

FULL DECISION

CASE REF: APE 0419

HEARING DATE: 27 & 28 May 2009

RE: Reference in relation to a possible failure to follow the Code of Conduct

RESPONDENT: Councillor Boughton

RELEVANT AUTHORITY CONCERNED: Dartmouth Town Council

ESO: Jennifer Rogers

ESO REPRESENTATIVE: Miss Sarah Reid

Case Tribunal Members

Chairwoman: Sally Lister
Member: Richard Boyd
Member: Ian Prosser

1 Preliminary Documents

- 1.1 The Adjudication Panel for England received a reference from an Ethical Standards Officer ('ESO') in relation to an allegation against Councillor Boughton. The allegation was that Councillor Boughton had constantly undermined and bullied the Town Clerk, Mr Horan and had showed contempt and disrespect to him , other staff of the Council and council members and by this conduct, Councillor Boughton had failed to comply with paragraphs 3(1), 3(2)(b) and 5 of the Code of Conduct.
- 1.2 Councillor Boughton's response to the reference is set out at sections 3 and 4 of this document. In addition to those comments the Respondent also stated that :

The town is faced with huge changes and the public wrangling is extremely bitter. The allegations are politically motivated and the Clerk is torn between the factions on the Town Council. Without the sort of infrastructural changes and training proposed by the Monitoring Officer in her report, the Town Council and the Clerk are simply unable to deal with genuinely held and passionate differences of opinion. The Peter Principle describes such phenomena. The tensions are

stoked by long serving town councillors who have failed to be elected to higher local authorities and have no power except to cause trouble for other organisations in the town and other local councils.

2 Findings

The Case Tribunal found the following facts, some of which were not disputed, after careful considering of all of the evidence before it. This included the oral evidence of the complainant, Mr Chris Horan, the Town Clerk, Mrs Tracey Rowe, assistant to the Clerk, Police Inspector Morgan and Councillors Morris, Rendle and Hawke. We also considered the oral evidence and written submissions of Councillor Boughton including his further papers provided to the Case Tribunal during the hearing:

- 2.1 Councillor Boughton was first elected to office as a member of Dartmouth Town Council in 2001 and he served continuously until the date of the Case Tribunal hearing. His most recent term of office began in May 2007.
- 2.2 Councillor Boughton was also a member of South Hams District Council from 2003 to 2007 when he lost his seat to Councillor Hawke.
- 2.3 Councillor Boughton gave a written undertaking to observe the Code of Conduct on 8 May 2007 and last attended a training session on the Code on 8 November 2007.
- 2.4 Dartmouth Town Council received "Quality Council" status in 2004 and was reaccredited in 2008. This required the Council to meet established criteria including the criterion that the Clerk to the Council had appropriate qualifications.

The relevant legislation and protocols

- 2.5 The Council had adopted a Code of Conduct on 3 September 2007 in which the following paragraphs were included:

- 2.5.1 Paragraph 3 (1) :

'You must treat others with respect'

- 2.5.2 Paragraph 3 (2) (b) :

'You must not bully any person'

- 2.5.3 Paragraph 5 :

'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'

The Allegation

Bullying and failing to treat the Town Clerk with respect

- 2.6 The Case Tribunal found that Councillor Boughton attended the town council offices frequently between January 2008 and May 2008. From a contemporaneous note prepared by Mr Horan, which formed part of the written evidence before it, Councillor Boughton attended the council offices on fifteen (15) occasions in April 2008.
- 2.7 Councillor Boughton accepted, and the Case Tribunal found that, on occasions at the start of these visits he would begin his conversation with Mr Horan with the words, *'the question for today is....'*
- 2.8 Councillor Boughton disputed that his exchanges with Mr Horan would, on occasions be angry and aggressive. However, the Case Tribunal found, after hearing the oral evidence of Mr Horan, Mrs Rowe, as well as Councillors Morris, Rendle and Hawke, all of whom impressed the Case Tribunal as accurate and truthful witnesses, that on repeated occasions Councillor Boughton's communication with Mr Horan became louder and louder. This was certainly perceived by Mr Horan as Councillor Boughton becoming angry and aggressive.
- 2.9 Councillor Boughton also disputed that he stood over Mr Horan during these exchanges, However, the Case Tribunal found, after hearing the oral evidence of Mr Horan, Mrs Rowe, Councillors Morris, Rendle and Hawke, who witnessed this, that he stood very close to Mr Horan on a number of occasions, in a way which could be described as invading his personal space. Mr Horan found this to be threatening and intimidating.
- 2.10 On 19 March 2008 Councillor Boughton wrote a note to Mrs Eyles in the council office indicating that she should 'watch her back'. He drew an arrow on the note which pointed towards Mr Horan's office.
- 2.11 Mrs Eyles said in her written statement before the Case Tribunal that she found this unnerving and she did not know whether to take it as a personal threat.
- 2.12 On 22 March 2008 Councillor Boughton sent an email to Councillor Smith, a newly elected member, which included the words: - 'if I were elected mayor in the face of all this, my first task would be to sack our incompetent Town Clerk....'
- 2.13 Councillor Boughton initially disputed that he referred to Mr Horan as incompetent but when his attention was drawn to his email of 22 March 2008 by the Case Tribunal, he conceded that he had done so on this one occasion. After considering the oral evidence of Mr Horan, Mrs Rowe, Councillor Morris, Councillor Rendle and Police Inspector Morgan, who attended Council meetings regularly as a representative of Devon and Cornwall Constabulary, the Case Tribunal found that Councillor Boughton did refer to Mr Horan as incompetent on several occasions and in public in front of others.
- 2.14 The Case Tribunal found that this comment was made to Mrs Eyles, a less senior member of staff, whom Mr Horan line managed, as well as other councillors. This comment was also made to Mr Horan directly.
- 2.15 The Case Tribunal also found that Councillor Boughton frequently challenged Mr Horan's efficiency and effectiveness in council meetings

in front the press , members of the public and other councillors, some of whom for example Police Inspector Morgan, found Councillor Boughton's comments disrespectful and inappropriate.

- 2.16 The Case Tribunal also found that Mr Horan became unwell in the summer of 2008 and was absent from work for about four weeks. Although the Case Tribunal did not receive a medical report, Mr Horan attributed this period of illness directly to his treatment by Councillor Boughton.

Disrespect towards other Councillors

- 2.17 Councillor Boughton also disputed that he was disrespectful to other councillors. In particular he disputed that he used the words "bloody" and "bitch" when referring to Councillor Morris in respect of her attendance at the opening of the lifeboat station. Other evidence before the Case Tribunal contradicted this. Mrs Rowe, who stated that she was sitting only a few feet away from Councillor Boughton at the time the statement was made, was certain about the words used by Councillor Boughton, even when pressed by him under cross examination. Her evidence was supported by the written statement of Mrs Eyles. On balance, the Case Tribunal found that the words "bloody", "hypocritical" and "bitch" were used by the Respondent.
- 2.18 In an email to Councillor Smith dated 22 March 2008, Councillor Boughton referred to councillors Mr and Mrs Norton as having signs of serious dementia.
- 2.19 In a letter to Councillor Wills dated 3 March 2008, Councillor Boughton referred to the council electing 2nd class people to be mayor and chairs of committees.
- 2.20 In addition to these comments, the Case Tribunal found that Councillor Boughton had exchanges with other councillors within the council offices that onlookers found aggressive and disrespectful. Mrs Eyles, for example witnessed Councillor Boughton having a heated exchange with Councillor Hawke during which the Respondent stood only inches away from Councillor Hawke's pointing into his face.
- 2.21 The Case Tribunal also found that Councillor Boughton's conduct at a public meeting of the Council was such that Police Inspector Morgan considered intervening. Police Inspector Morgan, who also impressed the Case Tribunal as a professional, truthful and dispassionate witness, stated that Councillor Boughton's conduct at some council meetings made him "feel uncomfortable" as he was witnessing conduct which was inappropriate.
- 2.22 Further, the Case Tribunal found that on frequent occasions Councillor Boughton declined to sit down at council meetings in spite of the ruling of the Mayor.

Bringing his office or authority into disrepute.

- 2.23 On the evidence before the Case Tribunal, which included a number of local press reports, we found that Councillor Boughton's conduct at council meetings was disruptive to the workings of the council.

- 2.24 On 7 April 2008, members resolved on a vote of fourteen out of fifteen members present that they deplored the behaviour of Councillor Boughton, disassociated themselves from comments made by him, and considered his actions disloyal to the council, misleading to the public, and demeaning in the public arena.
- 2.25 At the same meeting Councillor Boughton was suspended from all council committees for a period of 6 months.
- 2.26 There were press reports of the council resolution of 7 April 2008 in both the local and national press, including the comments Councillor Boughton had made about Councillors Mr and Mrs Norton.

3 Whether the material facts disclose a failure to comply with the Code of Conduct

3.1 The Respondent's Submissions

- 3.1.1 The testimonies from a group of councillors about his behaviour were contrived and he contested nearly all of them.
- 3.1.2 Some councillors monopolised the council by controlling the Clerk and have collaborated with each other in their testimonies.
- 3.1.3 In response to the ESO's draft report Councillor Boughton raised issues in relation to his complaints about the competency and conduct of Mr Horan, and the past difficulties within the Dartmouth Town Council.
- 3.1.4 Councillor Boughton stated that these issues were the subject of his disagreement with the Town Clerk and he did have vigorous discussions about these issues. However, he was not guilty of harassing or bullying the Town Clerk on any occasion, but it was these discussions which comprise the foundation of Mr Horan's accusations of harassment and bullying.

3.2 The ESO's Submissions

- 3.2.1 All the alleged conduct took place when Councillor Boughton was either in the council offices, at meetings of the council, or in correspondence with other members of the council in which he referred to himself as 'Councillor Boughton'. While Councillor Boughton stated that the email he sent to Councillor Smith on 22 March 2008 was private correspondence, the ESO noted that the content of the communication was all about council business, in that he talked of 'working together', and made several references to the competence and capability of other members to carry out council functions. In this email he was therefore conducting the business of his office within the meaning of the Code. Likewise, in his letter to Councillor Wills he was discussing council business and so conducting the business of his office within the meaning of the Code. The ESO was satisfied that at all material times, Councillor Boughton was acting in his official capacity within the meaning of the Code.

Bullying and failure to treat with respect

- 3.2.2 Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour, which attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.
- 3.2.3 Paragraph 3 of the Code was not intended to prevent a member from expressing disagreement with the views of an officer or employee of the council, or of the manner in which a particular matter has been dealt with. It was inevitable that in the everyday running of a council, members will have disagreements with the Clerk.
- 3.2.4 From his comments made in interview Councillor Boughton was not satisfied with the performance of Mr Horan as Clerk to the council. The ESO had to consider whether the concerns had been raised in an appropriate manner or whether Councillor Boughton's conduct towards Mr Horan crossed the line of acceptable behaviour and became bullying in nature.
- 3.2.5 While isolated incidents of a minor nature are unlikely to be considered as bullying under paragraph 3(2) (b) of the Code, regular and repeated behaviour directed toward a person, even if each incident on its own did not amount to bullying, should be viewed in the eyes of a notional reasonable member of the public to decide whether the cumulative conduct amounted to bullying.
- 3.2.6 The ESO considered that Councillor Boughton's frequent, almost daily, visits to Mr Horan's office during which Councillor Boughton spoke to Mr Horan in an aggressive manner using a loud voice, sometimes shouting and swearing, wagging his finger, and standing over him was threatening, intimidating and therefore bullying towards Mr Horan.
- 3.2.7 The ESO also considered that Councillor Boughton's frequent references to Mr Horan's incompetence undermined Mr Horan's position both to his staff, to other members of the council and to the public in general. If Councillor Boughton had concerns about the Clerk's capabilities these should have been pursued in confidence through the proper processes.
- 3.2.8 The ESO considered Councillor Boughton's behaviour towards Mr Horan in person and his frequent references to Mr Horan's incompetence in a variety of forums, was offensive, intimidating, insulting, humiliating, and undermining towards Mr Horan. The ESO was satisfied that Councillor Boughton's conduct amounted to bullying and failing to treat Mr Horan with respect and that he had therefore failed to comply with Paragraph 3(2) (b) and 3(1) of the Code.
- 3.2.9 Paragraph 3(1) of the Code was not intended to stand in the way of lively debate or disagreement with the views of others. Such activity is a crucial part of the democratic process.

However, the Code did distinguish between acceptable expressions of disagreement and making disrespectful personal comments directed at the person and their characteristics rather than the idea.

- 3.2.10 The ESO considers that Councillor Boughton's comments that the current mayor, Councillor Morris was a 'bloody hypocritical bitch' were rude and went beyond an acceptable expression of views even if he considered that Councillor Morris's attendance at the opening of the lifeboat station was hypocritical. Councillor Boughton personalised his comments and in so doing failed to comply with paragraph 3(1) of the Code by failing to treat Councillor Morris with respect.
- 3.2.11 Councillor Boughton's references to Councillors Peter and Pamela Norton as suffering from dementia were wholly inappropriate. Although Councillor Boughton was a qualified medical practitioner and may think he could make such judgments, this was not appropriate in the context of introducing a new council member to his fellow councillors. The comments made were rude and disrespectful and that Councillor Boughton failed to comply with paragraph 3(1) of the Code in relation to this matter.
- 3.2.12 Likewise, by making reference in written correspondence to Councillor Wills that the mayor and chairs of committees are 'second class people', Councillor Boughton crossed the bounds of reasonable comment and was rude and disrespectful to members who had held those offices. The ESO considers that Councillor Boughton failed to comply with paragraph 3(1) of the Code in relation to this matter.
- 3.2.13 The ESO considers that by persistently failing to come to order when so required by the mayor at meetings of the full council and interrupting other members when speaking, Councillor Boughton has failed to afford the mayor and those members due respect, thereby failing to comply with paragraph 3(1) of the Code.

Disrepute

- 3.2.14 The ESO had to consider whether, on an objective view, the conduct of Councillor Boughton both generally and particularly at meetings could reasonably be regarded as affecting the good reputation or respectability of the council, or of Councillor Boughton's office as a councillor.
- 3.2.15 Councillor Boughton's conduct at meetings was disruptive and on one occasion resulted in an experienced senior police officer considering intervening to prevent disorder.
- 3.2.16 The cumulative effect of Councillor Boughton's behaviour caused the mayor to propose a resolution to the council deploring his conduct which was unanimously supported by all members other than Councillor Boughton.

- 3.2.17 Other members had provided evidence of the damage they believe Councillor Boughton's actions had caused to the reputation and work of the council. Councillor Allen described the conduct as destructive to the council and making them 'look like twits' and bringing it into disrepute. Councillor Hawke used the term 'disruptive' and Councillor Rendle stated that Councillor Boughton had "bought a quality council to a full stop".
- 3.2.18 Councillor Smith commented in particular that Councillor Boughton's behaviour in the presence of the press was picked up and made for good reading outside but bad public relations for the council. Both the recent mayors expressed their opinions on the impact of the conduct, with Councillor Pritchard saying that it almost got to the point where it was a joke that all the council did was argue, giving a totally wrong impression of the council resulting in a negative public perception. Councillor Morris was of the view that Councillor Boughton's behaviour had stifled debate, and that he had intentionally misrepresented the views of the council in the public arena.
- 3.2.19 Meetings of the full council were held in public with members of the public and press present. The comments made by a local newspaper reporter to Inspector Morgan were of particular significance, indicating that the press saw the conduct of Councillor Boughton at meetings as the norm, and some kind of show, bringing both the council's proceedings and its reputation as a whole into disrepute.
- 3.2.20 Furthermore, the ESO considered that a reasonable member of the public would expect that as an elected councillor, Councillor Boughton would deal properly and fairly with the council's employees. By questioning the Clerk's competency in public on several occasions, Councillor Boughton failed to act as a responsible employer and in so doing brought both his office as councillor and the council as a whole into disrepute.
- 3.2.21 Taking the whole of Councillor Boughton's conduct into account, and particularly his behaviour at public meetings of the council, the ESO considered that Councillor Boughton had brought both his office and his authority into disrepute and had therefore failed to comply with paragraph 5 of the Code.

3.3 Case Tribunal Decision

- 3.3.1 Four matters were determined by the Case Tribunal on the basis of the facts as found:
- 3.3.2 Whether Councillor Boughton was acting in his official capacity for the purpose of the Code at the time the conduct complained about took place, i.e. was he conducting the business of the Council or acting, claiming to act or giving the impression that he was acting as a representative of the Council;

- 3.3.2.1 If so, whether Councillor Boughton's conduct:
- 3.3.2.1.1 failed to treat others with respect and/or
 - 3.3.2.1.2 was such as to amount to bullying and/or
 - 3.3.2.1.3 was such as could reasonably be regarded as bringing his office or authority into disrepute.

3.3.3 The Case Tribunal noted that in respect of the facts as found, Councillor Boughton's conduct took place in the council offices, at council meetings and in correspondence with other councillors, the content of which was about council business.

3.3.4 Even though Councillor Boughton stated that his letter to Councillor Wills of the 3 March 2008 and his email to Councillor Smith of the 22 March 2008 were private, he did not dispute that he wrote them in his capacity as a councillor advising newly elected councillors about his perception of other council members and the workings of the Town Council.

3.3.5 The Case Tribunal therefore concluded that at all material times, when the conduct complained about took place, Councillor Boughton was acting in his official capacity within the meaning of the Code of Conduct.

Failure to treat others with respect and bullying.

3.3.6 A failure to treat others with respect will occur when unfair, unreasonable or demeaning behaviour is directed by one person against another. The circumstances in which the behaviour including the place, who observed it, the character and relationship of the people involved, will all be relevant in assessing whether the behaviour was disrespectful.

3.3.7 In respect of bullying, this can reasonably be defined as offensive, intimidating, malicious, insulting or humiliating behaviour towards someone weaker than you or someone you have or believe to have influence over which attempts to undermine an individual or group of individuals and which can have a damaging effect on a person's confidence, capability and health. Again the circumstances in which the behaviour occurred is relevant in assessing whether the behaviour amounts to bullying.

3.3.8 Councillor Boughton stated in evidence that he was Mr Horan's employer by virtue of being a member of the Town Council. He therefore regarded himself as having influence and power over Mr Horan. The relationship between Mr Horan and Councillor Boughton was not equal, Mr Horan being in a weaker position.

3.3.9 Although the Case Tribunal accepted that councillors may disagree with council officers on the implementation of policy and may have justifiable concerns about an officer's

effectiveness, there are recognised procedures which should be used to raise these concerns. Councillor Boughton did not use those procedures in this case.

- 3.3.10 Councillor Boughton's behaviour towards Mr Horan was, undermining and inappropriate. It was also offensive, intimidating and on occasions, humiliating.
- 3.3.11 An example of this was that Councillor Boughton called Mr Horan incompetent and referred to him as ineffective and inefficient to his face while standing over him. He would also refer to him as such in correspondence with another councillor (the email of the 22 March to Councillor Smith), to more junior members of staff (Mrs Eyles) and at council meetings in front of both the press and members of the public.
- 3.3.12 The Case Tribunal were satisfied on the evidence that Mr Horan suffered ill health as a result of this conduct.
- 3.3.13 The Case Tribunal found that Councillor Boughton's conduct towards Mr Horan could reasonably be regarded as bullying and failed to treat him with respect.
- 3.3.14 The Case Tribunal also found that Councillor Boughton failed to treat his fellow councillors with respect, in particular, his comments that both Councillors Mr and Mrs Norton "having signs of serious dementia" and that "elderly colleagues from the lower town are losing the plot". His comments about the Mayor, Councillor Morris in respect of the RNLI invitation, that she was a "bloody hypocritical bitch", his reference about her and Councillor Pritchards' mayoral capabilities ("The way the Council works is that it elects 2nd class people [to] be mayor") as well as the heated, almost physical altercation with Councillor Hawke in the council offices, are all further examples of the Respondent treating others with disrespect.

Disrepute

- 3.3.15 With regard to whether Councillor Boughton also brought his office or authority into disrepute, the Case Tribunal noted that the Oxford English dictionary defined this as a "lack of good reputation or respectability". Therefore anything which could reasonably be regarded by an objective observer as diminishing a member's office or their authority or which harms or could harm the reputation of an authority will bring that office or authority into disrepute.
- 3.3.16 The Case Tribunal found that Councillor Boughton had brought his office and authority into disrepute by his lack of regard for the authority of the Mayor and his conduct during council meetings. This included verbal aggression to other councillors, the manner in which he shouted down others, his refusal to abide by points of order asked of him by the Mayor and by conduct which was described by Police Inspector Morgan as bedevilment.

3.3.17 In considering whether Councillor Boughton had breached paragraphs 3(1), 3(2)(b) and 5 of the Code of Conduct, the Case Tribunal had regard to Article 10 of the European Convention on Human Rights, which provides:

“(1) 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...

(2) 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... for the prevention of disorder ...or the protection of the reputation or rights of others...”

3.3.18 Section 1 of the Human Rights Act 1998 identifies the rights under the European Convention of Human Rights which have effect for the purpose of the Act. This includes Article 10 of the ECHR. Section 3(1) of the 1998 Act provides that so far as it is possible to do sosubordinate legislation must be read and given effect in a way which is compatible with the convention rights.

3.3.19 The Case Tribunal took the view that that Councillor Boughton's Article 10 rights were engaged here and that the right to freedom of expression was a fundamental basic right that may only be interfered with where there was clear and satisfactory reasons within the terms of Article 10(2) to do so.

3.3.20 The Case Tribunal had regard to the judgement of Mr Justice Wilkie in the case of Sanders v Steven Kingston [2005] EWHC 1145 (Admin) who considered the relationship between Article 10 and paragraphs 2(b) and 4 of the then Code of Conduct. These provisions equate to paragraphs 3(1) and 5 of the Council's Code. Mr Justice Wilkie referred to the case of *Lingens v Austria* in which the following was said:

“... In this connection the court has to recall that freedom of expression....constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self fulfilment.More generally freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the convention...”

3.3.21 Mr Justice Wilkie also referred to the judgement of Lord Justice Hoffman in the case of R v Central Independent Television plc [1994] (Fam 192):

“Publication may cause needless pain, distress and damage to individuals or harm to other aspects of public interest. But a freedom which is restricted to

what judges think to be responsible or in the public interest is no freedom. Freedom means the right to publish things which government and judges, however well motivated, think should not be published. It means the right to say things which "right thinking people" regard as dangerous or irresponsible.."

- 3.3.22 Mr Justice Wilkie was of the view, on the facts of that case that Article 10 was engaged and therefore the finding of a breach of the Code and the imposition of a sanction was prima facie a breach of Article 10. However, he drew a distinction between expressions of a political or quasi political nature, which benefited from a high level of protection and those which amounted to no more than expressions of anger and personal abuse which did not :

"I have concluded that the words and writing of the appellant amounted to no more than expression of personal anger and personal abuse and did not constitute political expression which attracts a high level of protection. In the circumstances , in my judgement the finding of the Case Tribunal that the appellant had breached the code of conduct and its notification of that finding to his local authority constituted an interference with freedom of expression but one which was lawful pursuant to Article (2)"

- 3.3.23 In considering the nature of the words and expressions used by Councillor Boughton, which were the subject of the complaint, the Case Tribunal, were not of the view that he was making political or quasi political comments when stating, for example that Councillor Morris was a "bloody hypocritical bitch" or when stating that Councillors Mr and Mrs Norton had "serious dementia". These words and the derogatory comments about Mr Horan and other councillors were not an articulation of political comment or debate, but were personal attacks on their characters.

- 3.3.24 In addition the Case Tribunal were of the view that Councillor Boughton's lack of regard for the ruling of the Mayor during council meetings and his verbal aggression to Mr Horan and other councillors such as Councillor Hawke did not amount to political expression but of expression of bad temper and personal abuse. The Case Tribunal therefore concluded that Councillor Boughton's comments did not qualify for a high level of protection.

- 3.3.25 By finding that Councillor Boughton had breached the Code of Conduct, the Case Tribunal were of the view that Councillor Boughton's conduct damaged the reputation of the authority and its members and threatened to seriously undermine the good order and workings of the council. Councillor Morris, in her evidence described how the Council had become a laughing stock in the eyes of the public and the Case Tribunal had before it a number of local newspaper articles which gave

this impression. In the Case Tribunal's view, these were clear and compelling reasons for interfering with Councillor Boughton's Article 10 rights making any interference proportionate, lawful and necessary pursuant to Article 10(2).

3.3.26 In taking this view, the Case Tribunal had regard to the words of Mr Justice Collins in the case of Livingston v The Adjudication Panel for England [2006] EWHC 2533 (Admin)

"...it is important that any individual knows that he can say what he likes, provided it is not unlawful, unless there are clear and satisfactory reasons within the terms of Article 10(2) to render him liable to sanctions".

4 Submissions as to the action to be taken

4.1 The ESO's Submissions

4.1.1 The ESO considered that Councillor Boughton had repeatedly breached the Code of Conduct. The ESO noted what Councillor Boughton has said in evidence in respect of his view of the competence and efficiency of the Clerk, and his feelings that the council was run by a small cabal of members and that this frustrated him. The ESO considered that his holding this view had meant that he had been unable to appreciate the seriousness of his own misconduct and had continued to deny the facts despite the evidence to the contrary.

4.1.2 The ESO had considered the significant damage that Councillor Boughton's conduct had caused to the proper functioning of the council. Councillor Boughton's conduct, if unaddressed, would in the ESO's view prevent the council from fulfilling their functions.

4.1.3 The ESO had noted the serious consequences of the misconduct that has been identified, with the apparent effect on Mr Horan, the public perception of the council and the internal 'siege mentality' environment that has been created within.

4.2 The Respondent's submissions

4.2.1 Since so much of the case depended on the context of what had transpired in the last few years the Respondent wished to begin his case with a brief statement about himself, about Dartmouth and about Dartmouth Town Council.

4.2.2 He gave evidence of his record of behaviour at the District Council to be reviewed.

4.2.3 He gave evidence concerning his behaviour as a member and chairman of other community committees.

4.2.4 He asked the Case Tribunal to take into account the work he had undertaken on the Market and Coastal Town Initiative Community Plan (MCTI) having been chairman for five years ,

representing Dartmouth Town Council.

- 4.2.5 Councillor Boughton also made submissions concerning his relationship to Councillors Rendle, Morris, and Pritchard and stated that he had a good relationship with Councillor Hawke.
- 4.2.6 As regards to his conflicts with some councillors in the council chamber, he referred to their behaviour as it related to his own. He submitted that an example of this was when they referred in public debate to Dartmouth working people as dross, and people who bet on horse racing as scum. On other occasions the work of the MCTI was referred to as a load of horse manure and in these cases the mayor said this was "freedom of speech".
- 4.2.7 Councillor Boughton wished to present evidence concerning his complaint about Mr Horan. The Case Tribunal had a copy of Councillor Boughton's complaint in the papers before them but also made it clear that apart from putting his conduct into context it was not relevant to its determination. The Case Tribunal was not concerned with whether Councillor Boughton was justified in believing Mr Horan to be incompetent or dishonest but the way he went about expressing that.
- 4.2.8 Councilor Boughton also submitted that when it came to standing orders he had never strayed from these. In relation to this, two chairmen of committees were on record as saying they never had problems with his behaviour on their committees and the Mayor has never had to threaten to adjourn a council meeting because of him nor threaten his removal from the council chamber. In contrast other councillors including him refer to her as an incompetent chairman.

5 Case Tribunal Decision

- 5.1 In deciding what sanction, if any should be imposed in this case, the Case Tribunal had regard the Guidance on Sanctions produced by the President of the Adjudication Panel for England
- 5.2 The nature of Councillor Boughton's breach involved unreasonable, intimidating and humiliating behaviour towards others over a number of years.
- 5.3 As a direct result of this conduct a number of councillors were distressed and upset.
- 5.4 Also as a direct result of this conduct, Mr Horan, suffered a period of ill health and was absent from work for about four weeks. This must have impeded the good administration of the council.
- 5.5 Councillor Boughton's breach also greatly impeded the ability of some councillors in council meetings to carry out their duties and responsibility for which they were elected one councillor felt, for example, that it "brought a quality council to a full stop". This damaged the reputation of the council as a whole.

- 5.6 The Case Tribunal therefore viewed Councillor Boughton's breach of the Code of Conduct as very serious.
- 5.7 In deciding what sanction if any should be imposed, the Case Tribunal took account of Councillor Boughton's length of service as a councillor, having been first elected in 2001 and the positive comments about his performance from colleagues. It was said that he was "enormously energetic "and, "conscientious, dedicated and hardworking".
- 5.8 However, no sanction or a period of suspension was not considered appropriate given the seriousness of the breach. The Case Tribunal was also aware that a previous finding by the Standards Board for England that Councillor Boughton had breached the Code of Conduct, but which did not result in any sanction being given, had not made any impact on Councillor Boughton's conduct. Therefore no sanction was certainly inappropriate. Moreover the Respondent had, in effect already received a period of partial suspension imposed by his fellow councillors following their resolution in April 2008 and the Case Tribunal heard evidence that his conduct had changed very little as a result. Councillor Hawke, the only person who said in oral evidence that Councillor Boughton's behaviour had improved slightly since that resolution also stated that it was still disrespectful and inappropriate. It was therefore, clear to the Case Tribunal that a period of suspension would not impress on Councillor Boughton the severity of the matter and the need to avoid a repetition.
- 5.9 During the course of the hearing, Councillor Boughton gave no indication that he appreciated the seriousness of his own conduct or expressed remorse for the effect this had had on others. He continued to blame others for his failings stating that he was the victim. He told the Case Tribunal he stood by the comments contained in his email of the 22 March 2008, blaming Councillor Smith, whom he described to the Case Tribunal in his submissions concerning sanction as a "despicable little man" for causing his difficulties by allowing his comments to become public.
- 5.10 In deciding what action to take, the Case Tribunal was mindful of the need to uphold and improve the standard of conduct expected of members as part of the process of fostering public confidence in local democracy.
- 5.11 The Case Tribunal were also aware that the High Court had suggested that Case Tribunals should be reluctant to interfere with the democratic will of the electorate. Balanced against this, the Case Tribunal also recognised that Parliament had expressly provided it with such a power and that such interference may be a necessary price to pay for the need to maintain public trust and confidence in the local democratic process.
- 5.12 The Case Tribunal was of the view that this was such a case and unanimously decided given all the circumstances of this particular case that a period of disqualification for three years was appropriate. In reaching this decision it was mindful that any period of disqualification had to be for the minimum period necessary to enable Councillor Boughton to reflect on his actions and the result this had on others. It

also needed to be for a sufficient period of time to enable the Council to recover from this period of disruption, work together for the benefit of the electorate and begin the process of rebuilding public confidence in it.

- 5.13 As stated above, the decision of the Case Tribunal was unanimous.
- 5.14 The date such sanction is to take effect is 28 May 2009
- 5.15 The Respondent may seek leave from the High Court to appeal against the decision of the Case Tribunal that there has been a failure to comply with the Code of Conduct and/or the decision as to sanction. The President of the Adjudication Panel for England may suspend the effect of the sanction if requested to do so by a Respondent who intends to seek leave to appeal to the High Court against the decision of the Case Tribunal. Applications for leave to Appeal must be made to the High Court within 21 days of this decision. The Respondent is directed to the provisions of Part 52 of the Civil Procedure Rules.

Sally Lister

Chairman of the Case Tribunal

15 June 2009