

COMPLAINT REFERENCE 1/2009

REPORT TO THE STANDARDS COMMITTEE OF
PENDLE BOROUGH COUNCIL ON AN ALLEGED
BREACH OF PENDLE BOROUGH COUNCIL'S
CODE OF CONDUCT BY COUNCILLOR TONY
GREAVES

PHILIP MOUSDALE
MONITORING OFFICER
15th JULY 2009

EXECUTIVE SUMMARY

This report is an investigation into a complaint made against Pendle Borough Councillor Tony Greaves by Borough Councillor Mohammad Iqbal.

The allegation is that he breached paragraph 3 (1) of the Pendle Borough Council's Code of Conduct in that he failed to show him respect through his use of language.

My finding is that there has been a failure to comply with the Code of Conduct.

INTRODUCTION

1. A complaint has been made against Borough Councillor Tony Greaves by Borough Councillor Mohammad Iqbal. This was considered by the Assessment Sub-Committee of Pendle Council's Standards Committee who decided to refer the complaint to me as Monitoring Officer for investigation in accordance with section 57A (2) of the Local Government Act 2000.
2. The complaint is that Councillor Greaves failed to show respect to Councillor Iqbal through his use of language at a meeting held on 6th March 2009
3. In conducting this investigation I have interviewed Councillors Iqbal and Greaves, and Pendle Council Chief Executive and Returning Officer Stephen Barnes. I have examined Council minutes, a note of the meeting of 6th March 2009 and e-mail correspondence. I have also taken legal advice from a legal officer of the Standards Board for England and from a barrister.
4. Councillor Greaves has served for many years on Pendle Borough Council having been most recently re-elected in May 2008. Pendle adopted its present Code of Conduct for Members in May 2007. The Code is in the Model form. Councillor Greaves signed his undertaking to abide by this on 8th May 2008.

THE COMPLAINT

5. The provision of the Code of Conduct for Members adopted by Pendle Borough Council which it is alleged has been breached is

Paragraph 3(1) – You must treat others with respect.

THE BACKGROUND

6. Following the May 2008 Borough Council elections Councillor Greaves successfully put forward a notice of motion about postal vote fraud at a full Council meeting. In summary this called on the Chief Executive to convene meetings between the political parties; to make enquiries and hold discussions with other local authorities; and to write to the government about voter identification. It also requested the executive to consider whether more resources were required for electoral registration purposes.
7. There were in fact three such meetings with political parties and it was at the last one on 6th March 2009 that the language complained of was used.

8. At the first two there had been discussion about developing a local protocol between the parties on how their workers would conduct themselves over postal votes. Following apparent initial agreement, it became clear that the Liberal Democrat and BNP parties would sign up to it but Labour and the Conservatives would not. The third meeting was therefore called.
9. Councillor Iqbal says that the meeting started with Mr. Barnes reading out a letter from the Conservative Association and from the Regional Labour Party setting out their views as to why they were not prepared to sign the local protocol.
10. Discussion then followed. Councillor Iqbal says that at one point when he was speaking Councillor Greaves interrupted him, banged his hand on the table, pointed at him and said "You, you bastard I am going to send you to jail." This was followed by further heated exchanges and the meeting broke up a few minutes later.
11. Mr. Barnes confirms the above description of the meeting.
12. Councillor Iqbal says that he has had no apology from Councillor Greaves. He takes great offence at the use of the word "bastard".
13. When I contacted Councillor Greaves to arrange an interview with him he sent me the letter attached to this report. In this he raised the fundamental issue of whether the Code of Conduct applied to him at the meeting of 6th March. In short he says that the meeting was a meeting of political party representatives and that the Code did not apply to it.
14. I subsequently interviewed Councillor Greaves. He was accompanied by Councillor John David. He expanded on his argument that the Code did not apply and that the incident was outside the Standards regime, in particular
 - he did not attend the meeting as a councillor but as a local party leader and that he made this clear in advance
 - the meeting was outside the Code of Conduct and relevant legislation
 - the 2007 Code expressly changed the earlier Code by limiting its remit to "official capacity"
 - a person in public life like him works in "compartments" and sometimes he is acting as a councillor and at other times he is not; these distinctions are important and must be maintained
 - the facts that there were other councillors and Council staff present or that the meeting was held in the Town Hall were not sufficient to make it a meeting of the authority.

FINDINGS OF FACT

15. I have set out above the background to this complaint by way of explanation of the context. What happened at the meeting has not been disputed by Councillor Greaves. I find that Councillor Greaves was present

at the meeting on 6th March and that he did use the words “You, you bastard I am going to send you to jail” directed at Councillor Iqbal.

16. I also need to come to a finding as to whether the Code applied to Councillor Greaves at the meeting on 6th March. This is a complex question. I have discussed the point with a legal officer from the Standards Board for England and with a barrister. I have taken into account their advice in coming to my finding.
17. The Code of Conduct contains the following provisions
 - Paragraph 1(1) – This Code applies to you as a member of an authority
 - Paragraph 1(4) – In this Code “meeting” means any meeting of (a) the authority; (b) the executive of the authority; (c) any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub- committees, or area committees
 - Paragraph 2(1) -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.
 - Paragraph 2(2) -this Code does not have effect in relation to your conduct other than where it is in your official capacity.
18. Put simply the effect of the above provisions is to confine the application of the Code to when a councillor is acting in his/her official capacity and to exclude its application to his/her private life.
19. Official capacity is defined widely in paragraph 2(1). It includes attending official meetings of the Council as defined in para 1(4) but also other activities and meetings where the councillor is conducting the business of the Council or his/her office; or is otherwise acting, claiming to act or giving the impression that he/she is acting in their official capacity.
20. The meeting of 6th March was held as a result of a debate initiated by Councillor Greaves at a meeting of the Council and a decision taken by the Council which called on the Chief Executive of the Council to convene meetings with political parties.
21. The Council often discusses election and electoral registration matters. The subject matter is at the heart of what the Council is about and is of concern to the Council itself, political groups on the Council, individual councillors as well as political parties. It is part of the wider democratic process. Elections and electoral registration are Council functions even

though they are formally and legally exercised in large part by the Returning Officer and Electoral Registration Officer.

22. It is not uncommon for meetings such as that on 6th March to be held with the political parties on issues of concern. These are not meetings as defined in Paragraph 1(4) of the Code; they can however be other meetings at which a councillor may be acting in his/her official capacity.
23. Most Pendle councillors are members of both the political groups on the Council and of the local political parties. They are usually active party workers and some are leading and prominent members of the party. They legitimately undertake both the role of councillor and of party member and their work and activities in the two roles will frequently overlap.
24. As a result the usual and practical way of inviting persons to attend meetings such as that on 6th March has been to contact a senior representative of either or both the political party or political group and leave them to bring along or send such other representatives as they see fit. As a result the meetings are normally attended by a mix of councillors and non-councillors.
25. On this occasion the meeting was called at short notice by the Chief Executive's secretary e-mailing 4 councillors who were both representatives of the 4 political groups on the Council and also leading members of their respective political parties. The e-mails were sent through the Council's internal e-mail system to the mailboxes provided to them as councillors. Councillor Greaves was additionally sent one to his personal mailbox, a common practice as he is frequently away from his home computer for several days at a time.
26. On receipt of the e-mail Councillor Greaves asked me to confirm that it was to be a meeting with the political parties. He felt this was important as it would be the political parties who would be responsible for the conduct of their election campaigns. I did confirm this to him.
27. As expected more people attended the meeting than were specifically invited and they were a mix of councillors and non councillors, along with Mr. Barnes and elections staff. The note of the meeting records the actual attendances as follows
 - Stephen Barnes - Returning Officer
 - Gillian Hartley - Elections and Registration Manager
 - Stephanie Cork - Elections Assistant
 - Cllr. George Adam – Labour Party Member
 - Cllr. Mohammed Iqbal – Labour Party Member
 - Robert Oliver – Labour Party Election Agent
 - David Foat – Labour Party Secretary
 - Cllr. Tony Greaves – Liberal Democrat Election Agent
 - Cllr. Adam Grant – British National Party Member
 - Keith Thorpe- British National Party Member

28. Generally speaking Councillor Greaves is a Liberal Democrat spokesperson on democracy and election matters both within and outside the Council.

29. I have no doubt that Councillor Greaves, as he contends, attended the meeting of 6th March as a representative of his political party. The question is whether he was also attending in his official capacity as a councillor.

30. I have considered carefully the points made by Councillor Greaves as to why he considers he was not acting in this capacity. I acknowledge that there is some force in them. On balance however my view is that he was also acting, or giving the impression that he was acting, in his official capacity as a councillor for the following reasons

- Election issues are of fundamental concern to the Council and councillors.
- The specific issue of postal vote fraud (which was the subject of the meeting on 6th March) was expressly made the concern of the Council when Councillor Greaves introduced the motion at the full Council meeting.
- Notwithstanding the clarification sought by Councillor Greaves as to whether it was a meeting with political parties, the meeting was arranged through normal Council channels and was attended by persons representing both the Council and the political parties.
- The presence of other councillors and Council staff, whilst not making the meeting a meeting as defined in paragraph 1(4), is strong evidence that the meeting was concerned with the business of the Council.
- Paragraph 1(4) is included in the Code primarily to assist members in determining when they need to declare interests; it does not define or limit the occasions when a councillor is acting in their official capacity.
- The phrase “giving the impression” has to be interpreted objectively; the impression to the others attending the meeting, and to an outsider aware of the background and applying common sense, would be that he was there partly in his capacity as a councillor.
- Election issues are a concern for both councillors and political party members; when a person is both it is artificial and against common understanding to say that on some occasions they are a concern in only one capacity.

31. I therefore find that the Code applied to Councillor Greaves at the meeting on 6th March.

WHETHER THERE HAS BEEN A FAILURE TO COMPLY WITH THE CODE

32. I now go on, in the light of these findings of fact, to consider whether there has been a failure to comply with the Code.

33. The Guide for Members on the Code of Conduct issued by the Standards Board for England in May 2007 says the following about treating others with respect;

In politics, rival groupings are common, either in formal political parties or more informal alliances. It is expected that each will campaign for their ideas, and they may also seek to discredit the policies and actions of their opponents.

Criticism of ideas and opinion is part of democratic debate, and does not in itself amount to bullying or failing to treat someone with respect. Ideas and policies may be robustly criticised, but individuals should not be subject to unreasonable or excessive personal attack. This particularly applies to dealing with the public and officers. Chairs of meetings are expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct.

Whilst it is acknowledged that some members of the public can make unreasonable demands on members, members should, as far as possible, treat the public courteously and with consideration. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

34. Failure to treat others with respect occurs when unfair, unreasonable or demeaning behaviour is directed by one person against another. The circumstances in which the behaviour occurred is relevant in assessing whether the behaviour is disrespectful. The circumstances include the place where the behaviour occurred, who observed the behaviour, the character and relationship of the people involved and the behaviour of anyone who prompted the alleged disrespect.

35. The concept of "treating others with respect" requires a balance between the right to freedom of expression and the imposition of certain minimum standards of behaviour in public life. The threshold for failure to treat with respect is set high to allow for robust political debate.

36. The issue here is the use of the word "bastard".

37. I acknowledge that Councillor Greaves was very unhappy at the unwillingness of the Labour Party to sign the protocol and that he was deeply concerned about postal vote fraud and the need to stamp it out.

38. However it is a word which I do not recall a councillor using to another councillor in a meeting, even a meeting such as this which was not held in public. I consider that it goes beyond robust political criticism. I also believe that the common sense and understanding of councillors and of members of the public is that its use amounts to conduct which falls below the standard expected of elected representatives.

39. I therefore find that in using the word “bastard” Councillor Greaves failed to show respect to Councillor Iqbal and that there was a failure to comply with paragraph 3(1) of the Code of Conduct.

SCHEDULE OF EVIDENCE GATHERED FOR THE PURPOSES OF THIS REPORT

- Face to face interview with Councillor Iqbal
- Face to face interview with Councillor Greaves accompanied by Councillor David
- Face to face interview with Stephen Barnes
- Copy Borough Council minute of 15th May 2008
- Copy e-mail correspondence concerning the calling of the meeting on 6th March
- Copy of a note of the meeting held on 6th March
- Copy letter from Councillor Greaves dated 18th April
- Copy of Councillor Greaves’ undertaking to observe Pendle Borough Council’s Code of Conduct, dated 8th May 2008