

Report of	Meeting	Date
Monitoring Officer	Standards Committee	05 March 2009

CASE UPDATE

PURPOSE OF REPORT

- To advise Members of recent cases which have been considered nationally.

RECOMMENDATION(S)

- That the report be noted.

CORPORATE PRIORITIES

- This report relates to the following Strategic Objectives:

Put Chorley at the heart of regional economic development in the Central Lancashire sub-region		Develop local solutions to climate change.	
Improving equality of opportunity and life chances		Develop the Character and feel of Chorley as a good place to live	
Involving people in their communities		Ensure Chorley Borough Council is a performing organisation	✓

ADJUDICATION PANEL DECISIONS

- Only one decision of the Adjudication Panel has been published since the last meeting of the Standards Committee. The decision related to an appeal against a Standards Committee decision in respect of a Parish Councillor and a copy of the decision is annexed to this report. Perhaps the most interesting part of the decision is the Appeal Tribunal's support for the Standards Committees decision to hold their hearing in private. That decision was made because of concern that the Councillor's defence might stray into wide ranging criticism of the Town Clerk.

STANDARDS BOARD CASES

- The Standards Board continues to supply reports of the outcome of Ethical Standards Officers' investigations. Since the last Committee meeting, eight reports have been published relating to cases where either no breach of the code has been found or no further action has needed to be taken.
- Amongst the cases reported are the first submitted after the arrangements for local assessment came into force and, although the reports do not make it clear, presumably these are cases which have been referred by local Standards Committees. The cases include cases which relate to allegations involving Leaders, an Independent Member of a Standards Committee and a case which related to inappropriate comments made about



the Council's Chief Executive. These perhaps provide some steer on the kinds of cases which the Standards Board will be willing to accept on referral from a Standards Committee.

7. Perhaps the most interesting of the cases reported though, pre-dated local assessment and is the case concerning Liverpool City Councillor Steve Hurst. Councillor Hurst was convicted of an offence under the Representation of the People Act for distributing election leaflets purporting to be on behalf of a different political party and which contained a number of abusive comments about another Councillor and her family. The Ethical Standards Officer considered that electioneering and canvassing were activities that Members undertook in their roles as party activists and that Councillor Hurst was therefore not acting in his official capacity when he committed the offence. In the Ethical Standards Officer's view therefore the behaviour was not covered by the Code of Conduct.

CASES BEFORE THE COURTS

8. There have been two recent Court cases relating to Standards which are of interest. In a case relating to Harrogate Borough Council a planning application by a Councillor Atkinson was passed on the casting vote of the Chair, Councillor Simms. The application had been strongly recommended for refusal by Officers because of it being contrary to planning policy. This resulted in complaints to the Ombudsman and to the Standards Board.
9. The Standards Board found no breach of the Code. The two Councillors were members of the same political group, shared a car to Council meetings and had social contact a dozen times a year. However, they had rarely been in each others' houses and Councillor Simms had not been invited to a recent event to celebrate Councillor Atkinson's anniversary attended by 120 people. The ESO concluded that they did not meet the Code's definition of friends and hence there could be no personal let alone prejudicial interest.
10. The Ombudsman however found apparent bias and the Court subsequently agreed. The Court noted in particular:
 - The contact between the Councillors went further than what would normally be expected of fellow members of a political party –they were “friendly acquaintances”.
 - It was a planning application in which Councillor Atkinson had a very obvious personal interest
 - Councillor Simms was not merely a member of the Committee. He was its Chair.
 - His vote was not an ordinary vote. It was a casting vote exercised against a strong officer recommendation.

Although no on factor was decisive the overall picture was one of apparent bias. As in some previous cases the fact that an independent investigator (in this case the Ombudsman) had reached a view, was relied upon by the Court in support of its own decision.

11. The second very recently reported case concerns a Birmingham City Councillor. The Councillor was concerned about the condition of a listed building which was being developed. With the owner of a neighbouring building he entered the site of the listed building and began to shoot a video. In the video he introduced himself as 'Councillor...'.
12. The owner of the listed building arrived and there was a scuffle. Later the video was placed on the Youtube website.
13. The listed building owner brought a complaint to the Standards Committee alleging that the Councillor had not treated him with respect by: (i) trespassing on his land and (ii) filming

him and the building and making it available on the internet. done and that he had been exercising his right to freedom of expression. He also said that he had not been acting in his 'official capacity'. The Standards Committee found that he had been acting in his official capacity and that he had breached the Code

14. The Councillor then appealed to the Adjudication panel who upheld the decision and rejected the argument that the Councillor had been acting as campaigner or politician outside his official capacity. The Panel confirmed the Committees decision that there had been a breach of the Code. This decision was then challenged through the Courts
15. The Court said that the Code itself defined 'official capacity'. In this case the most relevant part of the definition was: 'conducts the business of the office to which s/he has been elected or appointed'. Those were ordinary descriptive English words. Different tribunals may take a different view on the same set of facts but this Committee and Tribunal had reached a conclusion within the range of reasonable conclusions.
16. In relation to the public interests and human rights argument the Court said that there had to be a balance struck between the various relevant aspects of the public interest in all the relevant circumstances of the case. The concept of 'treating others with respect' was one that allowed the balance to be struck. Similarly although political expression attracted a high degree of protection under the freedom of expression that was something which could be and was considered in determining whether there had been a breach of the Code.

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There are no background papers to this report.

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