

Appeals Tribunal Decision

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| Case Ref: | APE 0451 |
| Date of Appeal Tribunal Hearing: | 18 September 2009 |
| Relevant Standards Committee: | Forest Heath District Council |
| Date of Standards Committee Decision: | 23 June 2009 |
| Name of member concerned: | Councillor Pat McCloud of Forest Heath District Council |
| Monitoring Officer: | Peter Heard |
| Independent Investigator: | Bruce Laws |
| <u>Appeals Tribunal Members:</u> | |
| Chairman | Chris Hughes |
| Member | Bill Nelson |
| Member | Peter Dawson |

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 Standards Committee and the Appellant.
3. The Appellant had appealed following a determination by the Standards Committee of Forest Heath District Council to censure Councillor McCloud and require him to write a letter of apology following their finding that by the content and circulation of an email on 14 November 2008 Councillor McCloud had failed to comply with paragraphs 3(1) of Forest Heath District Council's Code of Conduct. The Standards Committee also recommend that further training on the Council's constitution and the Code of Conduct is undertaken.
4. Paragraph 3(1) of the Code provides:

"You must treat others with respect"
5. 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 that Councillor McCloud be censured and required to make a written apology to Councillor Chambers, copied to the Monitoring Officer.
6. The Appeals Tribunal has determined that the Appellant did not fail to follow the provisions of the Code because:

- 6.1. Councillor McCloud in an e-mail stated "As for Councillor Chambers attempting to denigrate my comments "Stating they were only Councillor McCloud's personal opinions" how could she possibly know what I was about to say, how could anyone know until I finished, you know they used to burn witches at the stake for professing to have such abilities". The Investigating Officer concluded that the remark was a direct reference to Councillor Chambers. In his submission Councillor McCloud argued that he had no intention of suggesting that she was a witch or to suggest that anyone had such powers. It was a dramatic way of suggesting that what Councillor Chambers purported to be able to do was impossible. The inference drawn by the Investigating officer that this was clearly personal to councillor Chambers is an inference which the Tribunal concluded was not justified. The comment does not directly call her a witch; it was a far more general comment and did not pass into the realm of personal abuse. While it was incautious of him to use that expression on this occasion it did not amount to a breach of the code.
7. This re-hearing remedied any defect in the composition of the original hearing panel. In the selection of such panel within a local authority there will inevitably be direct acquaintance with the respondent councillor in any member of the council who sits on the hearing panel. Nevertheless we feel it appropriate to point out that on this occasion the inclusion of Mr Noble, whose son is a cabinet colleague of the complainant on another authority, could have raised doubt in the mind of an observer as to his objectivity and independence. In such cases as this strenuous efforts need to be made in the selection of members of the panel to ensure that the risk of such perceptions is eliminated. Likewise there are a number of common interests between the complainant and Councillor Dicker which could equally be perceived as raising similar questions in relation to his participation. In no way should these comments be interpreted as suggesting any lack of integrity, or improper behaviour on the part of either of these individuals. However the overall composition of the panel could have raised in the mind of a reasonable observer the question of whether there would be a fair hearing.
8. The decision of the Standards Committee ceases immediately to have effect.
9. A copy of this determination is being given to the Appellant, the Standards Board, the Standards Committee, and any person who made the allegation that gave rise to the investigation.
10. 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.

Chris Hughes, OBE
Chairman of the Appeals Tribunal

18th September 2009.