

BETTER GOVERNANCE FORUM

AN ANALYSIS OF

THE EFFECTS OF THE LIVINGSTONE CASE

1. In light of the judgement by Collins J., Standards Committees and Case Tribunals will need to take a restrictive view of what constitutes “any other circumstances” than when a member is acting in an official capacity. There will need to be a clear link with the performance of the member’s powers and duties.
2. Unless the facts justify a finding that a councillor has been improperly misusing his office, there must now be a considerable risk that the high Court will not uphold a finding that personal misconduct, including criminal or other unlawful acts, can be seen as bringing a councillor’s office or authority into disrepute.
3. Where councillors have used their title as a councillor in dealings with other people which are designed to secure an advantage or disadvantage, then those actions could still be regarded as being caught by the code and its enabling legislation.
4. Complaints to the referrals unit of the Standards Board are unlikely to progress if they rely on criminal offences which have been committed when there is no link with the role of councillor.
5. The above will remain the position until the proposals in the Local Government Bill come into force notwithstanding that some of the pronouncements by the High Court judge are not strictly part of the rationale of the decision.
6. It will be for councillors to argue that when attending premises for the purpose of council meetings they are not acting in the furtherance of their functions but conduct which occurs on the way to or from those meetings clearly falls outside.
7. Although not part of the rationale of the decision, Mr Justice Collins said:

If a councillor commits sexual misconduct or is convicted of a theft, I do not think the reputation of the office is necessarily brought into disrepute...

Misuse of the office can obviously bring disrepute on the office but personal misconduct will be unlikely to do so.

It will be difficult in the light of this judgement for standards committees and case tribunals to find that personal misconduct as opposed to misconduct in office has caused the reputation of the member's office or authority to be affected. It can be argued in some cases that even misconduct in office does not necessarily damage the reputation of the office or authority. On the other hand, it might also be argued that such damage may be caused if misuse of office is allowed to continue without being brought to a stop.

**Keith Stevens
Senior Governance Manager and Ethical Standards Advisor
CIPFA/IPF
8 February 2007**