

Standards Committee: 30 September 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.

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

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

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

The decisions are set out in full on the Adjudication Panel for England's website at www.adjudicationpanel.tribunals.gov.uk, where they can be found under "Decisions" by their reference numbers.

APE 0417 – Somerset County Council

[Extract from Standards for England Bulletin Issue 45]

On July 23 2009, the President of the Adjudication Panel for England made a significant decision in the case of Councillor Buchanan, an ex-councillor of Somerset County Council.

This is an important judgment as it is the first occasion in which the Adjudication Panel had to deal with a potential breach of paragraph 3(2)(c) of the Code of Conduct. Paragraph 3(2)(c) concerns the intimidation of, or an attempt to intimidate, a complainant in a Code of Conduct investigation.

In April 2007, the Chief Executive of Somerset County Council made a number of complaints about Councillor Buchanan's behaviour to Standards for England. Later on that year, Councillor Buchanan made a formal complaint to the council about the Chief Executive's conduct which the council decided not to investigate.

Following a further complaint from the Chief Executive about Councillor Buchanan, the council's Liberal Democrat group asked Councillor Buchanan if he would suspend himself from the group pending the outcome of all ongoing investigations, but he declined. Councillor Buchanan was notified that his membership of the Liberal Democrat group had been formally revoked on 5 December 2007.

On that same day, Councillor Buchanan wrote a letter to the Association of Local Authority Chief Executives, (ALACE) stating formal complaints about the Chief Executive and listed five headings of inappropriate and unacceptable types of behaviour that the Chief Executive had allegedly committed. And five days later, he sent a letter in identical terms to the Society of Local Authority Chief Executives (SOLACE).

On 15 December 2007 Councillor Buchanan further wrote a formal complaint to the council's monitoring officer in almost identical terms.

The Chief Executive then complained about Councillor Buchanan's motivation and intent in making the serious allegations about him in the letters. This was because Councillor Buchanan knew that Chief Executive was the complainant in an ongoing investigation.

Against these facts the Tribunal had to decide whether:

- Councillor Buchanan had brought his office or authority into disrepute
- had used his position to improperly disadvantage the Chief Executive
- had intimidated or attempted to intimidate the Chief Executive.

The respondent's case was that he had either witnessed or been told about the Chief Executive's alleged behaviour and had previously raised his concerns about the behaviour with various senior officers of the council.

The Tribunal's findings were that Councillor Buchanan had not voiced the concerns he was now alleging and that:

- although he may have formed a belief about the seriousness of the alleged behaviour, there was no evidence to suggest that it was reasonable for him to have done so
- whatever he had seen, he did not at the time regard the alleged incidents as seriously as he was asserting at the time he wrote the letters
- he had knowingly exaggerated the facts about the Chief Executive's style and performance in order to strengthen his allegations of serious misconduct.

Counsel for the ethical standards officer (ESO) had helpfully referred the Adjudication Panel to the Shorter Oxford Dictionary definition of the word 'intimidate' as meaning terrify, overawe, cow. The dictionary suggested the word was now used especially in order to mean to force to or to deter from some act by threats of violence.

Counsel for the ESO also referred the Tribunal to R v Patresca [2004] EWCA Crim 2437, which concerned an offence under Section 51 of the Criminal Justice and Public Order Act 1994. This proves that a person commits an offence if he or she does an act:

- (a) which intimidates and is intended to intimidate another person (the victim)
- (b) knowing or believing that the victim is assisting in the investigation of an offence or is a witness or potential witness

(c) intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.

The Court of Appeal noted that the Criminal Justice and Public Order Act provided that "an intimidatory act which consists of threats may threaten financial as well as physical harm".

In the course of the judgment, May LJ confirmed that 'intimidate' and 'intimidation' are ordinary English words and endorsed the dictionary definition referred to above and stated:

"In our judgement, a person does an act which intimidates another person within section 51 (1) (a) of the 1944 Act if he puts the victim in fear. He also does it if he seeks to deter the victim from some relevant action by threat or violence. A threat unaccompanied by violence may be sufficient and the threat need not necessarily be a threat of violence. The act must be intended to intimidate. The person doing the act has to know that the victim is a ...witness or potential witness...., He has to do the act intending thereby for the cause of justice to be obstructed, perverted or interfered with. A person may intimidate another person without the victim being intimidated...An act may amount to intimidation even though the victim is sufficiently steadfast not to be intimidated.

"In our judgement pressure to change evidence alone is insufficient, Pressure alone might be unexceptional and entirely proper at least if applied in an honest belief, for instance that what was sought was evidence which would be truthful. Alternatively pressure might be improper but lack any element of intimidation, for example a bribe. For a person to intimidate another person the pressure must put the victim in some fear, or if not there must nevertheless be an element of threat or violence such that the pressure is improper pressure."

Against this background, the Case Tribunal had no doubt that in writing the letters to ALACE and SOLACE and later to the council, Councillor Buchanan was motivated by a desire to cause harm to the Chief Executive whom he saw as responsible for the collapse of his political career.

The Case Tribunal was also in no doubt that in writing those letters, the respondent intended to cause the Chief Executive a disadvantage both in terms of his future employment with the council or more widely. Because those letters were submitted essentially as an act of revenge, the respondent did use his position improperly and had thus failed to follow the provisions of paragraph 6(a) of the council's Code of Conduct.

The Tribunal also found that even though there was no evidence that the Chief Executive was intimidated, that did not of itself mean that the allegation of a breach

of paragraph 3 (c) failed. There would still be such a breach if the respondent had attempted such intimidation.

The Case Tribunal believed that for the claim to succeed it would have to accept that the letters were intended to intimidate the Chief Executive into:

- altering any evidence he was called upon to give against the Councillor; **or**
- not making further complaints about the Councillor.

On the facts of this particular case the Case Tribunal concluded that neither were Councillor Buchanan's intention. The evidence here was that the respondent was seeking revenge for the Chief Executive's past actions rather than seeking to intimidate him. Therefore there was no breach of paragraph 3(c) of the council's Code.

The Case Tribunal's view was that the respondent, in allowing his actions to be motivated by his desire for revenge, had shown himself to be unfit to be a councillor and local authorities should be protected from his membership.

Although the respondent had by then ceased to be a councillor, he was disqualified was two years.

The Adjudication Panel's decision is on the APE website under its reference APE 0417.

APE 0424 – Gosport Borough Council

[This case is the subject of an appeal to the High Court and the sanction imposed has been suspended pending the High Court's decision]

This case concerned an allegation that the councillor failed to declare personal and prejudicial interests, failed to leave the room while business in which he had a prejudicial interest was discussed at a council meeting, improperly used his position to advance his own interests and those of his limited company and brought his office and his council into disrepute.

The councillor wished to stage a music festival on council land using his limited company and wrote to the council in his private capacity asking for permission. The council's Emergency Sub-board met and gave its approval in principle to the

proposal. Following this approval the councillor updated his registered interests to include his employment by and directorship of his limited company. The council's Licensing Sub-board granted the council a premises licence for the proposed festival subject to conditions.

At the following meeting of the full council a three part motion was considered which would have enabled the council reconsider the terms upon which the approval had been given. The councillor did not declare any interest in relation to the motion, did not retire from the meeting room and voted against the first part of the motion, which was defeated by a single vote. As a result there was no consideration of the rest of the motion. The music festival took place.

The Tribunal noted that the costs of staging the music festival were £270,000 and found that the councillor had a personal and prejudicial interest in the motion because of his involvement with his limited company, which meant that the matter under consideration would affect his employment and business. His interest was one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it was likely to prejudice the councillor's judgment of the public interest.

The Tribunal found that the councillor had breached the Code of Conduct by failing to declare a personal and prejudicial interest, failing to withdraw from the council chamber before a vote was taken, improperly used his position to secure an advantage for himself and his company and brought both his office of councillor and the council into disrepute. The Tribunal viewed the case as an extremely serious one going to the very heart of the ethical framework which revealed a blatant and deliberate disregard for the Code of Conduct. It noted that the councillor had recently been re-elected to Hampshire County Council but in the circumstances of the case none-the-less decided to disqualify the councillor for a period of two years.

APE 0427 – Needham Market Town Council

This case concerned an allegation that the Councillor had breached his council's Code of Conduct by failing to treat others with respect when, at the council's mayor making meeting he called the new mayor and the council's deputy clerk were "proven liars". The mayor had previously been the council's town clerk and the background to the allegation was that during a previous complaint to the Standards Board about the Councillor's treatment of her when she was town clerk, which led to

the councillor being suspended for three months, the issue had arisen as to whether a particular telephone call had taken place between the councillor and the then town clerk. In the event the issue of the phone call was not considered relevant to that complaint by the investigator or the district council's standards committee and no findings of fact were made about it. Following the outcome of that complaint the councillor had tried to pursue his allegation that the then town clerk and her deputy had lied about the phone call but the council had refused to look into the matter. Subsequently the town clerk was elected to the council and later became the mayor.

The councillor's defence to the complaint was that if the former clerk and the deputy clerk had lied he was entitled to say so. The Tribunal found that the councillor was acting in an official capacity when he spoke at the council meeting but decided that it was unnecessary for it to rule upon whether the mayor and the deputy clerk had lied about the telephone call. The Tribunal accepted that the truth of comments will often have a direct bearing on whether the comments amount to a failure to show respect but decided on the facts of the case that the comments were a breach of the Code whether or not they were true. The dispute about the telephone call was of long standing and the Tribunal understood the councillor's frustration at not being able to get his concerns investigated but found that the way the councillor chose to raise the matter at the council meeting was not appropriate. The councillor's views were well known and there was no new information which required him to raise the issue at the meeting.

His true purpose in raising his allegations at the meeting was to tarnish the election of the new mayor and to reignite the dispute over the telephone call. In particular the Tribunal noted that the election of the mayor was a formal occasion and important for the new mayor, his view that the mayor had lied about the telephone call was strongly disputed, no body or tribunal had accepted the allegation and it was wrong to describe the mayor as a "proven liar" and the other councillors were well aware of his views. The Tribunal found that the councillor had failed to treat the mayor with respect and made the same finding in relation to the deputy clerk, noting that only in exceptional circumstances would a councillor be entitled to challenge an employee's honesty in an open meeting of the council.

The Tribunal considered the councillor's right to freedom of expression under Article 10 of the European Convention on Human Rights and concluded that while the councillor was not entitled to the highest level of protection, his reputation was in issue as was the suitability of a person for public office was in issue so he was entitled to a substantial degree of protection. However the language he had used was inflammatory and the councillor could have expressed himself in language which would have put the issues before the council without using such language. Given that the choice of language was intended to inflame the situation, tarnish the

election of the mayor and reignite a known dispute rather than to genuinely expose the mayor's previous conduct to scrutiny, a finding that the councillor had breached the Code was an interference with his right to freedom of expression but one which was lawful.

The Tribunal considered the appropriate sanction to impose and was advised that the councillor had submitted his resignation earlier that morning. It was noted that the councillor had been re-elected with a substantial number of votes following the earlier standards complaint and his suspension, and that at that time it would have been apparent that the councillor had a poor relationship with the other councils and the dispute about the telephone call was in the public domain. The Tribunal took the view that the councillor's conduct was often based on tactics which had as their objective causing difficulty for those opposing his views, rather than achieving an objective that was in the public interest.

The councillor was disqualified for 12 months.

Comment

The Tribunal clearly had some sympathy with the councillor because while the disputed telephone conversation was of no significance in itself it did potentially raise issues about the suitability of the mayor for public office. However when the Tribunal considered the timing, words used and motivation for bringing the issue up at the council meeting they took the view that whether or not the mayor and deputy clerk had lied about the telephone call did not need to be considered before deciding that the councillor had failed to treat them with respect.