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**The Case Alert 2, December 2006**

### **Former Mayor disqualified for improper conduct toward clerk**

**Councillor Anthony Prior, the former Mayor of Chard Town Council and a member of South Somerset District Council, was disqualified for nine months, following a hearing of the Adjudication Panel for England on 21 June 2006.**

The panel's tribunal found that Councillor Prior had breached the Code of Conduct by inappropriately asking the town clerk, for whom he had line management responsibilities, to go on holiday with him and offering her £500 as a present if she declined. The tribunal found that that by this conduct Councillor Prior brought his office into disrepute.

Councillor Prior later issued the clerk with a written warning when he found out she had sent a copy of a grievance letter to the Standards Board for England. Councillor Prior also issued a press release in which he made an unjustified public attack on the clerk and published her home phone number. The tribunal found that this behaviour was disrespectful to the clerk, and brought Councillor Prior's office into disrepute.

Not all of the complaints about Councillor Prior were upheld at the hearing. The tribunal found that on a number of occasions Councillor Prior's conduct was motivated by genuine concerns over the clerk's performance or the efficient running of the council.

The decision in the case helps to clarify the distinction between legitimate criticism of council officers and inappropriate conduct. Members should, of course, be able to exercise their right to challenge officers, and the Code of Conduct was not meant to constrain members from doing this. The decision indicates that members retain that right to challenge or criticise officers even where, as in this case, the relationship between the individuals is for any reason strained or has broken down.

However, members should always deal with performance issues in accordance with the authority's procedures, in an appropriate way and in the proper forum. It is inappropriate to discipline an employee in retaliation for a grievance, and to publicly criticise them in a press release.

### **Holiday invitation**

Councillor Prior asked the clerk about the holiday in March 2005, after a meeting to discuss council business. He said he would like to take her on holiday, and said he would pay and buy her anything she needed. When the clerk did not respond to the proposal, Councillor Prior handed her an envelope with a cheque for £500 if she declined the holiday, which she did not accept.

The Adjudication Panel decided that Councillor Prior brought his office into disrepute by making this proposal. The tribunal considered that it was inappropriate for an elected member to extend such an invitation to a council employee when there was such a power imbalance in their working relationship, and when there was not the slightest encouragement from the employee. This was particularly the case in this instance, where the councillor held two senior posts in the council and was the employee's line manager.

The tribunal noted, however, that this was a highly personal conduct that did not reflect badly on the council as a whole. The only relevance for the council was that the proposal had been made during a meeting between a member and an employee to discuss council business. The tribunal therefore found that the councillor had not brought his authority into disrepute.

The tribunal also considered that this proposal would not, by itself, have justified disqualifying the councillor, especially as Councillor Prior and the clerk agreed to put the incident behind them and not to take any further action at the time.

### **Criticism of the clerk**

There were a number of other allegations about Councillor Prior's behaviour toward the clerk which were not upheld at the hearing. These allegations concerned individual incidents between the holiday proposal and the written warning, as well as Councillor Prior's overall pattern of behaviour during this period.

In relation to these other allegations, the tribunal found that there was insufficient evidence that Councillor Prior had been improperly motivated in his behaviour towards the clerk. The tribunal found that Councillor Prior had genuine concerns about the clerk's performance, and that a number of comments he made about the clerk's work were not disrespectful.

The tribunal also found that Councillor Prior's conduct toward the clerk between the holiday invitation and the written warning was motivated by concern about the efficient running of the council, and so did not bring his office or authority into disrepute. The tribunal did not consider that the individual incidents constituted an improper pattern of behaviour.

### **Warning letter in response to grievance**

The tribunal regarded Councillor Prior's warning letter to the clerk as inappropriate and disrespectful. Councillor Prior gave the clerk the written warning after she confirmed she had sent a copy of a grievance letter to the Standards Board. This followed an earlier meeting arranged by Councillor Prior to discuss concerns about her conduct.

The tribunal found that the decision to issue the written warning was a direct response to the clerk's grievance to the Standards Board, and this was not relevant to how he should have addressed performance issues. As the tribunal noted:

"[The clerk's] action of sending her grievance to the Standards Board had no bearing on the merits of any concerns the Respondent had about [her] performance as Town Clerk and yet it was the reason the Respondent issued the warning letter..."

The tribunal decided that Councillor Prior failed to treat the clerk with respect, and so failed to comply with the Code of Conduct, "as he was influenced in his decision to issue a written warning ... by the fact that she had sent a copy of the grievance to the Standards Board".

### **The press release**

Councillor Prior also acted inappropriately when he issued a press release in December 2005. The press release related to his resignation as the Mayor of the town council, but made a number of comments about the clerk.

The press release inferred that the clerk concealed two letters from him, which had "proved expensive". He inferred that the clerk's actions were improper and led to financial losses for the council. He also implied that the clerk was misleading the council over her sickness. The press release also contained the clerk's ex-directory home phone number.

The tribunal found that these were unjustified attacks on the clerk, and regarded it as serious matter that Councillor Prior had publicly criticised the clerk's professional performance and impugned her integrity. The tribunal accordingly regarded the press release as a failure to treat the clerk with respect.

The tribunal also decided that Councillor Prior failed to comply with the Code of Conduct by disclosing confidential information. The clerk's home phone number was given in the press release without her permission, when she was off work sick and despite the fact that Councillor Prior was involved in a public conflict with her at the time.

#### **The tribunal's decision**

The tribunal took account of Councillor Prior's long record of public service, deep commitment to work as elected member, and the expressions of public support he had received, as well as the fact that his actions were not dishonest, his motivation after the holiday invitation was the efficient running of the town council, and he was open in dealing with the Standards Board.

The tribunal considered that issuing the warning letter to the clerk as a deliberate reaction to the grievance being sent to the Standards Board was a serious matter and strongly indicated that disqualification was appropriate. In addition, the tribunal noted that Councillor Prior saw the issuing of the warning letter as a technical failing rather than as a fundamentally flawed action.

The tribunal unanimously decided to disqualify Councillor Prior for nine months to adequately recognise the seriousness of his actions on the three separate occasions when he breached the Code, and to allow him to stand in the May 2007 elections.

A summary of this case is available on our site.

The full decision is available on the Adjudication Panel for England's website.