

Appeals Tribunal Decision

Case Ref:	APE 0450
Appeals Tribunal Date:	24 September 2009
Relevant Standards Committee:	West Lindsey District Council
Date of Standards Committee Decision:	1 July 2009
Name of member concerned:	Councillor Peter Hallett of Bardney Group Parish Council
Monitoring Officer:	Rachel North
Independent Investigator:	Alan Tasker
<u>Appeals Tribunal Members:</u>	
Chairman:	Simon Bird QC
Member:	David Billing
Member:	Sam Jones

1. The Appeals Tribunal has considered an appeal from the Appellant about the above decision.
2. The Appeals Tribunal has considered written submissions from the Appellant.
3. The Appellant has appealed against the decision of the Standards Committee of West Lindsey District Council that the Appellant had failed to follow paragraph 9 of the Code of Conduct and its decision to censure him and to require him to attend training on the Code of Conduct within the next six months.
4. Paragraph 8 of the Code provides:

"(1) You have a personal interest in any business of your authority where, either-

(a) it relates to or is likely to affect-

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority:

(ii) any body-

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position of a relevant person to a greater extent than the majority of-

(iii) other council tax payers, rate payers or inhabitants of your authority's area"

(2) In sub paragraph 1(b), a relevant person is –
(d) any body of a type described in sub paragraph 1(a) (i) or (ii)

5. Paragraph 9 of the Code provides:

“When you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to the meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent”

Essential Facts

6. The Appellant was elected to Bardney Parish Council in May 2005 and gave an undertaking to abide by the Code of Conduct.
7. The Appellant was at all material times a member and Treasurer of the Bardney Development Trust (“the BDT”).
8. The BDT is a voluntary, non-charitable organisation set up with the following objectives:
 - (a) to promote social, cultural, economic and environmental regeneration in the Bardney area;
 - (b) to act as a focal meeting point for the community, to encourage debate and local participation;
 - (c) to support and work alongside the activities of other organisations having similar aims and objectives.
9. The Appellant was not appointed or nominated to the BDT by the Bardney Parish Council.
10. During 2007 and 2008 the BDT had been working to provide village signs at various locations in Bardney. Whilst the Bardney Parish Council had no objection to the principle of the erection of such signs, their design was a matter of controversy and the Parish Council had rejected one design of them in July 2007;
11. Lottery funding had been obtained for the manufacture of the signs and the signs had been made.
12. The Parish Clerk called an Extraordinary General Meeting of the Parish Council for 9 May 2008. The agenda for the meeting showed only one item of business namely “Village Signage”.
13. Whilst there is some absence of clarity as to the object of the meeting, it is clear from the stance of the Divisional Highways Manager of Lincolnshire County Council as set out in his letter of 11 November 2008 that, without the support of the Parish Council, it was unlikely that the signs would be erected.
14. The Appellant had no personal financial interest in the decision as to whether the signs were erected.
15. The minutes of the meeting of 9 May 2008 show that the Appellant was present and participated in the debate. They further disclose that the Appellant declared no personal interest in the single agenda item although his involvement in the BDT and the signage project was well known.

16. The Appellant seconded the motion proposed by Councillor Howe that the proposed signs be accepted. This was voted on and approved by the Parish Council.

The Issue

17. The issue for the Appeals Tribunal is whether on these facts, the Appellant breached paragraph 9 of the Code.
18. The Appeal Tribunal agrees with the Investigating Officer's report which concluded that the Appellant did not have a registrable personal interest. Firstly, the Appellant was not appointed or nominated to BDT by the Parish Council and in consequence paragraph 8(1)(a)(i) is not relevant. Secondly, the BDT is not a body of the type which falls within paragraph 8(1)(a)(ii) of the Code. Whilst its objectives may broadly be described as to further the local public interest, it has no *functions* of a public nature and it is not a quasi public body of the kind anticipated by the Code. Thirdly, it is not a charity and it does not have as a principal purpose to influence public opinion or policy so paragraphs 8(1)(a)(ii), (bb) and (cc) do not apply.
19. It follows that paragraph 9 of the Code was engaged in this case only if paragraph 8(1)(b) applied i.e. if the decision on the Village Signage to be made on 9 May 2008 might reasonably be regarded as affecting the Appellant's well-being or financial position to a greater extent than the majority of the other council tax payers, rate payers or inhabitants of the Parish.
20. There is no question of the decision having any bearing on the Appellant's financial position, so the issue in this appeal narrows to the effect on his well-being.
21. The meaning of the term "well-being" was addressed by Keith J in the case of *Murphy and The Ethical Standards Officer [2004] EWHC 2377 (Admin)* in which he endorsed the following definition:

"Well-being' can be described as a condition of contentedness, healthiness, and happiness. Anything that could be said to affect a person's quality of life, either positively or negatively is likely to affect their well-being. It is not restricted to matters affection a person's financial position."
22. The Judge added "*Someone can have a sense of well-being without having benefited in a material or financial way*".
23. On the facts, the Appeals Tribunal concludes that it is more likely than not that the contentedness and therefore well-being of the Appellant would have been affected to a greater extent by the decision of the Parish Council at its EGM than that of the majority of the tax payers and inhabitants of the Parish Council's area. He was the Treasurer of the voluntary organisation which had a longstanding project to erect the signs and he himself supported the project as demonstrated by his seconding of the motion for the acceptance of the signs. Lottery funding had been secured for the signs, they had been made, and an inability to erect them would at the very least have led to additional complications for the Treasurer of BDT. Acceptance of the signs in this context was likely to have a greater effect on him than the majority of other tax payers, rate payers and inhabitants of the Parish.
24. The Appeals Tribunal therefore finds that the Appellant did have a personal interest which should have been declared at the meeting of 9 May 2008 and, in failing to do so, the Appellant did fail to follow the provisions of the Code.
25. The Appeals Tribunal has decided that the action which is appropriate is for the Appellant to be required to undertake training on the requirements of the Code of Conduct within the next 6 months if this has not already occurred in accordance with

the decision of the Standards Committee. This was an unintentional and technical breach of the Code, the consequence of a failure to understand the implications of paragraph 8(1)(b) of the Code of Conduct, rather than any intent to hide a declarable interest. The Appellant's involvement with the BDT was well known and no breach of the Code was involved in his voting on the motion to approve the signage. However, it is clear from the Appellant's representations on the appeal that he does not understand the full implications of paragraph 8(1)(b) of the Code and that some training would be appropriate.

26. The Appeals Tribunal considers that in all these circumstances the finding of breach coupled with the requirement for training is an adequate sanction. The censure of the Appellant by the Standards Committee was disproportionate to the breach and the Appeals Tribunal rejects that part of the sanction.
27. The Appeals Tribunal has partly upheld the finding of the Standards Committee.
28. The Appeals Tribunal directs that the sanction of training on the Code of Conduct within 6 months originally imposed by the Standards Committee will take effect as of 24 September 2009.
29. A copy of this determination is being given to the Appellant, the Standards Board, the Standards Committee, any parish councils concerned and any person who made the allegation that gave rise to the investigation.
30. 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.tribunals.gov.uk.

Simon Bird QC

Chairman of the Appeals Tribunal

24 September 2009