



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

**CASE NO:** LGS/2010/0503

**ON APPLICATION FROM:**

Ethical Standards Officer (ESO) of Standards for England

Application reference No: SBE 07701-O6Y7R

Dated: 19 April 2010

**APPLICANT:** Jennifer Rogers, ESO, Standards for England

**RESPONDENT:** Councillor Ahmed Khan  
of South Tyneside Council

**DATE OF HEARING:** 8 September 2010

**VENUE:** George Washington Hotel, Washington

**DATE OF DECISION:** 17 September 2010

**BEFORE**

**Judge: David Laverick**

**Member: David Billing**

**Member: David Ritchie**

Attendances:

For the Applicant (ESO): Mr Mark Jones

The Respondent appeared in person

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

## **DECISION OF THE FIRST-TIER TRIBUNAL**

The Respondent has been found to have failed to follow the provisions of the Code of Conduct and has been censured

### **REASONS FOR DECISION**

1 The Tribunal has determined an application from an Ethical Standards Officer (“ESO”) in relation to allegations that the Respondent had breached South Tyneside Borough Council’s Code of Conduct by making statements about the Monitoring Officer of the Council and the Standards Committee of the Council.

2 The Respondent was elected to office in May 2008 for a term of four years. He represents the Beacon and Bents ward. He currently serves on the following committees Riverside Community Area Forum, Licensing Committee, Regulatory Committee, Overview and Scrutiny Co-ordinating Committee, Select Committee for Jobs and Enterprise, Regeneration and Resources and Culture and Well-being Committee, and the Common Land Town and Village Greens Committee. He is also a member of the Ocean Road Community Association Management Committee.

3 The Council has adopted a Code of Conduct

3.1 Paragraph 2(1) of the Code states:

*“... you must comply with this Code whenever you—  
conduct the business of your authority (which, in this Code, includes the  
business of the office to which you are elected or appointed); or  
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”*

3.2 Paragraph 3 of the Code states:

*“(1) You must treat others with respect.  
(2) You must not...  
b) bully any person*

3.3 Paragraph 5 of the code states:

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

3.4 The media protocol (on p.249 of the council’s constitution) states:

*“1.1 This Protocol guides all Members of the Council when dealing with the  
media in respect of complaints against Members and their investigations*

*whether dealt with by the Standards Board for England, the Monitoring Officer or the Standards Committee ("Committee").*

*1.2 Individual Members should not initiate press comment on complaints and investigations. The only exceptions are comments made by: -*

*1.2.1 a Member against whom the complaint has been made; or*

*1.2.1 [sic] a Member who has made a complaint*

*either of whom may respond factually when approached by the media."*

#### 4 Relevant Facts

4.1 The Respondent requested Mr Scott, who was then the Council's Monitoring Officer, to issue a press release stating he had been cleared of all wrongdoing following a meeting of an Assessment Sub-Committee which had decided to take no further action in relation to a complaint about the Respondent which had been referred to it. The Respondent quoted a section of the Council's constitution in his request saying that this entitled him to a press release. Mr Scott refused the Respondent's request, because he believed that the Respondent's interpretation of the constitution was incorrect.

4.2 The Respondent had established, before his election what he describes as a community newsletter entitled *The Beacon*. The summer 2009 edition of that newsletter began with a paragraph, alongside a photograph of the Respondent, which read:

*Please accept my apologies for the delay in producing this edition of the Beacon. This is due partly to the volume of work I do on your behalf and the fact that I wanted to produce and deliver my first annual report to every household in the ward*

There followed a reference to his being the first councillor to produce such a report.

4.3 The newsletter contained an article, written in the first person and highlighted details of how the Respondent could be called or contacted. This included an allegation of partisan conduct on the part of the Council's Monitoring Officer who it was stated "*wriggles like a maggot on the end of a hook in an effort to get out of issuing a press release in case it upsets the ruling group.*"

4.4 The article stated that the Council's Standards Committee takes a secretive approach to public standards, never reports its findings publicly and will not issue a press release reporting a finding that a councillor has been cleared of misconduct. The article described allegations said to have been made against Labour Councillors about which the Standards Committee were said to have done "Absolutely nothing". The article contrasted that lack of action with decisions by the committee to investigate allegations made against Independent Alliance councillors.

4.5 On Page 3 of the newsletter is a box headed "join me on TWITTER" under which the text read:

*Back in March I became the first councillor in South Tyneside to use Twitter in an effort to engage with local residents and to provide people with regular updates about my work as a councillor, upcoming meetings,*

*personal opinions and a few snippets about what else I get up to. You can find me on Twitter at [www.twitter.com|councillor\\_khan....](http://www.twitter.com/councillor_khan)*

A box on the final page of the newsletter gave information about "my" (Councillor Khan's) advice surgeries.

At the end of the page was a highlighted box which read:

YOU CAN CALL COUNCILLOR KHAN ON (mobile number) or (landline number).  
E-MAIL HIM AT (e-mail address).

- 4.6 Before the Tribunal the Respondent asserted that he was not the author of the articles in the Beacon Newsletter. He was supported in this claim by Mr Peter Shaw who said in evidence to the Tribunal that he was the editor of the newsletter.
- 4.7 The newsletter (consisting of four pages) was overwhelmingly written in the first person as if by the Respondent. The only reference to the Respondent in the third person seems to be in the highlighted box at the bottom of page 4. The newsletter, in the view of the Tribunal, gave a clear impression to readers that it was written by, and to promote, the Respondent. Neither at the time the newsletter was distributed - such distribution being partly by the Respondent - or in the period prior to the complaint being made, did the Respondent seek to dissociate himself from anything said in his name in the newsletter.
- 4.8 The newsletter made no mention whatsoever of Mr Shaw and the Tribunal does not accept that he, rather than the Respondent, was the person referred to when the words 'I', 'me' or 'my' were used in the newsletter. From the content, the inference that is inescapably drawn is that the references are to the Respondent.
- 4.9 Even if, which the Tribunal finds hard to believe, the publication was written by Mr Shaw, the wording about a maggot wriggling on the end of a hook, bias on the part of the Monitoring Officer and criticisms of the Standards Committee appeared in the written notes which the Respondent says were passed to Mr Shaw as part of the preparation of the newsletter.
- 4.10 The reference from the ESO included information as to the effect that two of the allegations described had never been to the Standards Committee and offered explanations as to why some others had not been dealt with. Prior to the hearing the Tribunal had asked for a schedule to be prepared showing all allegations that had been considered. This detailed 83 complaints, some of which are related, but showed that there was a marked disparity in the proportion of complaints being passed by the Assessment Committee for investigation. About 70% of complaints against councillors who formed the Independent Alliance to which the Respondent belongs had been passed for investigation compared with about 10% of complaints against councillors belonging to the majority Labour Group, the ESO's representative conceded that it was not an attractive line of argument for him to criticise the Respondent for making a statement which was shown by analysis of the schedule requested by the Tribunal to have had some substance.
- 4.11 The Standards Committee is not a party to the proceedings before the Tribunal which has not sought to review the merits of each of the decisions made by the Standards Committee. But the Tribunal was concerned by the delay in dealing with some complaints against members of the majority group and by the quality

of some of the committee's decisions which were drawn to the Tribunal's attention.

- 4.12 As noted above, the Respondent operates a 'Twitter' site in which he is referred to as Councillor Khan and where he regularly discusses council issues. He also operates a separate site, using his name followed by a number, where the title 'Councillor' does not appear.
- 4.13 In August 2009 the Respondent posted a message on his "councillor khan" Twitter site referring to the possibility that a letter of resignation had been mislaid.
- 4.14 In September 2009 the Respondent posted messages on this site.
- 4.14.1 One stated: *"Remember the local Labour Party & South Tyneside Council have a bit of previous when it comes to influencing the result of elections"*
- 4.14.2 Another stated *"Less than 48 hours to go until the ballot boxes from the Westoe by-election are opened assuming the Returning Officer does not lose them"*
- 4.15 The Respondent had, prior to the election stood unsuccessfully in a previous poll. He lost by 32 votes in an election where 87 votes had been rejected. When he sought to contest that result, he found that the rejected votes had been lost.

## 5 **Whether the material facts disclose a failure to comply with the Code of Conduct.**

- 5.1 The Respondent submitted that his involvement with the newsletter was not part of the business of his office as a councillor. He pointed out that the first two editions of *The Beacon* were issued by the Respondent and his wife and were issued before he was elected. He submitted that in the newsletter he does not prefix his name with "Councillor". He submitted that the newsletter is funded by the Respondent and his wife (with no financial contribution from the Council) and is designed, printed and distributed entirely independently of the Council.
- 5.2 As noted in paragraph 4.5 the newsletter ends with a message where his name is prefixed by councillor and there are also references to his Twitter site in the name of Councillor Khan.
- 5.3 The Respondent argued that the business of his office as a councillor did not extend beyond attending and speaking at meetings of the Council or its committees or acting on behalf of his constituents. The Tribunal did not accept that argument. It is clear from the copy of the newsletter with which the Tribunal has been particularly concerned that he himself interprets his role as a councillor more widely than that and sees it as part of his role to report back to his constituents on what he has been doing and what issues he is involved with. That may not be a role which all councillors undertake but where they do then, in the Tribunal's view, the Code does apply.
- 5.4 The Tribunal accepted his contention that in his dealings with the newsletter he was not acting as a representative of the authority.
- 5.5 The Respondent also argued that in commenting on his Twitter site he was not conducting the business of the office to which he had been elected. He had

explained to the ESO that he had chosen the name Councillor Khan because Ahmed Khan was a name already in use. He further argued that the Code was written before social networking sites were common and that Standards for England only issued guidance relating to the use of social media in February 2010. He submitted that South Tyneside Council did not have a Twitter site and barred full time officers and councillors from using or accessing Twitter on council owned computers. Therefore, he submitted, it cannot be argued that comments made by members from privately owned equipment made in their own time site are official.

- 5.6 The Tribunal gave little weight to the explanation as to why the Respondent had chosen to use his title in a Twitter site. By establishing such a site the Respondent clearly ran the risk that this, like *The Beacon* newsletter, was part of the way he conducted the business of being a councillor and the Tribunal's examination of the content of the site does nothing to cast doubt on that view. The fact that he had his other Twitter site, in which he did not use his official designation, lent strength to the view that the site now in question was used by him for the conduct of his business as a councillor. In the view of the Tribunal, when posting entries on the Councillor Khan Twitter site the Respondent was subject to the provisions of the Code of Conduct.
- 5.7 The application of the Code may involve an interference with the right to freedom of expression. That right enshrined in Article 10 of the European Convention on Human Rights is subject to some exceptions and the High Court has accepted that in a democratic Society the Code if properly applied could constitute such an exception.
- 5.8 In applying the Code the Tribunal is conscious that expressions of political opinion are entitled to a high degree of protection. Bearing that in mind and the right to make objectionable comments, the Tribunal was of the view that comments he made on Twitter even if they were not justified, fell within the area for which there was that high degree of protection. The Tribunal determined that the comments on Twitter did not involve a breach of the Code of Conduct.
- 5.9 The same reasoning applied to the article in *The Beacon* about the work of the Standards Committee in South Tyneside. The Respondent was certainly entitled to make political comment about such work and, as was acknowledged by the ESO in the course of the hearing there appears to be some justification for his comments. They certainly did not constitute a breach of the Code of Conduct.
- 5.10 The Respondent does not consider that the language used in the article about the Monitoring Officer's view that a press release should not be issued following a decision not to pursue a complaint about him to "constitute a personal abuse". The Respondent says he did not call the Monitoring Officer a maggot but rather that he was like a maggot. The Tribunal does not share the Respondent's view that the distinction is critical as to whether there was a breach of the Code of Conduct. The particular reference could not be fairly regarded as the expression of a political opinion. Rather, it constituted vulgar abuse and did show a lack of respect toward the Monitoring Officer who was the subject of the analogy. The Tribunal found that by using that expression the Respondent was in breach of paragraph 3(1) of the Code of Conduct.
- 5.11 The particular article suggested that the Monitoring Officer's reluctance to issue a press release arose from a reluctance on his part to upset the ruling group on



the Council. The ESO suggested that this suggested political bias on the part of a senior officer and was a further reason for finding a breach of paragraph 3(1) of the Code of Conduct. The Tribunal regarded the statement as being more an expression of political opinion about the operation of South Tyneside Council as a whole and this was to some extent borne out by a disparity in the handling of complaints, as noted above. As such the Respondent in making such a statement was entitled to a high degree of protection from interference with his right to freedom of expression and should not be regarded as being in breach of the Code of Conduct. The Tribunal has not sought to form a view on whether the Monitoring Officer was right in his interpretation of the Council's Constitution or was motivated in the way the Respondent suggested.

### **Action to be taken**

- 6 The Tribunal heard submissions from the ESO and the Respondent.
  - 6.1 The former commented that the Respondent appeared to show little contrition for his actions and has given little indication that he would be likely to behave differently in the future or indeed that he accepts that he has in any way breached the Code of Conduct. On the other hand, the Respondent was a relatively new councillor and the Tribunal did not need to take account of any continuing relationship with the Monitoring Officer who had retired.
  - 6.2 The Respondent had submitted prior to the hearing that ultimately he is accountable to the electorate for his actions as a councillor. He was put into office with a mandate to propagate openness, accountability and transparency. From the onset of his decision to stand as a councillor to the day he was elected, he has repeatedly promised to keep the ward members of Beacon and Bents informed of issues which affect them. Any actions taken by the Respondent have been an acknowledgement and reflection of this promise.
  - 6.3 After the Tribunal announced its decision that he had failed to treat the Monitoring Officer with respect, the Respondent asked the Tribunal to take into account that he is the only councillor not to have missed a meeting during his period of office, that he works very hard in his role and recognises that he is a very vocal councillor. The finding that he has breached the Code is a harsh lesson. If he to some degree caused hurt to Mr Scott then he can only apologise to him. He also commented, as he had done earlier in the hearing that training in South Tyneside for new councillors about the Code is virtually non-existent and it is important that new members receive appropriate and relevant training.
  - 6.4 The Tribunal also took into account that whilst the Respondent's comments about the Monitoring Officer were wrongful and insulting, they were not entirely without provocation. In asking for a press release to be issued when the Assessment Committee decided that no further action should be taken on complaints made against him, the Respondent's interpretation of the Council's Constitution, namely that he was entitled to such a press release, was not unreasonable. The Monitoring Officer's emailed refusal to issue a press release stated that the Respondent had not been cleared of the allegations but it would be equally true to say that he had not been found to have breached the Code of Conduct. The wording of any press release could have made the position clear. His frustration was understandable.
- 7 Taking all these considerations into account, the Tribunal decided that this was not a case where any period of suspension was appropriate but that the particular language

which the Respondent had used about a Monitoring officer should not be condoned. It therefore determined that the Respondent should be censured.

- 8 The decision of the Tribunal was unanimous both in finding that there had been a breach of paragraph 3(1) of the Code of Conduct and that the Respondent should be censured.

### **Recommendations**

- 9 The Tribunal makes the following recommendations to South Tyneside Council

9.1 The Tribunal has avoided being led into detailed examination of the way the standards regime is working in South Tyneside. But examination of such papers as have been before the Tribunal has given some rise to some unease both in terms of the time being taken to bring some matters to a conclusion and in the quality of some of the decisions being taken.

9.2 The Tribunal also has a concern that the Council's media protocol as quoted in paragraph 3.5 of the ESO's reference might be seen as an unjustified interference with a councillor's rights to freedom of speech.

9.3 The Tribunal recommends the Council to commission a review of the operation of the standards regime in South Tyneside and of its media protocol and to consider the outcome of that review with a view to achieving greater confidence in the working of the regime in South Tyneside and promoting a culture which substantially reduces the number of complaints from councillors about each other.

### **Right of Appeal**

- 10 Any request for permission to appeal to the Upper Tribunal against this determination 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.

David Laverick

**Judge**

**17 September 2010**