



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(Local Government Standards in England)**

CASE NO: LGS/2010/0491

ON APPEAL FROM:

Standards Committee of: Herefordshire Council
Decision Notice No: SC0802
Dated: 11 December 2009

APPELLANT:

**Councillor Frank Myers of Walford Parish
Council**

RESPONDENT:

**Herefordshire Parish Council Standards
Committee**

Determined on the papers:

21 May 2010

DATE OF DECISION:

4 June 2010

BEFORE

**Judge: Beverley Primhak
Member: Brian McCaughey
Member: Chris Perrett**

Subject matter:

**Appeal by a member of a local authority
against a Standards Committee decision**

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal has been refused and the decision of the Standards Committee has been upheld.

REASONS FOR DECISION

1. The Tribunal has considered an appeal from the Appellant.
2. The Appellant had appealed against the Standards Committee's finding that the Appellant had failed to follow paragraph 6(a) of the Code of Conduct following a determination by the Standards Committee of Herefordshire Council that in April 2008 the Appellant used his position as Vice Chairman of the Parish Council improperly to confer on or secure an advantage for himself or a disadvantage for Councillor Cole.
3. The Appellant has appealed against the action which the Standards Committee decided to take in the light of the failure to follow the provisions of the Code of Conduct. That action was that the Appellant be required to undertake training provided by the Monitoring Officer and be required to make a written apology in a form agreed by the Deputy Monitoring Officer.
4. The Tribunal has considered written evidence and submissions on behalf of the Standards Committee and the Appellant. It is satisfied that the appeal may appropriately be determined by way of written representations.

Relevant paragraphs of the Code

5. Paragraph 2 provides:

(1) Subject to sub-paragraphs (2) and (5), you must comply with this Code whenever you:

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority; and references to your official capacity are construed accordingly.

6. Paragraph 6(a) provides:

"You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage".

Preliminary issues

7. In his grounds of appeal the Appellant alleged that the procedures followed by the Standards Committee were unfair. However, the Tribunal has considered the issues afresh and has reached its own view of the facts and whether those facts disclose a

breach of the Code. The Tribunal has not made a determination on the fairness or otherwise of the Standards Committee procedures as the appeals process has effectively cured any injustice. The Appellant submitted that there was an unreasonable delay in the matter being heard; however the Tribunal considered that any delay that had occurred has not had an effect on the outcome.

Finding of Facts

8. The Standards Committee made findings of fact. The undisputed facts are as follows:
 - 8.1. The Appellant held a beneficial interest in the Wythall Estate. Whilst the estate is adjacent to Thorny Orchard, separated only by a B road, the topography of the location means that the habitable element of the estate is a significant distance from either Thorny Orchard, which is screened from the road by a screen of mature trees, or Orchard House. There is no access road from the adjoining B road to the estate.
 - 8.2. The agenda item described as Thorny Orchard in the minutes of the meeting of the Walford Parish Council of 12 March 2008 was primarily concerned with the planning enforcement history relating to both Thorny Orchard and Orchard House.
 - 8.3. Whilst the development of the site did create noise and disruption, the activities which were the subject of the planning consent and discussion of the Parish Council meeting did not create interference, or directly or indirectly affect the Wythall Estate.
 - 8.4. There were concerns within the community concerning the activities undertaken by Councillor Cole at Orchard house.
 - 8.5. The Parish Council had not authorised the Appellant to raise concerns with the water authority or its contractors.
 - 8.6. The Appellant believed there to be a breach of planning law but professional advice had not been sought and his view had not been endorsed.
 - 8.7. The cessation of Laing O'Rourke activities at Orchard House did not impact upon the Wythall Estate to any greater extent than other residents in the area.
9. The disputed facts relate to:
 - 9.1. Whether there was a continuing disagreement between the Appellant and Councillor Cole as a result of actions taken during an earlier County Council election campaign;
 - 9.2. Whether the Appellant when writing to Laing O'Rourke, signing the letter as Vice Chairman of Walford Parish Council, created the perception that he was acting in his capacity as a senior councillor on behalf of the Council; and
 - 9.3. Whether the letter written by the Appellant acted as a catalyst for the termination of the agreement between Councillor Cole and the Welsh Water Authority and that consequently Councillor Cole suffered financial loss as a result.

Whether there was a continuing disagreement between the Appellant and Councillor Cole as a result of actions taken during an earlier County Council election campaign

10. The Standards Committee concluded as a matter of fact that there was a continuing disagreement between the Appellant and Councillor Cole, after hearing oral evidence. The Appellant strongly disputes this. He states that there has been political rivalry but not personal enmity. The Tribunal considers that whether or not there is a continuing disagreement between Councillor Cole and the Appellant is not central to the issues and makes no finding in this respect.

Whether the Appellant when writing to Laing O'Rourke, signing the letter as Vice Chairman of Walford Parish Council, created the perception that he was acting in his capacity as a senior councillor on behalf of the Council.

11. The Appellant wrote letters to the Chief Executives of Laing O'Rourke, Severn Trent and Enterprise PLC in April 2008. These all used similar wording. They were on his own headed notepaper and signed "*Frank Myers MBE, Vice Chairman Walford Parish Council*". The Appellant submits that the letters were written by him in his personal capacity. However, the letters all use the words "*It is our view and belief that such use is not permitted on this site and that you are potentially committing various offences.*" There is nothing in the letter to indicate whom "*our view and belief*" could relate to other than the Parish Council. The letters go on to state: "*We who live in the locality are considering every possible means to put a stop to this eyesore*" and "*Your comments would be appreciated and will be shared with the Community*". The Tribunal considers that a person receiving such a letter would be given the clear impression that it was sent on behalf of the Parish Council.

Whether the letter written by the Appellant acted as a catalyst for the termination of the agreement between Councillor Cole and the Welsh Water Authority and consequently whether Councillor Cole suffered financial loss as a result

12. The Appellant argues that there is no evidence that the letter acted as a catalyst for the termination of the agreement for use of the site by Welsh Water. However, it is quite clear from letters sent back by the Managing Director of Welsh Water and Laing O'Rourke that they treated the letters sent to them very seriously indeed and that the Appellant's involvement was influential in their decision to close the site by 1 May 2008, very shortly after the letters were written. The Tribunal accepts that it cannot be said that Councillor Cole necessarily suffered a financial loss as a result of the actions of the Appellant. Whether or not the contractors left the site was a matter for them and would depend on various factors, including how seriously they viewed their community policies and what legal agreements were in place. It is not known how much Laing O'Rourke and others were affected by the reference in the letters to "offences." It could be assumed that they would know that the Parish Council had no formal remit in respect of planning or environmental controls; however, it was bound to cause them concern.

Official Capacity

13. The Appellant has argued that he wrote the letters to Laing O'Rourke and others in his private capacity and that therefore he cannot have breached the Code. However, in response to the Standards Committee's submissions he accepted that in writing the letters, he acted as a Councillor and wrote the letters as a result of complaints made to him as a Councillor. He also signed his letters as Vice Chair of the Parish Council.
14. The Tribunal finds that the Appellant was acting in his official capacity when writing to Laing O'Rourke and the other companies.

Whether there was a breach of Paragraph 6(a)

15. The Tribunal has to consider whether the Appellant used his position as a member improperly and whether it was to confer on or secure for him or someone else an advantage or disadvantage.
16. In considering whether the Appellant breached paragraph 6(a) of the Code, the Tribunal has had regard to Article 10 of the European Convention on Human Rights. This provides:

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of ... the protection of the reputation or rights of others."

The right to freedom of expression is an important right in a democratic society and may only be interfered with where there are convincing reasons justifying the interference. It is important that the restraints do not extend beyond what is necessary to maintain proper standards in public life.

17. The Tribunal has found that the letters sent by the Appellant would have given the fair-minded reader the impression that they had been sent on behalf of the Parish Council and were expressing their official concerns. It is clear that the Appellant had no authority to write in those terms. Indeed, he says in his submissions that, although he had no doubt that the Parish Council would have written a letter in the way that he did if he recommended it, it was not worth creating the ill-feeling that would have been caused, given that the complainant and Mrs Cole were both councillors. The Parish Council was certainly concerned about the state of the Coles' site as recorded in the minutes of their meeting held on 12 March 2008. The minute states: *"It was agreed that Cllrs. Thomas and Myers would draft a letter for further comment by Councillors and then submission to the Authorities"*. However, the intention was clearly that a letter would be agreed and then presumably sent in the normal way to the Local Planning Authority and other agencies. There was no authority from the Parish Council for the Appellant to send letters such as he did to the companies occupying the site.
18. The Tribunal considers that it would have been acceptable for the Appellant to write as he did in his personal capacity and probably also as a councillor on behalf of his constituents. What he was not entitled to do was to write seemingly on behalf of the Parish Council in the terms he did, and the Tribunal considers that his actions were improper.
19. Given the facts as found, the Tribunal does not consider that the Appellant wrote to the contractors to secure a direct advantage for himself; what he did was to confer a disadvantage on Councillor Cole, whether intentionally or recklessly. He wrote to Laing O'Rourke and the other companies, claiming the weight of the community behind him, to persuade them to stop doing business with Councillor Cole and to leave the site. It is clear from the correspondence that the Respondent's intervention had a strong influence on the actions of the contractors. The Tribunal considered that the Appellant did not require a prejudicial interest to confer a disadvantage on Councillor Cole.
20. For these reasons the Tribunal considers that the Appellant breached paragraph 6(a) of the Code of Conduct and that in all the circumstances the finding involves a proportionate restriction on his right to freedom of expression.

Sanction

21. The Tribunal must decide whether the sanction imposed by the Standards Committee was reasonable and proportionate in all the circumstances.
22. The Tribunal has taken account of the guidance issued by Standards for England for Standards Committee determinations.
23. The Standards Committee's submissions state that they took into account the Standards for England guidance and imposed the lightest sanction that was appropriate in all the circumstances, taking into account the councillor's relative inexperience and that he had apologised to the Committee.
24. The Standards for England guidance states:

"Suspension may be appropriate for more serious cases, such as those involving: trying to gain an advantage or disadvantage for themselves or others"
25. Although a period of suspension might have been appropriate for a breach of paragraph 6(a), the Tribunal agreed with the Committee that there were mitigating factors in this case as identified by them. The Tribunal was also mindful of the fact that, although the Appellant had broken the Code by writing as he did, the Parish Council had had concerns about the planning situation at the Orchard House site, and that there was no evidence that the Respondent had acted for his personal gain.
26. For these reasons the Tribunal considered that the sanctions imposed by the Standards Committee were appropriate.
27. The Tribunal upheld the finding of the Standards Committee.
28. The Tribunal directs that the sanctions that the Respondent should undertake training provided by the Monitoring Officer and that he be required to make a written apology within four weeks in a form agreed by the Deputy Monitoring Officer, as originally imposed by the Standards Committee, will take effect.
29. The written reasons for the Tribunal's decision will be published on the Tribunals website at www.adjudicationpanel.tribunals.gov.uk.
30. Any request for the decision to be reviewed or for permission to appeal needs usually to be made to the First-tier Tribunal within 28 days of receipt of the Tribunal's reasoned decision. Such applications need to be in writing.

Beverley Primhak

Judge

4 June 2010