



STANDARDS COMMITTEE

9 May 2011

DECISION OF STANDARDS SUB COMMITTEE: APPEAL TO UPPER TRIBUNAL

Purpose of the report:

To inform the Standards Committee of the current position in relation to an appeal against a recent decision of its Determination Sub Committee and to agree a process for next steps

Background:

- 1 In July 2010 a Determination Sub Committee of this Standards Committee heard a complaint about Councillor Chris Pitt. The complainant was Ms Sheila Little, who was the Assistant Head of Finance. The Sub Committee heard evidence from a number of witnesses and reached a decision on 23 July 2010. The Sub Committee decided that Mr Pitt had failed to show respect towards Ms Little in his conduct at the meeting of the Adults and Community Care Committee which he was chairing on 21 January 2010 and so had failed to comply with Surrey County Council's Members' Code of Conduct. The Sub Committee required Mr Pitt to write Ms Little a letter, apologising for his disrespectful behaviour.
- 2 In August 2010 Mr Pitt, assisted by Councillor John Butcher, appealed to the First-tier Tribunal against the decision of the Sub Committee. The First-tier Tribunal is part of Her Majesty's Courts and Tribunals Service and has the role of hearing appeals against the decisions of local authorities' Standards Committees. The Principal Judge of the First-tier Tribunal considered the application and dismissed the appeal, without a hearing. He decided that the Sub Committee was entitled to reach the decision and impose the sanction that it did on the evidence before it.
- 3 Mr Pitt (again assisted by Mr Butcher) then appealed against the First-tier Tribunal's decision to refuse permission to appeal, by applying to the Upper Tribunal (Administrative Appeals Chamber). The Upper Tribunal is a Superior Court of Record. Its role was to

decide whether the First-tier Tribunal's decision (which if accepted by Mr Pitt would require him to give the apology required by the Sub Committee) should stand.

- 4 The regime introducing First-tier and Upper Tribunals is relatively new and unfortunately the Regulations governing the process for appealing against a refusal of leave to appeal seem to have been drafted in haste. This has resulted in the matter spending several months bogged down in a quagmire of legal process.
- 5 The first difficulty was that Mr Pitt's appeal highlighted an "uncertainty" about the proper procedure and forum for further appeal / review from the First-tier Tribunal. As a technical legal point this had no bearing on the merits or otherwise of Mr Pitt's appeal. The question that the courts needed to decide was what route Mr Pitt's challenge to the First-tier Tribunal's decision should follow: either it was to be an appeal against the decision to the Upper Tribunal; or to be by review of the decision through judicial review in the Administrative Court.
- 6 These were properly matters between Mr Pitt and the judiciary. The decision of the Standards Sub Committee has not been reviewed or scrutinised in any of the procedures following the First-tier Tribunal's refusal to grant Mr Pitt leave to appeal against it and the Monitoring Officer considered that use of the Council's resources should be kept to a minimum, so has largely kept a watching brief on events.
- 7 By January 2011 two Upper Tribunal decisions had resolved the uncertainty as to where an appeal against the decision of the First-tier Tribunal should be taken. The appeal should be properly heard in the Upper Tribunal. Therefore the Upper Tribunal took control of the case. Unfortunately this has led to further legal uncertainties concerning the Regulations and there are further points which the Upper Tribunal wishes to resolve before the matter proceeds further.

Appeal to the Upper Tribunal

- 8 On 1st April 2011 an Upper Tribunal Judge decided that Mr Pitt should be given permission to appeal to the Upper Tribunal to challenge the decision of the First-tier Tribunal. Again this decision has no bearing on the merits of the initial decision of the Standards Sub Committee. The judge's reasons for making the decision that he did were that:
 - (a) There is a realistic prospect that the decision of the First-tier Tribunal involved the making of an error on a point of law

- (b) The case merits the attention of the Upper Tribunal in view of the uncertainty over the test that the First Tier Tribunal has to apply on an application for permission.

In short therefore the Upper Tribunal intends to treat this as a test case, in order to clarify the Regulations and set the process for any future cases. Bearing in mind that the Standards regime is likely to be abolished at the end of 2011, whilst such clarification is clearly a pressing need for the Courts and Tribunal Service it is unlikely to be of further assistance to Surrey County Council.

- 9 However the judge dealing with the case has issued directions (sent under cover of a letter dated 12 April 2011) which are binding on both Mr Pitt and the Standards Committee. The Committee has until 11 May to respond to the directions and Mr Pitt will then have one month in which to reply
- 10 In particular the judge requests submissions on
- a. the correct approach / test for error of law and how this should be applied at the permission stage
 - b. whether he should give permission himself or give permission to appeal to the First-tier Tribunal

Conclusions:

- 11 The directions issued by the judge have legal force and therefore the Standards Committee will need to make proper submissions to the Tribunal in order for the judge to rule on the way to proceed. The Monitoring Officer has informed the Chairman of the Standards Committee of the current position and is working on the correct approach, taking advice from counsel experienced in dealing with this area of law. She will be able to update the Committee on this at its meeting.
- 12 The Committee will see from the above, that this has become a convoluted legal process and, despite the time that has elapsed and the court time spent on the matter, it has not yet moved beyond consideration of the legal basis upon which Mr Pitt should be able to appeal the July 2010 decision of the Standards Sub Committee.
- 13 The recent decision of the Upper Tier Tribunal has in effect restarted the process so that either the First-tier or Upper Tribunal will decide (depending on the outcome of the Upper Tier's deliberations for which it is now seeking submissions) whether or not Mr Pitt should be granted permission to bring his appeal.

- 14 The First-tier Tribunal will only test the decision of the Standards Sub Committee if Mr Pitt is granted permission to go ahead with an appeal against the Sub Committee's decision. Nevertheless the Monitoring Officer is obliged to respond to a direction of the Upper Tribunal and must therefore prepare legal argument on the procedural issues currently under consideration in the Upper Tribunal.

Financial and value for money implications

- 10 To date the Monitoring Officer has pursued a strategy which has avoided any commitment of Council resources. The Tribunal is now requiring the Council to engage with its deliberations on the process it should follow and there will be financial implications, which could become substantial if the judge decides a hearing is required.

Recommendations:

The Committee is asked to note this report and to delegate to the Monitoring Officer in consultation with the Chairman of the Standards Committee conduct of these proceedings going forward.

Next steps:

The Monitoring Officer will respond to the Directions within the timescale required by the Tribunal. Mr Pitt will then be expected to respond within a further month. A decision as to how to handle the application for leave to appeal the original decision of the Sub Committee is expected by mid July.

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Sources/background papers:

1. Application Notice (with Grounds incorporated) dated 23.09.10; attaching
2. Decision of Principal Judge Laverick, First Tier Tribunal, dated 26.08.10
3. Observations / Directions of Judge CG Ward, Upper Tribunal, dated 21.10.10

4. Correspondence / responses to Directions (Judge Laverick; Surrey County Council for the Standards Committee; JVC Butcher for Chris Pitt)
5. Observations of Judge CG Ward, Upper Tribunal, dated 12.01.11 with Directions for listing of permission to appeal hearing on 16.03.11.
6. Correspondence in relation to Administrative Court hearing dated 02.03.11
7. Order(s) of HHJ Thornton QC (Administrative Court) dated 02.03.11 (date stamped 14.03.11; 11.03.11 and 03.03.11)
8. Amended Grounds, served 28 March 2011 (substituting pages 7,8,9,12 and 13 of enclosure A5)
9. Decision of Judge Edward Jacobs, Upper Tribunal, dated 01.04.11 refusing permission to apply for judicial review.
10. Decision / Directions of Judge Edward Jacobs, Upper Tribunal, dated 01.04.11 granting permission to appeal with Directions.
11. Notice of hearing (Administrative Court) dated 13 .01.11 and Application Notice dated 10.11.10
12. Note of Hearing before HHJ Thornton QC 02.03.11
13. Final version of Order of HHJ Thornton QC (Administrative Court) dated 02.03.11