

Decision

CASE REF: APE 0389

HEARING DATE: 6 November 2007

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

RESPONDENT: Former Councillor Leadbeater

RELEVANT AUTHORITY CONCERNED: Dartford Borough Council

ESO: (*Ethical Standards Officer*) Ms Jennifer Rogers

ESO REPRESENTATIVE: Ms Sarah Reid

Case Tribunal Members:

Chairwoman: Ms Melanie Carter
Member: Mr Alex Rocke
Member: Mr Ian Prosser

1 Preliminary

In a letter dated 24 July 2007, the Adjudication Panel for England received a reference from an Ethical Standards Officer ('ESO') in relation to an allegation that former Councillor Leadbeater had failed to comply with Dartford Borough Council's Code of Conduct. It was alleged that he had misused his position as a councillor when he improperly used a council owned computer, in order to access indecent images of children contrary to the terms of the Council's Internet Policy and Guidance; and that in so doing so he was in breach of paragraphs 4 and 5 of the Code.

2 Procedural matters

Mr Leadbeater did not appear at the hearing. The Case Tribunal were informed that he had previously indicated that he did not intend to take part in the proceedings beyond giving evidence to the ESO. In these circumstances, the Case Tribunal decided to proceed in his absence.

3 Findings of fact

The Case Tribunal found the following facts:

- 3.1 Mr Leadbeater was first elected to the Council in 1983 and served continuously until June 2006. Mr Leadbeater was elected Leader of the Council between May 1991 and May 1995 and again between May 2003 and June 2006. Mr Leadbeater held a significant number of positions within the Council and the community.
- 3.2 The Council adopted the Code of Conduct in January 2002. Mr Leadbeater gave a written undertaking to observe the Code of Conduct on 2 May 2003. He attended training on the Code of Conduct provided by the Council on 17 February 2004.
- 3.3 The Council adopted its Code of Conduct on 28 January 2002. Paragraph 1 of the Code states:

“1.(1) A member must observe the authority's code of conduct whenever he
(a) conducts the business of the authority;
(b) conducts the business of the office to which he has been elected or appointed; or
(c) acts as a representative of the authority, and references to a member's official capacity shall be construed accordingly.

2) An authority's code of conduct shall not, apart from paragraphs 4 and 5(a) below, have effect in relation to the activities of a member undertaken other than in an official capacity.”

Paragraph 4: *“A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.”*

Paragraph 5: *“A member- (b) must, when using or authorising the use by others of the resources of the authority - (i) act in accordance with the authority's requirements; and....”*

- 3.4 Mr Leadbeater signed a declaration to abide by the Council's Internet Policy on 16 October 2003. The declaration requires members to sign and to adhere to the policy, comprising an Overview and Declaration and Further Details and Guidance. The Council's policy covers both internet connection and council provided equipment.
- 3.5 A document entitled 'Further Detail and Guidance' (the "Guidance document") provided members with additional information regarding the Internet Policy:

Paragraph 2:

The Internet Policy provides that the Council has the right to inspect any and all files stored on the Council's computing facilities in order to assure compliance with the policy.

Paragraph 3:

“the display of any kind of indecent image or document on any Council system is a violation of its policy on harassment. In addition, indecent material may not be archived, stored, distributed, edited or recorded using the Council's network or computing resources”

Paragraph 5:

“the Council's Internet facilities and computing resources must not be used knowingly to break the law. Use of any Council resources for illegal activity is

grounds for immediate dismissal and the Council will cooperate with any legitimate law enforcement activity”.

Paragraph 15:

“since a wide variety of materials may be deemed offensive by colleagues, customers or suppliers, it is a violation of Council policy to store, view, print or redistribute any document or graphic file that is not directly related to the user’s job or the Council’s business activities.”

- 3.6 The declaration of acceptance of the Internet Policy signed by Mr Leadbeater states: *“I accept that I must release my PC for audit by IT Delivery or Internal Audit immediately upon their request”*
- 3.7 Mr Leadbeater resigned as Leader of the Council on 20 February 2006, and resigned from the Council on 12 June 2006.
- 3.8 On 22 September 2006 Mr Leadbeater was convicted on 14 charges of making indecent images of children. It is probable that all the offences took place in April and May 2004. No offences took place after May 2004.
- 3.9 Mr Leadbeater was sentenced to a three year community rehabilitation order and a three year sexual offences prevention order. He was placed on the sexual offenders’ register.
- 3.10 Mr Leadbeater accessed the indecent images of children on a computer provided to him by the Council because he was a councillor.

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

4.1 Mr Leadbeater’s submissions

4.1.1 Mr Leadbeater had argued to the ESO that, albeit he admitted paying and viewing the relevant images he had not set out to save or download them in anyway. He understood now however that the computer saved such images as temporary files.

4.1.2 He told the ESO that he did not know at the time that viewing such images was unlawful.

4.1.3 Mr Leadbeater further argued that, at the time he accessed the images, he believed that he owned the computer. It had been provided to him by the Council on account of being a senior member of the Council. He told the ESO that he had understood that its value was being written down by 25% every year such that by 2004, being effectively valueless, he thought it belonged to him. He claimed that he was paying for the internet connection such that, to the best of his knowledge he was not using council owned resources when he viewed the offensive material.

4.2 The ESO’s Submissions

Paragraph 4 of the Code of Conduct

4.2.1 Mr Leadbeater misused his position as a member when he committed the criminal offences and used the resources of the Council contrary to the Council’s policy and guidance. Paragraph 4 of the Council’s

Code of Conduct provides that a member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute. It is accepted that in these circumstances, Mr Leadbeater was acting outside of his official capacity. The question then was whether this fell within "*any other circumstance*".

- 4.2.2 The ESO drew the attention of the Case Tribunal to the case of *Ken Livingstone v. The Adjudication Panel for England* and the need for a link to the Council where it is alleged that a member has breached paragraph 4 "*in any other circumstance*".
- 4.2.3 The relevant link to the Council, it was submitted, was Mr Leadbeater's use of the Council provided computer to access and view the indecent images. Mr Leadbeater misused computer resources that were only made available to him as a result of his position as a member of the Council. As such, paragraph 4 of the Code applied to Mr Leadbeater's conduct.
- 4.2.4 A member of the public with knowledge of the relevant circumstances would consider that Mr Leadbeater's conduct was such that it seriously undermined confidence in his appropriateness to hold public office. By failing to comply with the terms of the Council's policies for the use of its resources in order to commit criminal offences which are regarded by the public as of a most repugnant nature, Mr Leadbeater brought his office into disrepute contrary to paragraph 4 of the Council's Code of Conduct. He flouted the rules of the authority that were designed to protect its reputation and its property against misuses.
- 4.2.5 The ESO's representative submitted, at the hearing, that one of the facts that the Case Tribunal should take into account were the breaches by Mr Leadbeater of the Internet Policy. She exhorted the Case Tribunal to take a purposive approach to the document and to conclude that the former councillor was clearly in breach of the policy. Particular attention was drawn to:
 - 4.2.5.1 the prohibition against display of any kind of indecent image on any council system;
 - 4.2.5.2 the prohibition against the Council's internet facilities or computing resources being used to knowingly break the law;
 - 4.2.5.3 the prohibition against the viewing and storing of any graphic file that is not directly related to the user's job or the Council's business activities.

Paragraph 5 of the Code of Conduct

- 4.2.6 Paragraph 5(b)(i) of the Council's Code of Conduct provides that a member must act in accordance with the authority's requirements when using the resources of the authority. This paragraph only applies when a member is acting in his official capacity. At the hearing, the representative of the ESO accepted that Mr Leadbeater was not at the relevant time acting in an official capacity. As such, this head of the allegation was not pursued.

4.3 Case Tribunal decision

- 4.3.1 The Case Tribunal had first to consider the extent to which the Code covered Mr Leadbeater's conduct. As set out above, the representative of the ESO agreed at the hearing that Mr Leadbeater had not been acting within his official capacity. As such, the Case Tribunal found that he had not been in breach of paragraph 5 of the Code, as alleged, as this provision only applied to members acting within their official capacity.
- 4.3.2 Given that Mr Leadbeater was not acting within his official capacity the question was whether his conduct fell within "*any other circumstance*" under paragraph 4 of the Code.
- 4.3.3 The Case Tribunal took into account the case of *Ken Livingstone v. The Adjudication Panel for England*. In that case, Mr Justice Collins had considered the scope of paragraph 4 of the Code of Conduct and the phrase "*or any other circumstances*". It was held by the court that the phrase must be read in conjunction with section 52 of the Local Government Act 2000 which requires a member to provide a written undertaking that in "*performing his functions*" he will observe the authority's Code of Conduct. Mr Justice Collins held in relation to the phrase "*or any other circumstances*":

"That phrase must receive a narrow construction so that any other circumstance will not extend to conduct beyond that which is properly to be regarded as falling within the phrase 'in performing his functions'. Thus, where a member is not acting in his official capacity (and official capacity will include anything done in dealing with staff, when representing the council, in dealing with constituents' problems and so on), he will still be covered by the Code if he misuses his position as a member. That link with his membership of the authority in question is in my view needed".

Mr Justice Collins further stated:

"It seems to me that unlawful conduct is not necessarily covered. Thus a councillor who shoplifts or is guilty of drunken driving will not if my construction is followed be caught by the code if the offending had nothing to do with his position as a councillor."

- 4.3.4 In this regard, the Case Tribunal was aware that the Government is seeking to amend the Local Government Act 2000 such that councillors may be caught by the Code when acting outside their official functions if they have committed certain prescribed criminal offences. The Case Tribunal noted however that this was not yet the law and that the case before them had to be decided on the basis of the legislation and the Code in force at the date of the hearing.
- 4.3.5 The Case Tribunal was of the view that the necessary link with membership of the Council was provided by the fact that the computer was owned by the Council. The computer was meant for

the sole use of councillors in the performance of their functions. It was not anticipated that councillors would use the computers provided for personal matters. Mr Leadbeater used a council owned computer to access the indecent images. In these circumstances, the Case Tribunal found that paragraph 4 of the Code did potentially apply to the case at hand. It had then to consider whether the conduct in question was such that it could be reasonably be regarded as bringing the councillor's office or authority into disrepute.

4.3.6 The Case Tribunal asked itself whether it might be said that the conduct in question would bring disrepute upon the man himself rather the office of councillor or the authority. This distinction had been considered in the *Livingstone* case. The Case Tribunal took the view that the fact that Mr Leadbeater had used council resources to access pornographic images of children and therefore committed serious criminal offences through council owned property inevitably brought the Council and his office as councillor into disrepute.

4.3.7 In the circumstances set above, the Case Tribunal concluded that Mr Leadbeater was in breach of paragraph 4 of the Code.

5 Submissions as to the action to be taken.

5.1 ESO's submissions

5.1.1 Mr Leadbeater entered a plea of guilty to the charges brought against him, and he was given a substantial but non-custodial sentence. Mr Leadbeater took steps to minimise the damage to the reputation of the Council by resigning as Leader immediately after the police investigation began and before charges had been brought against him. He then resigned from the Council, and his resignation letter contained expressions of regret and remorse.

5.1.2 The ESO must however consider the nature of the offences for which Mr Leadbeater was convicted, his position as Leader of the Council during the time when offences were committed, and his use of council resources to commit these offences. The ESO has also taken into account the seriousness with which these offences, involving as they do the exploitation of children, are viewed by the public, and the impact that such criminal conduct is bound to have had on public confidence in such a senior elected member. The ESO has noted that Mr Leadbeater is not prevented from seeking election as a councillor in the future.

5.2 The Respondent made the following points during the ESO's investigation:

5.2.1 In his resignation letter dated 12 June 2006, Mr Leadbeater explained that he was "*devastated by what has happened*" and "*deeply sorry for what I have done and for the hurt I have caused to colleagues, friends, neighbours, family and residents*" [JR8 p72].

5.2.2 Mr Leadbeater stated that he served as a member of the Council for 23 years and during that time he had given his time and abilities and had endeavoured to work for the people of Dartford. Mr Leadbeater wrote that he hoped "*that the lurid headlines of the past four months will not eclipse the achievements and dedication of 23 years.*"

5.2.3 Mr Leadbeater said at interview that he does not intend to put himself forward for any public office in the future.

5.3 **Case Tribunal decision**

5.3.1 The Case Tribunal considered that Mr Leadbeater had, in the most serious way, abused the trust placed by the public in its local government representatives. The accessing of child pornography led directly to the exploitation of children. Mr Leadbeater had accessed the images using a council owned computer, paid for by public funds. This behaviour indicated that Mr Leadbeater was not fit to hold public office as a councillor and warranted the highest possible sanction.

5.3.2 The Case Tribunal took into account the points in mitigation put forward by Mr Leadbeater and the ESO on his behalf. Whilst acknowledging his long years of public service and the steps he had taken to minimise the damage to the Council on being arrested, the Case Tribunal still felt that the most serious sanction available to it was the appropriate one to impose.

5.3.3 It took into account its own guidance document, noting the references there to disqualification being likely to be appropriate following conviction of an offence punishable by a sentence of three months or more imprisonment. It noted further that the guidance provided that the fact that a court has imposed a lesser sanction does not mean that a five year disqualification is inappropriate. In this regard, the Case Tribunal took into account that albeit Mr Leadbeater was in receipt of community sentence orders lasting three years, he would remain on the sexual offenders list for five.

5.3.4 Mr Leadbeater had been a very senior member of the Council, indeed at the time of the offences, he had been its Leader. Public trust and confidence required that he be disqualified from seeking public office as a local government for a substantial period.

5.3.5 The Case Tribunal decided therefore that Mr Leadbeater should be disqualified for five years from being or becoming a member of the relevant authority or of any other relevant authority within the meaning of the Local Government Act 2000. The disqualification was effective from the date of the hearing.

5.3.6 The decision of the Case Tribunal was unanimous.

Melanie Carter

Chairwoman of the Case Tribunal

9 November 2007