

**Standards Committee : 28 July 2009**

**Title of report: Summary of Adjudication Panel for England Decision**

<b>Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>	<b>N/A</b>
<b>Is it in the Council's Forward Plan?</b>	<b>N/A</b>
<b>Is it eligible for "call in" by Scrutiny?</b>	<b>N/A</b>
<b>Cabinet member portfolio</b>	<b>Corporate</b>

**Electoral wards affected and ward councillors consulted: N/A**

**Public or private: Public**

**1. Purpose of Report**

To provide a summary of a relevant Adjudication Panel for England decision.

**2. Key Points**

At the Annex to this report is a summary of the Adjudication Panel for England decision reference APE 0420 concerning a breach of the West Somerset District Council Code of Conduct in relation to the disclosure of confidential information.

**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**

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N/A

**5. Officer recommendations and reasons**

That the case summary be circulated to all members for information.

**6. Cabinet portfolio holder recommendation**

N/A

**7. Next steps**

N/A

**8. Contact officer and relevant papers**

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Background Papers:

Decisions on the Adjudication Panel for England website at  
<http://www.adjudicationpanel.tribunals.gov.uk/>

## ANNEX

### SUMMARY OF ADJUDICATION PANEL DECISION

The decision is set out in full on the Adjudication Panel for England's website at [www.adjudicationpanel.tribunals.gov.uk](http://www.adjudicationpanel.tribunals.gov.uk), where it can be found under "Decisions" by its reference number.

APE 0420 West Somerset District Council

This case concerned an allegation that the Councillor had breached his council's Code of Conduct in that he disclosed information of a confidential nature given to members in confidence about a proposed redundancy agreement with the council's Chief Executive without the disclosure being reasonable and in the public interest. The allegation was investigated by an Ethical Standards Officer appointed by the Standards Board for England.

The relevant paragraph of the West Somerset District Council Code of Conduct provided:

"You must not –

(a) Disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to have been aware, is of a confidential nature, except where-

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is-

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority."

The background to the alleged breach of the Code of Conduct was as follows.

1.1 On 12 December 2007 West Somerset District Council considered a report relating to the potential redundancy of an identified individual. A resolution had been passed, without dissent or discussion from any member (including the Councillor), to exclude the press and public while the report was considered.

1.2 The minutes record that the leader of the council told all members present that information in the report was confidential "and must remain so. Any leaking of the information could lead to formal proceedings being taken against the authority".

1.3 The report contained information about a redundancy settlement for the Chief Executive, setting out the various financial elements of the arrangement as well as some personal information relating to the Chief Executive.

1.4 Following the meeting the Councillor communicated with the press and based on the confidential report disclosed the details of the Chief Executive's redundancy package in a press release headed "Rebel Councillor Blows Whistle on District Farce".

1.5 At the time that the Councillor communicated with the press, he did not know whether the agreement with the Chief Executive had been concluded.

1.6 The information was published in the local newspaper and correctly attributed to the Councillor on 28 December 2007.

The Councillor argued before the Case Tribunal that he had deliberately breached confidentiality as "an act of protest at what [he] considered to be a serious public injustice". He felt that his disclosure was in the public interest and related to his view about officer accountability. The Councillor argued that a significant part of the blame for the council's financial difficulties was the responsibility of the Chief Executive who, he considered, should have resigned or been dismissed. Revealing the information was "an act of protest against the culture of secrecy [within the council] and that the "taxpayer had a right to know" about the payment given that the council was "basically [financially] crippled". He felt that there should be no secrecy when it comes to the salaries of senior officials within local authorities or public bodies in general and was concerned that the council was presented with what was in effect a 'done deal' with no proper opportunity for debate and decision, and insufficient information on which to base an informed decision.

The Councillor admitted that he did not "really weigh the pros and cons" of disclosure and said:

"If it meant additional cost to the council and taxpayer, then so be it. I felt the people would rather know the truth and bear the cost, than not know. Besides I also felt the council was in such a mess that any further expense would be almost irrelevant.

"I did spare a thought for the families of the CEO and Deputy and the public wrath they might possibly face in the aftermath of my disclosure, but after all we are talking about the mismanagement of public funds which effects us all and not just a few so again the public interest I felt outweighed the consequences of my actions.

"... whilst compiling my protest for the press, the possible repercussions to the council financially did not enter my mind as I felt that the council was in such financial difficulty anyway that one more item of expenditure would not make much difference as the authority was virtually bankrupt.

"I also felt that it would have been rich of them to file any lawsuit in light of the fact that the council had no money which was down to them, so in some ways I was calling their bluff so to speak".

The Case Tribunal found that the Councillor had breached the Code of Conduct. The Councillor had been acting in his official capacity when he obtained the information and when he disclosed it to the press. The reasoning of the Case Tribunal was as follows:

2.1 The information disclosed had the necessary “quality of confidence”. Although the Chief Executive’s salary, to within £10,000 was in the public domain via the Council’s accounts to work out from a broad knowledge of the Chief Executive’s salary what his redundancy pay was you would need more information than was readily in the public domain, such as years of service and age. In addition there were other elements in the settlement that had never been in the public domain as well as personal biographical details.

2.2 The Councillor received the information at an “exempt” session of the council, the minutes of which show that the council considered the public interest test in deciding whether the information should be kept confidential. At the meeting it was impressed upon the Councillor and the other councillors by the leader of the council that the information was confidential. The Case Tribunal considered that the information that was disclosed was given to the Respondent in confidence and was of a confidential nature.

2.3 The Case Tribunal was referred to the Information Commissioner’s guidance “When should salaries be disclosed?”. As part of the overview this indicates:

2.3.1 Salary scales should usually be published as a matter of routine. Disclosure should only be to the extent necessary to fulfil a legitimate public interest. This may involve narrowing down advertised scales, for example to the nearest £5000. Only in exceptional circumstances is disclosure of exact pay likely to be justified.

2.3.2 The exceptional circumstances cited include for instance where there “are current controversies or credible allegations” and “normal procedures have not been followed”. The Case Tribunal did not consider that this was the case here.

2.4 Although this guidance related to salaries rather than redundancy payments, the Case Tribunal considered that the principles were relevant and provided support for the argument that the Chief Executive’s detailed redundancy arrangements could legitimately be considered to be confidential.

2.5 In conclusion the Case Tribunal took the view that the Councillor had disclosed information given to him in confidence and which he believed or ought reasonably to have been aware was of a confidential nature, contrary to the Code of Conduct.

2.6 Having reached this conclusion the Case Tribunal then had to consider whether any of the exceptions in paragraph 4 applied.

2.6.1 The Councillor did not have consent to disclose the information.

2.6.2 The Councillor was not required by law to disclose the information.

2.6.3 The information was not disclosed for the purpose of obtaining professional advice.

2.6.4 The Case Tribunal considered whether the disclosure was reasonable and in the public interest; and made in good faith and in compliance with the reasonable requirements of the authority. The Case Tribunal undertook a balancing exercise in determining the public interest in disclosure of the information against the public and private interests in maintaining confidentiality of the agreement between the Chief Executive and the council.

2.6.4.1 The factors that the Case Tribunal took into account in favour of disclosure were:

- \* The right to, and value of, freedom of expression.
- \* The right of the public to know about decisions made by their elected representatives.
- \* Openness and transparency in relation to the use of public money.
- \* The fact that the council had not indicated at or soon after the council meeting on 12 December 2007 that it had any intention to disclose by way of a press release a general statement that it had agreed to the departure of the Chief Executive on mutually accepted terms. On the evidence available there had been no attempt to agree that a press release be issued or its content. There was a clear public interest in disclosure of the fact that the Chief Executive had been made redundant. It was not sufficient that a brief minute had been produced and that the public could discover the fact of the redundancy from the council's offices or a detailed examination of the council's accounts.

2.6.4.2 The factors which weighed against disclosure were:

- The disclosure intruded on the Chief Executive's privacy.
- Because of the timing the press release could have hindered the conclusion of the agreement that had been agreed by the full council.
- The council had determined that the matter should be considered as 'exempt' business.
- The council and the chief executive were negotiating a confidentiality clause in the termination agreement which could well have been a significant factor for either party in deciding whether to complete the agreement. The Councillor's disclosure might well have rendered such a clause nugatory.
- The Councillor voted both for the matter to be considered as 'exempt' business and also for the redundancy arrangements. He knew that it was about to be a legally binding agreement that all the councillors had agreed to and was subsequently prepared to knowingly breach the terms of that agreement.

- The disclosure would be likely to reduce the confidence of employees in the authority's ability to protect their right to privacy.
- The disclosure would be likely to reduce the ability to negotiate in confidence with employees in relation to employment disputes in the future making it difficult to settle employment disputes in a cost effective way.
- Some of the information released was still subject to the agreement of the Audit Commission. The Respondent had not given a full, accurate or definite picture of the redundancy settlement in the details he had released.

2.6.5 The Case Tribunal, having weighed up the different issues, considered that it was not in the public interest to disclose the detailed information of the Chief Executive's redundancy package. They put particular weight on the fact that the decision to treat the information as exempt had been agreed unanimously by the full council after considering the public interest and that the Councillor had not put forward any objections. The full council had unanimously agreed to the redundancy package. They also considered that as a matter of good governance there was a public interest in councils being able to rely on confidential information remaining so where the proper process had been followed.

2.6.6 The Chief Executive had been led to believe and had a legitimate expectation that the agreement would be formally recorded in a legally binding document with a confidentiality clause which was due to be signed shortly after the meeting. It was unreasonable in the circumstances to release that information.

2.6.7 The Case Tribunal considered the Respondent's submissions that the redundancy arrangements had been made inappropriately and in secrecy and that instead of receiving a redundancy pay the Chief Executive should have been disciplined; it was therefore in the public interest for the arrangements to be disclosed. However, the Case Tribunal did not accept this as a justification for his actions. It was clear that the Audit Commission were aware of what was taking place and were being consulted about the settlement. Also, the council had chosen to agree a redundancy package for the Chief Executive when, if there were grounds for so doing, it could have used statutory procedures to investigate his actions.

2.6.8 The Councillor had not acted in good faith as he had not sought advice as to how the public could be told about the redundancy package. He could, for instance, have sought advice from the Monitoring Officer or his own lawyer, who could have assisted him to make a formal application for some or all of the information to be made public. He clearly did not comply with the reasonable requirements of the authority: it was made very clear to him that the Chief Executive's redundancy package was confidential but he then without any warning disclosed the details of it to the press.

2.7 The Case Tribunal therefore concluded that the Respondent had breached the Code of Conduct and suspended the Councillor for 3 months.

## **Commentary**

This case illustrates the complex issues which arise when deciding whether disclosure of confidential information is justified. In its conclusions the Case Tribunal suggested that the Councillor could have released the fact that the arrangement had been made, without breaching the Code of Conduct, provided that detailed financial information was not disclosed in the process.

**C&G/DJP**