

FEDERAL APPEALS PANEL Case 43

IN THE MATTER OF AN APPLICATION BETWEEN:

CLLR ALISON EDEN

Appellant

-AND

ADRIAN KEY (on behalf of the Complaints Panel in case G-1048)

Respondent

PRELIMINARY RULING

CAROLE FORD
MEMBER of the FAP (Case Manager)
13 JULY 2022

Introduction

I have been designated Case Manager by David Graham, Chair of the Federal Appeals Panel, in respect of this matter.

The Appellant challenges a Decision Notice dated 19 January 2022 in which the complaint against Cllr Gary Taylor was upheld at a Complaints Hearing convened by the Respondent.

Ruling on permission to proceed to a Case Panel

Permission is not granted to proceed to a Case Panel hearing in respect of FAP case 43.

Reasons

The three possible arguments for an appeal to proceed to a Case Panel must satisfy at least one of the following criteria:

- (a) there was a serious failure of process or reasoning that was likely to render the determination of the complaint unsafe or unsatisfactory in all the circumstances
- (b) relevant evidence, which could not have been adduced at the time of the determination of the complaint, has since come to light which is likely to render the determination of complaint unsafe or unsatisfactory in all the circumstances
- (c) the sanction determined was manifestly excessive or manifestly lenient in all the circumstances.

Arguability is a low threshold. I am conscious that there is no appeal from a refusal of permission to proceed (FAP published procedures 3.6c).

Nevertheless, in all the circumstances, I have reached the judgement that the Applicant's grounds for appeal do not meet any of the criteria listed above.

Specific grounds for appeal

Ground 1

- 1. The respondent Cllr Gary Taylor nominated Cllr Martin Wrigley to speak for him. My understanding of process is that a respondent can either speak for themselves OR nominate somebody to do so. I did not think there was an option for both. However, a panel member suggested hearing from Cllr Taylor as well. I have been a respondent and there is no text anywhere that says a respondent can speak AND have a representative speak for them. Please clarify.*

It is within the rules for both the Respondent and the Representative to speak at a hearing. Panel members have the right to ask questions of anyone present as a complainant, respondent, representative or witness. This ground for appeal is therefore dismissed.

Ground 2

- 2. One of the panel members betrayed a prejudice that he had brought to the hearing when he described the person Cllr Taylor attacked as having a 'bulging neck'. This highly subjective word 'bulging' raises a concern in terms of the panel members' objectivity and openness to my points and my complaint. The chair eventually stepped in to stop this particular panel member essentially 'cross-examining' me. I have watched the video countless times and cannot see how an objective panel member could conclude that Cllr Mullone's neck was bulging with rage.*

The Appellant ascribes a very particular inference to the use of the word 'bulging' and further infers that this is evidence of bias. This is an argument based on two assumptions by the Appellant for which there is insufficient evidence. Physical descriptions are usually highly subjective and the Appellant's disagreement on the appearance of someone's neck cannot be considered sufficient evidence of bias on the part of one panel member. In the Decision Notice there is no reference to the panel considering the demeanour,

or appearance, of the person Cllr Taylor approached. Indeed, in their discussion of the possibility of ASD as a factor to consider, it is made clear that they are focusing on Cllr Taylor's behaviour, not the nature of the person he approached. This ground is therefore dismissed.

Ground 3

3. I feel that my point that "we would not have wanted a child to witness what Gary physically did to Cllr Mullone" was only grudgingly accepted. I don't consider given their positive description of Gary's physical actions as 'assertive' that the panel reflected their acceptance of my point in the choice of the word 'assertive.'

The Complaints Panel took account of all the evidence, as detailed in their Decision Notice, and concluded that Cllr Taylor's actions were overly assertive. They did not consider that his actions amounted to assault, nor met the legal definition of assault. The Appellant disagrees with their judgement. However, the ground for an appeal must describe 'a serious failure of process or reasoning which renders the determination unsafe or unsatisfactory'. It is clear that the panel considered all the submissions, questioned both the Complainant and Respondent at the hearing, and specifically discussed the issue of assault. Their conclusion was unanimous that the description unnecessarily, or overly, assertive was appropriate. Neither their reasoning nor the process meet the standard of 'serious failure'. This ground is therefore dismissed.

Ground 4

4. I would therefore like the appeal panel to find that there was a failing in procedure that affected the wording of the decision notice to favour the respondent by using a positive word to describe his actions despite their upholding my complaint.

There is a distinction between reasoning and procedure. The Appellant disagrees with the panel's reasoning, as detailed and considered above, but has not identified a failure in procedure on the panel's behalf. Given there was no procedural failure, this ground for appeal is dismissed.

Ground 5

5. I request the appeal panel find the hearing panel's use of the word 'assertive' inappropriate and unsatisfactory as a way to describe actions they have condemned.

This ground for appeal falls for the same reason as ground 3. However, it is worth noting that the panel does not describe the behaviour as merely assertive, but as overly assertive or unnecessarily assertive. It is not used in a complimentary manner. As at ground 3, disagreeing with the panel is not necessarily evidence of a serious failure of reasoning on their part.

Ground 6

6. I expressed my preference at the hearing that Cllr Taylor be required to attend anger management counselling. I can see why they have not gone for that since who would need counselling for being 'assertive'? We live in an increasingly violent world, I don't want my school-age daughter seeing reports in the press describing the act of shoving, pulling and tackling as 'assertive'!

This ground for appeal falls under the category of the sanction being manifestly lenient or excessive. Cllr Taylor experienced suspension from the party, the obligation to offer a public apology and the attendant publicity associated with the disciplinary hearing and outcome. The panel consulted the Standards Officer before reaching its determination on sanction. The Appellant is entitled to her view that the sanction is too lenient and should include anger management counselling. However, the standard to meet is 'manifestly lenient'. I cannot consider that the additional sanction of anger management counselling would constitute a significant difference to the original determination, therefore the sanction cannot be considered to be manifestly lenient, and this ground for appeal is dismissed.

Further comment from the Appellant

My complaint that Cllr Taylor had brought the party into disrepute by physically attacking an independent councillor at a Full Council meeting was upheld by the panel. However, the **wording in the notice** and the **sanction** they selected for him are unacceptable because:

- a. the panel showed bias (described below)
- b. the set procedure was not followed (described below)
- c. the chair failed to stop the respondent's representative Cllr Martin Wrigley launching an ad hominem attack on me which contained untrue, libellous and defamatory suggestions. His defence of Cllr Taylor was essentially that I'm more horrible.... The length of his attempt to destroy my credibility is obliquely referred to in the decision notice. I'd love to believe that the all-male panel saw through Cllr Wrigley's bizarre attack but the fact that they described Gary's physical attack on another councillor as 'assertive' makes me wonder.

In the decision, the panel describe a physical attack by Cllr Taylor on Cllr Mullone at Full Council as 'assertive'. I am alarmed by the use of such a forgiving word

when we should, as a party, be demonstrating zero tolerance on acts of physical violence. (Especially when they're forever on film!)

The panel references the absence of a criminal conviction as a rationale for not reaching a more punitive decision regarding Cllr Taylor's actions. This is a specious argument since the police investigation of the incident is still ongoing. Also, police do not, by necessity of resources, investigate all acts and threats of violence (as I know personally having successfully taken a local police officer through their complaints system).

In this comment the Appellant refers to other possible grounds for appeal, namely the chair failing to stop defamatory comment about herself during the Complaints Hearing and the absence of a criminal conviction as a specious argument for a more lenient sanction. On the first issue, at the hearing a panel member specifically admonished the Respondent and his Representative for their attacks on the Appellant. There is no reference to the Appellant's character or actions in the panel's reasoning. There is therefore no evidence that the attack on the Appellant had any influence on the outcome of the hearing. Indeed, given the panel member's comments during the hearing, one might speculate it would not have been to the Respondent's advantage if it had been considered. On the second issue, the panel did consider the legal definition of assault in reaching their determination and concluded that Cllr Taylor's behaviour did not meet it. They make no reference to the absence or otherwise of a criminal conviction; they were using the legal definition to assist in their reasoning, not any actions, or inactions, of the police. This is an entirely legitimate standard to apply in judging behaviour. This comment therefore provides no further grounds for appeal.