

## **Appeals Tribunal Decision**

<b>Case Ref:</b>	<b>APE 0413</b>
<b>Appeals Tribunal Date:</b>	<b>23 January 2009</b>
<b>Relevant Standards Committee:</b>	<b>North Wiltshire District Council</b>
<b>Date of Standards Committee Decision:</b>	<b>14 November 2008</b>
<b>Name of member concerned:</b> <i>(Appellant &amp; his authority)</i>	<b>Mr John Ireland formerly of Calne Town Council</b>
<b>Ethical Standards Officer (ESO):</b>	<b>Ms Hazel Salisbury</b>
<b>Monitoring Officer:</b>	<b>Mr Peter Jeremiah</b>
<b>Investigating Officer:</b>	<b>Mr Felix Hetherington</b>
<b><u>Appeals Tribunal Members</u></b>	
<b>Chairwoman:</b>	<b>Ms Melanie Carter</b>
<b>Member:</b>	<b>Mr Chris Perrett</b>
<b>Member:</b>	<b>Mr Neil Pardoe</b>

1. The Adjudication Panel for England received an appeal from Mr John Ireland, formerly of Calne Town Council, following a determination by the Standards Committee of North Wiltshire District Council ("the Standards Committee") that he had breached paragraphs 3(1) and 3(2)(b) the Members' Code of Conduct and to suspend Mr Ireland for a period of one month from 1 December 2008, unless he gave a written apology to the complainant before that date. The complainant, who is the Town Clerk of the Town Council, had alleged that Mr Ireland had failed to treat her with respect and had bullied her. The Appellant has appealed both the decision that he had breached the Code and the action taken.
2. The Appellant did not appear and had not sought an adjournment. The Appeals Tribunal decided to proceed in his absence.
3. The Appeals Tribunal considered oral submissions from Mr Jeremiah, the Monitoring Officer of the District Council, on behalf of the Standards Committee and written submissions from the Standard Committee and the Appellant. There was no oral evidence heard.

### **The Code**

4. Paragraph 3(1) of the Code provides:

*" You must treat others with respect"*

5. Paragraph 3(2)(b) of the Code provides:

*"You must not..... bully any person."*

## **Findings of Fact**

### Background

6. Mr Ireland had been a member of the Town Council since 2002. Between 2003 to 2007 he was also a member of North Wiltshire District Council and served on its Standards Committee throughout his time on that Council.
7. Mr Ireland was last elected to office on 7 May 2007. He served on the Amenities Committee, the One Council and the Traffic Calming Working Groups. In the previous municipal year he was Chair of Development Control and was a member of the Policy and Resources Committee.
8. Mr Ireland gave a written undertaking to observe the Code of Conduct on 8 May 2007. Mr Ireland has attended no formal training session since re-election in May 2007 on the Code of Conduct but says that he has kept up to date by reading any material sent to him.
9. Mr Ireland has resigned from Calne Town Council since making his application to appeal.
10. The complainant, Mrs Linda Roberts is a long standing employee of Calne Town Council and was promoted from Deputy Town Clerk to Town Clerk of the Council in January 2008.
11. Both Mrs Roberts and Mr Ireland agreed that there was no cause for concern in their working relationship prior to February 2008.

### Emails relating to the flying of the union flag

12. In the autumn of 2007 the government changed the rules relating to the flying of the union flag from public buildings. Mr Ireland, who has a military and police service background, is strongly in favour of the flag being flown from Calne Town Hall on a daily basis.
13. On 13 November 2007 by email to the then Town Clerk, Ann Kingdom, he put down a notice of motion to this effect for debate at the next full council meeting. Subsequently that motion was not passed. Mr Ireland recognised that, pursuant to standing orders, he would have to wait 6 months before the motion could be re-submitted to the council.
14. At the Annual Parish Meeting held on 14 April 2008 a proposal was discussed 'to fly the flag' and a vote by those present at the meeting was in favour of the proposal. There was a Town Council meeting immediately following this parish meeting, but this proposal was not debated. In fact, it would not have been lawful for the proposal to have been discussed on account of the 6 month rule mentioned above and also that it was not an item on the agenda. The Town Council's standing orders provide that only agenda items may be discussed unless the Chairman decides the matter is one of urgency or standing orders are suspended. Neither course of action would have been appropriate here such that the vote in favour of flying the flag could not be considered at the Town Council on 14 April. There was no obligation on the Town Council to fly the flag in the absence of a resolution of the council to that effect.

15. Whilst the Town Clerk was away on a day's leave following the parish meeting, Mr Ireland requested that her Deputy fly the flag from the town hall for a short while. On the Town Clerk's return, she asked for it to be taken down as a formal decision of the Town was required as to whether it should be flown.
16. On 16 April 2008 Mr Ireland phoned Mrs Roberts to discuss the flag having been taken down. Mrs Roberts told the Investigating Officer that during their conversation Mr Ireland had commented first that *"you are going to be in for a very rough ride, this is war"* and second that *"your attitude stinks"*. Whilst Mr Ireland cannot remember clearly what was said, he disputes that he referred to her attitude in this way. He accepted however that something along the lines of *"I don't like your attitude"* may have been said. The Appeals Tribunal noted that Mrs Roberts had not initially, in her complaint form to the Standards Board and accompanying statement, used the words *"your attitude stinks"*, referring rather to Mr Ireland not liking her attitude, in accordance with Mr Ireland's recollection. The words *"your attitude stinks"* do not appear until Mrs Roberts is interviewed by the Investigating Officer on 23 June 2008.
17. The Appeals Tribunal noted that the Standards Committee had simply decided to adopt the Investigating Officer's findings of fact and had not, where there was a dispute of fact, as here, given any specific reasons for that finding. As neither the Appellant nor Mrs Roberts had chosen to attend, the Appeals Tribunal was in some difficulty determining this issue of fact. It would ordinarily have placed some weight upon the Standards Committee's findings on a point of evidence, as it had had the benefit of oral testimony. In this circumstance however, the Appeals Tribunal noted that the Standards Committee decision had stated that Mrs Roberts had not answered many questions on account of being upset and the Standards Committee decision did not refer to any inquiry relating to the telephone conversation. The Appeals Tribunal was of the view therefore that this point may not have been dealt with in cross examination of Mrs Roberts.
18. In these circumstances, the Appeal Tribunal concluded that the only fair way to proceed was to accept Mr Ireland's version of the telephone conversation.
19. Following this telephone conversation, an email timed at 13:10 was sent by Mr Ireland to a number of addressees - including the press and Mrs Robert's PA - but not to Mrs Roberts herself. The email stated:

*"Dear all, I am sorry to have to inform you that the flag has now been removed from the town hall on the instructions of the town clerk, it seems that, and I quote, "the town council is under no obligation to take any notice of the Parish meeting" her words to me this morning.*

*I have informed her that if she and the council do not have to take any notice then she will find herself with a virtual war on her hands. I am sorry to relay this to you as I know it meant so much to all of you but we do have a copy of the standing orders and we will challenge this decision if necessary through the courts. In the mean time I suggest that the survey continues and now goes town wide. It seems that they only "have to take note and put it up for further discussion at the next full town council meeting". I am also informed that Councillor Hill has already spoken to the Gazette & Herald and said that if they print the story of the Parish Meeting it will be factually wrong. He is a Conservative and a retired RAF Sqn. Ldr. And brings nothing but shame to the Conservative Party over this issue and his dogmatic approach to it.*

*The legality of the vote is not in doubt but Page 94 of the standing orders is quite clear in that it says, if a motion put before the parish meeting is not accepted the electors may cause an extra ordinary meeting of the parish to be*

*held, at the cost to the council, to debate the issue. It is therefore clear that when interpreting the rules, the gathered public were misled in order to obviate the necessity of facing this obligation. It also says that certain decisions do have legal standing and theirs to accept the majority vote to fly the flag must surely be in that league! The next step is Parish Poll.*

*This was not a political issue but now I am afraid it has become one."*

20. Mrs Roberts was sent a copy of the email and she responded to Mr Ireland denying that she had said there was 'no obligation' upon the Town Council to consider the matter. This email said that the council "*had a duty to consider the proposal*". Mrs Roberts received a further email on the same subject at 14:38 on 16 April. This stated:

*"You forgot yourself Town Clerk you DID say exactly what I quoted and I stand by that. I made a note of it at the time.*

*I agree that you said that you had a duty to consider the proposal but that is not in my original e-mail. The fact of the matter is that the proposal on the night was 'to fly the flag' not to 'reconsider and revisit at the next meeting. The proposal was as written on the head of the survey and was read out as the active proposal therefore you and the council are in breach of your legal responsibilities. I suggest you read Charles Arnold Baker Local Government Policy Page 94 Chapter 10 para H. You failed to convey that this would be then placed on another town council agenda for further debate and therefore prevented the public from exercising their right to call for a Parish Poll on the matter.*

*May I politely remind you that Mr. Mayo informed you that if this matter was not resolved at the meeting we would be demanding a parish Poll. In effect we had exercised our right during the meeting therefore to go to a poll if necessary. Page 93 refers."*

21. The next email in the series which caused Mrs Roberts concern is again dated 16 April and timed at 16:01 from Mr Ireland to Mrs Roberts. This email further argued that the Town Clerk had been under a duty in law to inform those present at the Annual Parish meeting of the legal effect of their resolution. Mr Ireland suggested that she might want to take legal advice as "*I am afraid that we will not let the matter rest.*"
22. Councillor David Bland has confirmed that the Clerk was silent at the Annual Parish meeting about the status of the vote.

#### Expenses claim

23. The incident in question arose from a meeting of the full Calne Town Council on 14 April 2008 (in fact the meeting following the Annual Parish meeting). Under agenda item 11 in the open part of the meeting Mr Ireland queried a petty cash claim for £20 that Mrs Roberts had made for a working lunch, in connection with an establishment review, for four people including external consultants. Mr Ireland said that as she was on an extremely high salary, much more than councillors, she should be paying for working lunches out of her own pocket, as did the previous Town Clerk.
24. Mrs Roberts said there were no members of the public present at this part of the meeting but added that two external consultants were present whom she had asked to attend to do a presentation to the council.

25. Mr Ireland responded to the complaint by saying that initially he had been led to believe that the refreshments were for staff training and that the complaint paints entirely the wrong picture of his intentions and actions. He said further that he had merely asked why there was a claim for *"breakfast rolls for staff meetings"* and the conversation deteriorated from that point. He said his aside about the previous Town Clerk paying for them out of her own pocket was in response to Mrs Roberts saying *"why should I pay for them"* or words to that effect. He says also that the 'Accounts' item on the agenda was in the public part of the meeting and therefore open to public inspection and questioning. As to the consultants he believes they stayed on into at least part of the confidential part of the meeting.
26. Councillor Alan Hill's recollection was that the reaction of most councillors was that there had been a collective *"intake of breath"* and of disapproval and dismay at the comments by Mr Ireland. This latter point was disputed by Mr Ireland. Again, in order to ensure fairness and given the lack of oral evidence, the Appeals Tribunal accepted Mr Ireland's testimony and proceeded on the basis that councillors, other than Councillor Ansell and Councillor Hill, had not reacted in this way.
27. Councillor Glenis Ansell, who had been elected to the council on 31 January 2008, stated that she was shocked by what had taken place and remembers saying that *"it wasn't for the council to decide what the Clerk paid for out of her salary. If we did enter into that territory that would be a dangerous precedent."*
28. Councillor David Bland recalled the incident and said this was the first time he can recall a claim for refreshments and that the previous Town Clerk spent her own money on refreshments for ground staff and council workers.

### **Standard Committee's Decision**

29. The Standards Committee made the following findings:

*"In respect of the first incident the Hearing Sub-Committee found no breach of the Member's Code of Conduct.*

*In respect of the second incident [the emails relating to the flying of the Union flag] there was a finding of a breach of paragraph 3(2)(b) of the Code "you must not bully any person."*

*In respect of the third incident [the expenses claim allegation] there was a finding of a breach of paragraph 3(1) of the Code "You must treat others with respect."*

*Considering all three incidents together, there was a pattern of behaviour which under the code amounts to a failure by Mr John Ireland to treat the Town Clerk with respect and amounts to bullying."*

### **Appellant's Grounds of Appeal**

30. The Appellant refuted the Town Clerk's allegation of bullying. He stated that he had never threatened her and would not ever do so. She had, in the Appellant's opinion, deliberately chosen to accuse him of such for malicious reasons and the accusation is false. The Appellant, in his exchanges with the Town Clerk in relation to the expenses incident had not intended to treat her with disrespect. It was argued that the Town Clerk had *"indulged in debating across the floor of the chamber"* with the Appellant and was therefore as guilty as he of what transpired.

31. The Appellant raised various arguments that his human rights under Article 6 and the Human Rights Act 1998 had been breached in the way in which the proceedings before the Standards Committee had been conducted. The Appeals Tribunal noted his claim that the Standards Committee had acted with bias in favour of the Town Clerk. The Appeals Tribunal considered how best to deal with the various claims, whether to consider these in substance, or whether to in effect rehear the case, thereby curing any breach.
32. The Appellant's arguments in this respect were:
  - 32.1. Prior to the hearing the Appellant was given a copy of the Town Clerk's statement in which she shows that district councillors had informed her about conversations with officers in regard to this allegation thereby showing that confidentiality had been breached.
  - 32.2. The Appellant was refused several witnesses at the hearing and despite his appeals that those witnesses would allow him to refute the allegations the Monitoring Officer would not allow them.
  - 32.3. The Monitoring Officer also refused to allow the hearing to be heard in public.
  - 32.4. The Appellant's legal representative was out of the country at the time of the hearing and the Monitoring Officer refused to allow an adjournment until his return.
  - 32.5. At the hearing the Monitoring Officer allowed the Town Clerk to introduce a new statement which contained facts and allegations that had previously not been seen by the Appellant.
  - 32.6. The panel chairman referred to the Investigating Officer and having agreed with his findings he asked him if he would indicate to them what a suitable punishment would be. This led the Appellant to believe that the question of guilt or innocence had been decided prior to the hearing.

### **Standards Committee's representations**

33. The Standard's Committee's representations were all with regard to the alleged human rights and procedural breaches. As the Appeal Tribunal did not need to determine these (see below), the Standards Committee's representations are not set out in full here.
34. The Standards Committee did note however that the issue concerning witnesses was dealt with as part of the pre-hearing process. The Appellant had not indicated the nature of the evidence to be given by his nominated witnesses, and, consequently, it was difficult for the Standards Committee to assess its relevance.
35. The issue of privacy had been dealt with under the Local government Act 1972 as amended. The minutes of the Standards Committee referred to paragraph 7C of Schedule 12A of the Act, whereby a council is entitled to hold a private hearing of a case referred to a local authority by the Standards Board, as here.

### **Appeals Tribunal's view on human rights arguments**

36. The Appeals Tribunal considered that, without making any findings in relation to the above claims, the best way forward would be to rehear the matter and to make up its own mind whether there had been a breach of the Code. This way, any breach of the Human Rights Act which may have occurred would be cured by the Appeals Tribunal.

37. It did note however with regard to the witnesses question, that the Standards Committee were entitled to decide which witnesses if any may attend the hearing on 7 November 2008. As Mr Ireland had not indicated the outline content of his proposed witnesses' testimony and given the detailed nature of the Investigating Officer's investigation and report, the Standards Committee had acted reasonably in refusing to allow witnesses other than Councillor Bland. In this regard, the Appeals Tribunal further noted that the Adjudication Panel President had also disallowed the Appellant witnesses other than Councillor Bland on the basis that, having been told of the outline content of the testimony of the other witnesses, that this was not relevant to the issues before the Appeals Tribunal. The Appeals Tribunal agreed with this conclusion and was of the view that the Appellant had not been disadvantaged and that there had not been a breach of his Article 6 rights.
38. The Appeals Tribunal heard from the Monitoring Officer, on behalf of the Standards Committee, that the decision to hear the case in private was based primarily on the understandable fear, given the nature of Mr Ireland's defence, that the hearing would stray into wide ranging criticism of the Town Clerk, matters which went well beyond the scope of the complaint. Thus, the Appeals Tribunal accepted that the Standards Committee had properly exercised its discretion in deciding to proceed in private.

### **The Decision on breach of the Code**

#### Emails relating to the flying of the flag

39. The Appeals Tribunal considered first the Standards Committee finding that in relation to this matter there had been a breach of paragraph 3(2)(b) such that Mr Ireland had bullied the Town Clerk.
40. The Appeals Tribunal accepted that there was genuine confusion on the part of Mr Ireland as to the legal effect of the resolution at the parish meeting. It noted further that it would have been helpful if the Town Clerk had clarified this at the meeting itself. As matters stood, the Appeals Tribunal could understand why Mr Ireland might have been aggrieved that the flag had been taken down on the order of the Town Clerk.
41. On the basis of the findings of fact above, the Appeals Tribunal found itself unable to hold that the terms of the telephone conversation were anything other than a direct and robust challenge of an officer's decision by a councillor. Whilst, no doubt, the forceful nature of that call would have been difficult for Mrs Roberts, the Appeals Tribunal did not consider that this amounted to disrespect or bullying.
42. When Mrs Roberts saw a copy of the first email dated 16 April 2008, She said in respect of the wording "*she will find herself with a virtual war on her hands*" that she took the word "*her*" to be a personal reference rather than the council and she felt threatened by the phrase used. This was the same phrase used in the telephone conversation. In response, Mr Ireland explained that his intention in respect of this phrase was to reflect how strongly feelings were running about the issue and warn her that things could get out of control – which he said had subsequently happened. He did not intend that the words should be taken literally. The Appeals Tribunal accepted this account and in so doing had regard to the terms of the subsequent emails which were predominantly concerning a legal issue and possible next steps by the group campaigning in favour of flying the flags. The next steps concerned possible legal action, a survey and the taking of a parish poll. This would all have been action taken against the Town Council, not Mrs Roberts personally.
43. With regard to the email on 16 April timed at 14.38, Mr Ireland says that it was not his intention to imply that the Clerk was in breach of her responsibilities but rather that

he understood that the Clerk had a legal duty to advise the Mayor of matters of procedure. He said that if he had wanted to cast aspersions about her professional competence he would tell her directly.

44. In relation to the third email of that day, Mrs Roberts said that she felt uncomfortable with a reference to taking legal advice and *"not letting the matter rest"*. Mr Ireland says that Mrs Roberts was the instigator of the exchange and that it was she who had first used the phrase about legal advice to which he replied *"you do that and so will I"*. Mrs Roberts was concerned furthermore to read the words *"you and the council are in breach of your legal responsibilities"* which she said called into question her position as Town Clerk.
45. The Appeals Tribunal was of the view that all of the above, the telephone conversation and the subsequent emails, were forceful, challenging and would have been uncomfortable for the Town Clerk to deal with. That said, she was the most senior officer at the Town Council and could be expected to handle robust and direct challenges by councillors. Given Mrs Roberts' instruction to take down the flag, some type of reaction from Mr Ireland could be guaranteed and would not be unexpected. The tone used by Mr Ireland was unfortunate at times, but did not amount to either disrespect or bullying.
46. The Appeals Tribunal concluded, in the light of the above, that there had not been a breach of paragraph 3(1) or 3(2)(b) of the Code. Thus it rejected the finding of the Standards Committee on this point. The Appeals Tribunal did note moreover that, in making its finding on bullying, it appeared to have taken into account the first incident in Mrs Robert's complaint which was, in the event, dismissed by the Standards Committee itself. This may have been an error in the record of decision but, on appeal, was something which the Appeals Tribunal felt should be pointed out.

#### Expenses

47. Mrs Roberts said that she felt humiliated and uncomfortable as a result of this incident. She pointed out that paragraph 9.2 of the Town Council's Member and Officer Protocol says that *"Members must not raise matters relating to the conduct or capability of individual Officers or employees (either individually or collectively) at a meeting which is open to the press and public in accordance with Standing Order Number 37.1, 37.2 and 37.3"* Her submission appeared to be that, if Mr Ireland had had concerns over the propriety of her actions, he ought to have raised these privately and not in a public forum.
48. Mr Ireland has stated that he felt totally within his rights to raise his query on the accounts item. It involved public money and the Clerk had not sought authorisation for the expenditure. With regard to the matter being raised in the open part of the meeting, Mr Ireland regarded the external consultants as officers. Mr Ireland stated that he had no intention of harassing or humiliating the Town Clerk and he saw nothing wrong with his conduct in this incident.
49. The Appeals Tribunal was told and accepted that Mrs Roberts did have authorisation for expenditure under powers delegated to her by the council. It further accepted however that Mr Ireland was entitled to query any item of account at the meeting. The Appeals Tribunal was of the view that it was not reasonable of him to have viewed the consultants as officers and therefore to have considered the meeting as, in effect, in private. Mr Ireland was an experienced councillor who would have understood that in the absence of a resolution to go into private session, council meetings remain in public.



50. It was unconscionable that Mr Ireland should have suggested that the Town Clerk pay for council expenses from her own pocket, regardless of what the previous Town Clerk had done. It was moreover deeply disrespectful to have referred to her salary level, in a public meeting, in the way that he did. This was a breach of paragraph 3(1) of the Code in that Mr Ireland had failed to treat Mrs Roberts with respect.
51. The Appeals Tribunal decided, in the light of the above, to uphold the finding of breach of the Code by the Standards Committee.
52. Finally, the Appeals Tribunal considered the Standards Committee overall finding that Mr Ireland had bullied the Town Clerk. The Standards Committee had been considering a series of incidences (the flying the flag and the expenses incidences). The Appeals Tribunal had however concluded that the matters relating to the flying of the flag had not amounted to a breach of the Code. As such, in considering whether there had been bullying, it was only looking at the one incidence at the Town Council meeting on 14 April 2008. The Appeals Tribunal took into account the Standards Board guidance on bullying and its suggestion that a one off incident could give rise to bullying. The Appeals Tribunal considered that, whilst this could arise, there would more normally be a pattern of conduct giving rise to a finding of bullying. For a one-off incident to amount to bullying, as opposed to disrespect, it would need to be of a serious nature and characterised by an abuse of power, something over and above just the fact that the matter involved an officer and councillor. An example of this might be a threat of dismissal by a senior councillor or one with direct involvement in the officer's area of responsibility. Whilst the Appeals Tribunal was very critical of Mr Ireland for the way he had behaved at the council meeting on 14 April 2008, it did not consider that this was sufficient to warrant a finding of bullying.

### **Decision on sanction**

53. The Appeals Tribunal considered next whether the action taken by the Standards Committee was appropriate. Albeit the Appeals Tribunal had not agreed with the Standards Committee's findings on the flying of the flag incident, it did consider that the breach arising from the expenses incident was sufficiently serious to warrant the sanction imposed. Mr Ireland could have mitigated the length of suspension by providing an apology, which he failed to do. Without the period of suspension, there would be no effective sanction for failing to provide the apology. The Appeals Tribunal considered that one month's suspension was an appropriate period for the disrespect shown in the way in which Mr Ireland had addressed the Town Clerk at the council meeting on 14 April 2008. These were matters which ought to have been raised in a measured way, outside of the meeting and certainly not in a public forum.

### **Conclusion**

54. The Appeals Tribunal has upheld the finding of the Standards Committee that Mr Ireland breached the Code of Conduct and the sanction imposed.
55. A copy of this determination is being given to the Appellant, the Standards Board, the Standards Committee, the Town Council and the Town Clerk.
56. This decision will be published on the Adjudication Panel's website at [www.adjudicationpanel.co.uk](http://www.adjudicationpanel.co.uk).

**Melanie Carter**  
**Chairwoman of the Appeals Tribunal**

27 January 2009