

The appellant had been adjudged by the Standards Hearings Sub-Committee to have breached paragraphs 3(1) (respect for others) and 3(2)(b) (bullying) of the Code through his behaviour towards Council officers in sending out certain emails and was suspended for 28 days, a period which had been served by the time of the appeal. His application for leave to appeal on the basis that he was not acting in his official capacity when he sent those emails had been turned down by the First Tier Tribunal (FtT). The Upper Tribunal allowed that appeal and remitted the case to the FtT for a hearing.

During the course of that appeal the judge said the following:

When one is acting (etc) "as a representative" of an authority is a matter for determination by the tribunal of fact (i.e. a standards committee, or, on appeal, the First-tier Tribunal). I do however consider that, reading the Model Code as a whole, it is evident that "representative" is not to be equated to "member". The Model Code uses both terms and must be taken to have done so deliberately. Accordingly, merely to act, claim to act or give the impression one is acting (etc) as a member is in my view of itself not sufficient unless there is material on which the tribunal of fact can properly conclude that one is acting (etc) specifically "as a representative" of the authority.

This suggests that to make a finding that a member was acting, claiming to act or giving the impression that he or she was acting as a representative of their authority there must be something about their conduct which amounts to more than simply acting, claiming to act or giving the impression that one is acting as a member. Where official capacity is raised as an issue in cases it would appear that the Upper Tribunal is going to expect the body hearing the case to address official capacity in future by making reference to the conduct of the member that amounts to acting, etc, as a representative of the authority.

This could have significant ramifications for member's activity on blogs, twitter and other internet sites as well as in election or other political material. It is unlikely that most blog, etc postings will contain content that holds the member out to be acting as a representative of the authority rather than simply a member unless that content in some way gives the impression that the member is speaking for the council. However, depending on the circumstances such communications might be regarded as conducting the business of the office of member. This is because it is reasonable to regard communicating with constituents at large about issues of local political interest as being part of the business of the office of a councillor.