

STANDARDS COMMITTEE

26 March 2009

AGENDA STATUS: PUBLIC

Report Title	'R (on the application of Mullaney) v the Adjudication Panel for England' [2009] All ER (D) 102 (Feb)- comment
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Date of Meeting:	26 March 2009
Directorate:	Chief Executive's
Ward(s)	All

1. Summary

In this report some comments are made about this decision.

2. Recommendations

That members note the report.

3. Report Background

3.1 This is a very recent decision of the High Court and provides clarification on, among other things, the test to be applied when deciding whether a member was acting in his or her 'official capacity' at the time of alleged misconduct for the purpose of the code of conduct.

3.2 The facts are interesting. Mr Mullaney and a fellow councillor, concerned about the condition of a listed building owned by a third party, trespassed on his land in order to make a video and then upload it onto the internet. While they were on the land the third party returned, there was a scuffle, someone was injured and, later, an edited version of a video appeared on the 'youtube.com' website. The third party made a complaint to the council's standards committee, then Mr Mullaney appealed to the adjudication panel for England against the committee's decision upholding the complaint and imposing a penalty. Not succeeding, Mr Mullaney then applied for judicial review of the adjudication panel's conclusion as to breach of the code of conduct and the sanction applied. Mr Mullaney's case included the contention that he was not visiting the third party's land and making and uploading the video in his 'official capacity' as a councillor and so the relevant paragraphs of the code of conduct did not apply to him then.

3.3 The Court rejected this contention. It refused to provide a definition or explanation of 'official capacity' but emphasised that the words of the definition to be found in the code were ordinary English words which should be applied straightforwardly by decision-makers, provided that they did so in the context of the facts of the case before them. The Court also found that the most relevant part of the code's definition of 'official capacity' was: "conducts the business of the office to which s/he has been elected or appointed". This required looking at the reasons why, the circumstances in which and the reasons for which the communication in question was made, or the action complained of taken. The Court found support for this approach in statements made by the judge in the 'Ken Livingstone' case, such as: "...official capacity will include anything

done in dealing with staff, when representing the Council, in dealing with constituents' problems and so on".

4. Implications (including financial implications)

4.1 Resources and risk

There are none- apart from, perhaps, the resources needed to include training for members on any points arising.

4.2 Legal

4.2.1 This case is a timely reminder of the importance, when assessing ethical standards complaints, to consider whether the alleged misconduct can be said to have occurred when the member was acting or communicating in his/her 'official capacity'. It is not right to go straight to the question whether the member, based on the available information, can be said to have failed to treat another with respect, to have brought the authority into disrepute and so on.

4.2.2 In many complaints this will not be a significant problem, but where it is in issue members should look at the facts more carefully and adopt the approach advised by the Court in this judgment.

4.3 Other implications

None worth mentioning.

5. Background papers)

None

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