

FULL DECISION

CASE REF: APE 0439

HEARING DATE: 16 September 2009

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

RESPONDENT: Former Councillor Jane Hore

RELEVANT AUTHORITY CONCERNED: Suffolk County Council

ESO: Jonathon Wigmore

ESO's REPRESENTATIVE: Storm Westmaas

Case Tribunal Members:

Chairwoman: Sally Lister
Member: Trevor Jex
Member: Alex Rocke

1 Preliminary Documents

- 1.1 A Tribunal acting as if it were a Case Tribunal convened by the President of the Adjudication Panel for England has considered a reference made by an ESO to Suffolk County Council following a finding under Section 59(4)(c) of the Local Government Act 2000 ("2000 Act"). That reference has been accepted by the President of the Adjudication Panel for England for hearing by a Tribunal in accordance with regulation 17(1)(c) of the Standards Committee (England) Regulations 2008. This followed a determination by the Standards Committee of Suffolk County Council that the matter should be referred to the Adjudication Panel for England because the action which it could take, if there was a finding that there had been a breach of the Code of Conduct, would be insufficient.
- 1.2 The matters which were the subject of the investigation by the Ethical Standards Officer (ESO) related to an allegation that former Councillor Jane Hore had failed to comply with Suffolk County Council's Code of Conduct by voting twice on the same motion using the Council's electronic voting system. It is alleged that she first used her own delegate unit and then the unit of another member, Councillor Bill Quinton, who was not present at the time and who had not given his consent or permission.
- 1.3 The Respondent had not made any comments in relation to the reference nor did she appear before the Tribunal.

2 Oral Submissions

- 2.1 The ESO's representative, Mr Storm Westmass raised a number of preliminary issues at the beginning of the hearing which could be summarised as follows :-
 - 2.1.1 did the 2000 Act enable the Secretary of State to make regulations that would enable a Tribunal convened by the President of the Adjudication Panel for England to consider a referral from a Standards Committee where the matters, which were the subject of an investigation, had been referred by the ESO to the Monitoring Officer of a relevant authority;
 - 2.1.2 did a Tribunal therefore, have the jurisdiction to determine the matter;
 - 2.1.3 if a Tribunal did have the jurisdiction to determine the matter, was it sitting as a Case Tribunal;
 - 2.1.4 if it was not sitting as a Case Tribunal, what sanctions, if any, were available;
 - 2.1.5 if a Tribunal was sitting as a Case Tribunal did it have the power to disqualify the Respondent, and if so had the Respondent received sufficient notice of this possibility. If not, was it fair to proceed in her absence.
- 2.2 The Case Tribunal decided that:
 - 2.2.1 the 2000 Act did create a power which enabled the Secretary of State to make regulations in relation to the way in which matters referred to the Monitoring Officer of a relevant authority are dealt with. This included a power to make provision enabling the Standards Committee to refer the matter to the Adjudication Panel;
 - 2.2.2 the Tribunal, therefore has the jurisdiction to consider the matter;
 - 2.2.3 the Tribunal was sitting as if it was a Case Tribunal and was able to apply the sanctions available to a Case Tribunal, including disqualification;
 - 2.2.4 the Respondent had received sufficient notice that disqualification was one of the possible sanctions that may be imposed if there was a finding that she had breached the Code of Conduct.
- 2.3 In reaching these decisions, the Tribunal considered the submissions of Mr Westmass, the relevant legislation and the guidance on the circumstances in which the Adjudication Panel would consider accepting a reference from a Standards Committee, issued by the President of the Adjudication Panel for England.
- 2.4 Section 59 of the 2000 Act sets out that one of the functions of an ESO is to investigate cases referred by the Standards Board for England. The purpose of such an investigation is to determine which

of the findings mentioned in sub-paragraph (4) is appropriate. One of those findings is that the matters which are the subject of the investigation should be referred to the Monitoring Officer of the relevant authority concerned.

2.5 The finding of the ESO in this particular case was to refer the matter to the Monitoring Officer of Suffolk County Council and this was done in accordance with section 64(2) of the 2000 Act.

2.6 Section 66 of the 2000 Act provides that:

"(1) The Secretary of State may by regulations make provision in relation to the way in which any matters referred to the Monitoring Officer of a relevant authority under section 57A, 60(2) or (3) or 64(2) or (4) are to be dealt with.

(2) The provision which may be made by regulations under subsection (1) includes provision for or in connection with –

....(d) enabling a Standards Committee of a relevant authority, following its consideration of any such report or recommendation, to take any action prescribed by the regulations (including action against any member or co-opted member (or former member or co-opted member) of the authority who is the subject of any such report or recommendation)."

2.7 Further clarification of what may be included in the regulations under section 66(2)(d) is set out in section 66A(1)(a) which provides:

"The provision which may be made by regulations under section 66 by virtue of subsection (2)(d) of that section also includes provision for or in connection with -

(a) enabling a Standards Committee, where it considers that the action it could take against a person is insufficient, to refer the case to the President of the Adjudication Panel for England for a decision by members of that Panel on the action that should be taken against the person."

2.8 It is these powers that enables the Secretary of State to make regulations concerning how and by whom matters referred to the Monitoring Officer by the ESO can be dealt with. The Standards Committee (England) Regulations 2008 ("2008 Regulations") are made under these powers.

2.9 Those regulations provide at regulation 15 that where a matter has been referred to a Monitoring Officer under section 64(2) of the 2000 Act it is to be referred to a Standards Committee for consideration under regulation 17.

2.10 Regulation 17(1)(c) provides that a Standards Committee may, after considering a report referred by the Monitoring Officer, find that the matter should be referred to the Adjudication Panel for England for determination. This follows a determination that the action it could take against the member would be insufficient were a finding of failure to be made and the President of the Adjudication Panel for England has accepted the referral.

2.11 Regulation 17(6) of the 2008 Regulations provides:

"A tribunal may be appointed from the members of the Adjudication Panel to deal with a reference under subparagraph (1)(c), as if the reference had been made under section 64(3)(b) of the Act and shall have the same powers to take action as in such a case."

2.12 Section 64(3)(b) of the 2000 Act enables the ESO to refer a case directly to the President of the Adjudication Panel for England for adjudication by a Tribunal within section 76(1).

2.13 Section 76(1) of the 2000 Act provides:

"Adjudications in respect of matters referred to the President of the relevant Adjudication Panel under section 64(3)... are to be conducted by tribunals (referred to in this Part as case tribunals) consisting of not less than three members."

2.14 In accordance with the powers set out in sections 78A(4), (5), (7) and (8) of the 2000 Act, regulations have been made by the Secretary of State as to the sanctions which may be imposed by a Case Tribunal in England. The Case Tribunal (England) Regulations 2008 have been made under these powers. Under regulation 3(1)(k) a Case Tribunal may disqualify a respondent for being, or becoming (whether by election or otherwise) a member of the relevant authority concerned, or any other relevant authority for a period not exceeding 5 years.

2.15 The Tribunal also considered whether the Respondent had received sufficient notice of the possibility that she may be disqualified if there was a finding that she had breached the Code of Conduct. The Tribunal noted that she had been made aware, in correspondence sent by the Adjudication Panel for England that disqualification was one of the sanctions that were available to the Tribunal. The bundle of papers which formed the Appendix to the Listing Direction contained the guidance issued by the President of the Adjudication Panel for England on the circumstances in which the Adjudication Panel would consider accepting a reference from a Standards Committee under regulation 17 of the Standards Committee (England) Regulation 2008. That clearly set out that disqualification was one of the possible sanctions available to the Tribunal considering the matter. This document was also attached to the Respondent's draft statement prepared and sent to her by the ESO for the purposes of the investigation. There was evidence in the papers before the Tribunal that the Respondent had had sight of that statement and had corrected it. The papers had been sent to the Respondent.

2.16 For the reasons set out above the Tribunal decided it did have the jurisdiction to hear the matter and that the Respondent had had sufficient notice of the hearing and the possible sanctions that could be imposed should a finding be made that she had breached the Code of Conduct. The Tribunal therefore decided to hear the matter in her absence.

3 Findings

The Tribunal acting as if it were a Case Tribunal found the following facts:

Councillor Hore's official details

- 3.1 The Respondent was elected to office in 1987. Her term of office expired in June 2009. The Respondent stood for re-election but was unsuccessful. She was, therefore no longer a member of Suffolk County Council.
- 3.2 The Respondent was a member of the Council's Local Area Agreement Scrutiny Panel, the Resources, Finance and Performance Scrutiny Panel, the Standards Committee and the Statement of Accounts Sub-Committee.
- 3.3 The Respondent had previously been appointed as Leader of the Council, Chairman of the Council and Leader of the Labour Group.
- 3.4 The Respondent gave a written undertaking on 10 May 2005 to observe the Code of Conduct.
- 3.5 The Respondent had received training on the Code of Conduct provided by the Council's Monitoring Officer on 17 July 2007.

The relevant legislation

- 3.6 The Council adopted a Code of Conduct in which the following paragraph is included:

Paragraph 5 –

'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute'.

Facts not in dispute

- 3.7 Suffolk County Council held an extraordinary council meeting on 25 September 2008 which the Respondent attended.
- 3.8 Councillor Quinton, another member of the Council was logged into the electronic voting delegate unit between those occupied by the Respondent and a Councillor Owen. Councillor Quinton was sat to the right of the Respondent and to the left of Councillor Owen.
- 3.9 Councillor Quinton left the meeting at approximately 15.00 leaving his card in his delegate voting unit. He had not asked any other member to vote on his behalf at the meeting. He was recorded as leaving the council premises at 15.05.
- 3.10 The Respondent was sitting six to eight metres away from Councillors Goodwin and Aitchison who were both sitting almost opposite her.
- 3.11 At about 16.30 a debate took place concerning a boundary review. Councillor Quinton was not present at the time. A vote was taken at 16.35.
- 3.12 In order to cast a vote a member must first log onto the system using their own voting card, then press a button on their delegate voting unit confirming they are ready to vote and then vote for a motion. This is a process requiring three actions.

Facts not agreed

- 3.13 At the time the vote was taken Councillor Aitchinson and Councillor Goodwin stated that they saw the Respondent use the voting delegate unit of Councillor Quinton to vote on the motion concerning the boundary review.
- 3.14 In an interview conducted as part of the ESO's investigation, Councillor John Goodwin stated *"...If I had any shadow of doubt that it hadn't happened I would have kept quiet. But you know the vote was cast, he wasn't there we saw [her] press the button....That is as sure as I am in my own mind.....As I say, if there was any shadow of a doubt , I sure as hell wouldn't be making the accusation"*.
- 3.15 Councillor Clare Aitchison stated in interview, *"....So I did actually comment to Councillor Goodwin next to me just keep an eye on Jane. You know. I think she's going to do something silly in a minute, and we both sat and watched. We voted and she voted and then she voted for Councillor Quinton. So the fact that she was making a noise and having a laugh actually made me look at her, which is how I noticed her pressing, and then we finished..."*
- 3.16 Another councillor who was sitting to the right of the Respondent, Councillor Owen did not see the Respondent use Councillor Quinton's voting delegate unit but said that he felt that had she done so he probably would have seen her.
- 3.17 Two other councillors sitting behind the Respondent, Councillors Thomas and Patience also did not see the Respondent vote using Councillor Quinton's machine. Both, however stated that they were concentrating on other things.
- 3.18 The result of the vote was 40 in favour, 24 against and 2 abstentions. The "against" vote that was cast using Councillor Quinton's unit did not affect the decision on the matter.
- 3.19 After the vote was taken the print out of the voting of individual members confirmed that a vote against the motion had been cast on behalf of Councillor Quinton. The Respondent had also voted against the motion.
- 3.20 In an interview conducted on behalf of the ESO, as part of his investigation, the Respondent denied using Councillor Quinton's delegate voting unit. She also denied that she may have jogged or leant on the machine by accident stating that she would have been at a very funny angle to have done so. She suggested that an explanation for a vote being cast on behalf of Councillor Quinton was because the voting system was unreliable.
- 3.21 The Respondent stated that the allegations made against her may have been politically motivated but confirmed that she did not know Councillors Aitchison or Goodwin well and that there had not been "any run-ins or arguments or exchanges that were of a heated nature"
- 3.22 It had been confirmed by officers of Suffolk County Council that there had not been any incidents in all the years of operating the voting

system at the County Council of the system incorrectly registering votes.

Tribunal's conclusions on the facts not agreed

- 3.23 On balance, the Tribunal decided that the evidence of Councillors Aitchison and Owen of what they saw at the time the vote was taken was the more likely explanation of what took place at the Council meeting on the 25 September. The Respondent's explanation that the vote which was registered in Councillor Quinton's name was due to the unreliability of the voting system was not supported by the evidence of officers at the County Council. There was also no evidence before the Tribunal of any political motivation for the allegations to be made. The evidence of the other councillors who claimed they did not see the Respondent voting on behalf of Councillor Quinton was not as clear or categorical as the evidence provided by Councillors Aitchison and Owen.
- 3.24 The Tribunal therefore concluded that the Respondent had voted twice on the same motion once in her own name and then by using the voting delegate unit of Councillor Quinton who was not present at the time and who had not given his consent or permission.

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

- 4.1 The Respondent had not made any submissions since the reference was made.
- 4.2 The ESO's submissions
- 4.2.1 Paragraph 5 of the Council's Code of Conduct provides that a member must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.
- 4.2.2 Paragraph 5 applies to a member when they are acting in an official capacity and given that Councillor Hore was attending a full Council meeting, it is clear that she was acting in her capacity as a member of Suffolk County Council, during the incident in question.
- 4.2.3 In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a member's behaviour in office will bring that member's office or authority into disrepute if the conduct could reasonably be regarded as either:
- reducing the public's confidence in that member being able to fulfil their role; or
 - reducing public confidence in the authority being able to fulfil its functions and duties.
- 4.2.4 The ESO concluded that Councillor Hore knowingly registered an invalid vote during the meeting of the Council held on 25 September 2008. Her action was designed to boost the

numbers of votes that were cast in accordance with her view. Given her experience as a councillor, she ought to have been aware that, if a member was not present, she should not vote on his or her behalf. This is even more so in circumstances where Councillor Quinton had not asked her to vote for him. While her actions did not affect the decision on the matter in question, she should have known that the potential effect of her conduct could have been to pervert the Council's democratic decision making process.

- 4.2.5 Through her actions Councillor Hore sought to influence the democratic process improperly, and that this is a matter that would diminish the public confidence in her office as councillor.
 - 4.2.6 Integrity and accuracy in the process whereby votes are counted on motions in Council are essential to the Council's credibility as a legitimate decision making authority in the eyes of the public. In seeking to undermine this process, Councillor Hore's actions are capable of reducing public confidence in her authority being able to fulfil its functions and duties. Although she did not succeed in altering the outcome of the vote, in attempting to do so she brought her office and authority into disrepute and so failed to comply with paragraph 5 of her code of conduct.
- 4.3 Tribunal's decision
- 4.3.1 The Tribunal found that the Respondent had breached Suffolk County Council's Code of Conduct.
 - 4.3.2 Paragraph 5 of the Code of Conduct provided that a member must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.
 - 4.3.3 Paragraph 5 applies to a member when they are acting in an official capacity. The Respondent was acting in her official capacity when she attended the council meeting on the 25 September 2008 at which the events which have led to this hearing, occurred.
 - 4.3.4 The Tribunal noted that the Oxford English dictionary defined disrepute as "a lack of good reputation or respectability". Therefore anything which could reasonably be regarded by an objective observer as diminishing a member's office or her authority or which harms or could harm the reputation of an authority will bring that office or authority into disrepute.
 - 4.3.5 By voting twice on the same motion and by using another member's vote without his permission, the Respondent had undermined the whole integrity of the democratic process. This conduct would reduce public trust and confidence in the Respondent and her integrity and judgement would be severely damaged. This conduct also impacted on the confidence that the public would have in the decisions of the authority as a whole and would seriously harm the reputation

of the Council. The Respondent had therefore breached paragraph 5 of the Code of Conduct.

5 Tribunal's decision on sanction

- 5.1 The Tribunal was of the view that this breach of the Code of Conduct was a serious one which undermined the integrity of the democratic process.
- 5.2 As the Respondent was no longer a member of Suffolk County Council, only censure and/or disqualification were available as possible sanctions.
- 5.3 The Respondent did not appear before the Tribunal and there was nothing in the papers before the Tribunal which provided mitigating factors for the Tribunal to consider. An aggravating factor was that she had denied the fact despite clear contrary evidence.
- 5.4 Having considered the President's guidance on decisions to be made by a Case Tribunal when a Respondent has been found to have failed to comply with a Code of Conduct, the Tribunal was of the view that any sanction needed to restore public trust and confidence in the local democratic process. In the Tribunal's opinion, merely censuring the Respondent would not have done this.
- 5.5 The Tribunal therefore concluded a period of disqualification for one year was fair, reasonable and proportionate for this breach.
- 5.6 The disqualification was to take effect from the date of the hearing.
- 5.7 The decision of the Tribunal was unanimous.
- 5.8 The Respondent may seek leave from the High Court to appeal against the decision of the Tribunal that there has been a failure to comply with the Code of Conduct and/or the decision as to sanction. The President of the Adjudication Panel for England may suspend the effect of the sanction if requested to do so by a Respondent who intends to seek leave to appeal to the High Court against the decision of the Case Tribunal. Applications for leave to Appeal must be made to the High Court within 21 days of this decision. The Respondent is directed to the provisions of Part 52 of the Civil Procedure Rules.

Sally Lister
Chairwoman of the Tribunal
16 September