

Guidance on decisions to be made by a Case Tribunal where a Respondent has been found to have failed to comply with a Code of Conduct

Introduction

1. Section 75 of the Local Government Act 2000 provides that the President of the Adjudication Panel for England is responsible for training members of the Panel and for issuing guidance on how tribunals drawn from the Panel are to reach decisions. This guidance is issued in accordance with that power and applies to how Case Tribunals are to reach decisions after a finding has been made that there has been a failure to follow the provisions of a Code of Conduct. The guidance is not prescriptive. The decision to be made in each case is a matter for the Case Tribunal and will in a large part depend on the particular facts and circumstances as found by the Case Tribunal.
2. The powers available to the Case Tribunal are set out in Section 79(4) of the Local Government Act 2000 and in essence are:
 - 2.1. To disqualify the Respondent.
 - 2.2. To suspend the Respondent.
 - 2.3. To partially suspend the Respondent.
3. Although not expressly specified in Section 79 of the Local Government Act 2000, if the Case Tribunal decides not to suspend or disqualify a Respondent, it might be appropriate to warn the Respondent as to future conduct. Where such a warning has been recorded this is likely to be taken into account should the Respondent be found again to have failed to follow the provisions of the Code as a result of some later action.
4. In the case of a suspension or disqualification the Case Tribunal will also need to consider the period over which such a sanction should apply:
 - 4.1. A period of disqualification must not exceed 5 years.
 - 4.2. A period of suspension or partial suspension must not exceed one year or the remainder of the Respondent's term of office if shorter.
5. In the case of a partial suspension the Case Tribunal will need to decide from what activities the Respondent is to be suspended.

6. Generally the length of disqualification is likely to be the same whether elections are due imminently, or at some future time. There may sometimes be occasions when the timing of a Case Tribunal and the time when a disqualification might expire will result in the penalty having a disproportionate effect. Case Tribunals should be willing to hear submissions as to why the length of disqualification should be varied in such circumstances.
7. Whilst this publication contains guidance on the likely term of disqualification or suspension which might be imposed, that term may need to be varied upwards or downwards to take account of aggravating or mitigating factors. Such factors may at times also be sufficient to persuade the Case Tribunal to impose suspension where disqualification would otherwise have been their first thought and vice versa.
8. Examples (but not an exhaustive list) of mitigating factors are:
 - 8.1. An honestly held (although mistaken) view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice.
 - 8.2. A members' previous record of good service.
 - 8.3. Substantiated evidence that the member's actions have been affected by ill-health.
 - 8.4. Recognition that there has been a failure to follow the Code; cooperation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the member.
 - 8.5. Compliance with the Code since the events giving rise to the determination.
 - 8.6. Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.
9. Examples (but again not an exhaustive list) of aggravating factors are:
 - 9.1. Dishonesty.
 - 9.2. Continuing to deny the facts despite clear contrary evidence.
 - 9.3. Seeking unfairly to blame other people.
 - 9.4. Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code.
 - 9.5. Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.
10. The High Court has suggested that Case Tribunals should be reluctant to interfere with the democratic will of the electorate. This comment was made in circumstances where the member concerned had been re-elected since the events giving rise to his or her appearance before the Case Tribunal and where the electorate, who could be taken to have knowledge of those events, had nevertheless re-elected the member. But in another decision the High Court has

recognised that Parliament has expressly provided Case Tribunals with such a power and that such interference may be a necessary price to pay for the need to maintain public trust and confidence in the local democratic process. This may at times mean disqualifying members whose conduct has shown them to be unfit to fulfil the responsibilities which the electorate have vested in them.

11. In deciding what action to take, the Case Tribunal should bear in mind an aim of upholding and improving the standard of conduct expected of members of the various bodies to which the Codes of Conduct apply, as part of the process of fostering public confidence in local democracy. Thus, the action taken by the Case Tribunal should be designed both to discourage or prevent the particular Respondent from any future non-compliance and also to discourage similar action by others.
12. Case Tribunals should take account of the actual consequences which have followed as a result of the member's actions while at the same time bearing in mind what the possible consequences may have been even if they did not come about.
13. This guidance does not include a firm tariff from which to calculate what length of disqualification or suspension should be applied to particular breaches of the Code. Any such tariff would in any event need to have regard to the need to make adjustments toward the lower end of the spectrum if there are mitigating factors and towards the upper end if there are aggravating factors.

Disqualification

14. Disqualification is the most severe of the sanctions available to the Case Tribunal. This option is likely to be appropriate where:
 - 14.1. The Respondent has deliberately sought personal gain (for either him or herself or some other person) at the public expense by exploiting his or her membership of the body subject to the Code of Conduct.
 - 14.2. The Respondent has deliberately sought to misuse his or her position in order to disadvantage some other person.
 - 14.3. The Respondent has deliberately failed to abide by the Code of Conduct, for example as a protest against the legislative scheme of which the Code forms part. Members of local authorities are expected to uphold the law. Where the Code has been deliberately breached to reflect the Respondent's opposition to the principles underlying the legislation, the Case Tribunal is likely to think of a disqualification of one year.
 - 14.4. There have been repeated breaches of the Code of Conduct by the Respondent.
 - 14.5. The Respondent has misused power or public assets for political gain.
 - 14.6. The Respondent has misused council property.
 - 14.7. The Respondent has committed a criminal offence punishable by a sentence of three months or more imprisonment.

15. There may be other factors not listed above which also merit disqualification. Nor will disqualification always be appropriate even if the listed factors are present.
16. A short period of disqualification may be appropriate when the Respondent is no longer a member in circumstances where, had he or she been a member, suspension would have been the likely sanction. This would ensure that a member does not return to service as a councillor earlier than the period for which he or she would have been suspended had he or she not resigned.
17. Disqualification may be imposed as an alternative to suspension in order to avoid an authority being inquorate or the electorate left without adequate representation. Disqualification would allow by-elections to take place whereas this would not be possible if the member concerned were suspended.
18. Case Tribunals should take into account that disqualification is likely to involve a financial impact upon the member who will lose any entitlement to allowances and expenses.
19. The law imposes an automatic disqualification for five years on any member who is subject to a term of imprisonment for three months or more. That a Court has imposed a lesser sanction does not mean that a five year disqualification is inappropriate. If the Case Tribunal is of the view that the member concerned is unfit to hold public office and is unlikely to become fit over the next five years, then it may well be appropriate to impose such a disqualification. Nor, if the matter does come before a Case Tribunal should the view be taken that because a Court has imposed a sentence of 3 months imprisonment or longer that the maximum disqualification should automatically be imposed. The same facts as might give rise to such an outcome from criminal proceedings might not usually attract a five year disqualification by a Case Tribunal.

Suspension

20. Suspension is appropriate where the circumstances are not so serious as to merit disqualification but sufficiently grave to give rise to the need to impress upon the Respondent the severity of the matter and the need to avoid repetition. A suspension of less than a month is not likely to have such an effect.
21. Suspension is likely to be appropriate where the Respondent has been found to have brought his or her office or authority into disrepute without either being found in breach of any other paragraph of the Code, or being found to have committed a criminal offence punishable by at least three months imprisonment.
22. Whereas a disqualification will apply to membership of all authorities to which the Local Government Act 2000 applies, suspension will be limited to precluding the Respondent from participating as a member of the authority whose Code has been found to have been broken. If the facts giving rise to a breach of the Code are such as to render the Respondent entirely unfit for public office then disqualification rather than suspension is likely to be the more appropriate sanction.
23. Suspension may have some financial impact on a Respondent who may be denied payment of allowances during the period of suspension. This is a factor which Case Tribunals should take into account.

24. Suspension is not an option if the member has resigned or has not been re-elected to the particular authority.

Partial Suspension

25. This option might be appropriate where there is a concern that the Respondent is judged to have difficulty in understanding or accepting the limitation placed on his or her actions by the Code of Conduct in relation to a particular matter or area of activity but the difficulty does not affect the Respondent's ability to act properly in relation to other matters. Suspending the Respondent from exercising some particular function or having particular responsibilities (such as being the holder of a particular office or a member of a particular committee or sub committee) may in the view of the Case Tribunal provide an adequate safeguard against such a future breach whilst leaving the Respondent able to make an effective contribution to the other work of the body.
26. The option may also be seen as an effective sanction in respect of a Respondent exercising executive functions for the body to which the Code of Conduct applies.

A decision not to impose Disqualification, Suspension or Partial Suspension

27. Circumstances where such a decision may be appropriate include:
- 27.1. An inadvertent failure to abide by the Code of Conduct.
 - 27.2. An acceptance that despite the lack of suspension or partial suspension, there is not likely to be any further failure to comply on the part of the Respondent.
 - 27.3. The absence of any harm having been caused or the potential for such harm as a result of the failure to comply with the Code of Conduct.