

Other Bodies/Individuals

FINAL DECISION YES

SUGGESTED NEXT STEPS:

Details to be specified

Further consideration by this Committee

To Council

To Cabinet

To an O & S Committee

To an Area Committee

Further Consultation

Agenda No

Audit & Standards Committee - 20 February 2008.

Review of Adjudication Panel Decisions

Report of the Strategic Director of Performance and Development

Recommendation

That the Committee considers and comments on the report

Introduction

1. The number of cases dealt with by the Adjudication Panel for England has declined over the years. The numbers have significantly dropped since the powers to refer complaints for local determination (November 2003) and local investigation (November 2004) came into force.
2. Appendix A details the outcomes relating to adjudication panel cases between October 2002 and December 2007. Only 9% of the 336 cases resulted in a finding of no breach, in 19% of cases the sanction imposed was suspension and in 57% of cases the sanction was disqualification (in 47% the disqualification was for a year or more).
3. The latest investigation statistics show that of all cases requiring investigation almost 60% are referred for local investigation. In terms of the outcomes of appeals from the decisions of local Standards Committees up to December 2007

Final Decisions	Cumulative Total
Appeal refused by President	23
Standard committee finding upheld	19
Different finding imposed	2
Standard Committee finding dismissed	8
Appeal withdrawn	2
Total	54

4. Between January 2007 and January 2008 18 cases were referred to the Adjudication Panel. In two of the cases there was a finding of no breach of the code. Eight of the cases were appeals against the decision of local standards committees and fifteen of the cases involved allegations of 'failure to treat

people with respect' and or 'bringing the authority into disrepute'. The table below shows the outcomes in more detail and the types of breach involved.

Outcomes	Types of Breach involved	No of Cases
No breach	Improper advantage Disrepute Declaration of prejudicial interest	2 cases
No further action	Failure to register an interest	1 case
Apology	Failure to treat with respect Failure to register an interest	4 cases
Censure	Failure to treat with respect Failure to register an interest	4 cases
Suspension – one month	Disrepute Improper influence Declaration of prejudicial interest	2 cases
Suspension –three months	Failure to treat with respect	1 case
Disqualification – 3 months	Failure to treat with respect Disrepute Improper influence	2 cases
Disqualification – 6 months	Disrepute Failure to register an interest	1 case
Disqualification – 1 year	Failure to treat with respect Disrepute	1 case
Disqualification – 18 months	Failure to treat with respect Disrepute	1 case
Disqualification – 4 years	Disrepute	1 case
Disqualification –5 years	Disrepute	1 case

Failure to treat others with respect

5. Given that over 80% of the cases in the last 12 months have involved an allegation of failure to treat with respect, the following paragraphs highlight some of the behaviour involved and the views of the Adjudication Panel.
6. Recent case of *Hopkinson* underscores the need for members when complaining about actions taken or not by a Directorate not to personalise their comments towards individual officers. Suggestions that officers are biased or dishonest in preparing reports for members should not be made without very clear evidence to support such allegations.
7. The *Shaddock* case gives some interesting examples of the type of behaviour that is unacceptable. In this case the member emailed a member of staff (Mrs W) about the way a particular employee (Mrs N) had been dealt with under the absence management scheme. It contained such statements as

'This is clearly over the top and a draconian move on a good member of staff and I understand that managers could have used their discretion and not issued this letter...'

'I want to be told in no later than 24 hours that this letter is going to be withdrawn. If this does not happen I shall write to every member of staff in the Directorate as the Executive Member and tell them not to cooperate with managers regarding sick absence.....'

8. As the tribunal commented the member was not in a position to comment on whether or not Mrs N was a good member of staff as he had never been her manager. His role as Executive member did not give him a direct management role and he was not in a position to instruct officers how to deal with an individual case. His demand for the letter to be withdrawn was unreasonable (a) because he had no authority, (b) there had been no investigation by officers to determine the true position and (c) the timescale was clearly unreasonable. The threat to write to other staff was an attempt to place inappropriate pressure on a member of staff to accede to his demands. The email was unfair, unreasonable and demeaning and constituted a failure to treat the member of staff with respect.
9. The member subsequently attended a meeting for a briefing on the sickness absence policy amongst other things. This was a formal meeting attended by other officers and members of the Council. During the course of that meeting the member referred to the case of Mrs N. (the member had had a relationship with Mrs N which had finished in 2004). It was suggested by Mrs W that the member might wish to declare an interest under the code. The member responded in an aggressive fashion (in anger and with a raised voice) with remarks such as

'how dare you tell me how to run my life' ... 'how dare you speak to me like that'.. 'that he would have her disciplined'.....'to get out of the meeting'

10. The Tribunal found that the issue of the declaration of interest was an appropriate matter for an officer to raise, all it required was for the member to consider whether or not he had an interest and then tell the meeting his decision. His response in this case was unreasonable and unfair. There was no prying into his private life as alleged by the member. The member was the author of his own misfortune and any attempt to place the responsibility on the officer was misplaced. To demand a senior officer leave a meeting and be disciplined was demeaning because it was done without any reasonable basis in fact. Even if there had been such a basis such comments should not have been made in an open meeting in front of other officers and members. The Tribunal found a failure to treat with respect.
11. The member then wrote a letter to the monitoring officer seeking that Mrs W be dismissed because she had raised the issue of him declaring an interest at the meeting. The Tribunal in view of its conclusions about the conduct of the member at that meeting considered that this letter was again unreasonable, unfair and a failure to treat Mrs W with respect.

12. The Tribunal in this case also found the behaviour to be a breach of both paragraph 5(a) and paragraph 4 i.e. by seeking to compromise the impartiality of officers and use his position improperly in an attempt to confer an advantage on another person and thereby bringing the authority into disrepute. The sanction imposed was disqualification for 3 months, the mitigating factors were the personal circumstances of the member over the 4 months the events occurred –marriage break-up and divorce –otherwise the disqualification period would have been substantial.
13. The *Aldersey* case involved the member making comments to staff on a visit to a children’s home about another councillor i.e. that he was ‘*all mouth and no action*’. The member was censured and required to give a written apology.
14. The *Sandy* case involves a number of examples of unacceptable behaviour i.e. unjustified allegations that

an officer had improperly used her position to secure an advantage for a friend, in effect corrupt behaviour

an officer had obtained a signature falsely on a consent form

favours which go beyond the simple use of inappropriate and blunt language and move into threats e.g. ‘*...you have acted true to form in a most unprofessional manner....you have made Mr C’s life a misery with all your false stories and accusations this council’s name will stink by the time I have finished with you lot... why you and your department have gone out of your way to do this to Mr C is pure vindictiveness.*’

The Tribunal also took the view that unconditional accusations of corruption in public life are extremely damaging to the reputation of an authority. They imposed 3 months disqualification as the member had already resigned.

15. The *Hudson* case provides yet more examples

Making comments to staff about the competence of a planning officer i.e. *asking a junior member staff to pass to her boss the message that the councillor wanted another officer (other than her boss) to deal with a case and that he wanted her boss’s resignation if the council lost the case.*

Complaining to the local government ombudsman that a planning officer was professionally incompetent by repeating allegations without substance.

Making a statement at a Council meeting in the presence of public and press that he had heard four people with connections to the Council mislead the court from the witness boxin effect this was an unfounded allegation of perjury’

The sanction in this case was disqualification for 18 months.

16. The *Adkins* case involved a member in a rude and offensive manner calling a Chief Superintendent a 'liar' or 'bloody liar' in a public meeting. The Tribunal commented that there is nothing wrong with making fair criticism of a public official in an appropriate manner but to impugn the integrity of a police officer on the flimsiest of information in a public forum was clearly unacceptable. The sanction imposed was 3 months suspension. Of particular concern to the Tribunal was the lack of insight showed by the member that he had done anything wrong.
17. The latest case on failure to treat with respect decided on 20 December 2007 is the '*Pinfold*' case. The sanction in this case was disqualification for one year. This case involved

Inferences that had no factual base i.e. the member in an email to another person advised that he should record any phone call with the officer as the officer would lie *'he will deny having had the call, said anything etc..'*

statements in an email that a planning officer was activated other than by the planning merits of a case *'those wishing to buck the system are usually of ethnic origin....'* and that the planning officer did *'not have the courage of her conviction to take these people head on'*. These comments were also disrespectful to people from ethnic groups.

statements attacking the competence of officers *'speechless at the incompetence you have shown over this matter'* and *'if you could actually be bothered to look at the original planning permissions'*.

statements that officers were politically biased e.g. *'frankly the fact that you do not wish to help....indicates to me the total bias which you and the rest of your planning department have against high Conservative voting areas. You and your masters the Lib Dems...'*

Other Issues

18. There have been no court cases of any particular significance over the last 12 months. The Standards Board published their Case Review 2007 in October 2007 this gives a series of practical examples about behaviour which may constitute a breach of the code. This is available on the Standards Board Website at <http://www.standardsboard.gov.uk/Publications/TheCaseReview/>

DAVID CARTER
Strategic Director of
Performance and
Development

Shire Hall
Warwick
30 January 2008

Adjudication Panel Decisions – October 2002 – December 2007

Final Decision	Sanction	No of Cases
Disqualification	5 years	4
	4years 6 months	1
	4 years	6
	3 years	9
	2 years	19
	1 year	121
	18 months	10
	15 months	5
	9 months	3
	6 months	7
	5 months	1
	3 months	4
	2 months	2
Suspension	1 year	12
	9 months	7
	6 months	8
	5 months	2
	4 months	4
	3 months	12
	2 months	4
	1 month	4
	1 week	11
	19 days	1
	5 days	1
Partial Suspension		4
Reprimanded		2
No breach		31
Breach but no further action		39
Case withdrawn		1
Case Closed No decision		1
Total		336