



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

**CASE NO:** LGS/2011/0574

**ON APPEAL FROM:**

Standards Committee of: London Borough of Tower Hamlets  
Decision Notice No: ASC 01/2011  
Dated: 6 December 2011

**APPELLANT:** Councillor Helal Abbas of London  
Borough of Tower Hamlets

**RESPONDENT:** London Borough of Tower Hamlets  
Standards Committee

**DATE OF HEARING:** 27 March 2012

(Determined on the papers)

**DATE OF DECISION:** 4 April 2012

**BEFORE**

**Judge: Sally Lister  
Member: Richard Boyd OBE DL  
Member: Trevor Jex**

**Subject matter:** Appeal by a member of a local authority  
against a Standards Committee decision

**Cases cited:**

Livingston v Steven Kingston [2005] EWHC 1145 (Admin)  
Mullaney v Adjudication Panel for England [2009] EWHC 72 (Admin)  
MC v Standards Committee of the London Borough of Richmond [2011]  
UKHT 232 (ACC)

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

The appeal has been refused and the decision of the Standards Committee has been upheld

### **REASONS FOR DECISION**

1. The Tribunal has considered an appeal by the Appellant.
2. The Appellant had appealed against the Standards Committee's finding that he failed to follow paragraphs 3.3(b) and 3.4(b) of the London Borough of Tower Hamlets' Code of Conduct by disclosing confidential information to a third party regarding a council officer in September 2010 and against its determination to suspend him for one week, that he be censured and that he make a written apology.
3. The Tribunal considered written evidence and submissions on behalf of the Standards Committee and the Appellant. It was satisfied that the appeal may appropriately be determined by way of written representations.

### **Findings of Fact**

4. The burden of proof in respect of disputed facts rests on the Standards Committee of the London Borough of Tower Hamlets and the standard of proof is on a balance of probabilities.
5. In this appeal there is little material factual dispute. The principal area of dispute was whether the Appellant was acting in his official capacity when he wrote to the General Secretary of the Labour Party about the selection process of the elected Mayoral candidates of the London Borough of Tower Hamlets. The correspondence contained a statement which disclosed confidential information regarding disciplinary proceedings involving a council officer.
6. The Appellant was the councillor for the ward of Spitalfields and Banglatown in the London Borough of Tower Hamlets ("the Council") and had been a councillor on and off for of 14 years.
7. The Appellant was the Labour Party candidate for Mayor of the Council in October 2010.
8. The selection of the Labour Party candidate for Mayor of the Council had been contentious. On 4 September 2010 the Labour Party selected Lutfur Rahman, another councillor as the chosen Labour Party candidate for Mayor. It was the Appellant's view that the selection should be set aside and he instructed solicitors, Messrs Hickman & Rose to assist him with this.
9. A letter was written headed "Urgent – Letter Before Claim" which was said to comply with the Practice Direction on Pre-action conduct and a statement, signed by the

Appellant on 17 September 2010, were sent to the General Secretary of the Labour Party in support of the Appellant's submission that the Labour Party should set aside the result of the election to select Mr Rahman as the Labour Party candidate for Mayor.

10. Following receipt of the letter and the Appellant's statement, Mr Rahman's selection was set aside and the Appellant was then selected as the Labour Party's candidate.
11. In the Appellant's statement to the Labour Party, he stated at paragraph 1, "***I am leader of Tower Hamlets Council***". In paragraphs 12 the Appellant stated that a Mr Hira Islam, an officer of the Council, "***...should not be interfering with the political process***" and at paragraph 24 he stated, "***Hira Islam, whom I have mentioned before, is a prominent member [of the IFE] and it was he who was driving Luthfur Rahman around to visit other councillors to make offers of political position. Hira Islam is currently undergoing disciplinary proceedings for bringing his office into disrepute***".
12. The Appellant had made a complaint to the Council's Chief Executive in May 2010 about Mr Islam's presence at a polling station and his involvement in the local and general election. That matter had been the subject of disciplinary proceedings but which had been concluded in July 2010, in accordance with the Council's disciplinary processes.
13. At the time the Appellant signed his statement Mr Islam was not subject to any disciplinary proceedings regarding his conduct.
14. The Code of Conduct and the Member/Officer Protocol of the Council, which forms part of the Council's constitution, requires Members to keep employee matters confidential and therefore disciplinary proceeding against employees of the Council are treated as confidential. The Council's constitution states:

*"...Confidential or exempt information provided to Members may be discussed in Part II Committee meetings or in private meetings of appropriate Members and Officers. However, it should not be discussed with, or released to any other persons."*

### **Relevant Provisions of the Code of Conduct**

15. Paragraph 2 of the Code of Conduct provides :

*(1) Subject to sub-paragraphs (2) to (5), 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.*

*(2) Subject to sub-paragraph (3) and (4) this Code does not have effect in relation to your conduct other than where it is in your official capacity.*

16. Paragraph 3.3(b) of the Council's Code provides:

*"Not to disclose information given in confidence by anyone or information acquired which he or she believes or ought reasonably to be aware, is of a confidential nature"*

17. Paragraph 3.4 of the Council's Code provides:

*“Not to conduct him or herself in a manner which could reasonably be regarded as bringing his or her office into disrepute.”*

### **Findings as to whether the Appellant failed to follow the Code of Conduct**

18. Three matters fall for determination on the basis of the facts as found:
  - 18.1. whether in writing to the General Secretary of the Labour Party about the selection process of the Labour Mayoral candidate for the Council, the Appellant was acting in an official capacity; and if so.
  - 18.2. Whether the Appellant disclosed information given in confidence or information acquired which he believed or ought reasonably to be aware is of a confidential nature and/or.
  - 18.3. Whether the Appellant had conducted himself in a manner which could reasonably be regarded as bringing his office into disrepute.

### **Official Capacity**

#### Appellant's submissions

19. The Appellant appealed on the ground that he was not acting in his official capacity when he wrote to the General Secretary of the Labour Party. The statement complained of was part of a complaint to the Executive of the Labour Party about the party's own internal election process for candidates. Therefore it cannot be said that he was performing any of the functions of a councillor and was not claiming to act as a representative of the authority and so the Council's Code of Conduct was not engaged.
20. In summary, the Appellant asserted that it was clear from the Letter before Claim and the statement that neither document was intended for disclosure to anyone apart from the recipient and the NEC of the Labour Party. The statement complained of was part of a complaint to the Labour Party NEC about the party's own internal election process for candidate. The letter and statement was not concerned with the actual election of the Mayor but the selection by the Party for their official candidate. The letter clearly indicates that the Appellant was deeply concerned about the damage that, what he perceived as the 'serious manipulation of the electoral processes' would cause both to the reputation of the Party and the integrity of the electoral process in Tower Hamlets. It is a letter wholly concerned with both local and national Labour Party matters. By referring to himself in his statement as "the leader of Tower Hamlets", he was merely making a statement of the function he carried out in his working life. The Appellant in making his disclosure to the General Secretary was acting not as a councillor but as a political individual.

#### Respondent's submissions

21. In summary the Respondent did not think that this was a matter of internal Labour Party politics. The Appellant was the leader of the Council at the time and was responsible for a number of executive matters. His position as Leader of the Council was set out in the statement. The statement contained information about a council employee which had been acquired as a result of his position as a councillor and Leader of the Council and not as a result of non-council action. The statement contained detailed information about the officer's employment relationship with the Council. The Appellant would have been aware of this information in the course of his involvement as a councillor and had raised the complaint against the officer in that capacity. The statement and issues before the General Secretary concerned jockeying for position in the Council as elected Mayor.

## Tribunal's findings – Official Capacity

22. Part III of the Local Government Act 2000 sets out the legislative framework which governs the conduct of local authority councillors in England. From the terms of the 2000 Act and its legislative history it is well understood that the purpose of the legislation is to promote and uphold proper standards of conduct in public life. Section 52 of the 2000 Act requires a member or co-opted member of a relevant authority (of which the London Borough of Tower Hamlets is one) to give a written undertaking that in performing his functions he will observe the authority's Code of Conduct. The key question therefore before the Tribunal was whether the Appellant's action, in choosing to disclose information that had been obtained in confidence as a councillor was action taken in the furtherance of his office as a councillor and therefore whether his actions fell within the scope of the Code of Conduct.

23. Paragraph 2 of the Code of Conduct provides :

*(1) Subject to sub-paragraphs (2) to (5), 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.*

*(2) Subject to sub-paragraph (3) and (4) this Code does not have effect in relation to your conduct other than where it is in your official capacity.*

24. In the case of *Livingston v Adjudication Panel for England [2006] EWHC 2533*, Mr Justice Collins considered the scope of the 2001 model Code of Conduct, which has since been replaced by the 2007 model Code. Some paragraphs of the 2001 model Code applied when a councillor was acting in their official capacity or "in any other circumstance" and therefore consideration was given to what conduct fell within the scope of the Code of Conduct. Mr Justice Collins stated at paragraphs 27 to 29:

*"Conduct which is regarded as improper and meriting some possible sanction will often be constituted by misuse of a councillor's position. He may be purporting to perform his functions if, for example, he seeks to obtain an advantage by misusing his position as a councillor. Such misuse may not amount to corruption; it may nonetheless be seen not only to be improper but to reflect badly on the office itself. If the words "in performing his functions" are applied literally, it may be said that such misuse, and other misconduct which is closely linked to his position as such may not be covered.*

*It follows that conduct which is outside his official capacity can be covered by the words in s.52 and so can properly be within the Code of Conduct. Accordingly, I do not think that the words "or any other circumstance" can mean that the Model code is to that extent ultra vires. That phrase must receive a narrow construction so that any other circumstance will not extend to conduct beyond that which is properly to be regarded as falling within the phrase "in performing his functions." Thus where a member is not acting in his official capacity (an official capacity will include anything done in dealing with staff, when representing the council, in dealing with constituents' problems and so on), he will still be covered by the Code if he misuses his position as a member. That link with his membership of the authority in question is in my view needed. This approach is very similar to that adopted in Scotland and in my judgment accords with the purpose of the Act and the limitations that are appropriate. It is*

*important to bear in mind that the electorate will exercise its judgment in considering whether what might be regarded as reprehensible conduct in a member's private life should bring his membership to an end in due course. Equally, it is important that the flamboyant, the eccentric, the positively committed – one who is labelled in the somewhat old fashioned terminology, a character – should not be subjected to a Code of Conduct which covers his behaviour when not performing his functions as a member of a relevant authority.*

*It seems to me that unlawful conduct is not necessarily covered. Thus a councillor who shoplifts or is guilty of drunken driving will not if my construction be followed be caught by the Code if the offending had nothing to do with his position as a councillor. Section 80 of the Local Government Act 1972 provides for disqualification for election to a local authority of those who have within 5 years before the date of election been convicted of any offence which has resulted in a sentence of 3 months imprisonment (whether or not suspended) or more. Parliament could for example have provided that conviction of any offence carrying imprisonment whatever the sentence should lead to consideration of some punitive action by the Standards Board. It seems to me that if it is thought appropriate to subject a member of a local authority to a code which extends to conduct in his private life, Parliament should spell out what is to be covered."*

25. In *MC v Standards Committee of LB Richmond* [2011] UKUT 232 (AAC) the Upper Tribunal considered an appeal against the refusal of permission to appeal from a Standards Committee. The principal issue was whether the Principal Judge had erred in his approach to the issue of official capacity under the 2007 Code by applying the dicta of Collins J in *Livingstone* too rigidly and as binding on him. The Upper Tribunal held that the dicta in paragraph 28 of that judgement were not binding authority for the proposition that "official capacity" will include anything done in dealing with staff, when representing the council or in dealing with constituents' problems and so on, because that is not the issue Collins J had to decide. In deciding whether the Principal Judge's error was material, the Upper Tribunal held at paragraphs 35 and 36:

*"The Model Code now in use was issued after, and so with knowledge of, the judgment in Livingstone. It should be taken to have drawn the line which it now does advisedly, having regard to that decision, under the principle in *Barras v Aberdeen Sea Trawling and Fishing Co Ltd* [1933] AC 402 at 411. Under *Livingstone* matters which were not within official capacity, but which involved the misuse of a member's position, were within "any other circumstance". A materially identical formulation as to "official capacity" in the 2007 Code carries with it the same limitation....*

*The test under para 2(1)(a) is accordingly whether .....the Appellant was, as a matter of ordinary English, (actually) conducting the business of his authority, including the business of the office of councillor to which he had been elected? This requires a fact-sensitive approach: see *Mullaney*. If it was said to be part of the business of the authority to make or receive complaints in relation to what officers were doing in their private capacity (in one case prior to taking up a post with the council), I am unable to discern compelling evidence for such a view. However, what about the business of his office as councillor? Merely because the appellant was asserting he would use routes open to members but not to others does not of itself provide an answer to this question: the same might well be*

*true of those whose conduct would, on the Livingstone test, only have fallen within "any other circumstance" under the 2001 Code...*

*That para 2(1)(a) of the 2007 Code should be interpreted in this way is in my view further confirmed by the introduction of para 2(1)(b), which, in its reference to "act, claim to act or give the impression you are acting" does not have a direct equivalent in the 2001 Code. It is only through the introduction of para 2(1)(b) that Ms Dehon's submission that the 2007 Code broadened out the scope of "official capacity" is correct. The concepts behind, and scope of, para 2(1)(a) remained unaltered for the reasons given at para 35 above.*

*Ms Dehon sought to rely on a "reasonable observer" test. This is derived, I believe, from the First-tier Tribunal's decision in Sharratt...but is in my view not a correct reading of that decision. In any event, whether a person is or is not within para 2(1)(a) of the Code is a matter for objective determination. Questions of appearance are relevant, if at all, under para 2(1)(b).*

- 36. Accordingly, was the appellant acting, claiming to act or giving the impression that he was acting as a representative of his authority so as to fall within para 2(1)(b)? As a preliminary, I accept that while para 2(5) refers to acting "as a representative" on other authorities or bodies, it is not to be understood as exhaustive of the circumstances in which a person may be found to be acting, but merely states what is to happen when one is acting as a representative in those particular circumstances. When one is acting (etc) "as a representative" of an authority is therefore 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 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.*
- 37. Ms Dehon submits that a member of a local authority will be seen as equivalent to the authority. There is a range of legal structures within local government. There is also a wide variety of political contexts. An individual member may have a powerful place within the executive or may be a member of a relatively powerless minority party. Suffice it to say that Ms Dehon's submission, as a general proposition, is too widely stated.*
- 38. Ms Dehon submits that the view which I am taking on this point would weaken the provisions regarding claiming to act or giving the impression of acting. That may be so in the sense that it is conceptually possible for there to be persons who claim to act as a member but not as a representative but that is where those who made and endorsed the coming into force of the 2007 Code by way of SI 2007/1159 intended the line should be drawn. The Code was the subject of widespread consultation required by section 49 of the 2000 Act (and see also the history of the proposed removal of the words "any other circumstance" in Livingstone, para 22".*

26. In the case of *Mullaney v Adjudication Panel for England [2010] LGR 354* Mr Justice Charles stated that the correct approach to the determination of official capacity was as follows:

*“The most relevant part of the definition here is “conducts the business of the office to which s/he has been elected or appointed”. These are ordinary descriptive English words. Their application is inevitably fact sensitive and so whether or not a person is so acting inevitably calls for informed judgment by reference to the facts of a given case. This also means that there is the potential for two decision makers, both taking the correct approach, to reach different decisions. In the context of judicial review this brings into play, or reinforces the points that if the statutory decision makers have taken the correct approach in law their experience and knowledge as the persons chosen to be the decision makers is relevant to the irrationality argument (and indeed to arguments that they are wrong).*

*To my mind it cannot be said that the Appeals Tribunal (or the Standards Committee) erred in law in the approach taken to the construction and application of the test. They both applied the relevant language of the Code in its context.*

*Turning to arguments advanced:*

*i) I do not agree that para 2 of the Code only covers actions that a Councillor could not do if he was not a Councillor as was submitted, or to turn that from the negative that para 2 only covers actions that can be performed by a Councillor because he is a Councillor.*

*ii) To my mind that is too restrictive both as a matter of language, and having regard to the purpose of the Code to promote and uphold proper standards in public life.*

*iii) It was asserted that in respect of a letter signed by a Councillor, in which he referred to himself as a Councillor, it would be significant, if not determinative, whether the letter was written on Council notepaper or, in the same terms, on other paper, because only a Councillor could properly use the Council's notepaper. In my judgment albeit that such a distinction can be made, and the point that a letter was written on Council notepaper would provide support for the view that it was written in conducting the business of the office to which the Councillor was elected, it should not be determinative. The same can be said of the use of a personal email address or the funding of a particular activity.*

*iv) Rather in my view more important factors are the reasons why, the circumstances in which and the reasons for which the communication was made, or the action was taken. This is the approach taken by both the Standards Committee and the Appeals Tribunal. To my mind that is clearly correct and it is also supported by dicta in the Livingstone case at para 29 where Collins J says “– official capacity will include anything done in dealing with staff, when representing the Council, in dealing with constituents' problems and so on –”.*

27. The Tribunal also took into account the Guidance produced by Standards for England:

*"Q11 Do private discussions about authority business come under "official capacity"?"*

*Standards for England is likely to view any private discussion of authority business, either with members or with the authority's officers, as carrying out the business of the member's office"*

28. It is within this context that the Tribunal addressed the issue of whether the Appellant's actions, in disclosing confidential information which he obtained as a councillor was action taken in the furtherance of his office and therefore in his official capacity.

29. It is accepted that the majority of the letter and the Appellant's signed statement appeared to be about internal Labour Party processes, but it did concern and relate to the issue of the election of the Mayor. The background to this issue and the action that resulted was about a matter unique to the Council, the election of their Mayor, an official role within the Council not just a political group, which carried with it considerable power and influence. This was not only an issue about general Labour Party processes but also an issue about the electoral process within Tower Hamlets generally. The Tribunal did not accept, therefore that it was a letter or statement about local or national Labour Party matters.

30. The issue which prompted the Appellant's action was one which would affect the London Borough of Tower Hamlets as a whole and, as the letter stated, was of great importance to the Borough. By clearly asserting, both in his statement and in the letter written on his behalf and with his authority, that the particular function he carried out for the Council was "the Leader of Tower Hamlets Council", not just a member of the Labour Party or a councillor, and that "His intervention is not made for any personal advantage since the outcome of the process he invites you to take does not prima facie lead to his appointment as the party's candidate", gave the impression, in the Tribunal's view that the Appellant was acting as a representative of the authority who was conducting the business of the authority, not that he was acting in a private or purely political capacity.

31. This impression is supported by the fact that the confidential information the Appellant disclosed related to a council employee and could only have been acquired in the course of the Appellant's official duties and whilst conducting official business.

32. The Tribunal therefore concluded that the Appellant was acting in his official capacity when he disclosed information that he obtained in confidence as a councillor.

#### Failure to follow the Code of Conduct

33. The Tribunal carefully considered all the information before it and noted that the Appellant did not deny that he disclosed confidential information relating to a council officer in September 2010 and had acknowledged in his statement to the Investigating Officer:

*"With the benefit of hindsight, I think perhaps I should not have made reference to the disciplinary proceedings, as this was an employment matter that would better have been left private and confidential "*

34. The Tribunal was therefore of the view that the Appellant had failed to follow paragraph 3.3 of the Council's Code of Conduct.

35. With regard to whether the Appellant had brought his office or authority into disrepute, the Tribunal considered that a member would fail to comply with the Code of Conduct where his conduct could reasonably be regarded by an objective observer as diminishing the member's office or harm the reputation of the authority. In the Tribunal's view as this breach involved the disclosure of confidential and personal information about the conduct of an employee who was not asked nor was told that the information was to be disclosed and which, in part resulted in the initial election of the Labour Party Mayoral candidate for the Council being set aside and the Appellant being elected in his place, would be regarded objectively as likely to harm the reputation of the office of councillor and the authority as a whole and therefore likely to bring the office and authority into disrepute in breach of paragraph 3.4 of the Council's Code of Conduct .

### Sanction

36. The Tribunal had regard to the nature of the breaches, the guidance issued by Standards for England on sanction and the mitigating factors on behalf of the Appellant , which were:
- previous good record of service over 14 years as a councillor,
  - lack of intention on the appellant's behalf for the information to be disclosed more widely than the addressee and those to whom the letter and statement were copied,
  - recognition by the Appellant's that he should not have mentioned or named the officer of the authority to an external body.
37. The Tribunal decided that the decision of the Standards Committee, with their knowledge and expertise of the local context was fair and proportionate in all the circumstances.
38. The Tribunal has upheld the finding of the Standards Committee.
39. The Tribunal directs that the outstanding sanction originally imposed, and not yet spent, by the Standards Committee will take effect as of 27 March 2012.
40. The written reasons for the Tribunal's decision will be published on the Tribunals website at [www.adjudicationpanel.tribunals.gov.uk](http://www.adjudicationpanel.tribunals.gov.uk).
41. Any request 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.

Sally Lister  
**Judge**

Date: 5 April 2012