



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

**CASE NO:** LGS/2010/0485

**ON APPEAL FROM:**

Standards Committee: London Borough of Havering  
Dated: 22 January 2010

**APPELLANT:**

**Councillor Mark Logan**

**RESPONDENT:**

**London Borough of Havering (the Council)**

**DATE OF HEARING:**

**21 April & 27 July 2010**

**DATE OF DECISION:**

**16 August 2010**

**BEFORE**

**Judge: Karen Aldred  
Member: Alison Lowton  
Member: Alex Rocke**

**ATTENDANCES:**

For the Appellant: Unrepresented

For the Respondent: Owen Davies QC

**SUBJECT MATTER:**

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

**CASES CITED:**

**Mullaney –v- The Adjudication Panel for England  
2009 EWHC 72 (Admin)  
Councillor Sharratt of South Ribble Borough  
Council  
APE 0458  
Councillor Barnbrook –v- The London Borough of  
Barking and Dagenham LGS/0471  
Fox and Stirk/Ricketts –v- City of Cambridge  
ERO 1070 2QB 463**

## **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. This is an appeal by the Appellant against a determination made by the local Standards Sub-Committee of the Council on the 19 January 2010 that there was a failure by him to comply with paragraphs 3(1) and 5 of the Council's Code of Conduct and to impose a sanction of suspension for a period of one month; require him to undertake relevant training; and, provide that no member's allowance be paid for the period of suspension.

#### **Procedural information**

2. The Tribunal in preparation for the hearing which was planned to take place on the 21 April 2010 issued Directions in which it sought further information from the parties. As a result of the hearing on the 21 April 2010 being adjourned the Tribunal issued further Directions and made a determination on an application to strike out the Appellant's case. There was therefore a large body of documentation and submissions before the panel when it met to decide on paper evidence the outcome of this appeal on the 27 July 2010.
3. This is an appeal by way of re-hearing of the issues and so the Tribunal when making its findings and decision has taken into account all information available to the Standards Sub-Committee and the submissions and further documentation provided by the parties for this hearing.

#### **Background**

4. Briefly the facts are that the Appellant arranged of his own volition for Councillor Gadd of the London Borough of Havering to be observed and his commuting and travelling arrangements to be monitored and noted. This was undertaken by covert surveillance and the information was used to found an allegation by the Appellant that Councillor Gadd was neither residing nor working in the borough and so did not qualify to stand for election as a local councillor. Councillor Gadd works outside of the borough and he owns a family home some way further into Essex, but not, he states, at Burnham on Crouch as alleged by the Appellant. His association with the borough, and his right to stand for election to the council, was, therefore, based on residency for a portion of time at his parent's home in Colliers Wood in Havering from where travel to his office was easier. This temporary residency entitled him to be registered on the list of voters of Havering Borough and therefore stand for election.

5. The Appellant first brought his concerns that Councillor Gadd neither worked nor resided within Havering into the public arena in March 2006 when an article appeared in the Romford Recorder.
6. The first episode of covert surveillance was undertaken by the Appellant personally between May and September 2006. The Appellant was not a member of the Council at that time.
7. In September 2006 the Appellant brought this matter to the attention of the Electoral Commission and the Standards Board for England. Both authorities declined to deal with the complaint on the basis of lack of jurisdiction. The Standards Board for England found that the Appellant should, in the first instance, bring this matter to the attention of the Council.
8. The Appellant became a councillor of the London Borough of Havering in March 2008. At that time the Appellant still held, and indeed from the documentary evidence before the Tribunal continues to hold, the belief that Councillor Gadd was not entitled to serve as a councillor on the Council due to his lack of qualifying residency.
9. The Appellant received face to face training on the Code of Conduct from the Head of Legal Services and signed an undertaking to comply with it on the 20 March 2008.
10. In the autumn of 2008 the Appellant contacted the local press. An article subsequently appeared in the Romford Recorder on the 7 November 2008. This article repeated the Appellant's allegations that Councillor Gadd was not eligible to be a councillor for Havering.
11. Following publication of that article Councillor Gadd made a formal complaint to the Monitoring Officer on the 10 November 2008 stating that:
  - 11.1. The Appellant arranged covert surveillance of his parents' address in Collier Row and an address in Burnham on Crouch.
  - 11.2. The Appellant has made a false allegation that Councillor Gadd lives in Burnham on Crouch and is not qualified to act as a councillor in Havering.
  - 11.3. Councillor Gadd has been intimidated and harassed by the Appellant as this is now the second time when the Appellant has made complaints to the press about the same issue, the first being 2006. He, [the Appellant] has also complained previously to the Standards Board for England.
  - 11.4. In reporting the matter to the press the Appellant has placed on record that he has been involved in some sinister activities, namely the surveillance mentioned above.
12. This resulted in the Deputy Monitoring Officer being instructed to carry out an investigation.
13. The chronology and detail of this investigatory process is lengthy. It appears to have been beset with communication difficulties and the Appellant's concerns about the process are evidenced by his guarded participation. The Tribunal has had the benefit of seeing all the documentation relating to this investigation and takes no view as to whether the Appellant's concerns were well-founded.

### **The hearing before the Standards Sub-Committee**

14. The Deputy Monitoring Officer's report (DMO) was before the Standards Sub-Committee. That report made a number of recommendations and findings.
15. At the hearing in January 2010 the Appellant appeared in person and as part of his case he produced further evidence that Councillor Gadd lived at Burnham on Crouch and not at an address in Havering. This evidence was based on further covert surveillance of Councillor Gadd this time undertaken by an independent agency. The evidence consisted of two sets of observations of Councillor Gadd's house on two disparate dates in November 2009. This was evidence that the Appellant had commissioned further surveillance of Councillor Gadd and after the date that Councillor Gadd had lodged his complaint.

### **Code of Conduct – relevant provisions**

16. Paragraph 3(1) states: *You must treat others with respect*
17. Paragraph 5 states: *You must conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*

### **The findings of Fact made by the Standards Committee were:**

#### Covert Surveillance

18. The Sub-Committee found that the Appellant had arranged covert surveillance of both Councillor Gadd's parent's home and of an address in Essex. By his own admission the Appellant had arranged further surveillance as recently as November 2009.
19. The Sub-Committee considered that, in arranging for such surveillance to be undertaken, the Appellant had not shown respect to Councillor Gadd.

#### Allegation that Councillor Gadd did not live in Havering

20. At the hearing, the Appellant accepted that any person was entitled to own or reside at more than one property.
21. The Sub-Committee was not persuaded, therefore, that the allegation made by the Appellant was well-founded. Accordingly, the Sub-Committee concluded that he had not shown respect to Councillor Gadd.

#### The Appellant had intimidated and harassed Councillor Gadd

22. The Sub-Committee found that the Appellant's allegations related to events in 2006 and that, at that time, he had referred matters to the relevant authorities but they had declined to take further action. The Sub-Committee also noted that the DMO had found that the Appellant had not bullied Councillor Gadd.
23. The Appellant maintained that the surveillance he had arranged had been undertaken in compliance with the relevant law.
24. The Sub-Committee considered that, in arranging for properties to be subjected to surveillance in the way that the Appellant had, he failed to show respect to Councillor Gadd.

#### Reporting the matter to the press

25. The Sub-Committee found that the Appellant had actively encouraged the publication by the Romford Recorder of a report about his allegations, which (among other things) told of the methods he had used to seek to verify his suspicions. The Sub-Committee having found that the surveillance did not prove his allegations, it followed that the Appellant's allegations in the newspaper report were not well founded.
26. The Sub-Committee found that, by being instrumental in the reporting of the matters referred to in the Romford Recorder article, the Appellant had not only failed to show respect to Councillor Gadd but had brought the Council into disrepute.

In relation to the issues of whether there had been a breach of the Code the Sub-Committee made the following decisions:

27. The law does not prohibit members from owning or living at more than one residence and, if one wishes to challenge the eligibility of a candidate to stand for election there are specific courses of action that the law requires to be taken. The Appellant pursued some courses of actions some months after the election but the relevant authorities declined to investigate further.
28. It was, therefore, inappropriate for the Appellant to seek to re-open this matter following his election as a member, in the form of a personal attack upon Councillor Gadd. To do so through the press was inevitably improper, showed disrespect to Councillor Gadd and brought the Council into disrepute.

#### Sanction imposed

29. The Sub-Committee considered that the Appellant's actions amounted to a serious breach of the Code and that his suspension as a member was the inevitable consequence.
30. The Sub-Committee decided that, having regard to the seriousness of the Appellant's breaches of the Code, and in particular, the degree of intrusion of the surveillance arranged by him.
31. The Appellant shall be suspended for a period of one month from the date of the hearing, expiring at midnight on the 18 February 2010.
32. The Appellant is required to undergo such training as the Monitoring Officer considers appropriate to be undertaken before the end of the period of suspension.
33. No member's allowance shall be payable for the period of suspension.

#### **The Appeal**

34. The grounds of appeal submitted by the Appellant were, and these are repeated here verbatim:
  - 34.1. The Appellant has been used as a political scapegoat. He gave substantial evidence to prove a fraud is being committed by a councillor to the sum of £64,000.
  - 34.2. The Appellant would be guilty of the Code of Conduct if he hadn't told the Council about the fraud being committed, by reporting the fraud to the Council and other agencies. The Appellant has been persecuted for doing so.
  - 34.3. The Appellant believes he was being honest and reported a fraudulent councillor and on the 22 December issued court summons against Councillor

Gadd to seek reimbursement of funds for the Council who has not issued a counter claim.

- 34.4. The Appellant was told he was guilty of setting up surveillance, disrespecting a councillor, although this is not what the Deputy Monitoring Officer found him guilty of. The Appellant should have been offered protection under the whistleblower law also chapter 40 Harassment Law (prohibition of harassment) section a, section c.
35. In the grounds on which leave to appeal was granted, and in further representations to the Tribunal by the Appellant, the issue of whether the Appellant's Article 10 right to free speech had been infringed was raised.

### **Tribunal's Findings of fact**

36. For ease of reference the Tribunal has addressed the issues in the same order as that adopted by the Sub-Committee.
37. The Sub-Committee's findings were consistent with the DMO's findings and recommendation save in one respect, and that is where it had taken into its consideration the additional surveillance information placed before it by the Appellant at the hearing. There was no finding that the Appellant had harassed or intimidated Councillor Gadd as alleged by him in his complaint.
38. The Appellant has at no point challenged the DMO's factual evidence as to what was done and when. Moreover, having seen all supporting documentation the Tribunal has no reason to question the factual evidence in the DMO's report.

### Covert surveillance

39. The information supplied by the Appellant to the DMO and to this Tribunal clearly showed that he had carried out or commissioned surveillance of Councillor Gadd in 2006 and 2009. The Appellant clearly believed that he was correct in his belief that Councillor Gadd's residential arrangements did not qualify him to be on the voting register and for election to the Council.
40. From the submissions made by the Appellant he still considers this to be the case and he is of the opinion that he has furnished sufficient information to support his allegations. A true belief that something is as it is alleged does not of course make it so and in the absence of any conclusive evidence that belief remains just a belief.
41. The evidence produced to the DMO is not conclusive on what Councillor Gadd's travelling patterns and arrangements were at the time of surveillance in 2006. Nor, more importantly, does this evidence provide proof that Councillor Gadd permanently or temporarily resides somewhere other than where he has stated.
42. The further evidence supplied by the Appellant at the hearing in January 2010, relating to the further surveillance undertaken in November 2009, did not take matters any further. This surveillance observation related to two days only during a longer period of observation. These two days were also non-consecutive dates. The evidence consisted of photographs of a car which it is suggested is owned by Councillor Gadd but there is no supporting proof that in fact this is a car owned by him.
43. The Appellant has always maintained that he has been within the law whilst undertaking his surveillance operations. The panel takes no view on this and has no evidence one way or the other to support this. It therefore remains the Appellant's

assertion that he was working within the legal framework whilst carrying out his surveillance.

44. In his grounds for appeal the Appellant states that he has a right to pursue an individual where they are carrying out a crime and quoted from a text book focused on the topic of harassment law in support.
45. He further states in support for his actions that he is taking steps through legal redress to reclaim on behalf of the Council expense payments made to Councillor Gadd. The Tribunal has no information relating to these proceedings but more importantly it is not a matter that falls to be considered by it at this hearing. This is however further evidence that the Appellant clearly believed that Councillor Gadd was not eligible to stand for election and therefore in collecting his fees for being on the Council he was committing an electoral crime. Again, the Tribunal is not concerned with, or takes a view on, whether Councillor Gadd has committed or is committing, an electoral crime. This is not an issue for this Tribunal.
46. This Tribunal therefore upholds the Sub-Committee's findings on covert surveillance.
47. Residency in Havering the Tribunal was directed to the case of **Fox –v- Stirk** in which the issue before the court was whether temporary residency in a town during a period of study at university entitled the student to entry on the electoral role. The finding in that case was that to establish residence in a constituency, an elector need only show a considerable degree of permanence and that a man can have two residencies. Temporary absence does not deprive a person of his residence. A person might be on the electoral register at a number of places but he may only vote at one. It was held that the test was, was there, on the qualifying date, a considerable degree of permanence. In this case there was a sufficient prospect of permanence to turn simple occupation into residence, and the students were not disqualified simply because their parental homes, at which they might also qualify, were elsewhere. Councillor Gadd has stated that for the major part of a working week he resides with his parents at their home within Havering which has so far been accepted as a basis for him to register as a voter in that borough and to stand for election.
48. The DMO in his report sets out clearly the mechanisms that the Appellant could have pursued to challenge Councillor Gadd's qualifying residential status. There is a right to object contained within Regulation 29 of the Representation of the People (England and Wales) Regulations 2001 and the Electoral Registration Officer has powers to make house to house enquiries if he thinks fit pursuant to Section 10A of those regulations. Additionally, there is a right to petition the High Court or by way of complaint to the Magistrates Court pursuant to Section 92 of the Local Government Act 1972. The Appellant did not avail himself of these mechanisms in 2006 or 2008 and he has not furnished any information that he has done so since. These means of challenge and redress are still open to the Appellant.
49. As stated above, no conclusive evidence has been produced that Councillor Gadd did not reside as he stated which was for part of the week with his parents in Colliers Row and accordingly the Tribunal upholds the Sub-Committee's findings that the allegations made by the Appellant were not well-founded

#### Treating Councillor Gadd with respect

50. In his grounds of appeal the Appellant states that the DMO did not find him guilty of being disrespectful of another councillor. In paragraph 16.5 of his report the DMO states in his finding that the Appellant did not treat Councillor Gadd with respect, and in paragraph 16.6 gives full reasons for this finding. The DMO did not make a finding

of intimidation or harassment and this is conceivably what the Appellant was intending to refer to as a ground of appeal. However, even if this were the case, the finding which this Tribunal has to consider is whether the Appellant has been disrespectful.

51. As to whether mounting a programme of surveillance is treating another with disrespect is an issue which the Tribunal gave some consideration to during its deliberations. It noted that whilst the Appellant was consistent in his belief that Councillor Gadd did not qualify to stand for the election this did not necessarily support him taking what were rather unusual, and what may be considered by others, extreme measures of observing the movements of another individual. The Tribunal in this regard noted that an individual is increasingly under surveillance from a number of sources not least by CCTV cameras. However, undertaking personal, continual surveillance of a fellow councillor was a measure which it did not consider could be taken lightly and could not envisage many situations where such activities were engaged in for positive reasons. In this particular instance the information gathered from the surveillance was intended to be used in a negative way.
52. Moreover, the Appellant did not appear to have given consideration to the impact that his actions may have had on those he was observing and the distress which they may have suffered through finding out that they had been observed or having this fact brought into the public arena. The Appellant's surveillance was an infringement of another individual's right to privacy and had not been required either for national security or public protection. Given the fact that there were other means by which the Appellant could have challenged the election of Councillor Gadd this surveillance was also not necessary or proportionate.
53. The Tribunal therefore came to the conclusion that the mounting of surveillance generally, but particularly on the second occasion, after Councillor Gadd had lodged his complaint and had stated that the information gathered was incorrect, was disrespectful. Moreover, the Tribunal considered that this further period of surveillance bordered on harassment of Councillor Gadd.
54. The Tribunal therefore upholds the Sub-Committee's findings that the Appellant in mounting this surveillance has not treated Councillor Gadd with respect.

#### Publication in the press

55. Orchestrating the publication of this information through the medium of the local press a second time was also, in the Tribunal's view, an act that showed disrespect to Councillor Gadd.
56. The Tribunal noted that at the time the second article appeared the Appellant had joined the Council and had received training on the Code and therefore was aware of the behaviour that was expected of a councillor. Moreover, at this time the surveillance information which the Appellant was relying upon in 2008 was, by then, out of date.

#### Freedom of expression

57. The question of whether publication of this information by the Appellant was in pursuance of his Article 10 rights was considered by the DMO in his report. The respondent made detailed submissions on this point in its response to the reasons given for granting the appeal.

Article 10 states:

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. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be the subject of formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for the preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

58. In this regard, the Tribunal noted that the Appellant's case that his rights had been infringed hinged on two issues. Firstly, that he was exercising his right to political freedom of expression. Secondly, that this right was not negated by the right of Councillor Gadd to protection of his reputation as he was, in the Appellant's view, perpetrating an electoral crime.
59. In considering this matter the Tribunal took into consideration the fact that the Appellant had not expressed these views in the heat of political debate. Nor had these comments been aimed at a party policy or action but at an individual's behaviour outside of the political arena. More importantly these comments were expressed with the express intention of bringing Councillor Gadd's reputation into question.
60. The Tribunal also noted that that there were means other than publication in the local press by which the Appellant could have pursued his genuine concerns about abuse of the electoral system. These alternative means were more appropriate and would provide redress where as publication merely gave the issues a public airing.
61. The Tribunal therefore does not consider that the Appellant's rights under Article 10 have been breached and that by bringing this matter to the public attention in the way he chose he is not protected by this provision.

### **Breach of the Code of Conduct**

62. Having upheld the findings of the Council the Tribunal went on to consider whether the facts as found constitute a breach of the Code of Conduct. As a starting point the Tribunal considered whether the Appellant's actions as found above were covered by the provisions of the Code. It considered this as clearly the Appellant had been acting of his own volition.
63. In reaching its decision on this issue the Tribunal took into account and construed the terms of paragraph 2 of the Code which states amongst other things:
- You must comply with this Code whenever you:*
- (a) *conduct the business of your authority (which in this Code, includes the business of the office to which you are elected or appointed); or*
  - (b) *act, claim to act to give the impression you are acting as a representative of your authority, and references to your official capacity are construed accordingly.*
64. It also considered the dictum in the case of **Mullaney** and in particular paragraph 85 which states:

- (i) *I do not agree that paragraph 2 of the code only covers actions that a Councillor could do if he was not a Councillor as was submitted, or to turn that from the negative that paragraph 2 only covers actions that can be performed by a councillor because he is a Councillor.*
  - (ii) *To my mind that is too restrictive both as to manner of language and having regard to the purpose of the Code to promote and uphold proper standards in public life.*
  - (iii) ....
  - (iv) *Rather in my view more important factors are the reasons why, the circumstances in which, and the reasons for which, the communication was made, or the action taken.*
65. The Appellant has stated that it was his responsibility and duty to bring this matter to the public's attention and that he would have been in breach of the Code had he not done so. The Appellant held himself out as a councillor and made no secret of the fact that he was doing this on behalf of Havering residents and the Council. He has stated that he is personally pursuing on behalf of the Council the return of local resident's council monies paid to Councillor Gadd by way of expenses through an action in the County Court. The Appellant intended to be identified as a councillor and represented that he is acting in the Council's interest. Those reading the article in the Romford Recorder in November 2008 would be left in little doubt that the Appellant was righting a wrong in his representative capacity. The Tribunal therefore considers that the Appellant has given the impression that he is acting as a representative of the authority, the Council.
66. In reaching this decision the Tribunal distinguished the particulars of this case from those considered in the South Ribble and Barnbrook cases. In the South Ribble case the councillor had used his professional journalistic skills to publish a local newspaper the focus of which was to publicise and to criticise the actions of the Council. This would have been understood by locals as an action flowing from his general interests in local politics rather than, and solely from, his role and function as a councillor. In the Barnbrook case the councillor had not identified himself as a local councillor and had been engaged at the relevant time in the making of a national party video with wider political intentions and focus.
67. The Tribunal has therefore determined that the Appellant's actions do fall within the ambit of the Code in that he held himself out to be a councillor and believed himself to be acting in the Council's interest and in compliance with the Code of Conduct. Moreover, someone reading the article in the Romford Recorder would reasonably reach the conclusion that the issue of election of members or the qualifying provisions would be a matter that would concern a councillor.
68. Having made a finding that the Appellant was acting in his capacity as a councillor the Tribunal went on to consider whether the Appellant's actions as found by it could be construed as a breach of paragraphs 3(1) and 5 of the Code.
69. As stated above in the findings of fact, the Tribunal considers that the Appellant did not treat Councillor Gadd with respect either by mounting two periods of surveillance or in using the medium of the local press to air his allegations. The Tribunal therefore finds that he has breached paragraph 3(1) of the Code.
70. The Tribunal also finds that the Appellant has brought himself and the council into disrepute. The Appellant had mounted a personal attack on Councillor Gadd with a

view to expose Councillor Gadd, as a liar. These actions fell outside of the political arena: was conduct that was unbecoming of a Councillor; and which called into question the electoral process of the Council and the standing and reputation of the Council. Moreover the exposure that the Appellant had carried out surveillance on a fellow councillor would bring into question the standing of this councillor and in turn the Council. However, the use of the local press as a means of redress rather than other, more appropriate avenues of redress further sullied the standing of this councillor and the Council.

## **Sanction**

71. In considering the appropriate and proportionate sanction to apply in this instance the Tribunal took into consideration the following factors as identified in the indicative sanctions guidance.
72. In relation to mitigating factors:
  - 72.1. The Tribunal took into account the fact that the Appellant held, and still appeared to hold, a true belief that his allegations are well-founded and that his actions were appropriate in the circumstances. As stated above, the Tribunal does not have evidence to support the allegations and, more importantly, does not consider that the actions taken by the Appellant were appropriate. Even if the Appellant were able to provide evidence that the allegations were well founded the Tribunal does not agree that his chosen course of action, publication in the local press, is an appropriate course of action.
  - 72.2. The Tribunal took into account that there are no other matters which have brought into question the Appellant's standing as a councillor however, the Appellant has only been a councillor for a relatively short period of time and the events which culminated in Councillor Gadd's complaint took place only a few months into his term as a councillor.
73. Aggravating factors
  - 73.1. The Tribunal noted that not only had the Appellant mounted two periods of surveillance but had adopted the use of publication through the local press on two occasions. There was therefore a repetition of the behaviour complained of.
  - 73.2. The Appellant has not shown any regret or remorse for his actions and he has not apologised for his behaviour. Indeed, he has continued to assert that his actions were appropriate and proportionate and that he is right in his continued belief that there has been an electoral breach.
  - 73.3. In stating that the Appellant has not offered any apology or shown any remorse or regret the Appellant has demonstrated that he has gained no insight into the nature of his conduct and how it is inappropriate for a local councillor.
  - 73.4. Finally, the Tribunal has noted that the Appellant has made several allegations for which he has not provided any supporting evidence, such as his assertions relating to season tickets purchased by Councillor Gadd.
74. In the Tribunal's view this matter hinged on two issues. Firstly, the publication of the Appellant's allegations in the local press. Secondly, the fact that there were other routes by which the Appellant could more appropriately have sought effective redress

for his concerns. By choosing the methods he did he opened himself to the imposition of a sanction and this was therefore not a case in which the Tribunal could take no further action or issue a rebuke.

75. In all the circumstances of this case and taking into consideration the mitigating and aggravating factors above the Tribunal came to the conclusion that the Sub-Committee's sanction of one month's suspension and the requirement to undertake further relevant training on the Code of Conduct was appropriate and proportionate.
76. The Tribunal however makes no direction in relation to the withholding of expenses during the period of suspension, this being an administrative matter and one which will flow from the imposition of the suspension.
77. The Sub-Committee's sanction in relation to suspension and relevant training is therefore reinstated and takes immediate effect.

### **Costs and Procedural matters**

78. Under the Tribunal's rules both parties are required to agree to a matter being determined on paper submissions and evidence. As a result of matters raised by the Appellant in his grounds of appeal the Council wished to have the opportunity to question and cross examine the Appellant in person at a hearing. A hearing was therefore arranged for the 21 April 2010. However, on the day of the hearing the Appellant was not in attendance and due to the suggestion that his non-attendance was due to ill health the hearing was adjourned. The Tribunal thereafter directed that information relating to the non attendance be produced. The information requested was not furnished by the Appellant in the form requested by the Tribunal and in some respects not at all. The Tribunal was thereafter involved in an increased amount of case management which ultimately resulted in this matter being disposed of by way of written representations and contrary to the initial wishes of one of the parties. There have been two points in these proceedings when the tribunal has given consideration to the issue of striking out these proceedings. The manner and way in which this matter proceeded to a paper-based hearing was a cause of concern to the Tribunal and will therefore be the subject of further Directions that might result in a wasted costs order.
79. The written reasons for the Tribunal's decision will be published on the Tribunals website [www.adjudicationpanel.tribunals.gov.uk](http://www.adjudicationpanel.tribunals.gov.uk)
80. 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.

Karen Aldred

**Judge**

16 August 2010