

FULL DECISION

CASE REF: APE 0336

HEARING DATES: 2 March and 24 May 2006

RE: REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE CODE OF CONDUCT

RESPONDENT: Councillor Pickup

RELEVANT AUTHORITY CONCERNED: Whitworth Town Council

ESO: Nick Marcar

REPRESENTED BY: Mr C Crawford a barrister

Case Tribunal Members:

Chairman: Angus Andrew
Member: Chris Perrett
Member: Darryl Stephenson

1 The Code of Conduct

- 1.1 Whitworth Town Council adopted the Model Code of Conduct on 14 February 2002.
- 1.2 Paragraph 4 of Whitworth Town Council's Code of Conduct 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."

2 The Reference

- 2.1 The Adjudication Panel for England received a reference from an Ethical Standards Officer ('ESO') in relation to an allegation that Councillor Pickup had failed to comply with paragraph 4 of the Code in that:
 - 2.1.1 Councillor Ronald Pickup was responsible for ensuring that Whitworth Civic Hall ("the hall") was appropriately covered by Public/Employers Liability insurance and gave assurances to the Board of Whitworth Recreation and Leisure Ltd ("WRL") that this was the case. However, after a function was held at

the hall, the hall keeper was attacked and £2,365.46 was stolen and it then transpired that the Trust was not insured.

- 2.1.2 As Company Secretary of WRL, Councillor Pickup was responsible for submitting annual returns to Companies House. However, WRL was fined £500 by Companies House because the information was either incorrect or unavailable.
- 2.1.3 Councillor Pickup was interviewed by the Inland Revenue about unpaid tax and national insurance contributions for staff employed by WRL and he provided incorrect figures to the Inland Revenue regarding these matters. As a result, WRL was charged £1,092.00 by the Inland Revenue for unpaid tax and national insurance contributions.
- 2.1.4 Councillor Pickup advised the Board of WRL that a Public Entertainment Licence was held for the hall at which various functions were held. This was found to be incorrect and WRL and Councillor Pickup were found guilty and fined by Rawtenstall Magistrates Court after an event was held without a licence.
- 2.1.5 It is alleged that WRL lost a total of £6,457.46 due to misadministration by Councillor Pickup.

3 Preliminary issue

- 3.1 The Respondent applied to strike out the reference and in directions dated 21 February 2006 the Chairman directed that the application be taken as a preliminary issue and that skeleton arguments be filed.
- 3.2 In essence the Respondent relied on four arguments that can be summarised as follows:
 - 3.2.1 That the matters complained of related to his private rather than his public life; and
 - 3.2.2 That the matters complained of took place prior to the coming into effect of the Code; and
 - 3.2.3 That the ESO had relied on confidential information in the investigation of the complaint; and
 - 3.2.4 The ESO's report was tainted by bias: at the hearing the Case Tribunal understood him to suggest that by extension the Tribunal was also biased. Thus he concluded that he would be denied a fair trial in breach of his human rights, which the Tribunal understood to be a reference to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.
- 3.3 Paragraph 4 of the Code relates to a councillor's conduct "*in his official capacity, or any other circumstance*". It is thus clear that the paragraph encompasses conduct in a councillor's private life that might bring his office or authority into disrepute. The Case Tribunal accepted that the report of the Committee on Standards in Public

Life's tenth enquiry, in January 2005, recommended that the Code of Conduct should not cover matters that are wholly unrelated to the individual's official capacity. However that recommendation had not been implemented and the Case Tribunal had to apply the law as it currently existed. In any event it was apparent, from the facts recited below, that there was such a close relationship between the WRL and the Rossendale Borough Council, of which the Respondent was previously a member, and that the events complained of could not be said to be wholly unrelated to his role as a council member.

- 3.4 Although some of the facts recited below took place before the Code came into effect they continued long after that date and culminated in the Respondent being fined by the Rawtenstall Magistrates Court on 9 August 2004. To the extent that the facts complained of took place after the introduction of the Code it was appropriate to take them into account in determining whether there had been a breach.
- 3.5 At the hearing the Respondent did not specifically pursue his confidentiality argument. On the basis of his skeleton argument the Tribunal found his reasoning elusive. It appeared to be based on the proposition that the minutes of WRL were confidential and should not have been disclosed. The minutes were records of formal meetings of the directors and the Case Tribunal was unaware of any statutory provision that would cloak them with confidentiality. In any event the powers of the ESO's to conduct investigations and to present their reports, contained in Part III of the Local Government Act 2000, are extremely wide. The exception to the restriction on disclosure, contained in Subsection 63(1)(a) of the Act would clearly apply.
- 3.6 The Respondent's main complaint was that the Standards Board and in particular the ESO had been biased both in its investigation and in the preparation of its report. He drew the Tribunal's attention to a number of cases dating back to the 17th Century relating to bias. However they all related to bias on the part of the adjudicator rather than the investigating authority. Furthermore the Tribunal could, in any event, detect no bias on the part of the ESO. As observed the Act requires the ESO to investigate the complaint and that is what he had done. The fact that the Respondent disagreed with the report was not of itself evidence of bias. The only element of the ESO's report to which the Tribunal's attention was specifically drawn was the ESO's continued use of the term councillor, when describing the Respondent. The Case Tribunal did not consider that anything could be read into that: the ESO was simply using the Respondent's correct title: a title that he himself used. In short the Tribunal considered that the case had simply not been made out.
- 3.7 As far as the Case Tribunal was concerned it understood the Respondent's allegation of bias to be based upon the assumption that it was an extension of the Standards Board. That was not correct. The Case Tribunal is wholly independent from the Standards Board and had been appointed by the Lord Chancellor to adjudicate on references received from ESO's. In the absence of any specific suggestion of bias relating to the facts of this particular case it considered that there was no merit in the allegation.

- 3.8 For each and all of these reasons the Case Tribunal rejected the Respondent's application and issued further directions relating to the disposal of the other issues in dispute.

4 Findings

- 4.1 In the Appendix to the Listing Direction dated the 9 January 2006 the President directed the Case Tribunal to consider the "facts" set out in 121 paragraphs. Mr Crawford agreed with the Tribunal's assessment that those paragraphs could not be described as "facts" but rather they amounted to a summary of the evidence obtained by the ESO and contained in his report to the President. At the hearing on 2 March 2006 the Respondent indicated that he agreed the evidence contained in some 80 of the paragraphs: he disputed the remainder of the evidence.
- 4.2 At the hearing on 24 May 2006, to resolve the issues remaining in dispute, the Case Tribunal heard oral evidence from Mr R Tattersall (Chairman of WRL), Mr K Makin (a Director of WRL), Mr R J Hargreaves (former treasurer of Rossendale Borough Council) and the Respondent. On the basis of the agreed evidence, the oral evidence taken at the hearing, the documents in the hearing bundle to which the Tribunal's attention was specifically drawn and the submissions made by or on behalf of the parties the Case Tribunal found the following relevant facts:

Background

- 4.3 The Respondent has been a member of Whitworth Town Council for eight years. He was a member of Lancashire County Council until May 2005 when he did not stand for re-election as the nomination of the Labour Party was withdrawn. He was also a member of Rossendale Borough Council for three years until 2003, where he was Vice-Chairman of the Recreation and Leisure Committee.
- 4.4 Whitworth Civic Hall was owned by Rossendale Borough Council and was an amenity used by the residents of the town. Due to financial constraints the Borough Council proposed to close the hall. A number of people, of whom the Respondent was a leading member, devised a scheme to take over the running of the hall with the benefit of grant aid from the Borough. To that end they formed WRL, a company limited by guarantee. The Respondent offered to act as the Company Secretary because he had on his retirement in 1981 obtained a law degree and he considered that his experience both as a local authority employee and as a councillor would be of assistance. His offer was accepted and he was appointed as the Company Secretary on its formation in early 2000. He has remained in that role ever since but has held no other office in WRL.
- 4.5 By a lease dated 1 April 2000 the hall was let to WRL for a term of 6 years. The lease requires WRL *"to insure against third party and public liability risks"*. The Borough Council however is responsible for insuring the hall for its full reinstatement value.
- 4.6 A management agreement of the same date set out the parties' respective obligations relating to the management of the hall. The

agreement made provision for the transfer of the hall keeper's contract of employment to WRL. During the first year the Borough Council agreed to contribute £19,950 to the running of the hall. It is clear from the management agreement that the intention was to transfer responsibility for the day to day running of the hall to WRL.

- 4.7 As Company Secretary the Respondent applied for charitable status and WRL was finally registered as a charity on 11 September 2002. This conferred a number of benefits including the ability to reclaim tax and exemption from business rates.
- 4.8 The Respondent never had a job description but he accepted that, although not a Chartered Secretary, he would pursue the duties of Company Secretary as defined by the Institute of Chartered Secretaries and Administrators (ICSA).
- 4.9 The ICSA has published a 'Model Description for the Secretary of the Board' for organisations in the not for profit sector. Under 'Overall Purpose' ICSA describes a Secretary's role as:

"Responsible for the smooth and efficient running of trustee meetings and sub-committees, providing assistance and support to the chair of the board of trustees. Under company law, companies limited by guarantee have to appoint a Company Secretary, this may be a trustee or a duty delegated to a paid member of staff.

Depending on the size of the charity the Secretary may have to liaise with a paid Charity Secretary/Chief Executive to undertake the following responsibilities and duties and monitor their compliance. In a smaller charity, the Secretary will have to work as a team with the other trustees to undertake the day-to-day management of the organisation."

- 4.10 Under the heading of main responsibilities the following is included:

"To act as secretary (unless a paid member of staff is delegated to this role) and ensure that company law, charity law, and regulatory requirements are complied with."

- 4.11 Under the heading of main duties the following are included:

*"Advise and guide the board of any legal and regulatory implications of the charity's strategic plan.
Supporting the board in fulfilling their duties and responsibilities, organising trustee induction and ongoing training.
Being the external point of contact for stakeholders and interested parties.
Ensuring the charity's stationery, orders, invoices, cheques and other documents include all details required under company law and, if applicable, charity law and/or VAT law."*

Insurance

- 4.12 A function was held in the hall on 27 April 2002. After the function the hall keeper was assaulted, made to open the safe and the takings and floats from the tills were stolen. The total loss was estimated at £2,365.46.
- 4.13 The Respondent accepted unequivocally that he was responsible, as Company Secretary, for maintaining both contents and third party and public liability insurance. However at the time of the robbery no such insurance had been effected and the loss was subsequently made good by the Borough Council through an addition to the grant aid so that the loss fell on public funds.
- 4.14 It was apparent from the board minutes of WRL that the directors had concerns about the insurance position. The minutes of a board meeting held only 12 days before the robbery record that:
- “Roger Tattersall [the Chairman of WRL] – the insurance on the building needs addressing – the building is insured by Rossendale but the Public Liability Insurance is the responsibility of the Trust which has not been done.*
- Ron [the Respondent] to get on to the Insurers and sort it out – will do so ASAP.”*
- 4.15 It was equally apparent from the evidence of both Mr Makin and Mr Tattersall, which was not challenged at the hearing, that the Respondent had informed the directors that the Borough Council maintained cover and that the loss would be made good by its insurers. That was certainly not the case and the Tribunal concluded that the Respondent had no reasonable grounds for holding such a belief. Certainly Mr Hargreaves had agreed to maintain cover for a limited period, under the Borough Council's policy, when the management of the hall was transferred to WRL in 2000. However the Tribunal accepted his unchallenged evidence that, that was a temporary arrangement (to allow WRL to effect its own cover) that would lapse when the policy fell due for renewal.
- 4.16 Due to their involvement with the Borough Council the Respondent and Mr Hargreaves met on a number of occasions prior to the latter's retirement in September 2002. It was apparent from the evidence of both of them that the Respondent had endeavoured to persuade Mr Hargreaves to include the risks under the Borough Council's policy on a permanent basis. The Case Tribunal were however satisfied that no such assurance to that effect was ever given by Mr Hargreaves. The Respondent's evidence was that shortly before the robbery he had submitted a proposal form to Zurich Municipal. If he had believed that the risks were covered by the Borough Council's policy there would have been no need for him to seek cover elsewhere.

Companies House Fine

- 4.17 WRL was fined £500 for failing to file the annual return for 2000/01. The fine was later reduced on appeal to £250. The Respondent acknowledged that he was responsible for the filing of the annual return. He said that the return had been submitted in late 2002 but

had been returned because it had not been completed correctly. His evidence was that he had never received the returned form. He suggested that was because there was at that time no secure post box at the hall and mail was frequently delivered elsewhere. This was however contradicted by Mr Makin's unchallenged evidence that such a post box was installed in *"around April 2002"*: evidence that appeared to be supported by the Respondents' who had said that a secure post box had been installed a *"couple of years"* after management had passed to WRL.

Inland Revenue

- 4.18 In 2004, following an investigation by the Inland Revenue, WRL paid £1,092.00 in respect of cash payments made to employees during 2000/03 from which national insurance contributions and PAYE had not been deducted. The cash payments had been made to bar staff out of takings received.
- 4.19 The Respondent accepted that he was responsible for the payment of wages and the deduction of NI contributions and PAYE. He suggested however that another member of staff, who had since left, had made the payments without his authority and that he had stopped them as soon as they came to his attention. Regrettably the Tribunal did not find his evidence credible. In the transcript of a recorded interview, upon which he expressly relied, he had accepted that he had authorised cash payments to two students. Furthermore it was apparent that he had been less than frank with the directors of WRL in that he had initially denied that such payments had been made when he knew that that was not the case.

Entertainment Licence

- 4.20 The Respondent accepted unequivocally that it was his responsibility as Company Secretary to ensure that the hall had a valid Public Entertainments Licence (*"the Licence"*). The Borough Council had previously held the Licence but it had expired on 3 June 2000. He appreciated that the Licence would have had to have been renewed on an annual basis but suggested that he had reasonable grounds for believing that the Borough Council had continued to renew the Licence. This belief appears to have been based on the usual form of notice above the hall door to the effect that the Borough Council held the Licence: a notice that pre-dated the transfer of the management responsibilities to WRL.
- 4.21 In 2000 and 2001 the Borough Council sent renewal applications to the Respondent at the hall but they had apparently not been received: certainly at that time there was not a secure post box at the hall. However in February and April 2002 two emails were sent by the Borough to the Respondent reminding him of the need to submit a renewal application and the Tribunal had no doubt that he had received them. Indeed he accepted that following the second email he had contacted the Borough architect to establish the health and safety requirements relating to the gas and electrical appliances, upon which the Licence was dependent.

4.22 The minutes of a meeting of the directors of WRL, on 20 May 2002 record that:

"The Secretary reported that the Hall electrics had been checked as required to renew the Music and Dancing Licence. Costs over £1500."

4.23 A further letter was sent to the Respondent on 1 December 2003 reminding of the need to renew the Licence. The Respondent suggested that the letter had been opened by the hall keeper who had left it in his in-tray: it did not come to his attention prior to the fire, referred to below, that destroyed the hall. However the letter refers to a meeting with the Respondent on 25 November 2003 and continues in these terms:

"I am writing in relation to the holding of public entertainment in premises in Rossendale and to remind you that your licence expired on 3rd June 2000 and that you have not been licensed since then. During the discussion, you were handed an application form and a gas inspection form which you must use to process a new application for Public Entertainment should you wish to carry out any of the activities below: -

a) The event involves Karaoke..."

4.24 The Case Tribunal concluded that the Respondent was perfectly aware that the Borough Council had not renewed the Licence and that it was his responsibility, as Company Secretary, to renew it.

4.25 On 5 December 2003 a karaoke event was held at the hall for which no entertainment licence was in place. On the following day the hall was totally destroyed by a fire.

4.26 The Respondent and the Directors of WRL were summoned to appear at Rawtenstall Magistrates' Court on 9 August 2004 for failing to hold a Public Entertainments Licence, contrary to the Local Government (Miscellaneous Provisions) Act 1982. They pleaded guilty. The Directors were fined £2,000 with £1,500 costs. The Respondent was fined £2,000 with £500 costs.

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

5.1 At the hearing the Respondent denied that the facts revealed a breach of the Code. He largely repeated the arguments that he had advanced in seeking to persuade the Case Tribunal to dismiss the reference. He emphasised that he had at all times acted in good faith.

5.2 Mr Crawford relied substantially upon the written submissions previously lodged by the ESO. They had however been made before the Tribunal's findings of fact and consequently their relevance was limited. Mr Crawford drew the Case Tribunal's attention to the Relevant Authorities (General Principles) Order 2001, which he considered had been breached by the Respondent's behaviour. The Tribunal were not convinced of the relevance of that Order: the complaint against the Respondent was that he had breached the Code of Conduct not the Order.

- 5.3 Mr Crawford suggested that where a councillor is acting in his private capacity there had to be a sufficient nexus between his actions and his role as a councillor before he could be said to have brought his office or authority into disrepute. Given that the Code refers to conduct *"in any other circumstances"* the Case Tribunal was not entirely convinced that that was correct. However even if it was, it agreed that such a nexus existed here. It was apparent from the evidence that the Respondent's role as Company Secretary was inextricably linked with his office of councillor. The Respondent's own evidence was that the hall was managed with the local authority very much as joint venture. As a councillor he had been instrumental in bringing to fruition the scheme that transferred the management to WRL and retained the hall for the residents of Whitworth. As the Respondent had stated in an interview with the investigating officer, upon which he expressly relied, it had been suggested that he seek *"approval from the people of Whitworth... to take over the management of the hall"*.
- 5.4 Although Mr Crawford drew the Tribunals attention to the definition of "disrepute" in the Oxford English dictionary the Case Tribunal was not convinced that it was of any great assistance to it. The Tribunal agreed however that the test was an objective one. The Tribunal had no doubt that the general public, whose interests it regarded itself as representing, would have considered that the Respondent had by his actions brought his office of councillor into disrepute. He had wholly failed to discharge his obligations as Company Secretary. He personally had been fined: he had caused the directors to be fined and the company charged for unpaid tax: the loss suffered on the robbery had ultimately been made good out of public funds that could have been put to better use. The Case Tribunal concluded that to that extent there had been a breach of the Code.
- 5.5 The Case Tribunal was not however persuaded that it automatically followed that the Respondent had brought Whitworth Town Council into disrepute. That Council had never been responsible for the hall and the Tribunal considered that the general public were sufficiently sophisticated to draw a distinction between the reputation of the Respondent's office and that of Whitworth Town Council, which the Tribunal considered it unlikely to have been harmed. The Case Tribunal therefore concluded that he had not brought his authority into disrepute.

6 Action to be taken

- 6.1 Mr Crawford did not seek to persuade the Case Tribunal to impose a particular sanction but he drew its attention to the President's guidance, a copy of which had been received by the Respondent. The Tribunal agreed with Mr Crawford that the facts recited above revealed repeated breaches of the Code that could well justify disqualification. The Tribunal also considered that there were a number of aggravating factors in this case, *viz*:
- 6.1.1 Although there had been no misuse of public funds losses, resulting from the Respondent's actions, had been made good out of public funds; and

- 6.1.2 To the very end the Respondent had refused either to accept responsibility for his actions or to acknowledge that he should have behaved differently; and
- 6.1.3 Rather than accepting responsibility for matters that he accepted were his responsibility as company secretary, the Respondent had sought to blame others including local authority and WRL employees and the company directors.
- 6.2 Nevertheless the Case Tribunal took into account both the submissions made by the Respondent and an eloquent oral testimonial given by Councillor Kershaw who is his wife, an alderman of the town and former mayor. The Respondent had a long and previously unblemished record of public service having served for nearly sixty years as a local authority employee and since his retirement as an elected councillor. He had some years previously worked for the Town Council in an unpaid capacity for some two years to extricate it from a difficult position after an official had absconded with some £140,000 of public funds. It was largely through his efforts that the civic hall had been retained as a local amenity.
- 6.3 Furthermore the Case Tribunal was not without sympathy for the position in which the Respondent found himself. The Tribunal considered that it was best summed up by the former Chief Executive of Rossendale Borough Council. He did not appear before the Tribunal but in an interview with the ESO's investigator he had said: *"I think that wasn't particularly a reflection just on Ron. I think they bit off more than they could chew and I think a lot of it, the running of it did actually fall to Ron and Ron was not, is not, the youngest person. I remember seeing him stacking chairs, or unstacking chairs and thinking that's really not what he should be doing when he's trying to do the accounts and everything else."*
- 6.4 Given the aggravating factors referred to above the Case Tribunal did not consider that it could simply take no action. Some sanction was appropriate, in the words of the President's guidance, *"to reassure the public and impress upon the Respondent the severity of the matter and the need to avoid repetition"*. In the circumstances the Case Tribunal considered that a short period of suspension would be appropriate so that the Respondent could fully resume his duties well before his term of office came to an end in May 2007. In such circumstances the Tribunal considered it appropriate to suspend the Respondent from being a member of the Whitworth Town Council for a period of three months with effect from 24 May 2006 being the date of its decision.

Mr A J Andrew
Chairman of the Case Tribunal

Dated: 5 June 2006