

Standards Committee: 7 April 2009

Adjudication Panel for England Decisions

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Yes / No or "not applicable" If yes give reason why N/A
Is it in the Council's Forward Plan?	Yes/ No or "not applicable" If yes give date it first went in N/A
Is it eligible for "call in" by Scrutiny?	Yes/ No or "not applicable" If no give reason why not N/A
Cabinet member portfolio	Corporate

Electoral wards affected and ward councillors consulted: N/A

Public or Private: Public

1. Purpose of Report

To provide for the information of Committee details of recent decisions of the Adjudication Panel for England

2. Key Points

As an annex to this report are summaries of decisions of the Adjudication Panel for England. The decisions relate to appeals by members against the decisions of local standards committees as to breaches of the Code of Conduct and cases referred directly to the Adjudication Panel.

3. Implications for the Council

It is useful for the Standards Committee to consider decisions made by the Adjudication Panel for England as part of the continuing learning process into the new regime of local determination of standards complaints.

4. Consultees and their opinions

N/a

5. Officer recommendations and reasons

The decision summaries be circulated to all members of the Council.

6. Cabinet portfolio holder recommendation

N/a

7. Next steps

N/a

8. Contact officer and relevant papers

Dermot Pearson

Senior Legal Officer

Telephone: 01484 221437

Internal: 860 1437

E-mail: Dermot.pearson@kirklees.gov.uk

Background Papers: Decisions on the Adjudication Panel for England
website at www.adjudicationpanel.co.uk

**SUMMARY OF RECENT DECISIONS OF
THE ADJUDICATION PANEL FOR ENGLAND**

APE 0413

Calne Town Council

This case was an appeal against the decision of the North Wiltshire DC standards committee that the member had breached the Code of Conduct as a member of Calne Town Council and that he had bullied another person and failed to treat others with respect. The standards committee had ordered that the member be suspended for a period of one month unless he gave a written apology to the complainant.

The complaint concerned the member's actions towards the Clerk of Calne Town Council. The Town Council had previously considered a motion put forward by the member to fly the Union Flag from the town hall which was not passed. The town council's standing orders created a general rule that motions could not be resubmitted until 6 months had expired. Subsequently the annual parish meeting voted in favour of "flying the flag" but the issue was not debated at the town council meeting which followed because of the 6 month rule and the fact that there was no relevant item on the agenda. In the Clerk's absence on a day's leave the member had requested the Clerk's deputy to fly the Union Flag. When the Clerk returned she asked for it to be removed as a formal decision of the town council was required as to whether it should be flown. It was alleged that the member:

1. Had telephoned the Clerk and commented "*You are going to be in for a very difficult ride, this is war*" and something to the effect that "*I don't like your attitude*";
2. Had emailed a number of people including the press and the Clerk's PA, but not the Clerk herself quoting the Clerk as saying "*the town council is under no obligation to take any notice of the parish meeting*". The Clerk responded denying that she had said there was "*no obligation*" on the town council to consider the matter and saying that the town council "*had a duty to consider the proposal*". The member emailed the Clerk back stating "*You forgot yourself Town Clerk and you DID say exactly what I quoted and I stand by that. I made a note of it at the time*". The member's next email to the Clerk suggested the Clerk had been under a legal duty to inform those present at the annual parish meeting of the legal effect of their resolution and

said that she might wish to take legal advice as *“I am afraid that we will not let the matter rest.”* ;

3. At the meeting of the town council following the annual parish meeting the member, during an open part of the meeting, queried a petty cash claim for £20 which the Clerk had made for a working lunch for four people including external consultants, in connection with an establishment review. The member said that because the Clerk was on an extremely high salary, much more than councillors, she should be paying for working lunches out of her own pocket, as was the practice of the previous town clerk;

The standards committee found that the telephone call from the member to the Clerk did not involve any breach of the Code of Conduct, the member's emails about the flying of the flag were a breach of the Code of Conduct requirement not to bully any person and that the member's conduct in relation to the expenses claim was a breach of the Code of Conduct requirement to treat others with respect. The standards committee also considered all the allegations together, including the telephone call, and found that there was a pattern of behaviour which amounted to a failure to treat the Clerk with respect and bullying.

The Adjudication Panel found as follows:

The E-mails:

The Panel took the view that the telephone call and the emails were forceful, challenging and would have been uncomfortable for the Clerk to deal with but that she was the most senior officer of the town council and could be expected to handle robust and direct challenges from town councillors. Given the Clerk's instruction to take down the flag, some type of reaction from the member could be guaranteed and would not be unexpected. The tone used by the member was unfortunate at times, but did not amount to either disrespect or bullying.

The Expenses Claim:

The Panel took the view that it was unconscionable that the member should have suggested that the Clerk pay for Council expenses from her own pocket, regardless of what the previous 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. The Panel upheld the standards committee's finding that the member had failed to treat the Clerk with respect. Having found that the member's conduct over the expenses issue was the only breach of the Code the Panel found that a one-off incident such as this would have to have been more serious to

have amounted to bullying. Although the Panel was very critical of the member for his conduct at the meeting it did not consider that this was sufficient to warrant a finding of bullying.

The Panel upheld the standards committee's sanction of one month's suspension unless the member apologised to the complainant.

Comment

This decision is part of a trend in which the Adjudication Panel seems more inclined to expect officers, especially more senior ones, to deal with robust criticism from members and to not regard such criticism as being disrespectful or bullying.

APE 0410

Fylde Borough Council

This case was a referral from an Ethical Standards Officer from the Standards Board for England. It was alleged that the member had:

- (a) publicly calling for the chief executive of the Borough Council to resign and stated at the Council meeting that "*You should also tell the truth to the people of Lytham St Annes*".
- (b) during a meeting adjournment, stating that he was "*gunning for [the chief executive] big time now.*"
- (c) in so doing the member had failed to treat the Chief Executive with respect and bullied him contrary to the council's Code of Conduct.

The allegations arose from a Council meeting held on 3 March 2008. The Panel made the following findings of fact:

- (1) At its meeting on 3 March 2008, the council discussed its annual budget which involved a number of spending cuts being proposed by the council's administration.
 - The cuts were required in part because of a significant overspend on the 2007-2008 budget. Part of this overspend related to a loss of £609,000 in the Streetscene department which according to the portfolio holder for Streetscene (in an answer to a written question at the previous cabinet) had mainly

originated from a fire at the Streetscene depot in January 2007. The portfolio holder claimed at the cabinet meeting that he not been advised of the losses until December 2007, eleven months later.

- The cuts included the possible closure of both swimming baths in the district and a one-stop shop at Kirkham.

The meeting was held at the Fylde Rugby Club and commenced at 5.00pm, two hours earlier than the normal starting time for a council meeting. Over a hundred members of the public attended, many of whom were there to protest against the proposed pool closures.

- (2) In his address to the council meeting, the member spoke of his concerns about the proposed closure of public facilities and the mismanagement that had led to this situation. He made critical comments about the Conservative leadership of the council and the cabinet as well as making a comment about the Chief Executive's overall responsibility for the situation. The member's tone of voice in his address appeared to be measured, calm and assertive.

At the start of the meeting the ruling Conservative group issued an eight page document to opposition members listing changes to the proposed budget. No time was provided to allow opposition members to read or study the document. This led to some tension and ill will.