



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(Local Government Standards in England)**

CASE NO: LGS/2009/0484

ON APPLICATION FROM:

Ethical Standards Officer (ESO) of Standards for England
Application reference No: SBE-06451-X767Q
Dated: 16 December 2009

APPLICANT: Jonathan Wigmore, Ethical Standards
Officer, Standards for England

RESPONDENT: Councillor Isabella Forsyth-Fraser of
Campbell Park Parish Council

DATE OF HEARING: 30 March 2010

VENUE: Ramada Encore Hotel, Milton Keynes

DATE OF DECISION: 12 April 2010

BEFORE

**Judge: Nicholas Holden
Member: Neil Pardoe
Member: Narendra Makanji**

Attendances: Councillor Forsyth-Fraser
For the Applicant (ESO): Miss Jabeen Mirza
For the Respondent: Councillor S Crooks

**Subject matter: Reference about possible failure to follow the
Code of Conduct**

DECISION OF THE FIRST-TIER TRIBUNAL

The Respondent was suspended for a period of three months from Campbell Park Parish Council

REASONS FOR DECISION

Background

1. The Tribunal received an application in respect of a reference from an Ethical Standards Officer ('ESO') in relation to an allegation that the Respondent had failed to comply with Campbell Park Parish Council's Code of Conduct when she improperly sought to interfere with the award of the Certificate in Local Council Administration (CiLCA) to Mr Dawson the Parish Clerk and Manager to Campbell Park Parish Council and that, in so doing, she unfairly disparaged his professional reputation to senior members and officers of national organisations. It is further alleged that the Respondent lied to the Parish Clerk in saying that the circumstances of his CiLCA award had caused a furore at the National Association of Local Councils (NALC), and that the position of the official who had awarded the Parish Clerk his qualification was in some jeopardy.
2. The Respondent did not comment on the reference. However, in a letter of 10 December 2009 the Respondent made detailed comments on the ESO's investigation and draft report.
3. Prior to the hearing the Respondent made an application to the Tribunals Service for the hearing to be postponed for about six months on medical grounds because she was unable to prepare for the hearing or to attend. In the event the Respondent did attend the hearing. After the opening formalities the Tribunal inquired if the Respondent wished to make any applications or to raise any preliminary matters. The Respondent stated that she did not and thus she made no application for an adjournment on medical grounds. Both the Respondent and her representative indicated that she was happy for the hearing to go ahead.
4. At the hearing the Tribunal was careful to acknowledge the Respondent's medical condition and to assure the Respondent and her representative that if any short adjournments were required either the Respondent or her representative should interrupt the proceedings and the Tribunal would promptly grant an adjournment.
5. The Tribunal was aware that on 18 March 2010 there had been a hearing held by the Milton Keynes Council Standards Sub-Committee relating to allegations against the Respondent. The Sub-Committee had determined, in the absence of the Respondent that she had breached the Code and it had imposed the maximum sanction available to it of suspension for six months from both the Parish Council

and the Milton Keynes Council. The Tribunal was only provided with a copy of the full decision of the Sub-Committee during this hearing.

6. The Respondent's representative advised the Tribunal that it was the Respondent's intention to appeal that decision on several grounds.
7. During the course of his investigation the ESO's Investigating Officer carried out interviews with those involved. These interviews were recorded and verbatim written records were then produced from those recordings. References in this decision to interview statements are to the verbatim written records of such interviews.

Relevant legislation

8. The Council has adopted a Code of Conduct which includes the following paragraphs:

Paragraph 2(1)

"... you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly."

Paragraph 5

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

Paragraph 6(a)

"You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage"

Findings – the Respondent's official details

9. The Tribunal has found that the Respondent has been a member of Campbell Park Parish Council (and its predecessor) since 1993. Her current term of office commenced in 2008 and will end in May 2012. The Respondent currently serves on the following committees: Finance and General Purposes; Personnel; and Community Development and Environment. The Respondent is also a member of Milton Keynes Council.
10. On 16 April 2008, the Respondent gave a written undertaking to observe the Code of Conduct and she received training on the Code of Conduct at Milton Keynes Council on 18 June 2007.
11. At the time of the events, (March and April 2008), the Respondent represented the Council on the Milton Keynes Association of Urban Parish Councils (MKAUPC). She was also a member of the Buckinghamshire Association of Local Councils (BALC), having been elected to that office by MKAUPC, and a member of the National Association of Local Councils (NALC), having been elected to that office by BALC. In addition, the Respondent was a member of the South East Region County Associations Forum (SERCAF), an organisation comprised of representatives from the county associations of South East England.

12. NALC is one of the bodies comprising the Monitoring and Verification Board, responsible for awarding the CiLCA.
13. There is some uncertainty as to whether the Respondent was a nominee of the Parish Council in respect of MKAUPC. The ESO pointed out that the Respondent's declaration of acceptance of office stated:

"I am a member or hold a position of general control or management of the following body/ies to which I have been appointed or nominated by the Council – Milton Keynes Assoc Urban Local Councils."

In addition the ESO noted that in the minutes of Parish Council meetings on 19 June 2007 and 13 May 2008 the Respondent's name appears in a list of members appointed to represent the Parish Council on the Milton Keynes Association of Urban Parish Councils. Further in the minutes of the Annual General Meeting of MKAUPC the Respondent is described in the following way: *"I Fraser (Chair) Campbell Park PC"*. In the ESO's view these facts indicated that the Respondent was a nominee of her Parish Council.

14. The Respondent stated that it had been her understanding that she had not been nominated by her Parish Council. However, she accepted that the minutes recorded a group nomination from her Parish Council and she had, at least initially, formed part of that group nomination.
15. The Respondent's status was considered relevant by the ESO to the question whether the Respondent was acting in her official capacity for the purpose of the Code of Conduct. The Tribunal deals with this point below.

Findings – the events leading to the ESO's allegation

16. In late 2006 the Parish Council went through the process of appointing a new Parish Clerk and Manager. Mr Dawson was the successful candidate and he started work as the Parish Clerk and Manager on 2 January 2007. It was a condition of his appointment that he obtained the Certificate in Local Council Administration (CiLCA). In addition Mr Dawson had to complete a six month probation period. On 27 July 2007 Councillor Kent, Chair of the Council's Personnel Committee, wrote to Mr Dawson and confirmed that he had satisfactorily completed his probationary period. However, Mr Dawson had not at this date been awarded the CiLCA.
17. Mr Dawson had submitted the necessary work for the CiLCA in August 2007 and failed. He resubmitted the necessary work and on 20 February 2008 was informed that he had again failed because three sections were unsatisfactory. Mr Dawson appealed and the Chief Verifier found that in relation to one of the sections Mr Dawson had good grounds for his appeal and thus he awarded a pass. In relation to the other two sections the Chief Verifier upheld the original decision that they were fails. However, the Chief Verifier then reviewed the whole of the work submitted by Mr Dawson and concluded that in spite of the two failures overall Mr Dawson had reached the required standard and in his opinion *"it would be iniquitous to ask Mr Dawson to submit another portfolio when I am of the view that he has submitted sufficient evidence to pass.."* Accordingly the Chief Verifier instructed that the CiLCA be awarded to Mr Dawson.
18. The Tribunal has seen the full letter (address to the Society of Local Council Clerks (SLCC) in which the Chief Verifier set out his reasoning both in relation to the

three sections to which Mr Dawson's appeal related and his decision to award the CiLCA. While the Tribunal heard no argument about the quality of the Chief Verifier's judgement the Tribunal found that on its face the Chief Verifier's letter appeared to be a careful, thorough and balanced consideration of Mr Dawson's appeal which would not have lead a reader to the view that the standards applied to the award of the CiLCA were being undermined. The SLCC copied the Chief Verifier's letter to Mr Dawson as an enclosure in notifying him of the success of his appeal.

19. On the basis of the above facts the Tribunal found that the CiLCA qualification was properly award to Mr Dawson and that there was nothing to indicate that the Chief Verifier's decision to award Mr Dawson the CiLCA had been based on other than relevant criteria.
20. In March 2008 the Respondent was told that Mr Dawson had been awarded the qualification on appeal, together with the information that this was despite Mr Dawson not having passed all the portfolio sections, and that the Chief Verifier had said that it would be 'iniquitous' to make him submit further work. The evidence was that this information was given to the Respondent by an officer of SLCC.
21. On a date between Wednesday 19 and Friday 21 March 2008 a conversation took place, in Mr Dawson's office at the Parish Council, between the Respondent and Mr Dawson ("the conversation") in which the Respondent told Mr Dawson that she knew he had obtained his qualification on appeal; that the decision had caused a 'furore' at NALC; that he would probably receive a letter from NALC on the matter; and that the position of the Chief Verifier was in some jeopardy.
22. NALC did not intend to write to Mr Dawson about his CiLCA award, and the position of the Chief Verifier was not in jeopardy.
23. Any 'furore' relating to the circumstances of the Parish Clerk's CiLCA award did not arise until after the Respondent had herself complained about the matter, initially in an email that she sent to the Chief Executives of NALC and the SLCC on 25 March 2008, and subsequently when she addressed meetings of NALC and SERCAF on 1 and 25 April 2008.
24. On 25 March 2008 the Respondent wrote the above mentioned email, addressed to four people involved in various local government organisations which had an interest in the award of the CiLCA qualification. The email read:

*"Dear Irene,
I am replying to your email, but am forwarding it to John Findlay & Nick Randle & Ken Cleary. (I would be grateful if you would all read Irene's email)
I am outraged. We have a qualification which is already not of the highest standing, and certainly does not best serve those many superb clerks our sector has.
This judgment demeans my council. We are now foist with a clerk who patently does not understand our sector nor the legal structure pertaining to it.
There is no earthly reason why a clerk who patently fails should be passed, just because some arbitrary decision has been made, that he or she has to sit a third time.*

In doing this the chief arbiter has now foisted upon my council a clerk who is not up to the grade.

I insist this is fully investigated it is against all laws of natural justice.

Should this not be properly investigated and this decision rescinded I personally will take this to the highest level of government.

Cllr Isabella Fraser.

Nalc Rep Buckinghamshire and Milton Keynes."

25. The fact that Mr Dawson was confirmed in his position as Parish Clerk and Manager at the end of his six months probation period provides ample evidence that his performance in the job was satisfactory. The ESO refers to interview statements from Councillor's Petchy and Goss, both members of the Parish Council, which confirm that Mr Dawson's performance was actually more than satisfactory.
26. In her interview statement the Respondent herself, the gist of which she repeated at the hearing, described Mr Dawson in the following way *"he is a first rate clerk. His paperwork is good. He's organised and if he is asked to do something he does it instantly"*. The Respondent did however express some reservations about Mr Dawson role as the manager of the other staff of the Parish Council in her interview statement.
27. However, looking at this evidence overall the Tribunal found that there were no grounds for the Respondent to raise any concerns about the performance of Mr Dawson in the context of the CiLCA in her email of 25 March 2008.

Findings - disputes of fact

28. In stark contrast to her statements before the hearing, when the Respondent had stated that she intended to "contest this most vigorously" and to call witnesses, the Respondent accepted at the hearing that the facts were as stated in the ESO's report.
29. The Tribunal thus found that the facts were as set out in the ESO's report and outline above.

Findings - Official Capacity

30. Paragraph 2(1) of the Code sets out the circumstances in which it applies to a member. In paragraph 2(1)(a) the obligation to comply with the Code applies whenever a member conducts the business of their authority, which includes the business of the office to which the member has been elected or appointed.
31. The ESO baldly states that "it is a known fact that the Respondent was not conducting the business of the Council when she sent her email". In the Tribunal's view that is true on the ordinary meaning of the words "conduct the business of your authority" but it does not address the extension of these words to the "business of the office to which you are elected".
32. The Respondent was elected as a member of the Parish Council and therefore holds the office of parish councillor and the Code will apply when she conducts the business of that office. Thus, the Tribunal had to decide whether the writing and sending of the email amounted to conducting the business of the office to which the Respondent was elected.

33. The Tribunal found that those things which formed the basis of the work of a councillor would fall within the words "the business of the office to which they were elected or appointed". Thus, for example, when a member was contacted by an elector to help with a problem which broadly related to the work of public bodies, say the quality of a road repair following work by a water company, the member may well deal with their own authority, other local authorities or public bodies as well as private bodies like water utilities. In such circumstances the member is conducting the business of their office.
34. In the Tribunal's judgment a person elected to the office of councillor will, as part of discharging the business of their office, have an interest in the efficient running and administration of their own authority and, in many circumstances, other public bodies because it involves the use of public money.
35. The Respondent had such an interest and she wished to be involved in bodies that supported local authorities through local and national organisations. In particular she was keen to see that there were qualifications for Parish Clerks and that the standard of those qualifications was set and maintained at an appropriate level. It was a prerequisite for membership of the local and national bodies with which the Respondent was involved that she was a member. In the Tribunal's judgment when acting in connection with her work on such bodies the Respondent was conducting the business of her office even though the matters she was dealing with may apply equally to all councils as well as her own.
36. While this finding may be reinforced by the fact that the Respondent was nominated by her Parish Council it is not a necessary prerequisite for the finding, because there was a sufficient link to the business of her office even if she acted as an individual councillor without nomination.
37. Paragraph 2 further provides that the Code applies to a member when they act, claim to act or give the impression of acting as a representative of their authority.
38. In the Tribunal's judgment this provision requires a full review of the surrounding facts and there is no one determining factor. Thus while in the Tribunal's judgment it may be relevant that the member is known to be a member of a particular council or to be nominated to be on a body by their council or to describe herself as councillor, it is not conclusive. The Tribunal noted that councils routinely nominate members for the membership of outside bodies such as charities, appointment panels and planning bodies. When acting on these bodies members no doubt have a strong predisposition to representing the views of the council which nominated them and other members as well as the public may well perceive the member as representing the views of the nominating council. However, in many cases the nominated member's overriding obligation under the law will be to the body concerned and they are not simply acting as a conduit for the views of their council. Thus in the Tribunal's judgment in most cases something more will be needed, to bring a member within this provision, than the simple fact that the member's position on the body is reliant on their status as a councillor or as a councillor nominated to the body concerned.
39. The Tribunal found the approach taken by the ESO in his report was sound as it identified the matters which related to whether there was a connection between the Respondent's comments and the Parish Council. The following factors indicated that the Respondent's actions did not give the impression of acting as a representative of the Parish Council:

- the email was sent from her private email address and not her official Council address;
- she signed the email using her NALC title;
- at interview, she stated that she wrote the email on behalf of all BALC members in respect of standards that BALC members were questioning;
- the Chief Verifier, when responding to the Respondent's email stated: *"I am also not clear whether the Respondent is speaking on behalf of Campbell Park Parish Council, or as an individual councillor, or as a NALC representative ..."*

40. On the other hand the following extracts from the email indicate a close connection with the Parish Council:

"This judgment demeans my council. We are now foist with a clerk who patently does not understand our sector nor the legal structure pertaining to it"

"...the chief arbiter has now foist upon my council a clerk who is not up to the grade."

41. Weight was added to the view that the Respondent was acting, claiming to act or gave the impression of acting as a representative of their authority by the fact that the minutes of the Parish Council clearly stated that she was nominated by the Parish Council to Milton Keynes Association of Urban Parish Councils for the relevant period.
42. Further, as the ESO notes, the Respondent's comments about the Parish Clerk's suitability for the role must have drawn, at least in part, from her dealings with him on Council business. In any event, his suitability for the role clearly was Council business and at interview, the Respondent agreed that it could be inferred from the content of her email that she had been acting in her role as a member of the Council.
43. The ESO adopted an objective assessment of the content of the email and concluded that it would leave the notional reasonable person with the impression that the Respondent was acting as a representative of her Council when she sent her email. The Tribunal found that an objective approach based on a reasonable person test was the correct approach.
44. In the Tribunal's judgment there are factors pointing both ways. The Tribunal found the fact that the Chief Verifier, a person perhaps as well placed as any to take on the role of the reasonable person, was uncertain as to the Respondent's role and this was an indication that the matter may well fall outside the Code. No doubt this uncertainty arose because the Respondent described herself primarily by reference to her position in NALC and sent the email from her home address and not from her council email address.
45. However, against this was the personal and strong language linking her concerns to Mr Dawson (albeit not by name) as Parish Clerk and to her own Parish Council. Looking at the language of the email overall, albeit including the email address used by the Respondent and how she signed herself, the Tribunal found that the reasonable person would find the language used provided a strong link to the Parish Council and to strong and, apparently known and established, concerns about the poor performance of the Parish Clerk, and on this basis a reasonable person would conclude that the Respondent fell within paragraph 2 because she

acted, claimed to act or gave the impression she was acting as a representative of her Parish Council.

46. In relation to the conversation the Tribunal concluded that the Code applied under paragraph 2 because the conversation took place on Parish Council premises in Mr Dawson's office, it related directly to Mr Dawson's position as Parish Clerk and Manager because it was a condition of his appointment that he obtained the CiLCA, the Respondent had been part of the interview panel which had appointed Mr Dawson and she was a member of the personnel committee. The Tribunal found that all these factors would lead the reasonable person to conclude that the Conversation related to the business of the Parish Council as defined in paragraph 2.

Findings – human rights

47. The Respondent raised no objection to the application of the Code based on her freedom of expression under Article 10 of the European Convention on Human Rights. However, it is well established law that the right must be considered in the context of the Code and the ESO provided a detailed consideration of the impact of his report on the Respondent's right to freedom of speech.
48. In the Tribunal's judgment the Respondent in both her email and conversation with Mr Dawson went beyond what should be considered acceptable in terms of political challenge or disagreement. The Respondent's comments were disparaging and insulting about Mr Dawson's abilities. The freedom of expression of one person should not be allowed to cause harm to another person and in this case the Respondent's views, having no basis in fact, were clearly damaging to Mr Dawson. Thus the Tribunal concluded that in relation to the conversation with Mr Dawson and the personal attacks on Mr Dawson in the email there was no public interest that should be afforded the protection of political expression. For this reason the Tribunal found that there had been no unlawful interference with the Respondent's right to freedom of expression.

Findings – breach of the Code

49. At the hearing the Respondent accepted the reasoning in the ESO's report that she had breached paragraphs 5 and 6 of the Code.

50. Paragraph 5 of the Code provides:

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

51. In the Tribunal's view the test is an objective one and is to be decided on the basis of whether the notional reasonable person would conclude, on the basis of the relevant facts, that the Respondent had brought her office of councillor or her authority into disrepute.
52. A member's conduct will bring that member's authority into disrepute if it could reasonably be regarded as reducing public confidence in the authority being able to fulfil its functions and duties. The significance of the words 'could reasonably be regarded' is that it is not necessary to prove that a member's actions have actually diminished public confidence or harmed the reputation of the authority: a breach will arise if the conduct is reasonably capable of having that effect.

53. The Tribunal has found that there were no grounds for criticism of Mr Dawson's performance as Clerk and Parish Manager and that he was properly awarded the CiLCA qualification. It follows that there were no grounds on which the Respondent could have reasonably made the comments about Mr Dawson contained in her email of 25 March 2008 nor, as the Tribunal has already found, were there any grounds for the Respondent's comments made in the conversation.
54. In the Tribunal's judgment the making of groundless, and thus untrue, comments critical of Mr Dawson's competence in the most disparaging language must in the mind of the reasonable person bring the office of the member making those comments into disrepute. The reasonable person will always expect a member to act on the basis of the facts known to her and not to allow emotion to be the basis for making groundless statements that personally disparage, in strong language, an officer of her council. Thus the Tribunal found that the Respondent had breached paragraph 5 of the Code because her conduct could be reasonably be regarded as bringing her office into disrepute.
55. However, the Tribunal found that the Respondent's conduct had a strong personal element as she had, as she acknowledged to the Tribunal, a fiery temperament which at times predominated. In the Tribunal's judgment, while a reasonable person might question whether a person with such a temperament was suited to public office, they would be likely to conclude that was essentially a personal failing which reflected badly on the member rather than on her authority. Thus the Tribunal found that the Respondent could not reasonably be regarded as bringing her authority into disrepute.
56. Paragraph 6(a) of the Code provides:
- "You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage"*
57. It was the Respondent's stated object in her email to get the CiLCA awarded to Mr Dawson rescinded and she expressed considerable determination about this stating that *"I personally will take this to the highest level of government"*. On a number of occasions the Respondent has stated that it was never her actual intention to get the CiLCA rescinded as this was an unrealistic objective and it was always about the CiLCA rather than Mr Dawson personally.
58. While the Tribunal shared, to a degree, the Respondent's subsequently stated view that rescission of Mr Dawson's CiLCA was not a realistic objective nonetheless the Tribunal found that on any reading of the email rescission was clearly an outcome greatly desired by the Respondent. Such an outcome would have been a substantial disadvantage to Mr Dawson because he would have had to resit the CiLCA examination as his appointment as Parish Clerk and Manager was subject to his gaining this qualification. Thus the Tribunal found that the unjustified attempt, whether or not it had a realistic chance of success, to get Mr Dawson's CiLCA rescinded amounted to an attempt by the Respondent to use her position as a member to improperly confer on Mr Dawson a disadvantage under paragraph 6 of the Code.
59. In addition there was also the fact that Mr Dawson had been disparaged in very strong language to those who received the email and these were people who were involved in professional organisations he would have to deal with and to

which he was known. It was inevitable that the Respondent's views, even though groundless, would damage Mr Dawson's reputation. In the Tribunal's judgment the language used by the Respondent would lead the reasonable person reading her email to conclude that Mr Dawson was incompetent. In the Tribunal's judgment the making of such unfounded statements was an attempt by the Respondent to use her position as a member to improperly confer a disadvantage on Mr Dawson in breach of paragraph 6.

60. On the evidence before the Tribunal it is clear that Mr Dawson's reputation has been besmirched without justification and it is the Tribunal's hope that its decision will go some way to undoing any harm caused by the Respondent to Mr Dawson's reputation.

Findings – sanction

61. During the hearing the Respondent made a full and public apology for her conduct which she acknowledged had breached the Code, and for the unjustified attack on Mr Dawson's reputation and for the anxiety she had caused Mr Dawson.
62. As the Tribunal has noted the Standards Sub-Committee had already made a finding against the Respondent and in the normal course of events the Tribunal would have taken this into account when considering what sanction to impose. However, in this case the Tribunal decided to place virtually no weight on the decision because there was to be an appeal and thus the eventual outcome was uncertain. The Tribunal was also mindful that the actual events under consideration at this hearing predated the events dealt with by the Standards Sub-Committee.
63. The Tribunal was mindful that there was the possibility that if the sanction it imposed ran concurrently with the sanction imposed by the Standards Sub-Committee it could be argued that the Respondent would not suffer any additional sanction in respect of the matters which were the subject of this hearing.
64. While acknowledging that this argument had merit the Tribunal decided that on the particular facts it did not hold good. In the Tribunal's judgment any sanction it imposed would be seen as confirming that the Respondent's conduct had been in breach of the Code and unacceptable. In addition her fulsome public apology at the hearing made this plain to those involved and to the public. Thus while it was open to the Tribunal to adjourn and await the outcome of the appeal it decided that the considerable delay that would result, the extra anxiety it would cause to the Respondent (particularly in view of her current health problems) and the limited impact the outcome was likely to have on the Tribunal's deliberations outweighed any possible advantage. Thus the Tribunal decided to come to its decision on sanction in respect of the findings of fact and breaches of the Code relating to the subject matter of this hearing, immediately.
65. The Tribunal considered the application of the guidance issued by the Principal Judge and in particular that part of the guidance dealing with sanction which states:

"Disqualification is the most severe of the sanctions...[and it is]... most likely to be appropriate where the Respondent has deliberately sought to misuse his or her position in order to disadvantage some other person."

66. On the basis of the above findings the Tribunal found that this part of the guidance strongly indicated that this was a case in which it should consider the disqualification of the Respondent from office.
67. Up to the hearing, the case for disqualification as the appropriate sanction was reinforced by the following factors. The Respondent had not given any indication that:
- she accepted that her conduct was wrong;
 - her conduct had harmed Mr Dawson’s reputation;
 - it was inevitable that she had caused unnecessary anxiety to Mr Dawson in the Conversation;
 - her criticism of Mr Dawson was untenable because it had no basis in fact;
 - her criticism of the award of the CiLCA to Mr Dawson on appeal was unjustified because it was not based on fact;
 - she had breached the Code;
 - she thought she owed Mr Dawson an apology.
68. At the hearing it was clear that the Respondent had undergone a very substantial change of heart. As is noted above the Respondent did not dispute the facts and she accepted that she had breached the Code in the manner outlined above. When dealing with sanction she accepted that some substantive sanction was inevitable.
69. This was a remarkable change in the Respondent’s position and the Tribunal naturally approached such a last minute change of position with some caution. However, the Tribunal found that substantial credit was to be given to the Respondent when considering sanction because she had publicly and very clearly accepted that her conduct was wrong and breached the Code. In addition she gave a very full and public apology to Mr Dawson and made it clear that she would not go back on what she had said to the Tribunal.
70. In addition Mr Crooks, acting as the Respondent’s representative, made some telling points in the Respondent’s favour:
- her long service on the Parish Council and substantial period on the Milton Keynes Council;
 - as her official details demonstrated she was involved in both local and national local government organisations;
 - that support for her came from across party lines;
 - that she played an important part in delivering a stadium and professional football to Milton Keynes;
 - that she is a tireless worker for her electors;
 - she has managed to increase her majority in spite of not representing either of the main political parties;
 - her real concern has always been the quality of the CiLCA as a qualification;
 - she is of a fiery disposition and there was no malice or dishonesty or intention to mislead;
 - a lesson had been learned and there was a recognition that high standards were needed in local government;
 - even at 74 years old she still felt that she had a lot to give to the community and wanted very strongly to continue with her public work;
 - she was genuinely an outstanding public servant.

71. In addition the Tribunal took into account the Respondent's medical condition. In particular the debilitating effect that the pain associated with arthritis can have on a person and while this could not excuse the Respondent's conduct it may well have an impact on her ability to control her emotions. Similarly in the period prior to the hearing and following the unsuccessful knee operation that the Respondent underwent in July 2009 the increased pain may well have had an impact on the Respondent's ability to see things in their true perspective.
72. In the Tribunal's view the views expressed by Mr Dawson in his interview statement were relevant to the question of sanction because he was still the Parish Clerk and Manager and the question of the likely working relationship between Mr Dawson and the Respondent as a prominent member of the Parish Council was a factor to be weighed in the balance. The Tribunal arrived at this view because it went to the efficient administration of the Parish Council and anyway Mr Dawson was the wronged party and in the Tribunal's judgment it was right to take account of how the Tribunal's decision might affect Mr Dawson personally in the future.
73. The Tribunal found that Mr Dawson's interview statement indicated that he had taken a mature approach to the situation and even though he had (quite properly) made the complaint which had led to the hearing and he was the wronged party his assessment of the Respondent was free of hyperbole and indicated little or no personal animosity to the Respondent. Indeed Mr Dawson acknowledged that the Respondent was an able member in some respects with a lot of useful knowledge about the Parish and he gave an example of his modifying his views based on the Respondent's comments. In the Tribunal's assessment Mr Dawson had gone out of his way to leave the way open to there being an effective working relationship between himself and the Respondent even if the relationship was unlikely to be a close one. It was much to Mr Dawson's credit that he took such an approach and it reassured the Tribunal that the Respondent continuing as a member of the Parish Council was not likely to have an adverse impact on its running or on Mr Dawson personally.
74. In the Tribunal's judgment the acceptance by the Respondent, even at a late stage, that her conduct was wrong, that she had breached the Code and was sorry for its impact on Mr Dawson, was genuine. The Tribunal gave this change in position by the Respondent considerable weight and found that it made suspension, rather than disqualification, the appropriate sanction.
75. In the Tribunal's view even if the Respondent had learnt her lesson it was necessary to demonstrate both to the public and to other members that such behaviour did not go without consequences, both to reassure the public as to the conduct of members and to discourage other members from making groundless comments which are detrimental to the reputation of others.
76. The Tribunal was unimpressed with the argument that the Respondent is known to have a fiery temperament and that this should count in her favour. It is too easy for a person with such a temperament to put the responsibility on others to cope with it rather than to take responsibility and control their temperament. It is in the Tribunal's judgment simply unacceptable for a member to attempt to make a virtue out of being of a fiery temperament. If a person knows they have such a temperament they must control it and if, on occasion they fail to control it, a reasonable person with insight into their own shortcomings will apologise quickly and fulsomely.

77. This case demonstrates very clearly that members who fail to control their temper are not effective in their work because instead of being able to effectively pursue the point of public interest, in this case the quality of the CiLCA qualification, their own conduct becomes the issue.
78. The email and the conversation were made by the Respondent in her role as a Parish Councillor and in the Tribunal's judgment these facts made it appropriate to limit the suspension to the Respondent's role as a parish councillor. In the Tribunal's judgment a period of three months suspension would be sufficient to make clear that the Respondent's conduct had been unacceptable without unduly disrupting her work as a parish councillor.
79. The Tribunal was under no illusions that it would take a considerable effort on the part of the Respondent to ensure that in future her comments were based on fact and expressed in moderate language. However, in the Tribunal's judgment a lenient sanction was appropriate based in a large part on accepting the Respondent's personal contrition at face value together with giving weight to the submissions of her representative.
80. The decision of the Tribunal was unanimous.
81. Any request for the decision to be reviewed or for permission to appeal needs usually to be made to the First-tier Tribunal within 28 days of receipt of the Tribunal's reasoned decision. Such applications need to be in writing.

Nicholas Holden

Judge

12 April 2010