

SOMERSET STANDARDS COMMITTEES CONFERENCE

19 FEBRUARY 2007

PROBLEM AREAS, OR NOT

Comments on the various scenarios

1. Councillor White and the application for a taxi driver's licence

This problem is all about a Councillor trying to secure an improper advantage for an individual. It may also involve compromising the impartiality of an officer. And it may also be about bringing the authority into disrepute.

It is about more than just bringing the Councillor's office into disrepute because if it becomes known that a Councillor is fiddling the system for the grant of taxi drivers licences, then the whole licensing system, and therefore the Council, is brought into disrepute.

It was felt that the offence would be so serious that a period of suspension or disqualification would be appropriate.

The point was also raised that if the Council gave delegated powers to the licensing officer to approve, but not refuse applications, the effect of Councillor White's intervention might be that the application was improperly taken away from the Licensing Committee's remit.

2. Local or Central Investigations

The six cases given are cases where the Monitoring Officer has asked the Ethical Standards Officer to take back the investigation of a complaint against a Councillor.

Volume 4 of the Case Review issued by the Standards Board for England at page 21 reports on what actually happened in a number of these cases, see (b), (c), and (d).

It seems to me that the Ethical Standards Officer was reasonably lenient in these cases and might have argued that the investigation could still have been carried out locally but by an independent officer appointed by the Monitoring Officer.

The same comment may be made about paragraphs (a), (e) and (f).

3. Confidentiality

Whilst all the papers and discussion of the award of a contract in confidential session are justifiably confidential at the time, once the contract has been awarded, the need for confidentiality reduces. For example, the name of the successful contractor may be made public almost immediately. There will still be some confidential details that remain for some considerable time. For example, information about references, about individual rates, etc., and perhaps about some commercially confidential processes.

In addition, the new Code of Conduct will allow a public interest test as to whether the interest of the public in knowing the information is greater than the interest of any particular party in keeping the information confidential.

On the public interest test, all four matters mentioned in Councillor Plum's press release may be justified, especially if the award of the contract was controversial.

Even under the existing Code of Conduct, the Adjudication Panel seems to give weight frequently to the public interest test, finding that although there may have been a breach of the code, the public interest provides strong mitigating circumstances.

Finally, one of the issues regarding Councillor Plum's press release is that it was issued within three hours of the meeting and may well have pre-empted any official press release or public information. Would jumping the gun like this involve showing a lack of respect to officers or other councillors handling the contract or could it be devised to secure an improper advantage or disadvantage to somebody? If it was designed to cause embarrassment to the majority party or to a senior officer, would that constitute "obtaining an improper disadvantage"?

4. Member/Officer Relations

The facts of this case are based broadly on the case of former Councillor Jarvis of Kingston upon Hull City Council on which the Adjudication Panel's decision was issued on 19 October 2006 after a hearing on 11 October 2006. The reference is APE0226.

The facts in the case study used on 19 February were an abbreviation of what Councillor Jarvis actually got up to.

The Adjudication Panel accepted that Councillor Jarvis had been a committed Councillor for a long period of time, but felt that there were considerable aggravating factors. Councillor Jarvis exhibited poor standards over a period of time, he failed to heed advice from other Councillors, and he had sought to put the responsibility for his own actions onto other people.

Councillor Jarvis was already disqualified for fifteen months for other matters that had been dealt with in September 2006 and the case tribunal in this case disqualified for a contemporaneous period of one year.

Allegation (d) is my own invention and was not involved in the Councillor Jarvis case. Almost certainly, in making comments to companions at a golf course, Colonel Mustard was not acting in his capacity as a Councillor and so the comments would not have been in breach of the Code of Conduct.

5. Accusing a Newspaper Editor of Bias

This case is based largely on a case of Councillor Dowden of North Baddesley Parish Council, which was heard by the Adjudication Panel on the 2 November 2006 with the decision issued on 10 November 2006. The case reference is APE0366.

It was an appeal against a decision of the Standards Committee of Test Valley Borough Council and the case tribunal hearing the appeal was technically called an Appeals Tribunal. The tribunal considered that the appellant had not breached the Code of Conduct. It took the view that the matters before it were "illustrative of the normal rough and tumble of local parish life and the level of political debate one might find in a small community".

The fact that the Editor had stood against the Councillor in an earlier election was evidence of the issue forming part of the rough and tumble of local politics. The issue at the heart of the dispute was the creation of a new Parish Council, a matter which was highly political. In any event the Editor was not under any obligation to provide a balanced view, or indeed to

provide the right of reply to any contributor. As such, an accusation of bias was perhaps not very serious.

6. Planning

This case study is based loosely on the case of Councillor Woodrow of the London Borough of Camden, a case heard by the Adjudication Panel in October and December 2006 with the decision being issued on 20 December 2006. The case reference is APE0352.

The case involved a huge development of an area around Kings Cross Station in London – a 27 hectare site. It was estimated that the building work on site would take approximately 20 years.

Councillor Woodrow was Chairman of the Planning Committee, but was concerned that the planning application was not being handled in the best way.

He made what may have been injudicious comments to statutory consultees and to the Editor of the Architects Journal.

The case tribunal found that there was nothing intrinsically improper with contacting a statutory consultee for advice, but that it was a breach of the code to contact a statutory consultee “with a view to lobbying that consultee to share a disposition against the form and substance of the planning application”.

With regard to contacting the press, the case tribunal found that no question of bringing the authority into disrepute could reasonably be said to arise where there was no risk of challenge to the ultimate decision on the ground of pre-determination. The Councillor had made it clear that he had not pre-determined his view on the planning application and the tribunal could see no reason why the reputation of the office of Councillor or the authority was harmed.

The only breach therefore was trying to lobby one of the statutory consultees and the tribunal found the breach to be at the low end of the scale of seriousness, having regard to the particular facts of the case. The tribunal decided to impose no sanction.

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