

The Case Alert 1, May 2006

Councillor with Conflict of Interest Suspended

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North Norfolk district councillor Michael Baker was suspended from office for 12 months, following a hearing of the Adjudication Panel for England on 9 January 2006.

The panel's tribunal decided that Councillor Baker had breached the Code of Conduct by taking part in a meeting in which he had a prejudicial interest. The tribunal expressed concerns that members and council officers had not clearly explained the councillor's obligations under the Code of Conduct.

The decision in the case clarifies councillors' duties when they have conflicts of interest in meetings, particularly in relation to the current definition of personal and prejudicial interests and the implications of human rights legislation.

The planning application

Councillor Baker was found to have taken part in the consideration of his own company's planning application for flats and shop storage at the council's development committee meeting on 3 February 2005.

Councillor Baker was the managing director of the company, as well as a company shareholder and employee. However, he did not declare an interest at the meeting, nor withdraw from the room when the application was discussed.

Official capacity

Councillor Baker said that he attended the meeting as an applicant, and not as a councillor. However, the case tribunal referred to a Court of Appeal judgment — *R. (on the application of Richardson) v North Yorkshire CC [2003] EWCA Civ 1860*. This judgment stated that members could not avoid the rules on interests by claiming to be present at meetings in a professional capacity.

He would still be a member, and regarded as representing his authority. (See chapter 3 of [The Case Review number 2](#) – ‘Prejudicial interests: an attack on local democracy?’ – for details of this judgment.)

There was a potential conflict of interest between Councillor Baker’s role as an applicant, and his role as an elected member. His ability to take part in the meeting was restricted by the rules on personal and prejudicial interests in the Code of Conduct.

Personal and prejudicial interests

Members of the committee appeared to be aware of Councillor Baker’s interest in the application, but no one seemed to challenge his participation at the meeting. Councillor Baker later claimed that he had not sought to take advantage of his position, but had acted to help build affordable housing for the company’s employees, which he regarded as “social housing”. However, the test of whether he had a prejudicial interest was an objective one, set out in the Code of Conduct.

The Code states that a member has a personal interest if it relates to one of their interests in the register of interests, or if it could be regarded as affecting his financial position or well-being to a greater extent than others in the area of the authority. A member also has a prejudicial interest if it is one that a member of the public would reasonably regard as so significant that it is likely to impair their judgment of the public interest.

The Adjudication Panel’s case tribunal found Councillor Baker had both a personal and prejudicial interest according to these criteria. He was the managing director of the company, as well as a shareholder and employee, and a decision on the application would affect him more than others in the area of the authority. The tribunal also found that a member of the public would be in no doubt that Councillor Baker had a prejudicial interest.

Councillor Baker accordingly had a duty under the Code of Conduct to declare a personal interest and withdraw from the meeting when the application was considered.

Human rights

The case tribunal also looked at the implications of human rights legislation for members making representations at council meetings.

Councillor Baker argued that it was unfair in terms of his human rights that he had been denied the right to speak on the application as a result of his holding office.

Article 6 of the *European Convention on Human Rights* states that “In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

The tribunal found that the company had the right to a fair and public hearing and to send anyone to make representations except Councillor Baker, who was prevented from doing so by the Code of Conduct. The tribunal regarded this as a proportionate and lawful restriction to prevent bias and ensure that the planning process was fair:

“The restriction on the company, as to who could represent them ... was a proportionate restriction in pursuit of a legitimate aim, to prevent bias and ensure fairness in the planning decision making process.”

There was also a question of whether this restriction infringed Councillor Baker's right to freedom of expression.

Article 10(1) of the convention states that:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by a public authority...”

However, Article 10(2) states that:

“The exercise of these freedoms ... may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others...”

The tribunal found that Councillor Baker's undertaking to comply with the Code of Conduct restricted his right to freedom of expression. The tribunal decided that this was not an infringement of his human rights, as the restriction was in accordance with the law and “necessary in a democratic society for the protection of the rights of others”.

The tribunal took into account the High Court judgment *Sanders v Kingston [2005] EWHC 1145*. This judgment found that interference with freedom of expression was lawful and justified by the need to protect the rights of others

in a democracy, in accordance with Article 10(2) of the convention. The judge concluded that the member was not expressing political opinions, which have a higher level of protection (see [The Case Review number 3](#), pages 46-49 for more details).

The case tribunal's decision

The Adjudication Panel's case tribunal decided that Councillor Baker had failed to comply with the Code of Conduct by failing to declare a personal interest, failing to withdraw from a meeting when a matter in which he had a prejudicial interest was considered, and improperly seeking to influence a decision on the matter.

The tribunal also decided that Councillor Baker had brought his office or authority into disrepute, particularly by choosing to ignore the advice of council officers before and during the meeting.

The 12-month suspension was imposed in view of the seriousness of the breach, but took into account the fact that Councillor Baker had not received clear advice at the meeting.