

## **Appeals Tribunal Decision**

<b>Case Ref:</b>	<b>APE 0456</b>
<b>Date of Appeals Tribunal Hearing:</b>	<b>15 October 2009</b>
<b>Relevant Standards Committee:</b>	<b>London Borough Richmond upon Thames</b>
<b>Date of Standards Committee Decision:</b>	<b>6 July 2009</b>
<b>Name of member concerned:</b>	<b>Councillor Marc Cranfield-Adams of London Borough Richmond upon Thames</b>
<b>Monitoring Officer:</b>	<b>Richard Mellor</b>
<b>Independent Investigator:</b>	<b>Keith Stevens</b>
<b><u>Appeals Tribunal Members:</u></b>	
<b>Chairwoman:</b>	<b>Melanie Carter</b>
<b>Member:</b>	<b>Alison Lowton</b>
<b>Member:</b>	<b>Narendra Makanji</b>

1. The Adjudication Panel for England has received an appeal from Councillor Marc Cranfield-Adams of London Borough of Richmond upon Thames following a determination by the Standards Committee of London Borough of Richmond upon Thames to censure the Appellant for a failure to comply with paragraph 3(1) of the Council's Code of Conduct which required the councillor to treat others with respect.
2. Paragraph 3(1) of the Code provides:

*"You must treat others with respect"*
3. The Appellant has appealed against the finding of breach and 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 he be censured for his failure to comply with the Code.
4. The Appeals Tribunal has considered written submissions from the Appellant and the Standards Committee.
5. The undisputed facts are that the Appellant had raised with the Planning Department his concerns over their handling of the planning application of two of his constituents. The applicants had been concerned over the rejection of their application for planning permission and had asked for a meeting with an officer at the Planning Department. That officer had written back a relatively short letter to say that "I do not see that a meeting with [sic] shed any further light on the matter". The applicants, unhappy with this response, had asked the Appellant to get involved. The Appellant wrote an email dated 12 June 2008 to the planning officer, copied to the applicants and three senior officers at the Council, including the Chief Executive:

*"Telling a resident that a meeting will not be an efficient use of time, when you are employed to serve the public, is wholly unacceptable. I cannot recall such arrogance from an Officer of the Council. I must ask, therefore, ask [sic] that you agree to meet me and [the applicant] as soon after the date he has specified."*

6. A more senior officer of the Planning Department replied to the Appellant on the 20 June 2008, explaining the position with regard to the refused application and the advice on a possible revised application which would be more likely to be accepted. She asked that *"if you are concerned over a member of staff's attitude could you please contact myself first to discuss the matter. In this instance, from speaking to the officer involved, and going through the case and file notes, I consider [the officer] has provided the applicants with correct and sufficient advice for them to revise the scheme, and do not consider a further meeting would be necessary or an efficient use of time or money for the applicants or the Council. However in this instance to move this case forward I would be happy to discuss the case with the applicants if they consider this necessary"*.
7. The applicants submitted a revised application during August and awaited validation. The Appellant sent a chasing email to the more senior planning officer on 12 August 2009. This email, although not before the Appeals Tribunal, was acknowledged by the Investigating Officer as being "encouraging" in tone and "praising" of officers. A response from the senior planning officer on the same day, promised to get a decision out shortly after the consultation expired on 28 August 2009.
8. On 9 September 2008, the Appellant wrote the following email to the applicants:

*"I am outraged and shocked that as a consequence of the inertia of our planning officers you, ..... and your young family are having to find alternative accommodation and that this might now be in jeopardy. As you can see I have copied this e-mail into the Director of Environment and the Chief Executive, as this is a damning [sic] indictment on the appalling service our planners are providing. I can only apologise on behalf of the Council and hope that by expressing my dismay in such forthright terms some one will pull their finger out and move this problem on without further delay."*
9. The original application had been decided within the 8 week target and as at 9 September 2008, the revised application was on target to be decided within this time period.

### **The Standards Committee decision**

10. The Standards Sub-Committee found that the Appellant had failed to comply with paragraph 3.1 of the member's Code of Conduct for the following reasons:
  - 10.1. representing the interests of constituents is an important part of a councillor's role;
  - 10.2. the tone and some of the words used in emails were insulting to officers of the Council and completely inappropriate ;
  - 10.3. the concerns the Appellant raised could readily have been taken up using perfectly acceptable language;
  - 10.4. copying the email to a range of senior officers appeared to be calculated to undermine the officer handling the case;

- 10.5. copying the email to members of the public might have led to much more public criticism;
- 10.6. the words used criticised a wide range of officers, who had no right of reply, and were not only insulting but were also unjustified on the facts;
- 10.7. there were other means for the Appellant to raise any concerns with a senior officer;
- 10.8. it was accepted that the planning applicants would have preferred their application to have been dealt with more speedily, but this was true of many applicants, and a councillor should establish whether or not proper grounds for a complaint were made out before pursuing it at senior level;
- 10.9. the 9 September email was, in the view of the Sub-Committee, sent without making due enquiries. The email was a 'flamed' email in that it was sent without appropriate consideration about the impact the email would have on the recipients. The comments in that email made sweeping and outspoken criticism of the Council's planning officers generally and were also clearly aimed at one relatively junior officer, without justification in this case.

### **The Appellant's grounds of appeal**

11. The Appellant raised a series of grounds which related to how the complaint against him was handled and the hearing before the Standards Committee conducted. The Appeals Tribunal noted that its jurisdiction was sufficiently wide to hear the matter afresh, such that any procedural defect would be cured by this appeal process. Thus, the Appeals Tribunal, whilst paying due deference to the local knowledge of the Standards Committee panel which heard the original case, was of the view that it was able to effectively hear the case again. As the case essentially stood on documentary evidence, the Appeals Tribunal was satisfied that it was able to determine the matter without the need to hear oral evidence. Thus, the Appellant's grounds of appeal with regard to procedural matters did not need to be addressed.
12. His grounds with regard to the substantive decision of the Standards Committee were, in essence that:
  - 12.1. the Committee appeared not to have given sufficient weight to the context in which the emails were made and the circumstances surrounding them;
  - 12.2. the polite and wholly proper email request dated 12 August asking the planning officers to act expeditiously had not been taken into account;
  - 12.3. the fact that the appropriate senior officers were copied into emails indicating that not all was well was in line with Council policy;
  - 12.4. in light of the genuine and sincere apology made by the Appellant on at least four occasions, the Committee should have concluded that in fact no action was the proper outcome of this investigation.

### **Standards Committee submissions**

13. The Standards Committee disputed the Appellant's assertion that he had requested that an apology be passed on to the planning officers in December 2008. The only apology was that given via the Investigating Officer during the investigation of this complaint.

14. The remainder of the submissions related to the procedural grounds of appeal, which since not part of this determination, are not set out here.

### **The Appeals Tribunal's Decision**

15. The Appeals Tribunal has determined that the Appellant did not fail to follow the provisions of the Code for the following reasons.
16. The Appeals Tribunal noted that the Appellant had not bothered to make enquiries of planning officers as to the background to this matter and whether the applicants' complaints were well founded. It appeared that the Appellant took exception to the fact that the Planning Department was not prepared to meet with the applicant. The Appeals Tribunal took the view however that the Planning Department was entitled to conclude that a meeting was not a good use of officers' time and to refuse to meet. Whilst the letter informing the applicants of this was perhaps worded in a rather blunt fashion, this did not justify the Appellant's response. The Appellant's accusation of "arrogance" on the part of that officer was inappropriate. He could and should have raised his concerns in a different, more temperate way, not copying in the applicant, a member of the public.
17. This email was directed at a named officer. By contrast the email of the 9 September 2008 concerned the Planning service as a whole and was expressed in more generalised terms. The Appeals Tribunal recognises that the manner in which the Appellant raised the concerns in that email was inappropriate and the language used was intemperate. However, this particular email, although lacking in substance and unpleasant in tone did not give rise to a breach of the Code.
18. The Appeals Tribunal considered that this email, being in relation to the Planning Department and not directed at an individual officer, fell within the ambit of comment that it was acceptable for a councillor to make. It was of the utmost importance that councillors should not be deterred from raising concerns with regard to Council services.
19. As such, the Appeals Tribunal did not view this case as concerning a series of communications which might have been said to be disrespectful to individuals. The first email therefore had to be viewed as a one-off.
20. The Appeals Tribunal, whilst concerned at the terms of that first email and the fact that it had been copied to a member of the public and senior officers, did not consider it to amount to disrespect such as to give rise to a breach of the Code. The email had been critical of an officer in a robust and intemperate fashion, which the Appeals Tribunal acknowledged would not have been pleasant for a relatively junior officer, to receive. It was of the view however that, on its own, it was too insignificant to amount to disrespect and therefore a breach of the Code. Had it been coupled with other instances of inappropriate behaviour towards that officer or other individual officers it might have amounted to disrespect. Equally if coupled with instances of other inappropriate behaviour it might have brought the Council or the Appellant's officer into disrepute. That was not however the case before the Appeals Tribunal.
21. The Appeals Tribunal was of the view that this matter should perhaps not have passed the Council's assessment of whether a complaint should be referred for investigation – either on the grounds that if proven it would not amount to a breach of the Code or alternatively that it was too minor. The Appeals Tribunal had some concerns that, on the face of it, no attempts had been made to deal with this issue in a different more informal way first (for instance, the Appellant being spoken to by the Monitoring Officer or the Leader of the Council). In any event, the Appeals Tribunal did not

consider this the kind of case which warranted the full weight of the standards machinery.

22. The Appeals Tribunal has therefore rejected the finding of the Standards Committee.
23. The decision of the Standards Committee ceases immediately to have effect.
24. A copy of this determination is being given to the Appellant, the Standards Board and the Standards Committee.
25. 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](http://www.adjudicationpanel.tribunals.gov.uk).

Melanie Carter  
**Chairwoman of the Appeals Tribunal**

19 October 2009