



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

CASE NO: LGS/2011/0543

ON APPEAL FROM:

Standards Committee of:
Decision Notice No:
Dated:

Slough Borough Council
CJM
7 February 2011

APPELLANT:

**Councillor Balwinder Singh Dhillon of
Slough Borough Council**

RESPONDENT:

**Slough Borough Council Standards
Committee**

DETERMINED ON THE PAPERS

3 May 2011

DATE OF DECISION:

4 May 2011

BEFORE

**Judge: Sally Lister
Member: Narendra Makanji
Member: Alison Lowton**

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 Slough Borough Council's Standards Committee's finding that he had failed to follow paragraphs 3(1) and 5 of the Code of Conduct by failing to treat others with respect, at a meeting of the Health Scrutiny Panel on 22 March 2010. The Appellant had also appealed the sanction imposed being a suspension for a period of two months and that he be provided with training in accordance with the recommendations of the Investigating Officer, at the discretion of the Monitoring Officer of the Council.
3. The Tribunal has considered written evidence and submissions on behalf of the Standards Committee and the Appellant. It is satisfied that this appeal may appropriately be determined by way of written representations.

Findings of Fact

4. The following are the Tribunal's findings of fact based on all the evidence before the Tribunal, including the statements from Councillor Arvind Dhaliwal, Councillor Christine Small, Councillor Robert Plimmer, Councillor Balvinder S. Bains, Councillor David MacIsaac, Councillor Julia Long and Mr Andrew Grimshaw all of which appeared to the Tribunal to provide a consistent, credible and truthful account of what took place on the 22 March 2010.
5. The paragraphs of Slough Borough Council's Code of Conduct relevant to the determination of this appeal provide as follows:

Paragraph 3(1) "*you must treat others with respect*"

Paragraph 5 "*you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority in to disrepute*"

6. On the 22 March 2010 a meeting of the Health and Scrutiny Panel ("HSP") of Slough Borough Council ("the Council") took place. The meeting was chaired by Councillor Arvind Dhaliwal and was attended by, amongst others, the Chief Finance Officer from Heatherwood and Wexham Park Hospital, Mr Andrew Grimshaw. The meeting was also attended by the Deputy Executive Director of Berkshire Healthcare NHS Foundation Trust, the Assistant Director of Locality Commissioning Slough, Berkshire NHS Trust and a representative from Slough LNKs.

7. One of the agenda items of the meeting concerned the plan to address the 20 million pound deficit at the Heatherwood and Wexham Park Hospital. Mr Grimshaw, as Chief Finance Officer at the hospital presented a report about the finance turnaround plans for the hospital to the HSP and he was available to answer any questions on the Hospital Trust's financial plans.
8. Members of the HSP were given an opportunity to ask questions of Mr Grimshaw, including the Appellant.
9. When it was the Appellant's turn to ask his questions, he asked a series of lengthy questions which Mr Grimshaw had difficulty understanding as they appeared to relate to an issue about quangos. The Appellant, in his Application for Appeal states that his questions related to whether the hospital's recovery plan was going to be robust enough to withstand the review of the various quangos that was going to be carried out if there was a change of government. In Mr Grimshaw's statement he says,

"...I was unable to make a reply and I think it was not a relevant point as it was about Quangos. From my understanding of Quangos, the Heathwood and Wexham Park Hospital do not have Quangos, so I did not understand the point of what Councillor Dhillon was saying to me "

10. The Appellant was not satisfied with Mr Grimshaw's response to his questions.

"I was not getting a proper answer to this question and I therefore pursued this further. I accept that I became a little terse as I was not getting a proper reply",

(Appellant's Application for Appeal).

11. The Appellant's conduct was described by Councillor Dhaliwal, Councillor Plimmer and Councillor Small as rude and aggressive towards Mr Grimshaw and his body language intimidating. He learnt forward, shouted and waved his arms about during what was described by Councillor Julia Long as a verbal attack on Mr Grimshaw. The Appellant persisted in his line of questioning.
 12. Councillor Dhaliwal, as chairman of the meeting then stepped in. He gave the Appellant an opportunity to ask further questions but asked that they be addressed through him as the Chairman. According to the statements of Councillors Small, Plimmer and Balvinder S. Bains, this made the Appellant annoyed and more aggressive. The Appellant accused the Chairman of being unfair to him and of treating him differently to other councillors at the meeting. The Appellant, by his own admission, (Application for Appeal) referred to another councillor as "she" rather than by her name or official title when making this allegation by saying something like, *she was asking questions and you let her carry on*". The Appellant then raised a personal matter relating to legal proceeding between the Appellant's and chairman's families to support his view that the Chairman had some personal animosity towards him and was therefore treating him differently. Mr Grimshaw says in his statement,
- "Councillor Dhillon became progressively heated about being advised by the Chair to ask his question".*
13. The meeting then fell into disarray. The Appellant was then asked by the Chairman to leave the meeting but the Appellant refused to do so. The Chairman then adjourned the meeting and the Committee clerk spoke to the Appellant. The Chairman then asked the Appellant to come outside to discuss the matter but the Appellant refused to go. The Appellant was again asked to leave and consideration was given to calling security staff

to remove the Appellant from the Council Chamber but the Appellant left the meeting of his own accord shortly after this.

14. The meeting was reconvened after a few minutes and Councillor Dhaliwal, apologised to Mr Grimshaw and the meeting, as did Councillor Long on behalf of the Conservative Group of the Council for the conduct of the Appellant.

Findings as to whether the Appellant failed to follow the Code of Conduct

Official capacity

15. The Appellant attended the HSP in his capacity as an elected member of the Council and it is not disputed and the Tribunal finds that he was acting in his official capacity when attending the meeting on 22 March 2010 and when he asked questions of Mr Grimshaw at that meeting.

Submissions made on behalf of the Standards Committee

16. In summary the Standards Committee agreed with the findings of the Investigating Officer when considering the Appellant's conduct. With regard to the Appellant's conduct towards Mr Grimshaw, the Appellant asked irrelevant questions and made irrelevant points in an aggressive and accusatory manner, and by leaning forward, shouting and waving his arms about, his body language was intimidating. The Standards Committee considered that such behaviour was disrespectful.
17. The Standards Committee also considered the Appellant's conduct towards Councillor Dhaliwal, the Chairman of HSP to be disrespectful despite the meeting being conducted in an appropriate manner. The Appellant failed to abide by the Chairman's instructions and challenged the Chairman's authority, inappropriately raising a personal matter at the meeting. The Appellants behaviour had escalated to such a level that it was necessary for the Chairman to warn the Appellant about his behaviour and ask him to leave more than once which the Appellant failed to do until the meeting was adjourned when the possibility that security officers would be called to remove him from the meeting was raised.
18. The Standards Committee were of the view that there was an air of embarrassment felt by all at the meeting and that there was concern about the reputation of members and the Council. The Standards Committee were of the view that the Appellant's behaviour at the meeting brought his office or authority into disrepute.

Submission made on behalf of the Appellant

19. In summary, the Appellant felt the Standards Committee in carrying out its functions failed to have proper and sufficient regard to the background to the matter. There has been considerable personal animosity from Councillor Dhaliwal, the Chairman of HSP and a complainant, towards the Appellant as a result of a dispute between his wife and the Appellant's brother.
20. The Appellant was asking a number of questions of Mr Grimshaw and was not getting proper answers to his questions and he became a little terse but he did not believe that the intervention of the Chairman would have happened in the same way if his questions had been asked by another councillor. The Appellant felt that the Chairman overreacted because of personal animosity towards him. The fact that Councillor Dhaliwal is of an opposing political party was also of significance.

The Tribunal's findings in relation to breach

21. In this case, following other similar cases, it is the Tribunal's view that failing to treat others with respect occurs when unfair, unreasonable or demeaning behaviour is directed by one person against another. The circumstances in which the behaviour occurred is relevant in assessing whether the behaviour is disrespectful. This includes where the behaviour occurred, who observed it and the behaviour itself.
22. Also in this case, it is the Tribunal's view that disrepute is a "lack of good reputation or respectability" as defined in the Oxford English dictionary. Anything which could reasonably be regarded by an objective observer as diminishing the 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.
23. In considering whether the Appellant breached paragraphs 3(1) and 5 of the Code, the Tribunal has 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, in the interests of...the protection of the reputation or rights of others,"
24. In the Tribunal's view freedom of expression is a crucially important right in a democratic society and it is clear that it may only be interfered with where there are convincing and compelling reasons within Article 10(2) justifying that interference and any such interference must be reasonable, proportionate and necessary.
25. The Tribunal is of the view that Article 10 is engaged here and therefore the issues to be determined are whether a finding of a breach of the Code on the facts as found, would be justified under Article 10(2).
26. This requires a factual investigation of the nature of the words and the manner in which they were expressed in order to determine whether their expression constituted a legitimate expression relating to matters within the legitimate concern of the member as a councillor (political or quasi political comment which benefit from a high level of protection), or whether they crossed the line into expressions of anger or ill-temper. In the latter case, the high degree of protection is not engaged.
27. The concept of "treating others with respect" is one that allows the essential balance required by Article 10(2) to be performed, as does the phrase "bringing his office into disrepute" used in paragraph 5 of the Code.
28. In the Tribunal's view, the threshold for a failure to treat another with respect and a failure to comply with paragraph 5 of the Code in the case of expressions of views, has to be set at a level that allows for the passion and fervour that often accompanies political debate or debates relating to matters of legitimate concern to members and which allows for appropriate and robust criticism of issues under council scrutiny. This is entirely consistent with the objective of maintaining proper standards in public life.

Conduct towards Mr Grimshaw and Councillor Dhaliwal

29. The Tribunal is satisfied that the Appellant did by his conduct on 22 March 2010 fail to treat both Mr Grimshaw and Councillor Dhaliwal with respect, in breach of paragraph 3(1) of the Code.
30. The Appellant may have been seeking to raise with Mr Grimshaw an issue of concern to him but he chose to do it in a way which was unreasonable, demeaning and unfair. The Tribunal finds on the evidence before it that while the words used by the Appellant, in his long questions or statements to Mr Grimshaw, may not have been abusive or offensive in themselves, the hectoring manner and tone of his questioning was rude, ill mannered and unnecessarily aggressive, accusatorial and attacking. In the statement of Councillor Small, which the Tribunal accepted as credible and truthful, it is said that it seemed that the Appellant was "trying to shoot the messenger" and carry out a "witch hunt" in his line of questioning. This was disrespectful, particularly as Mr Grimshaw was not a council member or officer and had only attended at the request of the HSP.
31. The Tribunal also finds that the Appellant's conduct towards Councillor Dhaliwal was disrespectful. In reaching this conclusion the Tribunal has considered the Appellant's assertion that Councillor Dhaliwal over reacted because of personal animosity towards him as a result of a private matter between their respective families and that they are of opposing political parties. It is also noted by the Tribunal that in the Appellant's letter to Ms Channa dated 28 December 2010 he states that he feels that he was subject to some provocation.
32. The Tribunal could not find any evidence from the papers before it that support the Appellants assertions. In fact the evidence from the witnesses suggests the contrary; that Councillor Dhaliwal acted entirely appropriately in trying to call the Appellant to order because of his inappropriate questioning of Mr Grimshaw, *"The Chair was trying to deflect Councillor Dhillon's aggression towards Andrew Grimshaw as a Chair should do in these circumstances"* (Councillor Small). *"Councillor Dhaliwal as the Chair, called Councillor Dhillon to order as the comments to Andrew Grimshaw were not suitable"* (Councillor Plimmer). *"The Chair had to control the meeting. The Chair gave him chances to ask his question but he just went on"* (Councillor Balvinder S. Bains).
33. The Tribunal also finds that Councillor Dhaliwal was calm and polite when speaking to the Appellant and was not provocative, *"The Chair was not antagonist[ic] towards Councillor Dhillon"* (Councillor Small). *"I thought the Chair was quite measured in his approach"* (Andrew Grimshaw).
34. From the evidence it also seems clear that Councillor Dhaliwal gave the Appellant every opportunity to ask questions of Mr Grimshaw, as all other members of HSP were, irrespective of their political party, but in a more precise and measured way, *"The Chair gave him chances to ask his question but he just went on"* (Councillor Balvinder S. Bain") and from Councillor Long, who is a member of his own party, *"Councillor Dhillon did not ask a question but started to verbally attack Mr Grimshaw "He was reminded by the Chair to ask the question if he wished to do so. Councillor Dhillon continued in a loud voice to go on about the shortcomings of the hospital Trust. Again he was told by the Chair that he should ask his question..."*
35. The Tribunal finds that the Appellant challenged the authority of the Chairman at the meeting by failing to abide by Councillor Dhaliwal's requests, refusing to listen to him and by undermining his attempt to bring order to a meeting which had fallen into disarray.
36. This conduct is unfair, unreasonable and demeaning and as such disrespectful and in breach of paragraph 3(1) of the Code.

37. The Tribunal noted that most of the witnesses were embarrassed by the Appellant's conduct and felt that it reflected badly on the Council, to the extent that Councillor Long felt it was necessary to apologise to the meeting on behalf of the Conservative Group, "*...in view of one or two comments made to me outside in the corridor during the interval and my own opinion of Councillor Dhillon's embarrassing behaviour, I apologised to the meeting on behalf of the Conservative Group*". Councillor Dhaliwail states, "*When he was behaving in an aggressive and rude manner I wanted to hide as I was ashamed as his behaviour was tarring us all with the same brush in front of visitors. It brings the whole Council into disrepute*" but in the Tribunal's opinion the most telling statement comes from Mr Grimshaw, "*I was surprised and mildly amused by the conduct of Councillor Dhillon. I have not experienced this type of behaviour at other meetings I have attended in other local authorities*".
38. The Tribunal finds that the Appellant's conduct towards a visitor to the Council and the Chairman of the meeting was embarrassing, rude and inappropriate which could reasonably be regarded by an objective observer as diminishing the member's office and, in this case, the Council and could harm their reputation. The Tribunal therefore also finds that the Appellant's conduct breached paragraph 5 of the Code.
39. For the reasons set out above the Tribunal is of the view that in finding the Appellant has breached paragraphs 3(1) and 5 of the Code of Conduct is necessary and proportionate and justified under Article 10(2).

Sanction

Submissions on behalf of the Standards Committee

40. In summary the Standards Committee took account of the guidance issued by Standards for England concerning sanctions. It was noted that the Appellant did not accept that his behaviour was inappropriate and did not recognise his rude and aggressive manner at the meeting. Taking into account that the behaviour took place in the presence of individuals who were external to the Council and the embarrassment caused by his behaviour, the Standards Committee felt a period of suspension for two months was necessary. In addition the Standards Committee thought the Appellant should undergo some training as recommended by the Investigating Officer.

Submissions by the Appellant

41. The Appellant is of the view that a period of two months suspension is excessive and disproportionate although he accepts the offer of training.

Decision on sanction

42. In the view of the Tribunal, it is its function on appeal against the sanction imposed by a Standards Committee to decide whether the sanction was a reasonable and proportionate response to the breaches of the Code as found. This approach accords appropriate deference to the decision of the Standards Committee with its knowledge of the local circumstances.
43. The Tribunal was aware that the Appellant was not standing for re-election at the recent Council elections held on 5 May 2011.
44. The Tribunal has taken account of the representations from the parties, the guidance issued by the Standards for England and the guidance issued by the President of the Adjudication Panel for England. This latter document is issued for Case Tribunals but it is

nonetheless of assistance in gauging the appropriateness of sanctions imposed by Standards Committees.

45. The relevant guidance is intended to assist Standards Committees to gauge what action is appropriate to discourage or prevent the particular member from any future non-compliance and also to discourage similar action by others. Whilst not purporting to lay down tariffs or be comprehensive, the Standards for England Guidance states that:

“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”*

46. The Adjudication Panel for England's guidance states:

“In deciding what action to take, the Case 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 apply, as part of the process of fostering public confidence in local democracy. Thus, the action taken by the Case 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”.

“Case 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”

“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.

47. As is clear from the guidance, the appropriate sanction in any case requires consideration of all mitigating and aggravating factors.
48. On the side of mitigation is the fact that the Appellant believed he was asking legitimate questions about an issue that was causing him concern. He later recognised in a letter to the Investigating Officer, dated 28 December 2010 that this questioning had caused some upset to some people attending the meeting and to the extent that he did cause offence, he apologised.
49. However, there are aggravating factors in this case:
- 49.1. The Appellant's words and conduct were seriously disrespectful towards Mr Grimshaw and the Chairman of the HSP;
- 49.2. The Appellant's behaviour occurred in a public place and in front of other members of the HSP and other people who were not members of the Council, and
- 49.3. The Appellant, although he has apologised for upsetting people at the meeting does not appear to have any insight into how his conduct was inappropriate and continues to claim he was provoked into behaving this way. In the Tribunal's view this lack of insight may well result in further breaches in the future.

50. The Tribunal is of the view, having regard to the guidance, facts and representations in this matter that the sanction imposed by the Standards Committee was a reasonable and proportionate response to the breaches and that the appropriate sanction is for the Appellant to be suspended for a period of two months and in addition for him to be provided with the training recommended by the Investigating Officer at the discretion of the Monitoring Officer.
51. For these reasons set out above the Tribunal has upheld the findings of the Standards Committee and upheld the sanction imposed.
52. The Tribunal directs that the sanction imposed by the Standards Committee will take effect as of the date of this decision.
53. The written reasons for the Tribunal's decision will be published on the Tribunal's website at www.adjudicationpanel.tribunals.gov.uk.
54. 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.

Sally Lister

Judge

4 May 2011