by others.
- 2.46 From the facts previously established, the Respondent could not reasonably have believed in December 2007 that there was evidence of a pattern of drunk and disorderly behaviour, a pattern of inappropriate behaviour towards female members of staff, a pattern of disclosure of confidential information, or a pattern of threatening and bullying behaviour by Mr Jones towards staff members and others.
- 2.47 Nor could the Respondent reasonably have believed that there had been a pattern of bullying by complaint and of political interference by Mr Jones, regarding himself.
- 2.48 The Respondent's assertion that he made his complaints in December 2007 because cumulative incidents of misconduct by Mr Jones had become so serious is not credible.

Intimidation of Mr Jones

- 2.49 The Respondent made his allegations in December 2007 when investigations were ongoing into two separate Code of Conduct complaints by Mr Jones about the Respondent. The Respondent has stated to the Tribunal that had he been told that the making of a complaint could be construed as a breach of the Code of Conduct he

would have delayed its submission until the existing matters had been determined.

2.50 On 21 December in a meeting with council officers the Respondent raised the possibility that he would withdraw some of his conduct allegations against Mr Jones as part of a negotiated solution, and made reference to the Standards Board investigations.

2.51 When the Respondent made his complaints of serious officer misconduct against Mr Jones, he knew Mr Jones was the complainant and a potential witness in ongoing Code of Conduct investigations.

3 Oral Submissions as to whether there was a failure to follow the provisions of the Code of Conduct (account was also taken of the written submissions as set out in the Appendix to the Listing Direction)

3.1 Intimidation

3.1.1 The Respondent submitted that intimidation was defined as to strike fear into or to seek to influence by threats or violence. He noted that the Chief Executive who could have been expected to give first hand testimony as to being intimidated had not been put forward as a witness.

3.1.2 For the ESO, Counsel indicated that the Code of Conduct distinguished between intimidation and an attempt to intimidate and that it was the latter contention that was made by the ESO.

3.1.3 At the invitation of the Case Tribunal, Counsel was asked to respond to the suggested definition of intimidation from the Respondent and particularly whether any relevant caselaw existed. She was also asked to make submissions as to whether the wording of paragraph 3(c) of the Code of Conduct constituted an interference with the freedom of expression guaranteed by Article 10 of the European Convention on Human Rights.

3.1.4 On the latter point, she agreed that the provision did constitute interference but argued that it was an interference which was justified in order to protect the rights of others.

3.1.5 On the former point Counsel helpfully drew attention to:

3.1.5.1 The Shorter Oxford Dictionary definition of intimidate as meaning terrify, overawe, cow. The dictionary suggested the word was now used especially in order to mean to force to or to deter from some act by threats of violence. A final modern usage is said to be the act of intimidating especially in order to interfere with the free expression of political or social rights.

3.1.5.2 Clerk & Lindsell on torts which suggested that the tort of intimidation is committed if A delivers a threat to B that he will commit an Act or use means, unlawful as

against B as a result of which B does or refrains from doing some act which he is entitled to do, thereby causing damage either to himself or C

3.1.5.3 *R v Patresca [2004] EWCA Crim 2437.*

This concerned an offence under Section 51 of the Criminal Justice and Public Order Act 1994 which provides that a person commits an offence if (a) he does an act which intimidates and is intended to intimidate another person (the victim) (b) knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness...and (c) does it intending thereby to cause the investigation or the course of justice to be obstructed perverted or interfered with.

A separate section of that Act made it an offence to harm or threaten to harm a person who has assisted in an investigation.

The Court of Appeal noted that the Criminal Justice and Public Order Act provided that "an intimidatory act which consists of threats may threaten financial as well as physical harm."

In the course of the judgement, May LJ stated

"Intimidation" and "to intimidate" are ordinary English words with a normally understood primary meaning of putting someone in fear....As with most words there are shades of possible meaning, such that to attempt a definition which is intended to be comprehensive is unnecessary and undesirable....

We accept, however that that the Oxford English Dictionary's modern usage of "to intimidate" as "to force or deter from such action by threats or violence" is capable of embracing a shade of meaning whereby the intimidator does not in fact succeed in putting the victim in fear. For this meaning some element of threat or violence is necessary

In our judgement, a person does an act which intimidates another person within section 51 (1) (a) of the 1944 Act if he puts the victim in fear. He also does it if he seeks to deter the victim from some relevant action by threat or violence. A threat unaccompanied by violence may be sufficient and the threat need not necessarily be a threat of violence. The act must be intended to intimidate. The person doing the act has to know that the victim is a ...witness or potential witness..., He has to do the act intending thereby for the cause of justice to be obstructed, perverted or interfered with. A person may intimidate another person without

the victim being intimidated...An act may amount to intimidation even though the victim is sufficiently steadfast not to be intimidated.

In our judgement pressure to change evidence alone is insufficient, Pressure alone might be unexceptional and entirely proper at least if applied in an honest belief, for instance that what was sought was evidence which would be truthful. Alternatively pressure might be improper but lack any element of intimidation, for example a bribe. For a person to intimidate another person the pressure must put the victim in some fear, or if not there must nevertheless be an element of threat or violence such that the pressure is improper pressure.

- 3.1.6 Counsel noted that the legislation was in different context and not expressed in the same terms as the Code but agreed that it could be read as persuasive authority in seeking to determine what is meant by the use of the word 'intimidate' in the Code.
- 3.1.7 She pointed out that the Code specifically referred to attempts to intimidate and that there was thus no need to prove that the Chief Executive was in fact intimidated. There was evidence in the document to the effect that he was upset. The Chief Executive was certainly a complainant and a potential witness either of which brought the matter within the circumstances specified in the Code.
- 3.1.8 Counsel acknowledged that there was no express threat in the letters but suggested that taken together the three letters to Alace , Solace and the council together with reference to the possibility in the meeting on 21 December, of some of the complaints being dropped as part of a negotiated settlement could be seen as an implied threat to proceed unless the Chief Executive sought to withdraw the complaints which the Standards Board were already investigating or agreed not to mount new complaints about the Respondent. The threat lay in pursuing a course of action which could foreseeably have the consequence of putting the Chief Executive's employment under threat. The allegations if proved could lead to the Chief Executive's immediate dismissal. The complaints were of an extremely serious and embarrassing nature
- 3.1.9 The Respondent claimed that the facts of the present case nowhere met the required test and indicated that his mention at the meeting on 21 December of seeking mediation of his dispute with the Chief Executive was consistent with earlier requests he said he had made. The suggestion of an implied threat was supposition
- 3.1.10 He insisted that he had not made any threat and certainly not to the Chief Executive. In his view for him to intimidate he would have had to have said something directly to the Chief Executive. At one stage in his submissions he expressed

surprise that his letters had been passed to the Chief Executive but later accepted that this was foreseeable.

3.2 Using his position to secure an advantage

3.2.1 The Respondent submitted that it was blatantly ridiculous and contrary to principles of democratic responsibility and roles of an elected member to regard his making justified complaints about the Chief Executive as seeking to secure an advantage for himself or a disadvantage for the Chief Executive.

3.2.2 He further submitted that it cannot be right to inhibit a member, a senior member, from following laid down procedures by his making complaints in confidence.

3.2.3 Counsel for the ESO submitted that the Respondent had not sought to contest the ESO's finding that in making his complaint he was acting as councillor. He was using his position as a councillor in pursuing the complaint. The complaint was intended to confer a disadvantage on the Chief Executive. It could also be said that it was used to secure for himself an advantage, to give himself a better negotiating position namely to bring about the dropping of complaints against himself or avoiding further such complaints.

3.2.4 She argued that it was an improper use of the Respondent's position for him to make a greatly exaggerated complaint and improper for him to make complaints that he knew to be untrue and did not honestly or reasonably believe.

3.2.5 It was not true that the Respondent had followed proper procedures: he had begun by making the complaints externally before making his complaint to the council.

3.2.6 The Respondent says that the proper procedures he followed were those he read on the websites of the two external bodies.

3.2.7 He disputed that his complaints had been greatly exaggerated or were malicious. The use of the word 'malicious' suggests a conspiratorial attitude. To say that he had bad faith or intent was a very serious matter and required a higher standard of evidence than obtained in this case. Civil Courts are reluctant to find damage because of the damage to reputation that could ensue.

3.3 Conduct bringing office into disrepute

3.3.1 The Respondent did not make submissions specifically on this point other than to say he had not given publicity to his letters and to repeat his assertion that there could be nothing wrong in a democratically elected councillor making complaints about the unacceptable behaviour of the Chief Executive.

3.3.2 Counsel for the ESO drew attention to the open letter which the Respondent had written within a day or two of sending his

first letter and which referred to his having requested a formal investigation of the behaviour and conduct of the Chief Executive.

3.3.3 Counsel drew attention to the judgement of Collins J in Livingstone on the need to separate the effect on the reputation of the office from the effect on the reputation of the man. She argued that in this case the reputation of the office was clearly affected as witnessed by the close connection of the complainant, the way the Respondent brought the complaint, the subject of the complaint and the nature of the complaint.

3.3.4 The Respondent insisted that the timing of his complaint was unconnected with his expulsion from the group, the day before his letter of 5 December to ALACE, and took exception to the suggestion that his complaints resulted from a desire for revenge. Revenge in his view was a hot-headed reaction whereas his had been a carefully considered decision to fulfil his responsibilities as a councillor. He had delayed making such complaints in isolation but felt bound to do so when it became apparent that there was a pattern of misbehaviour on the part of the Chief Executive. His expulsion from his political group was a blessing in disguise rather than a recent raw experience.

3.3.5 The Respondent submitted that for him to have made the complaints in the form he did using very similar wording as had been used in the Chief Executive's complaint about him was a perfectly reasonable procedure.

4 The Case Tribunal's decision as to whether there has been a failure to follow the provisions of the Code of Conduct

4.1 The Case Tribunal has no doubt that in writing the letters to ALACE and SOLACE and later to the council, the Respondent was motivated by a desire to cause harm to the Chief Executive whom he saw as responsible for the collapse of his political career. The Case Tribunal can accept that the Respondent could feel resentment toward the Chief Executive who had instituted complaints against him and who, according to the evidence from Councillor Shortland had advised that the Respondent should be expelled from the Liberal Democrat Group.

4.2 The Respondent submits that there was no such personal motivation and that he was instead fulfilling his duties as an elected representative. That response begs the question as to why the Respondent had not sought to bring a complaint at a much earlier stage. His claims to have been pursuing those matters through proper channels simply do not withstand even cursory examination let alone the detailed scrutiny which the Case Tribunal afforded over three days. Nor does his claim to have perceived a pattern of misbehaviour. With the exception of the two complaints involving drinking, the allegations made by the Respondent were essentially unconnected.

- 4.3 There is no dispute that in writing his letters to ALACE, SOLACE and the council, the Respondent was using his position as a member. The Case Tribunal is in no doubt that in writing those letters the Respondent intended to cause the Chief Executive a disadvantage both in terms of the Chief Executive's future employment with the council or more widely. Because those letters were submitted for an improper purpose, essentially as an act of revenge, the Respondent did use his position improperly and thus failed to follow the provisions of paragraph 6 (a) of the council's Code of Conduct.
- 4.4 There is no evidence that the Chief Executive was intimidated. That does not of itself mean that the allegation of a breach of paragraph 3 (c) fails. There would still be such a breach if the Respondent had attempted such intimidation. In the Case Tribunal's view, for that claim to succeed the Case Tribunal would have to accept that in writing the letters to ALACE, SOLACE and the council, the Respondent intended to intimidate the Chief Executive into refraining from making further complaints about him or in tempering such evidence (if any) that the Chief Executive was called upon to give in relation to complaints already made and under investigation. That is not an intention that the Case Tribunal draws from the evidence. On that evidence the Respondent was seeking revenge for the Chief Executive's past actions rather than seeking to intimidate him. Thus the Case Tribunal considers there has been no breach of paragraph 3 (c) of the Council's Code.
- 4.5 The dicta in the Livingstone case about the need to separate the bringing into disrepute of the office rather than the person holding the office has caused the Case Tribunal some difficulty. An illustration from outside local government may be useful. The Case Tribunal is aware of the recent controversy about claims for large expenses submitted by some Members of Parliament. That has had the unfortunate consequence of bringing the office of Member of Parliament into disrepute, in the eyes of the public, a disrepute which the public attaches even to those Members of whom no personal criticism has been made. The public in the Case Tribunal's view is very likely to see the failures of one or more individuals as damaging the reputation of all similar office holders.
- 4.6 As Counsel for the ESO put it, if the Respondent's is not a case where the office as well as the person has been brought into disrepute it is hard to envisage what could bring the office of councillor into disrepute. The particular actions of the Respondent which this Case Tribunal has been considering, even when seen in the context of an ongoing breakdown of relations with a Chief Executive and regardless of where fault lies for that breakdown, cannot do other than bring the office of councillor into disrepute. The Case Tribunal finds that there has been a failure to follow the provisions of paragraph 5 of the Code of Conduct.

5 Action to be taken

- 5.1 After hearing submissions from Counsel for the ESO and from the Respondent, who felt that only the mildest sanction should be imposed in recognition of the fact that he had already lost his position as a councillor as a result of being de-selected by his political party, the Case Tribunal decided that this was a case where some action needed to be taken.
- 5.2 The Case Tribunal sees the Respondent's submission as an indication of his ongoing failure to recognise how inappropriate it is for an elected representative to have acted in the way he has. Throughout the investigation, and before the Case Tribunal, there has been no indication of any remorse or contrition on his part. No mitigation can be pleaded on this account.
- 5.3 In the Case Tribunal's view the Respondent, in allowing his actions to be motivated by his desire for revenge, has shown himself to be unfitted to be a councillor and local authorities should be protected from his membership. This is a case where if the Respondent had still been serving as a councillor the Case Tribunal would have disqualified him. That is still the view of the Tribunal.
- 5.4 The Case Tribunal has decided to disqualify him from membership of any relevant authority for a period of two years.

6 Recommendation

A majority of the Case Tribunal has some reservations about the procedures used by Somerset County Council in considering the Respondent's complaints about the Chief Executive of the County Council. Public confidence in the council's procedures in such cases would in the majority's view be enhanced if there were an independent element involved in participating in or reviewing the early stages of that process. By a majority, the Case Tribunal makes that recommendation to Somerset County Council.

David Laverick
Chairman of the Case Tribunal

23 July 2009