

FULL DECISION

CASE REF: APE 0406

HEARING DATE: 14 November 2008

RE: Reference in relation to a possible failure to follow the Code of Conduct

RESPONDENT: Former Councillor Robert Dockerill

RELEVANT AUTHORITY CONCERNED: Erewash Borough Council

ESO: (*Ethical Standards Officer*) Ms Jennifer Rogers

ESO REPRESENTATIVE: Mr Matthew Copeland

Case Tribunal Members:

Chairwoman: Mrs Beverley Primhak
Member: Mr Peter Norris
Member: Mr Richard Boyd

1 Preliminary

- 1.1 In a letter dated 30 July 2008 the Adjudication Panel for England received a reference from an Ethical Standards Officer ('ESO') in relation to allegations that the Respondent had failed to comply with Erewash Borough Council's Code of Conduct by being convicted on three counts of making indecent images of a child and four of possessing indecent images of a child. One of these counts referred to thirteen images found on a computer that had been provided to Mr Dockerill by the council in his capacity as a councillor. In so doing, the Respondent was alleged to have brought his office or authority into disrepute contrary to paragraph 4 of the Code of Conduct.
- 1.2 Former Councillor Dockerill ("Mr Dockerill") appeared and represented himself at the hearing.

2 Procedural Matters

- 2.1 The Respondent made an application that the case be heard in private. The Tribunal decided to hear the parties' submissions in relation to the application in closed session.
- 2.2 The ESO's representative had two days prior to the hearing circulated an extract from a legal textbook and case law to support his contention that the hearing should be held in public. However Mr Dockerill stated that he had only received the papers just before the

hearing started and needed a long adjournment to have the opportunity to consider them fully. Having considered the matter the Tribunal felt that it was in a position to decide the issue without reference to the ESO's documents.

2.3 Respondent's Submissions

2.3.1 The Respondent accepted that generally cases should be held in public. However this was a case where the interests of justice would be prejudiced unless the matter was heard in private.

2.3.2 He said that all legal matters had not been concluded. Although his original appeal had been turned down, a number of legal avenues were being addressed. He intended to submit appeal papers on new evidence, although it was likely to be eighteen months before his appeal could go forward. There were ongoing investigations and proceedings about other councillors, and releasing information about these could prejudice his appeal. Also, he could not mention other parties in public because of issues of defamation. If the matter was heard in public he could not put forward the defence he wished to give as it would make the guilty parties aware of what was taking place.

2.3.3 He disagreed with the ESO's view as to what paperwork from the Crown Court trial was in the public domain as, although the judge's summing-up had been given in open court, the contents were never publicised. He indicated that it would be a very serious matter if information included in the summing-up was publicised.

2.3.4 The Respondent said that he had suffered reputational damage and had been subject to vigilante attacks. His mental strength was also a concern. These were all reasons why the hearing should be held in private.

2.4 The ESO's Submissions

2.4.1 The ESO's representative stated that the general rule was that hearings should be held in public unless there were exceptional circumstances.

2.4.2 The Respondent had provided scant details as to how the interests of justice would be prejudiced by hearing the case in public; it was not sufficient just to say so. The Respondent had been found guilty following lengthy Crown Court proceedings and there were no live appeal proceedings at present. If the Respondent wanted to make allegations against a third party, that person was entitled to know of them. The interests of justice were not served by allegations against third parties who did not know about them. It was just further smoke and mirrors to delay the process.

2.4.3 Article 6 of the European Convention on Human Rights indicates that the presumption is that the hearing should be held in public. This case involves a public authority and the

public interest which makes it even more important that the matter is held in public.

2.5 Case Tribunal decision

- 2.5.1 Having taken into account the submissions the Case Tribunal decided to hear the matter in public.
- 2.5.2 Article 6 of the European Convention on Human Rights states that *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."*
- 2.5.3 It was a very clear principle that proceedings in tribunals should be heard in public. The right of the public and press to attend and report hearings was a key element in ensuring that the public had confidence in the administration of justice. Cases relating to breaches of the Members' Code of Conduct involved a significant element of public interest. Thus the Tribunal would require convincing evidence that there was substantial harm to either the individuals involved in the hearing or to the public interest generally before holding a hearing in private.
- 2.5.4 The Tribunal felt it was material that its decision would be a matter of public record. It did not consider that an appeal, if eventually lodged, would be prejudiced by what was said in these proceedings or that it was at all likely that proceedings against other parties would be prejudiced by these proceedings. The Tribunal's proceedings were subject to qualified privilege and therefore the Respondent's concerns about being subject to proceedings for defamation carried little weight. A letter had been received from Her Majesty's Courts Service stating that the judge's summing-up in the Crown Court was in the public domain, and the Tribunal therefore did not accept the Respondent's contention that the contents of the summing-up ought to be considered in private. Although the Tribunal appreciated the difficult personal circumstances experienced by the Respondent, it did not consider that having a public hearing would affect the situation, given that the decision would have to be in the public domain.
- 2.5.5 Taking everything into account the Tribunal was not persuaded that there were exceptional circumstances in this case to warrant the hearing being held in private. However the Tribunal decided that the Adjudication Panel for England should not disclose the Respondent's home address.

3 Findings

The Case Tribunal has found the following facts, which were accepted by the Respondent.

Relevant Legislation

3.1 At the time of the conduct for which Mr Dockerill was convicted the council had adopted a Code of Conduct in which the following paragraphs were included:

3.1.1 Paragraph 1 of the Code of Conduct which states:

"1) A member must observe the authority's code of conduct whenever he:

(a) conducts the business of the authority;

(b) conducts the business of the office to which he has been elected or appointed; or

(c) acts as a representative of the authority, and references to a member's official capacity shall be construed accordingly.

2) An authority's code of conduct shall not, apart from paragraphs 4 and 5(a) below, have effect in relation to the activities of a member undertaken other than in an official capacity."

3.1.2 Paragraph 4 of the Code of Conduct which states:

"A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute."

Background

3.2 Mr Dockerill was first elected to the council on 1 May 2003 and served continuously until 3 May 2007.

3.3 During his term of office Mr Dockerill served on the following committees:

- 2003-04 the policy, development and review scrutiny panel and the licensing and public protection committee,
- 2004-05 the external affairs scrutiny committee,
- 2005-06 the external affairs scrutiny committee (Mr Dockerill resigned a chair of this committee upon reporting himself to the Standards Board for England) and the constitutional review group, and
- 2006-07 the external affairs scrutiny committee.

- 3.4 The council adopted the Model Code of Conduct in 2002. Although the council have now destroyed Mr Dockerill's written undertaking to observe the Code of Conduct they have confirmed that he did sign such an undertaking. They have also confirmed that Code of Conduct training was offered to all council members and all took part.

Allegations of a breach of the Code of Conduct

- 3.5 Mr Dockerill was convicted on 5 April 2007 in Birmingham Crown Court on three counts of making indecent images of a child and four of possessing indecent images of a child. One of these counts referred to thirteen images found on a computer that had been provided to Mr Dockerill by the council in his capacity as a councillor.
- 3.6 Mr Dockerill was sentenced on 4 May 2007 to a three-year community rehabilitation order, concurrent on each of the seven counts, and a five-year sexual offences prevention order. Mr Dockerill was placed on the sex offenders' register for a period of seven years and ordered to pay £10,000 costs.
- 3.7 Mr Dockerill possessed the indecent images of children over a period when he also served as a member of Erewash Borough Council. He had been provided with a computer by the council because he was a councillor. Indecent images of a child were found on this computer.
- 3.8 Mr Dockerill submitted an application for leave to appeal against the conviction to the Court of Appeal. A single judge refused Mr Dockerill's application on 29 August 2007. As Mr Dockerill did not renew his application to the court within four weeks of the decision being made his appeal as submitted lapsed and was considered closed.

4 Whether the material facts disclose a failure to comply with the Code of Conduct

4.1 The Respondent's Submissions

- 4.1.1 It should be noted that at the time of the Respondent deciding not to stand again he had not been found guilty.
- 4.1.2 As the hearing was to be in public the Respondent felt that he could not make his comments in such a way that they would not prejudice the known current legal investigations and separate envisaged legal proceedings. He had been reluctantly advised therefore to take no further active part in these proceedings. As a result that no defence could be entered, he had no option but to concur with the ESO's assertion that there was a breach of the Code of Conduct.
- 4.1.3 He considered, however, that there would only have been a breach of the Code of Conduct in the circumstances of this case if there had been a computer policy in place which he had breached.

4.2 The ESO's Submissions

- 4.2.1 Paragraph 4 of the Council's Code of Conduct provides that a member must not in his official capacity, or any other

circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

- 4.2.2 It was accepted that Mr Dockerill was not acting in his official capacity when committing the offences for which he was convicted. However one of the convictions did relate to his using a computer provided to him by the council to access indecent images of children. This conduct occurred after Mr Dockerill had given a written undertaking to abide by the Code of Conduct and while he was still a member of the council. The issue was whether this could be regarded as “any other circumstance”. The ESO’s representative referred to the *Livingstone* case where Mr Justice Collins considered that there had to be a link to the council for there to be a breach of paragraph 4 of the Code. The ESO considered that there was such a link in this case, namely that the images were stored on a computer which was council-owned and was only given to the Respondent because of his position as a councillor to assist him in performing his duties.
- 4.2.3 The ESO also drew the Case Tribunal’s attention to the decision of the Adjudication Panel for England in *Leadbeater* (APE 0389) where in similar circumstances a Case Tribunal had found there to be a breach of the Code of Conduct.
- 4.2.4 The ESO considered that, whether or not the council had a computer policy, it was commonsense that a council computer should not be used for the possession of child pornography and that such behaviour would bring disrepute.
- 4.2.5 In considering whether the conduct in question might be said to bring disrepute upon the man himself rather than the office of councillor or the authority the ESO focused on the seriousness of the offence and the fact that it was in part committed using a council-owned computer that had been paid for by public funds. It was the ESO’s view that a member of the public with knowledge of the relevant facts would inevitably consider that by his conduct Mr Dockerill had brought both the council and his office as councillor into disrepute.
- 4.2.6 Accordingly the ESO considered that Mr Dockerill failed to comply with paragraph 4 of the Code of Conduct.

4.3 Case Tribunal decision

- 4.3.1 Although the Respondent was convicted at Birmingham Crown Court on several counts, in coming to its decision as to whether there had been a breach of the Code of Conduct, and as to what penalty to impose, the Case Tribunal only took into account the behaviour relating to the computer owned by the council – Count 8 of the court proceedings.
- 4.3.2 The first question was whether the Respondent’s actions could potentially be a breach of paragraph 4 of the Code of Conduct. The Case Tribunal considered that he was not acting in his

official capacity. It therefore had to consider whether his conduct came within the phrase "any other circumstance".

- 4.3.3 In the case of *Ken Livingstone v. The Adjudication Panel for England* Mr Justice Collins considered the scope of paragraph 4 of the Code of Conduct and the phrase "*or any other circumstance*". It was held that the phrase must be read in conjunction with section 52 of the Local Government Act 2000 which requires a member to provide a written undertaking that in "*performing his functions*" he will observe the authority's Code of Conduct. Mr Justice Collins held in relation to the phrase "*or any other circumstance*":

"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 (and 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".

- 4.3.4 Mr Justice Collins further stated:

"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 is followed be caught by the code if the offending had nothing to do with his position as a councillor."

- 4.4 The Tribunal considered that the link required by the judge existed because the images the Respondent was found guilty of possessing were found on a council computer which had been given to him to assist him in carrying out his duties as a councillor. Therefore the breach was within the scope of Paragraph 4 of the Code of Conduct.
- 4.5 The next question was whether such behaviour brought disrepute on the office of councillor or the council. The Case Tribunal considered that for a councillor to be involved in such a matter inevitably leads to a lowering of repute in the eyes of the public. It considered that the electorate would therefore reasonably consider that both the councillor and council were brought into disrepute. Thus the Tribunal found that there had been a breach of paragraph 4 of the Code of Conduct.
- 4.6 The Tribunal did not accept the Respondent's submission that there could be no breach of the Code because the council did not have an IT policy in place at the time. It accepted the ESO's submission that it was common sense that to use a council computer for such behaviour was unacceptable.

5 Submissions as to the action to be taken

- 5.1 The ESO's Submissions

- 5.1.1 The ESO considered that a lengthy disqualification was appropriate. The ESO's representative referred to the *Leadbeater* case (APE 389) where a 5 year disqualification was imposed, and suggested that that would also be appropriate in this instance.
- 5.1.2 The ESO took into account the seriousness with which these offences are viewed by the public, and the impact that such criminal conduct is bound to have had on public confidence in an elected member. The ESO has also borne in mind the fact that Mr Dockerill continues to deny any wrongdoing in these matters and noted that Mr Dockerill is not prevented from seeking election as a councillor in the future.
- 5.1.3 The ESO considers it relevant that Judge Gregory in the Crown Court indicated that this type of offence would pass the custody threshold. The ESO considered it a matter of the utmost seriousness.
- 5.1.4 The ESO's representative said that, although he had a duty to mention mitigating factors, he had struggled to find any. He said that the only matters of mitigation were that the Respondent had himself made the complaint to the Standards Board for England and that he had resigned from office prior to the verdict.
- 5.2 The Respondent's Submissions
- 5.2.1 The Respondent told the Tribunal that, as no defence could be entered, he accepted the inevitable decision. Given that the Crown Court imposed a Community Rehabilitation Order for 36 months and given that he is not seeking re-election, disqualification for 3 to 5 years was appropriate.
- 5.3 **Case Tribunal decision**
- 5.3.1 The Case Tribunal took account of the guidance issued by the President of the Adjudication Panel for England.
- 5.3.2 The Tribunal took the view that as a councillor the Respondent was expected to lead by example. Elected members were expected to behave in a proper manner and maintain public confidence. Possession of indecent images of children, leading to a criminal conviction, seriously undermined confidence in local councils and councillors. It indicated that he was not fit to hold office as a councillor.
- 5.3.3 It was also a serious matter that the breach of the Code of Conduct had related to the misuse of council property.
- 5.3.4 The Case Tribunal further considered that this was a case where Paragraph 11 of the President's guidance was relevant. This stated that the action taken by the Case Tribunal should be designed both to discourage or prevent a Respondent from any future non-compliance but also to discourage similar action by others.

- 5.3.5 For these reasons the Tribunal took the view that the breach of the Code merited a significant period of disqualification.
- 5.3.6 In considering what penalty to impose the Tribunal also considered the mitigating factors put forward by the ESO's representative. However, it was not felt that these were sufficiently significant to affect the penalty.
- 5.3.7 The Case Tribunal decided to disqualify Mr Dockerill from being or becoming a member of the relevant authority or any other relevant authority within the meaning of the Local Government Act 2000 for five years.
- 5.3.8 The decision of the Case Tribunal was unanimous.
- 5.3.9 The Respondent has a right to appeal to the High Court against the above decision. Whilst parties should take their own legal advice about how to appeal the Adjudication Panel's understanding is that a notice of appeal to the High Court should be lodged with the Administrative Division and made within 28 days of the decision, in accordance with Civil Procedure Rules, Part 52.

B H Primhak
Chairwoman of the Case Tribunal

21 November 2008