

**APPEALS TRIBUNAL**

<b>Case Ref:</b>	<b>APE 0474</b>
<b>Appeals Tribunal Date:</b>	<b>21 December 2009</b>
<b>Relevant Standards Committee:</b>	<b>Coventry City Council</b>
<b>Date of Standards Committee Decision:</b>	<b>3 November 2009</b>
<b>Name of member concerned:</b>	<b>Councillor Matchet</b>
<b>Monitoring Officer:</b>	<b>Christine Forde</b>
<b>Independent Investigator:</b>	<b>David Taylor</b>

**Appeal Tribunal Members**

<b>Chairman:</b>	<b>Sally Lister</b>
<b>Member:</b>	<b>Richard Boyd</b>
<b>Member:</b>	<b>Bill Nelson</b>

1. The Appeals Tribunal considered an appeal from Councillor Matchet, the Appellant, against the decision by the Standards sub-committee of Coventry City Council ("the Council") to suspend the Appellant for a period of three months and to require him to submit a letter of apology for failing to comply with the Council's Code of Conduct.
2. The Appellant had agreed to the appeal being considered by way of written representations. After consideration of all the papers, including further written submissions provided by Ms Forde, the Monitoring Officer of Coventry City Council ("the Council") dated 18 December 2009 and a letter dated 21 December 2009 from Messrs Angels Solicitors, who were representing the Appellant, the Appeals Tribunal considered that it was appropriate to make a determination on the written evidence available.
3. The Appellant raised a number of issues in his submissions concerning this appeal, including an allegation that the Council had breached its duty of care towards him; that the Appellant, himself was a victim of discrimination and that in an unspecified way, the decision of the Standards Sub-committee or the appeal interfered with his convention rights as defined in section 1 of the Human Rights Act 1998.
4. The Appeals Tribunal, after considering the Appellant's grounds of appeal concluded that, save for the extent to which it was relied upon as a motive for making the allegation by the complainant, it was not a body with jurisdiction to hear a grievance about such discrimination. This was also accepted by the Appellant in the letter from his Solicitors dated 21 December 2009. Nor did the Appeals Tribunal consider it had jurisdiction to determine issues concerning a breach of duty of care although, in reaching its decision, the Appeals Tribunal took into account that the Appellant may have been on medication at the time the alleged incident occurred.

5. The Appeals Tribunal also concluded that there was no evidence or indication in the information before it that suggested the Appellant's convention rights had been infringed in anyway. It was noted that the Council had provided the Appellant with documentation in relation to the allegation against him and he had sought independent legal advice. He had not attended the hearing but had provided written submissions through his solicitors.
6. The issue that was determined by the Appeals Tribunal therefore, concerned the alleged incident on the 10 December 2008 and the decision of the Council's Standards sub-committee of the 3 November 2009.
7. The Appellant's grounds for appeal in relation to these specific issues could be summarised as follows:
  - 7.1. The Appellant did not breach the Council's Code of Conduct. The alleged conversation reported by the complainant between the Appellant, the complainant and Ms X was disputed. The Appellant had no recollection of the alleged conversation.
  - 7.2. The complainant's testimony was the sole evidence of the alleged conversation and her credibility should be questioned, particularly as she had been drinking at the time the incident took place. There was nothing to suggest that the complainant did not maliciously formulate her complaint on the grounds of disliking the Appellant on the basis of his age or sex.
  - 7.3. The documentary and oral evidence did not prove the conduct as alleged.
  - 7.4. In the absence of conclusive proof, it must be concluded that on the balance of probabilities the Appellant did not use unacceptable language towards the complainant or any other party and that the alleged breach of the Code of Conduct could not be upheld.
  - 7.5. There had been an unreasonable delay in carrying out the investigation and it was unreasonable to expect the Appellant to recall whether the alleged conversation had taken place.
  - 7.6. There was a failure to consider evidence and interview witnesses as requested.
  - 7.7. The sanction was disproportionate to the alleged offence.

### **The Appeals Tribunal's finding of Fact**

8. The Appeals Tribunal considered all the documentary evidence and made the following findings of fact:

#### Facts as found not in dispute:

- 8.1. The Appellant had been a member of the Council since 1999. On taking office the Appellant has signed an undertaking to abide by the Code of Conduct. On being elected Lord Mayor on the 15 May 2008, the Appellant had signed a further undertaking. The Appellant had also undertaken training on the Code of Conduct in 2008.
- 8.2. The Council's Code of Conduct provided:

*Paragraph 5.1.3.1 "You must treat others with respect"*

and

*Paragraph 5.1.5 "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute"*

- 8.3. On the 10 December 2008 the Appellant, as Lord Mayor of the Council hosted a community party, the purpose of which, in the words of the Appellant, was both ceremonial and a fund raiser for the Lord Mayor's charities. It was attended by over 500 people. The Appellant attended in his official capacity as Lord Mayor of the Council and wore his mayoral chain of office.
- 8.4. As the official host of the event, the Appellant moved around the party greeting, chatting and dancing. He also had his photograph taken with a number of guests. There was food, drink, including alcohol, and entertainment at the party.
- 8.5. The complainant attended the party with eight friends and colleagues including a Ms Claire Cheney and a Ms Gennie Holmes. Ms X also attended with a group of work colleagues.

Facts as found in dispute:

- 8.6. The Appeals Tribunal found, on a balance of probabilities that sometime during the evening the Appellant, who had been drinking, had a collective dance with Ms X and some of her work colleagues. When Ms X left the dance floor and went to sit next to the complainant, the Appellant joined them.
- 8.7. A conversation took place between the Appellant, Ms X and the complainant, some of which was of a sexually explicit nature. The conversation included comments by the Appellant about the age at which he lost his virginity and the comment that he would "like to fuck" Ms X.
- 8.8. In finding that this conversation did take place; the Appeals Tribunal was mindful that the Appellant had consistently said that he had no accurate recollection of the conversation. The Appeals Tribunal had taken into account the Appellant's view that the original investigation had failed to interview witnesses but concluded that as no other persons were party to the actual conversation the scope of the investigation was adequate. Also the Appeals Tribunal was not of the view that there had been an unreasonable delay in notifying the Appellant of the complaint or in carrying out the investigation into the incident. The formal complaint was made on 30 January 2009; the Appellant was notified in general terms of the complaint on 9 February 2009 and in detail on the 17 March 2009, a period of under seven weeks.
- 8.9. By contrast to the Appellant's inability to recall the alleged conversation, the complainant had consistently had a clear and unequivocal recollection of the conversation and the nature of what was said.
- 8.10. The Appeals Tribunal took into account that very soon after the conversation had taken place, the complainant had told Ms Cheney and Ms Holmes. This is confirmed in the two women's statements both of which describe the context in which the conversation took place and corroborate the complainant's account in an important respect.
- 8.11. In Ms Cheney's statement she said that she saw the Appellant come and sit with Ms X and the complainant and leaned towards the two women. She confirmed that it looked as if they were having a serious conversation. She stated that she noticed the Appellant was staggering and his speech was

slurred. After a further period Ms X and the complainant joined her on the dance floor and the complainant told her about the conversation that had just taken place.

- 8.12. In Ms Holmes' statement she said that the Appellant, the complainant and Ms X were having a conversation which she could not hear and left them to go for a dance. She noticed that the conversation between the three of them resulted in a lot of "shaking of heads and hand movements in a polite way but everything was not right". She stated that the body language was consistent with the nature of the conversation which was told to her by the complainant when she was joined by Ms X and the complainant on the dance floor shortly after the conversation had taken place. The complainant also told Ms Holmes about the conversation again in the taxi home at about 1am.
- 8.13. The Appeals Tribunal also noted that the complainant, upon arriving home, told her fiancée and made a written note of the conversation before she went to bed, when the events were still fresh in her mind. The next morning she discussed the incident with her line manager.
- 8.14. The complainant repeated the incident and the nature of the conversation to Mr David Taylor, the Investigating Officer on 23 April 2009. Again, the complainant repeated these events to the Council's Standards sub-committee on the 3 November 2009 when, quite rightly in the absence of the Appellant at the hearing, her evidence was robustly challenged and she was subjected to some quite probing, direct and blunt questioning.
- 8.15. The Appeals Tribunal took account of the fact that the complainant had been drinking at the party; a matter that was put to her by the Standards sub-committee, but accepted that alcohol had not affected her recollection, particularly as she had written the facts down as soon as she had got home that evening. Both the evidence of Ms Holmes and Ms Cheney confirm that the complainant had a few glasses of wine and may have been a little tipsy but was not drunk and was not slurring her words.
- 8.16. The Appeals Tribunal considered carefully the Appellant's suggestion that the complainant had maliciously formulated her complaint as she disliked him on the basis of his age or sex. The Appeals Tribunal concluded that there was no credible evidence that showed, or even indicated, that the complaint had been made maliciously.
- 8.17. The Appeals Tribunal found that, on balance the complainant had given an entirely credible and truthful account of what had taken place at the community party on the 10 December 2008 and therefore concluded that the alleged incident had occurred.

#### **Failure to comply with the Code of Conduct.**

9. On the facts as found, the Appeals Tribunal were of the view that the conversation that the Appellant had with Ms X and the complainant was highly embarrassing, offensive and disreputable. It would have offended anyone who heard it and was totally inappropriate. The Appellant certainly failed to treat both Ms X and the complainant with respect and therefore he had failed to comply with paragraph 5.1.3.1 of the Council's Code of Conduct.
10. In addition to this the Appeals Tribunal was of the view that by this disgraceful conduct, the Appellant had brought his office and authority into disrepute. Disrepute was defined as a lack of good reputation or respectability in the Oxford English

Dictionary. In the Appeals Tribunal's view, on an objective standard, by having this type of conversation while at an official function, where the Appellant attended in an important ceremonial capacity; representing the Council, his conduct was capable of diminishing public confidence and harming the reputation of the office of Lord Mayor, the position of Councillor and, indeed, the authority as a whole. Therefore the Appellant had failed to comply with paragraph 5.1.5 of the Council's Code of Conduct.

### **Sanction**

11. The Appeals Tribunal took account of the representations from the parties. Credit was given to the representations made in mitigation on behalf of the Appellant by Ms Jane Barlow, a member of the Lord Mayor's Office staff, that he had had a successful year as Lord Mayor and in his dealings and travels with her, their relationship had been very good and his conduct had always been perfect. Also the comments made by Ms Lorraine Evans, PA to the Council Leader who said her relationship with the Appellant had always been quite proper; that she had never detected any hint of inappropriate behaviour and that she had a good relationship with him and could not recall any problems.
12. However, the Appeals Tribunal was very concerned that the Appellant, in conducting his defence had attempted to malign the reputation of the complainant and impugn the standing of someone who did no more than their duty in making the complaint. In the Appeals Tribunal's view these were aggravating factors that may well have increased the appropriate sanction in this case.
13. The Appeals Tribunal considered the guidance issued by Standards for England entitled "Standards Committee Determinations" and the guidance issued by the President of the Adjudication Panel for England entitled "Guidance on decision to be made by a Case Tribunal where a respondent has been found to have failed to comply with a Code of Conduct". This document was issued for Case Tribunals but was nonetheless of assistance in gauging the appropriateness of sanctions imposed by Standards sub-committees.
14. All guidance was intended to assist those considering breaches of the Code of Conduct to gauge what action was appropriate in order to discourage or prevent the particular member from any future non-compliance and also to discourage similar action by others. The guidance advised that a tribunal should bear in mind the aim of upholding and improving the standard of conduct expected of members as part of fostering public confidence in local democracy. The Adjudication Panel for England guidance provided:  
  
*"Suspension is likely to be appropriate where the Respondent has been found to have brought his or her office into disrepute..."*
15. It followed from this guidance that, given the Standards sub-committee found that the Appellant had failed to comply with paragraph 5.1.5 of their Code of Conduct, suspension was a sanction which was appropriate. The Appeals Tribunal may well have imposed a longer period of suspension than that imposed by the Standards sub-committee considering the aggravating factors but accorded appropriate deference to the decision of the Standards sub-committee with its knowledge of the local circumstances and which had the benefit of hearing oral and written evidence.
16. The Appeals Tribunal was of the view that the Standards sub-committee's sanction was reasonable and proportionate and decided to uphold its decision to suspend the appellant for 3 months and to require him to submit a letter of apology in a form

specified by the sub-committee. The original sanction should take effect as of the date of this decision.

17. A copy of this determination is being given to the Appellant, the Standards Board, the Standards Committee, the Council and any person who made the allegation that gave rise to the investigation.
18. This determination will be published in a newspaper that is circulated in the area of the local authority and will also be published on the Adjudication Panel's website at [www.adjudicationpanel.tribunals.gov.uk](http://www.adjudicationpanel.tribunals.gov.uk).

Sally Lister

**Chairwoman of the Appeals Tribunal**

5 January 2010