

Decision

Case Ref:	APE 0334
Date of Appeals Tribunal:	2 February 2006
Local Authority:	Tamworth Borough Council
Date of Standards Committee Decision:	7 October 2005
Name of Member concerned: <i>(The Appellant)</i>	Councillor Brindley
Ethical Standards Officer (ESO):	Mr Nick Marcar
Independent local Investigator:	Ms Marilyn McCarron
Monitoring Officer:	Mr Phillip Lloyd-Williams

Appeals Tribunal Members

Chairman:	Mr Nicholas Holden
Member:	Mr Richard Tyndall
Member:	Mr Ian Prosser

1. The Appellant appealed against the Tamworth Borough Council's Standards Committee's finding that he had breached paragraph 2(b) of the Tamworth Borough Council's Code of Conduct by virtue of the words he used during a conversation with, or within the hearing of, Councillor Mrs Mary Oates on 5 July 2005. The Standards Committee found that the Appellant "had offended the provisions of the Code with the words he used and the likelihood of the manner they were communicated would have caused upset and disrespect to Councillor Mrs Mary Oates. Significantly Councillor Brindley was aware that Councillor Mrs Mary Oates had been seriously ill and such words would have upset her and thus demonstrated a lack of respect."
2. The Appeals Tribunal considered written and oral submissions from the Appellant and heard evidence from the Appellant, Councillor Seekings, Councillor Faulkner, Councillor C Cook and Mr P Lloyd-Williams (Monitoring Officer Tamworth Borough Council and legal advisor to the Standards Committee). The Appellant was represented by his friend Mr Holland.
3. Paragraph 2(b) of the Tamworth Borough Council's Code of Conduct provides:

"A member must treat others with respect"
4. The report of the Standards Committee summarised the allegation as "Councillor Brindley allegedly started to get abusive and threatened to "make her suffer", "give her a hard time", and that he would "make her ill".
5. The Standards Committee's finding in respect of the words "make her ill" were:
 - 5.1. "That something was said at the Scrutiny Committee on 5 July 2005 between Councillor Brindley and Councillor Mrs Mary Oates"

- 5.2. "That the precise words of what was said were not clear i.e. it was uncertain whether or not it was "I'll, we, he" was the prefix to any statement."
- 5.3. "It was uncertain whether or not the words "make her ill" had been said by Councillor Brindley."
6. In the Tribunal's view the Standards Committee's finding in respect of the "make her ill" allegation did not resolve the dispute as to what was said by the Appellant, but was a decision not to make a finding. It followed that the Standards Committee could not have taken into account the "make her ill" allegation as it had not made a finding that the words had been said by the Appellant. Mr Lloyd-Williams confirmed that he had drafted the note of the Standards Committee's decision and confirmed that the Tribunal's interpretation of the Standards Committee's finding was, in his view, correct.
7. The Appellant stated on oath to the Tribunal that he had said the words "He'll make you ill" to Councillor Mrs Oates about the conduct of her husband Councillor Michael Oates.
8. The summaries of interviews referred to in this decision were produced by Ms Marilyn McCarron, the independent local investigator, and signed as accurate and fair by the people interviewed.
9. The Tribunal took into account the summaries of the following interviews:
 - 9.1. an interview with Councillor Michael Oates about the content of an email he sent to the Appellant on 5 July about the incident. In essence Councillor Michael Oates's evidence was that it was very difficult for him to recall the exact events or words that had been used and he confirmed what he had stated in his email to the Appellant that he could not quote the exact words but the words were something like "we will make you ill";
 - 9.2. an interview with Councillor Mrs Oates in which she stated that the Appellant had said "we will make you ill"; and
 - 9.3. an interview with Councillor Seekings in which he stated that he had heard the Appellant say "He will make you ill". Councillor Seekings confirmed, on oath, that he had heard the Appellant say "He will make you ill".
 - 9.4. an interview with the Appellant in which he stated he had said "He will make you ill" to Councillor Mrs Oates about Councillor Michael Oates
10. The Tribunal prefers the evidence of Councillor Seekings and the Appellant for the following reasons:
 - 10.1. The Appellant has consistently stated that he said "He will make you ill".
 - 10.2. The Appellant's evidence is supported by the evidence of Councillor Seekings.
 - 10.3. Councillor Michael Oates's evidence is of very limited value as he accepts that he cannot recollect the exact words used.
 - 10.4. The evidence of Councillor Mrs Oates is contained in her complaint and in the interview in which she states that the words were said. However, the Tribunal has not heard oral evidence on oath from Councillor Mrs Oates and

while it is undisputed that she was very upset following the incident that is not evidence of what was said.

11. Thus the Tribunal finds that the Appellant said the words "He will make you ill" to Councillor Mrs Oates and that these words were a reference to her husband Councillor Michael Oates.
12. The Tribunal heard evidence on oath from Councillor Seekings, Councillor C Cook and the Appellant that the Appellant did not admit at the Standards Committee hearing that he had used the words "make her suffer" and give "her a hard time". It followed that they disputed the Standards Committee's findings of fact "that on the evidence presented and on the admission of Councillor Brindley that the statement "make her suffer" and "give her a hard time" had in fact been said by Councillor Brindley to Councillor Mrs Mary Oates."
13. The Tribunal heard evidence on oath from Mr Lloyd-Williams who confirmed that he had been present throughout the hearing. Mr Lloyd-Williams had taken a note of the proceedings but it was not a verbatim note and his approach had been to only note disputes of fact. He had drafted the Standards Committee's decision and he had deliberately chosen the words "on the admission of Councillor Brindley" because it reflected his clear recollection of what the Appellant had said and was consistent with his note. The Standards committee hearing had finished at about 9pm and he had drafted the note of its decision at 8.30am the following day while the hearing was fresh in his memory. His draft had been approved with slight amendments by the Chair of the Standards Committee as an accurate record of the hearing. He readily accepted that his notes were not complete and that his approach was to note only disputes of fact. In addition he stated that he could not be sure whether the Appellant had made his admission voluntarily or following a question. However, his recollection was clear that the Appellant had made the admission and he stuck to his recollection even when the conflict with the evidence of the Councillors Brindley, Cook and Seekings was put to him by the Appellant's representative.
14. The Tribunal found Mr Lloyd-Williams to be an impressive witness. He was at pains to be open and fair. He did not overstate the quality of his recollections and readily acknowledged the limitations of his note. However, he was firm in his recollection that Councillor Brindley had admitted that he had used the words "give her a hard time" and "make her suffer".
15. The Tribunal is faced with a direct conflict of evidence and no indication as to how such a conflict could have arisen *e.g.* confusion as to what was said or confusion by the Appellant as to which expression was being referred to.
16. On balance the Tribunal prefers the evidence of Mr Lloyd-Williams for the following reasons, he took a contemporaneous note, it was his job to advise the Standards Committee and thus to listen with care to what was said, it was part of his job to remain neutral, he had a clear recollection of the Appellant's admission, he gave evidence that he had chosen deliberately the words "on the admission of Councillor Brindley" and he had drafted the Standards Committee decision as soon as possible after the hearing and while the events of the hearing were still fresh in his mind.
17. Having accepted Mr Lloyd-Williams's evidence as accurate the Tribunal found that the Appellant had at the Standards Committee hearing admitted that he had used the words "give her a hard time" and "make her suffer" during his conversation with Councillor Mrs Oates on 5 July 2005.
18. The Tribunal heard evidence on oath from the Appellant, Councillors Seekings and Faulkner as to what was said after the Scrutiny Committee on 5 July. The witnesses were all clear that the expressions give her "a hard time" and "make her suffer" had

not been used by the Appellant. From their observations of Councillor Mrs Oates the conversation with the Appellant had not caused her much, if any, upset. In Councillor Faulkner's view she was a little flustered but by her husband's intervention rather than by the Appellant's words. The Appellant stated that he liked and got on with Councillor Mrs Oates and had no wish to upset her.

19. The Tribunal found the evidence of the Appellant, Councillors Seekings and Faulkner clear and consistent with each other. The Tribunal accepted the explanation of Councillor Faulkner that he had only become involved after the Standards Committee decision because prior to that no one had asked him what had happened and he had thought that he would be asked if his evidence was needed. On reading the Standards Committee decision he thought that an injustice had been done to the Appellant and had become involved.
20. Councillor Faulkner explained that the Appellant had a clear voice and he is easy to hear. He was confident that he would have heard the phrases "give her a hard time" and "make her suffer", had they been used.
21. The Tribunal found Councillor Faulkner's evidence convincing because he was clear and concise and had been present throughout the conversation between the Appellant and Councillor Mrs Oates as he was seated next to the Appellant.
22. Before making its findings of fact on this matter the Tribunal gave weight to its finding that the Appellant had at the Standards Committee hearing admitted using the words "give her a hard time" and "make her suffer". In the Tribunal's view the Appellant's admission was to be given considerable weight and was a strong indicator that the alleged words had been used by the Appellant. However, the Appellant's admission was not determinative of the matter as it was possible that the Appellant had, for example, made the admission in error.
23. The Tribunal noted that in the summary of the interview of the Appellant during the investigation of the complaint against him he had denied making the relevant statements. Councillor Michael Oates had not alleged that the Appellant had said the words "give her a hard time" and "make her suffer" in his email written on 5 July following the incident. In the Tribunal's view the omission of these words by Councillor Michael Oates was significant as it was likely that he would have referred to these words if he had heard them as the purpose of his email was to complain about what the Appellant had said to his wife. While the words could have been used prior to Councillor Oates becoming involved in the conversation between the Appellant and Councillor Mrs Oates the Appellant and Councillors Seekings and Faulkner were all insistent that the conversation had been amicable until Councillor Michael Oates's involvement. Thus the Tribunal finds it unlikely that the Appellant would have used the words "give her a hard time" and "make her suffer" prior to Councillor Michael Oates's involvement.
24. The only additional evidence that the Appellant said the relevant words is the complaint of Councillor Mrs Oates and the summary of her interview during the course of the investigation. However, as the Tribunal noted above, it has not heard oral evidence on oath from her and while it is undisputed that she was very upset following the incident that is not evidence of what was said.
25. On the balance of probabilities the Tribunal prefers the evidence of the Appellant and Councillors Seekings and Faulkner that the Appellant did not say the words "give her a hard time" and "make her suffer" for the following reasons:
 - 25.1. The Appellant stated in his evidence that he had known Councillor Mrs Oates for a long time and that he respected and liked her. In the Tribunal's view the manner in which he gave his evidence and the way he referred to

Councillor Mrs Oates supported his evidence that he respected and liked her.

- 25.2. Councillors Seekings and Faulkner were both present during the incident on 5 July and were both clear that the relevant words had not been said by the Appellant.
 - 25.3. Councillor Faulkner's involvement arose from seeing the Standards Committee's decision and that decision being completely at odds with his recollection of what was said by the Appellant.
 - 25.4. Councillor Faulkner gave his evidence in a clear and concise manner which indicated to the Tribunal that it was an accurate recollection of the incident.
 - 25.5. Councillor Michael Oates had not referred to the relevant words in his email of 5 July sent the same evening as the incident.
26. For these reasons the Tribunal found that the Appellant's admission at the hearing of the Standards Committee had been wrong and he had not said the words "give her a hard time" and "make her suffer" to Councillor Mrs Oates during their conversation on 5 July.

Breach of the Code of Conduct

27. The Tribunal asked for submissions as to whether the words "He will make you ill" amounted to a breach of paragraph 2(b) of the Code of Conduct because the words were a breach of the requirement that members must treat others with respect.
28. Mr Holland made the following submissions on behalf of the Appellant:
- 28.1. The Appellant had not intended to fail to treat either Councillor Mrs Oates or Councillor Michael Oates with respect and did not think he had done so.
 - 28.2. Prior to Councillor Michael Oates becoming involved in the discussion between the Appellant and Councillor Mrs Oates the conversation had been amicable and businesslike.
 - 28.3. The Appellant was aware that Councillor Mrs Oates had been ill and he "had a lot of time" for her.
 - 28.4. It was genuinely the Appellant's view that Councillor Michael Oates's behaviour would make Councillor Mrs Oates ill and he had not intended to be insulting or abusive to either Councillor Mrs Oates or Councillor Michael Oates because his concerns were genuine.
29. The Tribunal considered that it should take an objective approach to determining whether the Appellant's words amounted to a failure to treat another with respect. Thus the test applied by the Tribunal was that of a reasonable person who was aware of all the relevant circumstances. In this case the Tribunal considered that Councillor Mrs Oates's medical history was relevant to its decision, as it was known to the Appellant. The Tribunal also took account of the fact that the Appellant and Councillor Mrs Oates had known one another for many years and that Councillor Mrs Oates accepted in the summary of her interview that that she was used to the Appellant's abrasiveness. In the Tribunal's view it was desirable in a political context that the threshold for a failure to treat another with respect was set at a level that allowed for the passions that often accompanies political debate, discussion and, as in this case, political negotiations. Too low a level might lead to complaints that were about little

other than good manners and in its view not every rudeness or insensitive comment should amount to a failure to treat another with respect.

30. Section 54(4)(a) of the Local Government Act 2000 requires the Code of Conduct to be consistent with the Relevant Authorities (General Principles) Order 2001 (SI 1401). The Tribunal therefore took account of the General Principles Order and considered that it gave an insight into the objective of the requirement to treat others with respect. Paragraph 7 of the Schedule of the Order provides:

“Respect for Others - Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.”

31. It is clear that the requirement to treat others with respect as expressed in the General Principles Order is for the purpose of promoting equality. In the Tribunal's view the wording of the Code is wider than that of the General Principles Order, however it considers that the General Principles Order indicates that a tribunal should more willing to find that there has been a failure to treat another with respect when the case before it related to the promotion of equality. In this case there was no evidence which indicated that the promotion of equality was in issue and thus the Tribunal thought that the case was less sensitive and the words used less likely to amount to a failure to treat another with respect.
32. Taking account of the above factors the Tribunal came to the judgment that on the objective test the words “He will make you ill” spoken by the Appellant in reference to Councillor Michael Oates and in the context of the incident generally fell short of a failure to treat either Councillor Michael Oates or Councillor Mrs Oates with respect. Thus the Tribunal determined that the Appellant had not breached paragraph 2(b) of the Code of Conduct.
33. It follows that the Tribunal dismissed the finding of the Standards Committee that the Appellant “had offended the provisions of the Code with the words he used.”
34. A copy of this determination will be sent to the Appellant, the Ethical Standards Officer, the Standards Committee and any person who made the allegation.
35. The decision of the Standards Committee ceases immediately to have effect.
36. This determination will be published in a newspaper circulating in the area of the relevant local authority and on the Adjudication Panel's website at www.adjudicationpanel.co.uk.

Recommendation

The Tribunal notes that as an Appeals Tribunal under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 it does not have the statutory power to make recommendations. However, the Tribunal recommends informally that the Tamworth Borough Council Standards Committee considers how any future hearings in relation to breaches of the Code of Conduct are noted in order to prevent disputes as to what was said.

Mr Nicholas Holden
Chairman of the Appeals Tribunal

6 February 2006