

Appeals Tribunal Decision

Case Ref:	APE 0399
Date of Appeal Tribunal Hearing:	16 May 2008
Relevant Standards Committee:	Shepway District Council
Date of Standards Committee Decision:	26 February 2008
Name of member concerned: <i>(Appellant & his authority)</i>	Councillor Capon of Hythe Town Council
Ethical Standards Officer (ESO):	Ms Jennifer Rogers
Monitoring Officer:	Mr Peter Wignall
Independent Investigator:	Mr Kris Malde
<u>Appeals Tribunal Members:</u>	
Chairman	Mr Steve Wells
Member	Mr Chris Perrett
Member	Mr Darryl Stephenson

1. The Appeals Tribunal has considered an appeal from the Appellant in respect of a decision of the Shepway District Council Standards Committee. It has been agreed, both by the Appellant and the Shepway District Council Standards Committee, that the Appeal be considered in the absence of the parties and by way of written representations.
2. The Appeals Tribunal has considered the written submissions from the Appellant and the Monitoring Officer, Mr Wignall, on behalf of the Shepway District Council Standards Committee and determined that it is appropriate to deal with the Appeal by way of the written representations.
3. The Appellant appealed against the Standards Committee's finding that he had failed to follow paragraphs 2(b), 2(c) and 4 of the Code of Conduct through the comments he made about the Town Clerk on 20 July 2006 at a meeting of the Charity Trustees. Councillor Capon made the comment that the Public Rights of Way Officer had found the Town Clerk 'difficult to get on with' and further commented very shortly afterwards in the same meeting that 'this is also the view of many towns' people who say that when they try to contact the Town Clerk she is downright rude to them....'
4. Findings of Fact
 - 4.1. The facts found in the original Investigating Officer's report were undisputed namely:

4.1.1. That on 20 July 2006, at a meeting of the Charity Trustees, Councillor Capon made the comment that the Public Rights of Way Officer had found the Town Clerk 'difficult to get on with.'

4.1.2. That Councillor Capon further commented 'this is also the view of many townspeople who say that when they try to contact the Town Clerk she is downright rude to them ...'

4.2 The findings of fact were adopted by the Standards Committee at its hearing on 20 February 2008.

5. Paragraph 2(b) of the Code provides:

"A member must treat others with respect."

6. Paragraph 2(c) of the Code provides:

"A member must not do anything which compromises or is likely to compromise the impartiality of those who work for or on behalf of the authority."

7. Paragraph 4 of the Code provides:

"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."

8. The Appellant has appealed against the action which the Standards Committee decided to take in the light of the failure to follow the provisions of the Code of Conduct. That action was to censure the Appellant.

9. The Appellant, in his grounds of appeal cites a number of procedural matters in respect of the Standards Committee hearing which in his view amounted to a breach of natural justice. The Monitoring Officer provides explanations to counter each of the perceived procedural breaches. However, in view of the fact that the Appeals Tribunal is able to determine the facts and whether there has been a failure to follow the provisions of the Code of Conduct by way of a review it does not propose to adjudicate on any procedural flaws other than to comment on two procedural matters which the Standards Committee may wish to consider in respect of future hearings namely:

9.1 It is important that the hearing (including the evidence of witnesses and their cross examination) is heard in public, subject to the usual caveats in respect of confidential or privileged evidence, and that access by the public to the hearing venue is facilitated by clear signage and appropriate notice. Where a hearing or part of a hearing is to be convened in private the reasons for so doing should be clearly expressed to the public present and preferably reduced to writing.

9.2 Where the facts of the case are undisputed and the case is being heard in the absence of the respondent councillor on the basis of papers served on him or her before the hearing, further evidence should not be introduced to the Committee without giving the respondent councillor the opportunity to have sight of the substance of that evidence so that a decision could be made whether or not he/she should attend the hearing to rebut the evidence or to make written representations in respect of it.

10. From the documentation presented to the Appeals Tribunal it appears that the Shepway District Council Standards Committee chose not fully to follow the guidance produced by the Standards Board to Monitoring Officers and Standards Committees in respect of the conduct of hearings and the pre-hearing process. Whilst The Appeals Tribunal acknowledges that Standards Committees are free to regulate their own procedures, following the guidance provides a firm procedural foundation for the hearings of the Committee. Not doing so in respect of Councillor Capon's case this may have led to a degree of unfairness at the hearing on 20 February 2008.
11. The Appeals Tribunal has determined that the Appellant did not fail to follow the provisions of the Code for the following reasons:

Paragraph 2(b) of the Code

- 11.1 The Standards Committee's reasons for finding that Councillor Capon failed to comply with paragraph 2(b) of the Code of Conduct were that Councillor Capon failed to treat the Town Clerk with respect by using inappropriate language in a public forum and failed to rectify this when the opportunity arose and reinforced his point by further additional remarks. There is no suggestion in the evidence that the comments made by Councillor Capon, which form the undisputed facts of this case, were anything other than the opinion of individuals other than the councillor. Nor is it suggested that Councillor Capon was doing anything other than report the comments of others to the 20 July meeting. There is evidence to suggest that Councillor Capon and the Town Clerk had previously had disagreements in respect of council matters and that Councillor Capon had been opposed to the manner of her appointment. However, the Appeals Tribunal finds no evidence to suggest that the councillor's conduct was unfair, unreasonable or demeaning towards the Town Clerk. The Investigating Officer, Mr Malde is clear in his report about the allegations that having listened to the tape of the 20 July meeting, Councillor Capon's comments were not made in a malicious or bullying manner. The context of the first comment was entirely within the compass of the meeting since it related to comments attributed to Mr Denne, a Kent County Council Public Rights of Way Officer, in the context of a discussion related to a public bridleway, aspects of access to which was apparently disputed. The fact that Councillor Capon refused to apologise for comments that he honestly believed to be true and was simply reporting and then failing to apologise, cannot, in the opinion of the Appeals Tribunal, amount to treating the Town Clerk disrespectfully. Consequently, the Appeals Tribunal dismisses the finding of the Standards Committee that Councillor Capon was in breach paragraph 2(b) of the Code.

Paragraph 2(c) of the Code

- 11.2 The Standards Committee's reasons for finding that Councillor Capon failed to comply with this aspect of the Code (although the Committee attributed this reasoning to its decision about paragraph 4) was that Councillor Capon had behaved in a way that was likely to compromise the impartiality, in this case, of the Town Clerk by acting in a manner that was likely to inhibit the ability of the Town Clerk in fulfilling her functions effectively when dealing with officers and officials at Kent County Council. It is undisputed that the Town Clerk deals on a professional basis with local members and officers from neighbouring authorities. Whilst the Town Clerk, in evidence at the Standards Committee hearing, may have expressed an opinion about her ability to fulfil her duties with local members and officers as a result of Councillor Capon's comments this is not included in the decision of the Standards Committee and can only be a matter of speculation for the Appeals

Tribunal. The Investigating Officer's report attributes Councillor Matthews in his response to the Draft Investigation report as stating that "Mr Denne and the Town Clerk were able and willing to be 'very' friendly towards each other at a subsequent site visit". As this evidence comes from the original complainant in this case, the Appeals Tribunal finds it compelling in determining that the Town Clerk's dealings with Mr Denne were in no way inhibited by the comments made by Councillor Capon. Additionally, there is no evidence to suggest that the comments made inhibited the ability of the Town Clerk to fulfil her functions in other aspects of her work. The positive dealings between Mr Denne and the Town Clerk reported by Councillor Matthews and the lack of any evidence of other problems leads the Appeals Tribunal to conclude that Councillor Capon's comments would not be likely to lead to the Town Clerk being unable to fulfil her functions and would not appear to have compromised the impartiality of the Town Clerk working on behalf of the authority. Consequently, the Appeals Tribunal dismisses the finding of the Standards Committee that Councillor Capon was in breach paragraph 2(c) of the Code.

Paragraph 4 of the Code

- 11.3 The Standards Committee's reasoning for finding Councillor Capon to be in breach of this aspect of the Code was his failure to apologise, compromise or cooperate during a public forum, namely the Extra-ordinary Charity Trustees Meeting held on 20 July 2006.
- 11.4 The Oxford English Dictionary defines disrepute as a 'lack of good reputation or respectability'. A member will have failed to comply with the Code if his or her conduct could 'reasonably be regarded' by an objective observer as bringing the member's office or authority into disrepute. Anything which diminishes public confidence in either a member's office or their authority, or which harms, or could harm, the reputation of an authority, will bring that office or authority into disrepute.
- 11.5 In the Appeals Tribunal's view, it is important that members should be able to express in robust terms concerns that they have about any aspect of the running of the council and that this can include expressing disagreement with officers and can include criticism of the way in which an officer handles particular matters. During the 20 July meeting the Town Clerk chose to publicly question Councillor Capon about a letter that she believed should have been passed to her (it is interesting to note that the minutes of the meeting suggest that the letter had been previously circulated, a fact seemingly corroborated by the statement made by the Town Mayor during the verbal exchange that the letter made 'some quite startling statements').

Councillor Capon then made the first of the two undisputed comments that is the subject of this Appeal. The Appeals Tribunal considers that the threshold for a failure to treat another with respect has to be set at a level that allowed for the passion and frustration that often accompanies political debate and the discussion of the efficient running of a council and within the context of those involved in the exchange. The Appeals Tribunal is of the opinion that the Town Clerk, who had been in post since the middle of 1999 and was clearly very experienced in her dealings with councillors chose to debate the letter with Councillor Capon, and given her seniority within the administration of the council, was entirely able to defend her position. In the transcript of the tape recording of the relevant part of the meeting the Town Clerk sought an apology, did not receive one and then Councillor Carroll suggested that he be allowed to put forward a motion that Councillor Capon apologise or leave

the room. At this point Councillor Capon refused to apologise, made the second undisputed comment and then left the room. The Appeals Tribunal sees nothing in the evidence submitted to suggest that Councillor Capon conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute. He was engaging in political debate, and in doing so was simply publicly expressing the opinion of others about their ability to engage with the Town Clerk in a manner which was acknowledged to be neither bullying nor malicious. Whilst this was undoubtedly uncomfortable for the Town Clerk and it could be argued that it might have been better expressed in a more appropriate forum, the Appeals Tribunal does not believe that a reasonable objective observer of the proceedings would think that the comments would bring the office of councillor or the authority into disrepute. Consequently, the Appeals Tribunal dismisses the finding of the Standards Committee that Councillor Capon was in breach paragraph 4 of the Code.

12. The Appeals Tribunal has dismissed the findings of the Standards Committee.
13. The decision of the Appeals Tribunal is unanimous
14. A copy of this determination is being sent to the Appellant, the Ethical Standards Officer, the Standards Committee and any person who made the allegation that gave rise to the investigation.
15. The decision of the Standards Committee ceases immediately to have effect.
16. This determination will be published in a newspaper circulating in the area of the local authority and will also be published on the Adjudication Panel's website at www.adjudicationpanel.co.uk.

Steve Wells

Chairman of the Appeals Tribunal

16 May 2008