



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

CASE NO: LGS/2010/0500

ON APPLICATION FROM:

Wigan Council Standards Committee

Application reference No: BSS/LD/KPL//Z-185

Dated: April 2010

APPLICANT:

Wigan Council Standards Committee

RESPONDENT:

**Councillor Robert Bleakley of Wigan
Council**

DATE OF HEARING:

12 July 2010

VENUE:

Macdonald Kilhey Court Hotel, Wigan

DATE OF DECISION:

22 July 2010

BEFORE

**Judge: Beverley Primhak
Member: Chris Perrett
Member: Richard Boyd**

Attendances:

For the Applicant (SC):

Mr Trevor Beswick

For the Respondent:

Ms Claire Lefort

Subject matter:

**Reference about possible failure to follow the
Code of Conduct**

DECISION OF THE FIRST-TIER TRIBUNAL

The Respondent has been found to have failed to follow the provisions of the Code of Conduct and the Tribunal has imposed the following sanction, that the Respondent be suspended from Wigan Council for a minimum period of six months and then for up to 12 months in total until such time as he provides an apology to Mrs Pat Shacklock, undertakes training on the Code of Conduct by an external provider, and takes part in a conciliation process with the officer if she so agrees. The apology shall be in the format set out in this decision, addressed to the officer in writing and read out by him at the first (practicable) full meeting of the Council.

REASONS FOR DECISION

1 Introduction

The Tribunal has determined an application from the above named Standards Committee in relation to an allegation that Councillor Robert Bleakley had failed to comply with paragraphs 3(1) and 3(2)(b) of Wigan Borough Council's Code of Conduct by behaving in an intimidating manner towards Mrs Pat Shacklock, Team Leader employed by Wigan Council, then refusing to communicate with her directly and expressing derogatory comments about her to her colleagues.

2 Procedural Issues

- 2.1 The Tribunal considered that its role was to determine whether or not the Respondent had failed to follow the provisions of the Code of Conduct, which was a different role from determining whether Mrs Shacklock acted properly or improperly. It therefore decided that it should reach a preliminary view as to whether, on the assumption that the Respondent's complaints about Mrs Shacklock were correct, the Respondent's actions amounted to a breach of the Code of Conduct.
- 2.2 The Tribunal stressed that in dealing with the matter in this way it would not itself be reaching a view on whether the complaints were justified and no criticism of Mrs Shacklock should be implied. Both parties agreed to this.
- 2.3 In the event the Tribunal found that on the assumption referred to above there was a clear breach of the Code of Conduct. Both parties then agreed that the Tribunal should move on to consider submissions as to what action the Tribunal should take.

3 Findings

The Tribunal heard submissions as to whether what occurred at a meeting on 19 March 2009 was material and if so, whether oral evidence was required from Councillor Keith McManus. The Standards Committee considered that it was important to retain a reference to the meeting, as what happened there was part of the Respondent's pattern of behaviour. Councillor McManus had provided a short written statement and

it was agreed by both parties that no further evidence was necessary. The Tribunal has found the following material facts, which were undisputed:

The Respondent's official details

- 3.1 The Respondent was elected to office in a by-election on 27 June 2007 and then again on 1 May 2008 for a term of 4 years.
- 3.2 The Respondent currently serves on the following committees: Economic Environment Culture and Housing Scrutiny Committee and has also served on the Audit Improvement Review Committee and the Adult Services Panel in recent years.
- 3.3 The Respondent gave a written undertaking to observe the Code of Conduct on 2 May 2008.
- 3.4 Following election, the Respondent would have attended Member Induction and would have been invited to all Member training sessions.

Relevant legislation and protocols

- 3.5 The Council has adopted a Code of Conduct in which the following paragraphs are included:

Paragraph 3(1):

'You must treat others with respect'.

Paragraph 3(2)(b):

'You must not bully any person'

- 3.6 The Council's Standards Assessment Sub-Committee identified these paragraphs as possibly applying to the alleged conduct.
- 3.7 The Council has also adopted a member/employee Protocol governing their relations which includes the following requirement:

'Members should be aware that officers are constrained in the response they may make to public comment from members, and should not abuse officers in public, or through the press, nor seek to undermine their position by abuse, rudeness or ridicule If members believe they have reason to criticise the work of an individual junior officer, the proper approach should be through the senior manager of the section or Director of the Department.'

Summary of material facts

- 3.8 In early 2008 there were changes in policy at the Council to the way the Neighbourhood Teams (or their equivalent) were required to operate.
- 3.9 The Neighbourhood Teams ('Neighbourhoods') are designed to be a one stop shop for members of the public to come to with regard to what is happening in their local environment. There are five in total each headed up by a principal officer who is the team leader. Pat Shacklock is the team leader for Atherton and Tyldsley and the Respondent is one of the ward councillors for this area.

- 3.10 Some members were unhappy with the changes made by the Council, and the Respondent was one of them.
- 3.11 There were clear differences in opinion between senior officers and the Respondent as to how the policy was intended to operate, although some of these issues have been worked through to some degree of satisfaction.
- 3.12 The Respondent first raised concerns about Mrs Shacklock in January 2008 over the removal of a roving CCTV camera in his ward.
- 3.13 The Respondent was unhappy about the removal of the CCTV camera. He felt he had not been adequately consulted and he questioned Mrs Shacklock's competence with her senior managers. He also refused to talk and work with her as a result.
- 3.14 The Respondent accepts he was disrespectful towards Mrs Shacklock in January 2008 and agrees that he referred to her as 'that woman'. He maintains she was wrong to remove the CCTV camera which was the reason why he was disrespectful towards her.
- 3.15 The second major set of concerns arose out of a meeting held between officers and the Police in a public park in the Respondent's ward on 21 January 2009, which featured in the local press at the beginning of February 2009. The Respondent was not aware of this.
- 3.16 Mrs Shacklock apologised to the Respondent over the telephone for not informing him about the meeting. The Respondent acknowledged this in an email.
- 3.17 On 11 February 2009 the Respondent submitted a complaint about Mrs Shacklock to Neil Fearnley, Service Director responsible for Neighbourhoods, for:
- 3.17.1 Failing to keep him informed of progress on a damaged wall in Tyldsley, and for failing to take the appropriate action to address it since June 2008, and
- 3.17.2 Failing to advise him in advance about a meeting she held with the Police, Fire Service and other members of the Council's Neighbourhood Services in Astley Street Park in January 2009, and its outcome.
- 3.18 On 11 February 2009 the Respondent formally raised concerns that Mrs Shacklock had breached the member/employee protocol.
- 3.19 Neil Fearnley found no reason to take action against Mrs Shacklock as a result of the Respondent's complaint of 11 February 2009, and advised him so in a letter of 6 March 2009.
- 3.20 On 17 February 2009 the Respondent had named Mrs Shacklock in a press release to the Leigh Journal describing the incident under investigation at 3.17.2 above, and referring to Mrs Shacklock (and the Police) as being out completely of touch with what was going on in the area, linking their behaviour to a totalitarianist state like Russia or Zimbabwe. The Respondent says that:
- 3.20.1 The press release - written by a colleague and naming Mrs Shacklock - to the Leigh Journal came as a response to being offered the right of

reply to a previous release, published by the Police, which did not acknowledge the work already done by the ward councillors and of which Mrs Shacklock - in her capacity of liaison officer with the Police – had not informed the ward councillors.

- 3.20.2 Due to lack of consultation, both Mrs Shacklock and the Police were out of touch with work already done by councillors in the area of the park and therefore it was legitimate to say so. A careful reading of the press release will reveal that the final paragraph describes, in general, what happens when Government is taken over by unelected officials and is not specific to this incident.
- 3.20.3 The Respondent has apologised for naming Mrs Shacklock in the press release but feels that the press release was necessary in view of the fact that a comment had been made by a Labour councillor and this had been published. The Police apologised to him for not keeping him informed.
- 3.21 Around the same time in February 2009, Mrs Shacklock complained to Neil Fearnley that the Respondent had sent an article to the local press naming her and casting aspersions on her competence.
- 3.22 At a meeting with the Police on 23 February 2009 police officers apologised on behalf of the Police for poor communication. The Respondent mentioned at the meeting that he felt there were issues with the Neighbourhood Team and that he thought that Mrs Shacklock was incompetent.
- 3.23 On 6 March 2009 Neil Fearnley set out his findings (of the complaint by Mrs Shacklock) to the Respondent, offering mediation to try to resolve the differences between them, and asking for his comments, pointing out that the Respondent sent out the press release whilst his own complaint about her was still under investigation.
- 3.24 On 10 March 2009 the Respondent responded to Neil Fearnley's letter by email admitting that he sent the press release but saying that, as he did not draft it, he was not responsible for its contents. He enclosed a letter from the person who had drafted the document, whose view was that it was Mrs Shacklock who had breached the member/employee protocol, not the Respondent. The Respondent further commented that Mrs Shacklock had never apologised to him in writing, only half heartedly over the telephone, and pointing out she was not new to the job. He did not take up the offer of mediation suggested by Neil Fearnley.
- 3.25 On 2 April 2009 Neil Fearnley responded to the Respondent, advising him that as the press release was in his name he was responsible for it, that he had referred to an officer of the council in it in a disparaging manner and therefore likely to be in breach of the member/employee protocol. Neil Fearnley further says he had discussed it with the Director of the Department Martin Kimber whose view was that it was likely to be a standards matter, without a satisfactory explanation.
- 3.26 During February and March 2009 the Respondent asked that Mrs Shacklock be removed from her post, and told her senior managers that he would not work with her.

- 3.27 On 10 March 2009, four days after the date of Neil Fearnley's letters to him, and the same date he responded to Neil Fearnley regarding the press release, the Respondent contacted Joanne Makin, Mrs Shacklock's immediate line manager, with regard to a Township Forum meeting, to say that if 'that woman' was attending he would close the meeting, and he could because he was co-chair. Although he did not close the meeting, he caused great consternation amongst several officers, and in particular Mrs Shacklock. As a result of this telephone call Joanne Makin arranged for Mrs Shacklock to be accompanied to the forum meeting by a male colleague as she was concerned for her wellbeing.
- 3.28 On 19 March 2009 Joanne Makin called a meeting with the Respondent, another council officer, Sara Laing, and Inspector Liz Sanderson from Greater Manchester Police during which the Respondent referred to 'that woman', meaning Mrs Shacklock. Councillor Bleakley also said at that meeting: "Mrs Shacklock had flirted with Councillor McManus in order to try to stop him from agreeing with my point of view".
- 3.29 Councillor McManus states as follows:

"On 10th March 2009 I attended a meeting of the Tyldesley/Astley Township Forum. When I arrived I was greeted very effusively by Mrs Pat Shacklock. I took the only vacant seat in the room which was beside her. Her greeting was a bit 'over the top' and I put this down to the fact that there was a good deal of friction between her and Cllr Bleakley about casework which had not been attended to and that she was pleased to welcome another councillor with whom there was not the same friction. Her behaviour was such that it could be perceived to be what Cllr Bleakley regards as flirtatious".

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

- 4.1 The Respondent's submissions:
- 4.1.1 If the facts are as stated and on the assumption that Mrs Shacklock was at fault, he cannot understand why the matter had to come to a tribunal. The alleged breaches could have been determined by the Standards Committee. The Respondent had been prepared to apologise for upsetting Mrs Shacklock following a meeting with the Director, Martin Kimber and had been prepared to try and work with her. He had not apologised because he understood that when she was told of the result of the meeting she wanted her "pound of flesh" and the Tribunal may conclude that any malice was on Mrs Shacklock's side.
- 4.1.2 He considers that Mrs Shacklock breached the Code of Practice in respect of the CCTV camera as she did not consult councillors. Councillor Bleakley refused to speak to her as a result of this. This was a reasonable response. He was justified in trying to produce a situation where there was somebody he could trust and work with. However he did not maintain his refusal and did work with her some time afterwards. She was a completely inexperienced officer and should not have taken it on herself to make these decisions.
- 4.1.3 Councillor Bleakley had concerns about Mrs Shacklock's actions in respect of a wall, which he considered had implications for public safety. This intensifies the view that he was absolutely correct in making strong representations with regard to what he considered to be Mrs Shacklock's incompetence. Councillor Bleakley was perfectly justified in assuming

that she was either lazy or incompetent. He does not accept that his attitude could be referred to as bullying. He should perhaps not have referred to her as "that woman". He was frustrated. However, it would need a whole string of other incidents before a minor slip of the tongue triggered a breach of the Code of Conduct.

- 4.1.4 He was justified in criticising her in the presence of the Police and reporting her to senior officers.
- 4.1.5 Councillor Bleakley was very frustrated about the meeting held in the park. He only found out about it on 4 February 2009 from a digest of press articles. He was very annoyed as it had allowed a Labour cabinet member to comment without involving the Tyldesley councillors. The press release gave a false impression that the ward councillors were not involved. As there are no Labour councillors in Tyldesley ward this gave a totally inappropriate impression which could have been avoided if the Respondent had been told of the police initiative. He was perfectly justified in making a complaint and refusing to work with someone who kept him out of the loop. His frustration built up over a period of time as he felt that the Neighbourhood Team was interfering with his work.
- 4.1.6 Councillor Bleakley was also justified in issuing a press release of his own. Mrs Shacklock had acted like a politician and he treated her like one. Councillor Bleakley has apologised for this. The press release was written by Mr Beswick and if Councillor Bleakley had read it properly he might have taken Mrs Shacklock's name out. The press release is about the takeover of officer functions by Mrs Shacklock and the Neighbourhood Team and everything that was said about Mrs Shacklock was true. She asked for all she got. Councillors get elected on their work and reputation and cannot afford to have the electorate believe that they are not involved in ward issues. This may have been an accidental breach of the Code of Conduct.
- 4.1.7 The Respondent's actions were in response to a succession of failures by Mrs Shacklock. This put him in an embarrassing position. There was no malice in anything the Respondent did. He believed that Mrs Shacklock was 'short-changing' his constituents by her attitude to his casework and any anger and frustration which he felt towards her sprang from this – as did his complaints to her line manager and his refusal to work with her (which was in fact removed after the mediation meeting with Martin Kimber).
- 4.1.8 The remark which the Respondent admits was out of order was unintentionally disrespectful and was the sort of remark which any reasonable person might make out of frustration at the failure of an officer to consult ward councillors and failure to do work which was undeniably the job of her team. The remark was not therefore in breach of the Code of Conduct.
- 4.1.9 In the interest of future harmony the Respondent was and is prepared to apologise to Mrs Shacklock for naming her in the press release and for upsetting her but he denies that he was at any time in breach of the Code of Conduct. What options are open to a councillor if he finds that his arguments are not properly listened to by his line managers? Officers can report councillors to the tribunal but there is little a

councillor can do if he meets the stone wall of officers sticking together. He tried to complain to the District Auditor.

4.2 The Standards Committee's submissions:

- 4.2.1 The Respondent was acting in his official capacity throughout the conduct that was subject to the complaint. He referred to his constituents, the Neighbourhood Team and his position as a ward member. It was very clear that the Code of Conduct applied to his conduct throughout the matters complained about.
- 4.2.2 The Standards Committee representative referred to the accepted definition of disrespect for the purposes of the Code of Conduct. There is agreed evidence between the parties that the Respondent refused to work with Mrs Shacklock, that he referred to her as 'that woman' and he made inferences to her work colleagues on a number of occasions about her competence, asking for her to be removed. He also placed an article in the press naming her in an unfavourable light in clear breach of the member/employee protocol in place at Wigan Council. The press did not ultimately print her name, but she was still identifiable from the article. It is no defence for the Respondent to say that he did not write the article or check it. He is a public figure, it was in his name and referred to an officer he had previously refused to work with. He also did this while his complaint about the same matter was being investigated and therefore regardless of the outcome of that investigation. This behaviour subjected Mrs Shacklock to unreasonable and excessive personal attack which exhibits a lack of respect for her as a person and an officer of the Council and therefore breaches paragraph 3(1) of the Members' Code of Conduct which says 'you must treat others with respect.'
- 4.2.3 Paragraph 3(2)(b) of the Code of Conduct says 'you must not bully any person including other councillors, council officers or members of the public.' The Code of Conduct guidance states:

'Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person or person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.'

This can be contrasted with the legitimate challenges which a member can make in challenging policy or scrutinising performance. An example of this would be debates in the chamber about policy, or asking officers to explain the rationale for the professional opinions they put forward. You are entitled to challenge fellow councillors and officers as to why they hold those views.'

It is important that you raise issues about poor performance in the correct way and proper forum. However, if your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.'

- 4.2.4 To infer that someone is not capable of doing their job properly even on one occasion and as a result refuse to work with them, when that person is a key contact for you in your line of work, is an example of insulting and humiliating behaviour. The Respondent has admitted that he did this. He has attempted to dress this up as justified criticism of the officer's work, but this is not evidenced by her senior officers, and in any event the criticism is both a personal attack and of an offensive nature. It is the above guidance which the Investigating Officer relies on when concluding that the actions of the Respondent are caught under the definition of bullying.
- 4.2.5 Further, to ask for a publication in the local press maligning that person is, in addition, potentially detrimental to that person's confidence and capability and could also be seen as an attempt to insult and humiliate. This would be the case even if there were grounds for so believing. Even if this were not the intent, it is reasonable to conclude that this would be the outcome. The Respondent has submitted that he only referred to Mrs Shacklock twice and that it was reasonable to issue the press release because it was true. However, if you look at the press release in totality you gain the impression that all the comments are directed at her personally, whether that was intended or not. It is the interpretation which a reasonable man would reach. It is accepted the Respondent took external advice on how he should go about this, but he should perhaps have sought advice from the Council's own press office or indeed the Monitoring Officer, who would have properly advised him on the implications for breach of the member/employee protocol. Mrs Shacklock accepted that she had made a mistake and she apologised. The press release could have been a measured response; instead it was inflammatory and intemperate.
- 4.2.6 Whether the Respondent's concerns were or were not legitimate, that is a matter for Mrs Shacklock's managers, who do not however share the Respondent's view of Mrs Shacklock. Such beliefs must be raised in the correct way and proper forum, not by airing them publicly and in the press. Even if a person is incompetent, it is bullying behaviour to seek to address their inabilities in this way, under the definition set out clearly in the guidance. This action breaches the Council's member/employee protocol and the way in which it did therefore also breaches the Code of Conduct, by failing to treat the officer with respect and is an example of bullying behaviour.
- 4.2.7 Threatening to close down a public meeting on 10 March 2009 (intended or not) if a particular officer attended is not only evidence of bullying behaviour towards the officer concerned, but also of an attempt to intimidate (and therefore bully) her line manager into behaving in a certain way. It was demeaning, threatening action which was directly personal against Mrs Shacklock. The timing of this is of note, as it came a few days after Neil Fearnley's findings in respect of both the Respondent's complaint and that of Mrs Shacklock and the same day as the Respondent's response to Neil Fearnley regarding the press release.
- 4.2.8 Only a few days later on 19 March, in a meeting with Joanne Makin and others, the Respondent continues to refuse to acknowledge Mrs Shacklock by name and accuses her of 'openly flirting with' another Councillor for his benefit. Taken alone or in a different scenario this may

have been seen as a naive, harmless comment, but within the context of the complaint, the refusal to work, the press release and its repercussions, one can see how it could add further insecurities to an officer who was already upset by what was happening.

- 4.2.9 Mrs Shacklock appears to have been subject to a number of personal attacks on her by the Respondent. What may have happened is that, as a relatively junior manager who had moved into a newly restructured service delivering new ways of working which had 'created its own political tensions and teething problems, she found herself in the firing line from the Respondent's dissatisfaction with the new regime.
- 4.2.10 The Respondent, as part of the opposition to the ruling administration in the Council, seems to have been reacting to what he perceived to be a poorer service to his constituents being operated incompetently by officers, including Mrs Shacklock.
- 4.2.11 This was not a constructive approach for the benefit of the community and by personalising his dissatisfaction against her he exhibited the bullying behaviour now enshrined in the latest Code of Conduct and guidance; such is the seriousness with which it is now regarded in the ethical framework. Mrs Shacklock says she felt intimidated and undermined by this behaviour and there is no reason to suspect this was not the case.
- 4.2.12 The Respondent, on his own evidence, crossed the line of what is acceptable behaviour with regard to bullying. It is accepted that he may not have intended to bully Mrs Shacklock, but only to achieve what he perceived as a better service for his constituents. Very few people want to be classed in such a way. It is however not always obvious to a person who is bullying another that this is the result of their actions.
- 4.2.13 The Respondent was frustrated and angry. There is a member/officer protocol in place for when there is a breakdown in relationships but Councillor Bleakley did not comply with it. Even if he felt that his concerns were not properly addressed, he could have raised them directly with the Chief Executive and asked for a further review. The bullying had taken place before the complaint process had reached its conclusion. It is accepted that the role of a member is to be challenging. There are many ways of doing that. It is not acceptable to make comments into a personal attack, which is humiliating and offensive to an officer.
- 4.2.14 His dissatisfaction with the new way of neighbourhood working and its operation by officers responsible for implementing the change in his ward appear to have caused him to focus on one particular officer, resulting in him showing disrespectful and bullying behaviour towards her personally, which caused her to feel intimidated, humiliated and distressed.
- 4.2.15 However he did so because of his very strong commitment to a particular way of working which in his view was to the benefit of the community he serves and not because he wanted to cause Mrs Shacklock personal harm. This is the unfortunate by-product of his

behaviour which is the way in which he chose to channel his unhappiness with the process he was confronted with.

- 4.2.16 Despite various offers by the Respondent to make an apology, no apology has been forthcoming.

4.3 **Tribunal decision**

Official capacity

- 4.3.1 The Tribunal considered that, on all occasions when the conduct in dispute occurred, the Respondent was acting in the role of councillor and therefore in his official capacity. This has not been disputed.

Disrespect and bullying

- 4.3.2 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 occurred are relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurred, who observed the behaviour, the behaviour itself and its proportionality to the circumstances, the character and relationship of the people involved and the behaviour of anyone who prompted the alleged disrespect.

- 4.3.3 Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine an individual or a group of individuals and is detrimental to their confidence and capability and may adversely affect their health. Such behaviour may happen once or be part of a pattern of behaviour directed at another.

- 4.3.4 In considering whether the Respondent breached paragraphs 3(1) and 3(2) 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.” The right to freedom of expression is a very important right in a democratic society and may only be interfered with where there are convincing reasons justifying the interference.”

- 4.3.5 The Tribunal, having taken into account the facts and submissions, concluded that the Respondent had shown disrespect to and bullied Mrs Shacklock. The Tribunal fully accepted that the Respondent was entitled to criticise the running of the Council or the performance of a Council function. He was also fully entitled to make complaints about the performance of a particular officer. The issue, however, was whether, in dealing with his criticisms and dissatisfaction with the service or officer, he acted in a proper way.

- 4.3.6 The Tribunal concluded that the Respondent showed disrespect to Mrs Shacklock in the following respects:
- 4.3.6.1 He referred to her as “that woman” and refused to communicate with her following the dispute about a CCTV camera in Jan 2008.
- 4.3.6.2 He issued a press release naming Mrs Shacklock in a disparaging way, contrary to the Council’s member/officer protocol. Whether or not he was busy or had problems with his computer, he should have read the press release before it was issued. The Tribunal notes that the Respondent submits via his representative that “she asked for all she got”.
- 4.3.6.3 At the meeting on 23 February he told Police and others that Mrs Shacklock was incompetent.
- 4.3.6.4 On 10 March 2009 he told her line manager that “if that woman was attending” he would close the meeting. Her line manager arranged for her to be accompanied by a male colleague because she was concerned for her wellbeing.
- 4.3.6.5 At the meeting on 19 March 2009 he referred to her as “that woman” and alleged that she had been flirting with another councillor. The Tribunal felt that the reference to her flirting, which had nothing to do with her work, indicated a mindset to demean.
- 4.3.7 The Tribunal considered that this behaviour, regardless of whether the criticisms of Mrs Shacklock were correct, was unacceptable and showed disrespect to her. When taken together the Tribunal considered that the instances of disrespect showed a pattern of behaviour that was intimidating and humiliating and which constituted bullying. The Respondent’s conduct was disproportionate and unreasonable.
- 4.3.8 The Tribunal is satisfied that Mrs Shacklock felt bullied and this is supported by the comments of her line manager, Joanne Makin, who stated that she had concerns for Mrs Shacklock’s mental health and had authorised stress management for her as a result of difficulties at work arising out of the Respondent’s behaviour towards her.
- 4.3.9 The Tribunal accepted that the Respondent was frustrated with the system and he had every right to be if he did not share its ethos. However it was not right to focus his frustration on an individual whose job it was to administer a system with which he disagreed. If he had serious concerns about Mrs Shacklock’s working practices he should have used the appropriate channels. There are two parallel channels for a member to address perceived shortcomings – through the political group or through officer protocols. What he was not entitled to do is attack an individual with no right of reply and potentially bully them out of their job.
- 4.3.10 Even on the assumption that the Respondent’s frustration was justified due to Mrs Shacklock’s failure to work in a manner acceptable to him, the Tribunal came to the clear conclusion that he showed disrespect to her and bullied her in breach of paragraphs 3(1) and 3(2)(b) of the Code of Conduct.

- 4.3.11 The Tribunal wishes to reiterate that it has not considered whether any of the criticisms of Mrs Shacklock's behaviour were justified. It is important to stress, however, that the papers before the Tribunal did not suggest that Mrs Shacklock's managers were concerned about her work. Indeed her line manager, Joanne Makin, stated that she had no concerns about her performance.

5 Submissions as to action to be taken

5.1 From the Standards Committee:

- 5.1.1 The Respondent's behaviour made it difficult for Mrs Shacklock, her team and other people who dealt with her to carry out work for the benefit of the community. It had some impact on the service the community received. He may have had the interests of the community at heart but his behaviour resulted in difficulties for Mrs Shacklock and showed discord and disagreement to the public.
- 5.1.2 The Respondent had been re-elected in May 2007. He was disqualified from office in 2004 for 3 years and for 2 years in 2005, both for disrespectful behaviour. He returned to office in May 2007 and it was only in January 2008 that these instances of disrespectful and bullying behaviour took place. After disqualification for disrespectful behaviour it was reasonable to expect that he might have learnt from his previous conduct and either re-adjusted his approach to officers, such as considering other ways in which he could behave, or sought training, or obtained close guidance from senior officers. At the very least more care should have been exercised by him after two disqualifications.
- 5.1.3 The Respondent has demonstrated that he does not recognise his behaviour as being a breach. This does not show that he has learnt from the process he is going through now, despite the intervention of Councillor Tushingham and Martin Kimber.
- 5.1.4 It is not clear that the Respondent appreciates what is expected of him and his behaviour towards officers. There needs to be a good working relationship between ward members and officers. Members are potentially in a position to exercise control over officers. It is unacceptable to use your position in the way that the Respondent has done. Officers have no opportunity to protect themselves other than through this and the internal protocol.
- 5.1.5 It is acknowledged that the Respondent is passionate about the community. However this does not justify his behaviour to Mrs Shacklock.
- 5.1.6 The Standards Committee felt that the matter should be referred to the First-tier Tribunal because of the Respondent's previous history and conduct.
- 5.1.7 The Respondent was returned to office on 27 June 2007 following an extended disqualification from office (Case References: APE 0105/106/107 and APE 0248) which expired in May 2007. The behaviour complained of raises questions as to whether lessons have been learned from the earlier sanctions imposed.

5.2 From the Respondent

- 5.2.1 Neither the Respondent nor the rest of his party thought that justice had been served in relation to the previous cases before the Adjudication Panel for England.
- 5.2.2 The Respondent has already accepted that he was disrespectful on at least one occasion. This was born out of frustration, for instance in relation to the wall, when he referred to Mrs Shacklock as "that woman". It was a very minor transgression. It has been accepted that the Respondent did not deliberately set out to bully her. Her perception is not the same as his. His perception was that she was not doing what she should do and she failed to consult him. He felt he was trying to get her to do her work. He did try to go through proper channels by complaining to her managers. He went to the Director, who tried to mediate, but Mrs Shacklock refused to accept an apology.
- 5.2.3 Nobody commands a bigger majority in Tyldesley than the Respondent. He is known as "Mr Focus". They often say that they have to keep him supplied with work otherwise he is not happy. He works 24/7 at the behest of his constituents. When he was re-elected, the whole party was behind him. He is probably the most hands-on councillor they have ever had. He is a very good representative who looks after his constituents and is a model councillor. He has not had any training and was never offered any training on the Code of Conduct when he returned to the Council after his disqualification. If he had had training, he may not have done some of the things he did. If the Respondent is given more than a minimal sanction, the Tribunal would be depriving Tyldesley of the best councillor they have ever had and acting against the interests of the community.
- 5.2.4 He therefore asks that because of the Respondent's excellent record the minimum possible sanctions should be applied. This could be a written apology and a requirement to undertake training.

5.3 Tribunal decision

- 5.3.1 The Tribunal took into account the First-tier Tribunal's Guidance on how to reach decisions after a finding of a breach of the Code.
- 5.3.2 The Tribunal considered that these were serious breaches and a significant sanction was appropriate. The Respondent's previous breaches of the Code, which had led to two periods of disqualification in 2004 and 2005, were an aggravating factor, particularly as they dealt with four references, some of which related to a similar type of breach. The Tribunal therefore considered imposing a further period of disqualification.
- 5.3.3 However, the Respondent was re-elected in June 2007 and then again on 1 May 2008. His commitment as a councillor was clear to the Tribunal, both from his own submissions and from comments made in the documents submitted on behalf of the Standards Committee. It was noted also that the Respondent had agreed to mediation following a meeting with the Director, Martin Kimber. Balancing all the factors, the Tribunal decided that they would give the Respondent a further

opportunity to show that he was fit to be a councillor. However, a lengthy period of suspension was appropriate to impress upon him the unacceptability of his behaviour.

5.3.4 The Tribunal considered that the Respondent needed help in improving his skills as a councillor and member of a corporate structure and that training was therefore necessary for him. Indeed, it noted with surprise that no training on the Code appeared to have been offered to him since his re-election, despite the recommendations of a previous Case Tribunal that Wigan Council should take care to ensure that elected members and officers have appropriate training in complying with the code. The Tribunal considered that in the circumstances of this case an apology and conciliation would also be appropriate.

5.3.5 The Tribunal has decided to impose the following sanctions:

5.3.5.1 That the Respondent be suspended from Wigan Council for a minimum period of 6 months, and then for up to 12 months in total until such time as he provides an apology to Mrs Shacklock, undertakes training on the Code of Conduct by an external provider and takes part in a conciliation process with the officer if she so agrees. The apology is to be in the format set out below, addressed to the officer in writing and read out by him at the first (practicable) full meeting of the Council. For the avoidance of doubt the initial 6 months suspension will take place in any event. The suspension took effect on 12 July 2010.

5.3.6 The apology is to be in the following form:

“Dear Mrs Shacklock

Arising from the recent decision of the First-Tier Tribunal (Local Government Standards in England) and upon consideration of the facts that were found, I am writing to offer my sincere apologies.

I recognise that my criticism of you overstepped publicly acceptable standards of behaviour and I apologise unreservedly.

*Yours sincerely
Robert Bleakley”*

5.3.7 The decision of the Tribunal was unanimous.

- 6 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.

B H Primhak
Judge
22 July 2010