



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

CASE NO: LGS/2010/0492

ON APPEAL FROM:

Standards Committee of:
Decision Notice No:
Dated:

Bury Metropolitan Borough Council
SC.06
17 February 2010

APPELLANT:

**Councillor Michael Connolly of Bury
Metropolitan Borough Council**

RESPONDENT:

**Bury Metropolitan Borough Council
Standards Committee**

Determined on papers on:

25 May 2010

DATE OF DECISION:

27 May 2010

BEFORE

**Judge: Patrick Mulvenna
Member: Peter Dawson
Member: Keith Stevens**

Subject matter: Appeal by a member of a local authority against a Standards Committee decision

Cases:

Sanders -v- Kingston [2005] EWHC 2132 (Admin)
Hathaway -v- Ethical Standards Officer [2004] EWHC 1200 (Admin)
Sloam -v- Standards Board for England [2005] EWHC 124 (Admin)
The Queen on the Application of Chegwyn -v- Standards Board for England [2010] EWHC 471 (Admin)

DECISION OF THE FIRST-TIER TRIBUNAL

The appeal has been upheld and the decision of the Standards Committee on sanction has been rejected

REASONS FOR DECISION

1. The Tribunal has considered written submissions from the Appellant and from the Respondent.
2. The Appellant has been granted permission to appeal against the action which the Respondent decided to take in the light of a failure to follow the provisions of the Code of Conduct. That action was to suspend the Appellant from midnight on 21 February 2010 to midnight on 13 May 2010. The terminal date was expressed to have been determined to enable the Appellant to prepare for, and to attend, the Annual Meeting of the Council on 18 May 2010.
3. The Council adopted its present Code of Conduct on 16 May 2007. The relevant provisions are contained in paragraphs 8 - 12. They read as follows:

'Personal interests

8. (1) *You have a personal interest in any business of your authority where either-*
- (a) it relates to or is likely to affect –*
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;*
 - (ii) any body –*
 - (aa) exercising functions of a public nature;*
 - (bb) directed to charitable purposes; or*
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;*
 - (ii) any employment or business carried on by you;*
 - (iv) any person or body who employs or has appointed you;*
 - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election of any expenses incurred by you in carrying out your duties;*
 - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);*

(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
(ix) any land in your authority's area in which you have a beneficial interest;
(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is the tenant;
(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of – (sic)

(2) In sub-paragraph (1)(b), a relevant person is –

- (a) a member of your family or any person with whom you have a close association; or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9. (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature of existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of member's interest, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under Section 22 of the Local Government Act 2000.

Prejudicial interest generally

10. (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business –

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of –

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

(vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where –

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interest on participation

12. (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority –

(a) you must withdraw from the room or chamber where a meeting considering the business is being held –

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.'

4. The facts which gave rise to the Respondent's decision are not in dispute. They may be summarised as follows:
 - 4.1. A report ('the report') was prepared for the Council which '...responds to the outcome of the residential care consultation and sets out proposals that form the basis of the next consultation for modernising services that will enhance older people's housing and develop a programme for independent living.'
 - 4.2. The report identified workforce issues and stated. '...changing provision will impact on staff and effective communication and negotiation with trade unions will be necessary. A change management strategy will be developed to ensure that sufficient numbers of skilled staff are retained and that services continue to operate smoothly during any transition periods. Where staff require retraining or redeployment this will need to be conducted in a planned manner...'
 - 4.3. The report continued, 'The changing landscape for older peoples' housing will also bring new challenges for employees. Accordingly, workforce planning will look at the skills required and establish what alternative employment/training opportunities are needed to ensure the effective use of staff...'
5. The Appellant's partner was (and presumably still is) employed as a care assistant assisting people with learning disabilities at Whittle Pike, a Council run day centre. Whittle Pike is expressly referred to in the report, albeit within the context of '...running in tandem with the implementation of the agreed Learning Disabilities modernisation plan...' The report indicated that '...Hazelhurst/Whittle Pike has provisionally been identified as the site for a northern settlement.' This would appear to fit within the concept of 'a care village development', that is, a 'larger scale site with several hundred homes and associated community facilities.' It is evident that the Appellant's partner, as an employee at Whittle Pike Day Care Centre could potentially be affected by the proposals outlined in the report.
6. The Respondent found that the Appellant's partner was a 'relevant person' within the meaning of paragraph 8(2) of the Code. It was also found that he had a personal interest which was prejudicial in accordance with the definition contained in paragraph 10 of the Code. The Tribunal concurs with the Respondent's findings in this respect.
7. The report was considered at a meeting of the Joint Scrutiny Commission held on 22 January 2009 and at a meeting of the Healthier Communities Scrutiny

Commission held on 19 February 2009. The Appellant was present at both meetings.

8. It appears from the Report that the Joint Scrutiny Commission was 'established to examine the review of residential care.' The Appellant was recorded as being present at the meeting held on 22 January 2009 as a member of the Joint Scrutiny Commission and as declaring a personal interest in the 'Review of Residential Services for Older people, as the partner of an employee of a Local Authority facility for people with learning disabilities.' He is also recorded as having spoken at the meeting, particularly by commenting that 'the care village option had been overlooked within the preferred Option 4 set out in the Report.'
9. The Appellant is not recorded as being present at the meeting of the Healthier Communities Scrutiny Commission on 19 February 2009, although it is recorded that he declared a personal interest 'as the partner of an employee of the Council working at Whittle Pike.' It is recorded that 10 unnamed members of the public were present. The Appellant spoke at the meeting and the record of his contribution is under the heading 'Public Questions.' The Appellant appears not to have asked a question, but to have 'expressed concern over the impact of the proposals to possibly develop well being sites at...Whittle Pike would have on the learning disability community.' He 'accepted that the Modernisation Plan 2005 had been consulted on but highlighted that no recent consultation had taken place within the disability community on the specific proposals in [the report]'
10. The Respondent concluded that the Appellant had a prejudicial interest in the Report and should have declared so and acted accordingly. In particular, the Respondent found that the Appellant had breached paragraph 12(a) and (c) of the Code of Conduct which required him, respectively, to withdraw from the room or chamber where the meeting considering the business was being held; and not to seek improperly to influence a decision about that business.
11. The Appellant sought permission to appeal these findings and the sanction imposed by the Respondent. On 22 February 2010, Principal Judge Laverick refused permission to appeal in relation to the findings that there were breaches of the Code of Conduct. He granted permission to appeal the sanction. That sanction was to suspend the Appellant from midnight on 21 February 2010 to midnight on 13 May 2010. The terminal date was determined to enable the Appellant to prepare for, and to attend, the Annual Meeting of the Council on 18 May 2010. The suspension was for a period of 80 days. It is implicit in the decision that the Respondent considered that a lengthier period was appropriate. There is no indication in the record what that might be, although the answer to the appeal suggests that it was three months.
12. The Standards Board for England has issued guidance to standards committees in the following terms:

'When deciding on a sanction, the standards committee should ensure that it is reasonable and proportionate to the subject member's behaviour. Before deciding

what sanction to issue, the standards committee should consider the following questions, along with any other relevant circumstances:

What was the subject member's intention?

Did the subject member know that they were failing to follow the Code of Conduct?

Did the subject member get advice from officers before the incident?

Was that advice acted on or ignored in good faith?

Has there been a breach of trust?

Has there been financial impropriety, for example improper expense claims or procedural irregularities?

What was the result of failing to follow the Code of Conduct?

What were the potential results of the failure to follow the Code of Conduct?

How serious was the incident?

Does the subject member accept they were at fault?

Did the subject member apologise to the relevant people?

Has the subject member previously been warned or reprimanded for similar misconduct?

Has the subject member failed to follow the Code of Conduct before?

Is the subject member likely to do the same thing again?

How will the sanction be carried out? For example, who will provide the training or mediation?

Are there any resource or funding implications? For example, if a subject member has repeatedly or blatantly misused the authority's information technology resources, the standards committee may consider withdrawing those resources from the subject member.

Suspension may be appropriate for more serious cases, such as those involving: trying to gain an advantage or disadvantage for themselves or others, dishonesty or breaches of trust, bullying.

Sanctions involving restricting access to an authority's premises or equipment should not unnecessarily restrict the subject member's ability to carry out their responsibilities as an elected representative or co-opted member.'

13. The Guidance goes on to extract from 'Guidance published by the First-tier Tribunal on aggravating and mitigating factors they take into account when assessing an appropriate sanction.'
14. The Respondent gave no reasons for deciding the sanction imposed and there is no record in the minutes of their proceedings that they took account of the guidance issued by the Standards Board for England. The Council's Monitoring Officer has subsequently confirmed that account was taken of the guidance. There is no reason to doubt the Monitoring Officer, but it would have been good practice to record all the factors taken into account, as well as any which were disregarded. It would also have been helpful if the reasons for the sanction imposed had been given. The minute records a limited number of factors which were noted or considered (the Appellant's experience, his apology and his failure to seek guidance) but does not disclose the weight given to these or any other factors. There is no recorded rationale for the sanction. Subsequently (in response

to the appeal) it has been advanced that it was not felt that 'the conduct [was] not at the lower end of the spectrum.' It is by no means clear what 'spectrum' was in mind nor what comparators had been used in determining the relativity of the seriousness of the breaches. In the absence of a reasoned decision by the Respondent, the Tribunal has determined to consider the question of sanction by the exercise of its own judgement.

15. In considering the sanction, the Tribunal has had regard to the Standards Board for England guidance, to the Guidance on Decisions issued to First-tier Tribunals in March 2010 ('the Guidance') and also to the decision of Sullivan J in **Sanders -v- Kingston [2005] EWHC 2132 (Admin)**. The Guidance, at paragraphs 13 and 14 provides:

'In deciding what action to take, the Tribunal should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus, the action taken by the Tribunal should be designed both to discourage or prevent the particular Respondent from any future non-compliance and also to discourage similar action by others.

Tribunals should take account of the actual consequences which have followed as a result of the member's actions while at the same time bearing in mind what the possible consequences may have been even if they did not come about.'

16. In relation to disqualification, the Guidance provides, at paragraph 13:

'Disqualification is the most severe of the sanctions available to the Tribunal. This option is likely to be appropriate where:

- the Respondent has deliberately sought personal gain (for either him or herself or some other person) at the public expense by exploiting his or her membership of the body subject to the Code of Conduct*
- the Respondent has deliberately sought to misuse his or her position in order to disadvantage some other person*
- the Respondent has deliberately failed to abide by the Code of Conduct, for example as a protest against the legislative scheme of which the Code forms part. Members of local authorities are expected to uphold the law. Where the Code has been deliberately breached to reflect the Respondent's opposition to the principles underlying the legislation, the Tribunal is likely to think of a disqualification of one year*
- there have been repeated breaches of the Code of Conduct by the Respondent*
- the Respondent has misused power or public assets for political gain*

- *the Respondent has misused council property*
- *the Respondent has committed a criminal offence punishable by a sentence of three months or more imprisonment.'*

17. In relation to suspension, the Guidance provides, at paragraphs 19 and 20:

'Suspension is appropriate where the circumstances are not so serious as to merit disqualification but sufficiently grave to give rise to the need to impress upon the Respondent the severity of the matter and the need to avoid repetition. A suspension of less than a month is not likely to have such an effect.

Suspension is likely to be appropriate where the Respondent has been found to have brought his or her office or authority into disrepute without either being found in breach of any other paragraph of the Code, or being found to have committed a criminal offence punishable by at least three months imprisonment.'

18. The Guidance also provides, at paragraph 27, that a decision not to impose disqualification, suspension or partial suspension might be appropriate in circumstances which might include:

- *'An inadvertent failure to abide by the Code of Conduct.*
- *An acceptance that despite the lack of suspension or partial suspension, there is not likely to be any further failure to comply on the part of the Respondent.*
- *The absence of any harm having been caused or the potential for such harm as a result of the failure to comply with the Code of Conduct.'*

19. Having regard to this Guidance the Tribunal considered that the following factors were relevant:

- 19.1. The Appellant is an experienced councillor who has previously served on the Council's Standards Committee;
- 19.2. The Appellant breached the Code of Conduct on two occasions;
- 19.3. The Appellant apologised for the breaches, albeit on the basis of admitting making a mistake, which discloses an element of insight;
- 19.4. The subject matter under consideration was a report which '...responds to the outcome of the residential care consultation and sets out proposals that form the basis of the next consultation for modernising services that will enhance older people's housing and develop a programme for independent living'. There was no final decision expected on the issues under consideration at either meeting at which the Appellant breached the Code of Conduct;

- 19.5. There is no evidence that the Appellant has previously breached the Code of Conduct or has acted otherwise in any manner which might give cause for concern;
- 19.6. There is no evidence that the Appellant has an attitudinal problem which might give rise to future misconduct.
20. Taking all these factors together, the Tribunal concludes that the Appellant's actions fall short of the threshold on which disqualification was upheld in **Hathaway -v- Ethical Standards Officer [2004] EWHC 1200 (Admin)** and **Sloam -v- Standards Board for England [2005] EWHC 124 (Admin)** in which there were offences of violence and dishonesty, respectively, and which was said by Collins J in **The Queen on the Application of Chegwyn v Standards Board for England [2010] EWHC 471 (Admin)** to be a 'high one'. The Appellant's actions also fall short of the seriousness of those of the Appellant in **Sanders** (above) (interfering in the conduct of a housing benefits fraud investigation) in which the sanction was commuted from disqualification to suspension for six months. The Appellant's conduct, as with any breach of a Code of Conduct, is serious and inherently harmful, but balanced against this, no lasting damage has been caused and the Appellant has demonstrated some insight and, in the Tribunal's opinion, is unlikely to repeat his past indiscretions. In all these circumstances, the Tribunal considers that it would be reasonable and proportionate to suspend the Respondent for a period of one month.
21. In deciding a period of one month, the Tribunal had regard to the impact of the Appellant's actions and to all the other factors mentioned above (which do not appear to have been taken into account by the Respondent on the face of the record of their proceedings: see paragraph 14 above). The Tribunal has also had regard to paragraph 17 of the Guidance:
- 'Suspension is appropriate where the circumstances are not so serious as to merit disqualification but sufficiently grave to give rise to the need to impress upon the Respondent the severity of the matter and the need to avoid repetition. A suspension of less than a month is not likely to have such an effect.'*
22. The principal purpose of a sanction in this case is the 'need to impress upon the Appellant the severity of the matter and the need to avoid repetition.' The Guidance suggests that a suspension of less than a month is not likely to have such an effect. There is no evidence of any aggravating features which merit a suspension of more than one month.
23. A suspension for one month will bring home to the Appellant the seriousness of what he has done, and send the right message to all concerned that a serious view was indeed being taken of what he had done (see **Chegwyn**).
24. The Tribunal has decided that the action which is appropriate following that finding is for the Appellant to be suspended for a period of one month. That action takes effect from 7 June 2010. The Tribunal is conscious that neither the Appellant

nor the Respondent was present or represented at the hearing and that it will take time for the decision to be communicated to them.

25. The Tribunal has rejected the finding of the Standards Committee in relation to sanction.
26. The decision of the Standards Committee as to sanction ceases immediately to have effect.
27. The Tribunal's decision was unanimous.
28. The written reasons for the Tribunal's decision will be published on the Tribunals website at www.adjudicationpanel.tribunals.gov.uk.
29. 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.

Patrick Mulvenna
Judge
27 May 2010

