

From Councillor T. E. Sharratt

14 Coupe Green, Hoghton, Preston PR5 0JR; 01254-852978

3 July 2009

David Whelan, Esq.,
Legal Services Manager,
South Ribble Borough Council,
West Paddock,
Leyland PR25 1DH.

Dear Mr Whelan,

COMPLAINT BY COUNCILLOR J. D. MARSH

1. Thank you for your letter of June 23. Since you did not tell me about the meeting of the Standards Consideration Sub-committee on June 22 I did not know it was taking place; in any case I was not invited to attend. I must point out that since Councillor Marsh first lodged his complaint on 3 December 2008 seven months have elapsed and I have never once been allowed to defend myself against his allegations. Indeed, by the time the case comes before the Standards Committee in August close on nine months will have elapsed – by which time members will have considered Councillor Marsh's allegations many times and I shall not have been allowed to speak in my defence at all. To my mind there is a singular lack of justice in these proceedings, which is compounded by your refusal to give me the minutes of those meetings. And you now tell me that if I do not disclose my defence in advance I may not be allowed to present it at all. Please note that I therefore send you my observations under protest.

2. First of all let me say I made a mistake. Not being a lawyer, I thought the double jeopardy rule still applied under English law. After all, it has done us very well for about 800 years and was considered so important a couple of hundred years ago that it was incorporated as the fifth amendment to the United States Constitution. I was wrong. The idea that no-one found not guilty can be tried twice for the same offence was abandoned by the British Government six years ago. Under the Criminal Justice Act 2003 the accused can be brought back to the dock if "compelling new evidence" can be found. I raised the issue of double jeopardy with Ms Gray repeatedly during our correspondence and in person when we met in the interrogation cell on March 13 yet she never mentioned the change in the law. Why not?

3. And so it is that under the guidance of the Standards Board South Ribble Borough Council has adopted a procedure that permits a "review" of an acquittal. In other words, if a complainant doesn't like the first verdict he can ask for a retrial. In this case the jury, the first assessment committee, found the case so flimsy that they dismissed it. Councillor Marsh demanded a review, so the first jury was dismissed and a fresh jury appointed. The second assessment committee came up with what he wanted: they decided to put me on trial.

4. I shall no doubt be told that my protests are in vain – that the procedure is all within the rules. I do not doubt it. We have heard much recently of conduct that is all within the rules – in many cases, in accordance with the letter and spirit of the law – but that does not mean, in my view, that it is just, fair, and reasonable.

5. Before I continue I must ask for clarification on these points:

1. What degree of privilege applies to the proceedings?
2. What standard of proof is required?

6. Whatever offences I am accused of, I point out that only three have been made by Councillor Marsh: 1. That I described him as a "defecator"; 2. That I lied two years ago when I said he left the Idle Toad to join the Conservatives; and 3. That in an item headed "Not a Real Tory" I "went too far". That is what he wrote in his complaint dated 3 December 2008.

7. In response to the first complaint, that I described him as a "defecator", there is a simple explanation: it was a misprint. The word I intended to use was "defector" – that is, someone who abandons one council group to join another. Since the two words are so similar an errant letter "a" crept

in. Unfortunately I did not notice the mistake before publication, and I have already written a correction for the next issue of the *Idle Toad*. I drew attention to the misprint in my letter to Ms Gray of March 4 and told her that a correction would appear in the next issue. Her report makes no mention of that. Why not?

8. In response to the second complaint, my diary records that Councillor Marsh resigned from the *Idle Toad* on Tuesday, 13 February 2007. He first sat with the Conservative group at the council meeting on Wednesday, February 21 – just eight days later. With a gap of just eight days between his resignation from the *Idle Toad* and his first appearance with the Conservatives it does not seem unreasonable to suggest that he resigned to join the Tories. What I cannot say, of course, is on exactly which of those eight days he did so. Ms Gray's report makes no mention of that. Why not?

9. A particular point now arises: if Councillor March was aggrieved by my statement, why did he wait two years to complain? If it was untrue, why did he not complain at once or at some time in the intervening period? I suggest the reason was that in 2007 there was no county council election; but there most certainly was in 2009, as we know, and he lodged his complaint just six months before that election was due to take place – with his close friend and colleague, Councillor Barrie Yates, standing for election against me as the Conservative candidate in South Ribble Rural East. There, I suggest, there was a powerful motive: to discredit me in the eyes of the voters by calling me a liar during the period immediately preceding the election due on June 4. Ms Gray's report makes no mention of that. Why not?

10. There may have been another motive for Councillor Marsh's complaint besides his desire to see Councillor Yates displace me as county councillor for South Ribble Rural East – namely, to hinder production of the *Idle Toad*. In that endeavour he has been hugely successful: I have had to spend so much time responding to his allegations that I have had no time to produce the next issue.

11. In response to the third complaint, it is difficult to mount a defence against an allegation set out in such imprecise terms: that I went "too far". Councillor Marsh does not say how far is far enough or what limit I exceeded. I am left to guess. So let me guess that it is not his injured pride that prompts his complaint but my exposure of his hypocrisy – and hypocrisy it must be if he joins the Conservative Party and then goes round telling people he is "not a real Tory". I do not imagine his Conservative colleagues, or his group leader, would be very pleased to hear of that.

12. In what I wrote did I get it right? That is a crucial question. Did I quote Councillor Marsh accurately in what he said? Yes, I did. The best evidence that I got it right is his silence. At no time since that report appeared has he complained that I got it wrong. Not to me, not to anyone else. Not once. No complaint at all that he never said it, that he was misquoted, that he was taken out of context. Nothing. I think we may safely assume that I got it right. Ms Gray's report makes no mention of that. Why not?

13. There is a further implicit point in his complaint that I went "too far". It is that I embarrassed him, and should not have done so. I plead guilty. I made fun of him, and I say I am fully entitled to do so. Indeed, I am permitted to do so by law: Section 75(1)(c) of the Representation of the People Act 1983 permits me and all others to disparage our rivals. Indeed, disparagement – whether by way of ridicule, irony, sarcasm, parody, satire, lampoon, caricature, or any other kind of mockery, belittling rivals through humour – has been a traditional feature of British politics since the days of James Gillray and Thomas Rowlandson more than 150 years ago. Disparagement features long and loud in every meeting of South Ribble Borough Council and others I know of too. If Councillor Marsh doesn't like disparagement, he should get off the council; but being a member of the council it is not in my view a thing he can complain about.

14. Let me comment further on Ms Gray's report. In Para. 5.9 she says "Councillor Marsh understood the meaning of the word defecator and stated in interview that he believed that the article was calling him a 'bloody shit'." I must point out that I have never used those words and Councillor Marsh's assertion is pure speculation. Ms Gray's report makes no mention of that. Why not?

15. Again, in Para. 5.12 she says: "Councillor Marsh stated in interview that he did not believe the use of the word 'defecator' was a misprint but a deliberate act. He stated that he did not believe that a man with as much experience as Councillor Sharratt would have made such a mistake." Again, that is an

assertion by Councillor Marsh based on nothing more than speculation. Ms Gray's report makes no mention of that. Why not?

16. Ms Gray's report mentions several times that readers thought the item Not a Real Tory referred to Councillor Marsh. So it did, but it did not name him. He identified himself, and as I have already pointed out to Ms Gray the *volenti* rule applies. She makes no mention of that. Why not?

17. But why should the inadvertent appearance of the word "defecator" prompt people to think of Councillor Marsh? Apart from his defection to the Tories and his self-identification, could there be another reason? That is a question which Ms Gray does not explore. Why not?

18. Ms Gray concludes that the use of the word "defecator" was not a misprint but was deliberate. Referring to my 30 years as a *Guardian* journalist in Para. 7.7, she says: "Such a mistake is not consistent with a man of such experience and standing. Even if the misprint had occurred when initially writing the article I would have expected it to have been picked up in the editorial process. Therefore even if the inclusion of the word 'defecator' was not intentional I feel that its inclusion was reckless to such a degree that the Code of Conduct would still have been breached."

19. What she refers to as the "editorial process" is, I think, proofreading. Let me tell you of the efforts newspapers make to ensure that misprints do not appear. First, the writer is expected to avoid misspellings, and then what has been written goes to a sub-editor. The sub-editor's job is to check for misspellings, errors, and infelicities. Then the revise sub-editor goes through it all again, and so do the readers. These readers are not the readers who pay their tuppence for a paper every morning but readers of proofs of what has been written ready to go into the paper. At the same time the revise sub-editor will check proofs too – and possibly the sub-editor as well. So there are at least five attempts to correct misprints. And still misprints appear. I can show you examples from a whole range of newspapers.

20. I can tell you of all this because of my many years' work in newspapers. I should be glad to know of Ms Gray's experience on which she bases her observation that the use of the word "defecator" was deliberate or reckless. How many years' experience does she have as a proofreader? Did she do such work for a newspaper or magazine or other publication? If she has no such experience, did she seek advice from those who have? And if she has no such experience and did not seek advice, do not her conclusions amount to no more than unsupported assertion and speculation – that is, empty guesswork?

21. I expect Ms Gray, being a lawyer, is familiar with The Standards Committee (England) Regulations 2008. It is the statutory instrument that governs the proceedings you have brought against me. Indeed, being a lawyer, she will have read the regulations time and again and she will know them back to front, as no doubt you do yourself. The regulations have been read and reread and approved by Parliament. Since in Ms Gray's view it is so easy to spot a misprint please ask her to cast an eye over the regulations once again – and find the misprint. If an errant letter can creep unnoticed into a statutory instrument, it is not surprising, I suggest, that a similar letter can find its way unseen into the *Idle Toad*.

22. There are two issues arising out of Councillor Marsh's complaint. First, my exposure of his hypocrisy in joining the Conservative Party and then claiming he is "not a real Tory"; and, second, the question of an inadvertent misprint which led some readers to think of Councillor Marsh. I have already raised the question of why they did so at the top of this page. Strangely, Ms Gray has nothing to say about the rest of the conversation between Councillor Marsh and the young lady he addressed in such forthright terms last autumn. Why not?

23. Most strikingly, Ms Gray does not pursue the issue of *mens rea*. The most she offers (in Para.7.8) is that she concludes "that the use of the word 'defecator' was intentional and/or reckless to such a degree that a breach of the code of conduct has occurred." She does not state the evidence on which her conclusion is based other than to assert that it should have been spotted during "the editorial process". I have dealt with that earlier in this letter.

24. To come to a verdict the Standards Committee requires two things: evidence and proof. Ms Gray's report offers neither. It relies largely on assertion, speculation, and supposition. All that can be said of it is that it is at best slipshod and superficial and fails to make any kind of case against me.

25. You ask me specific questions:

1. Do I disagree with any of the findings of fact in the report, and if so would I give reasons? I have already answered that question in the earlier part of this letter.
2. Do I wish to be represented at the hearing? No; I shall represent myself.
3. Do I wish to give evidence at the hearing either orally or in writing? Yes – both.
4. Do I wish to call witnesses? No.
5. Do I wish any part of the hearing to be in private? No -- please invite press and public.
6. Do I wish any part of Ms Gray's report or other relevant documents to be withheld from the public? No – please send them to the media.

26. Having answered your questions I invite you to answer mine:

1. What evidence do you intend to present against me?
2. What further allegations do you propose to make against me?
3. What witnesses do you intend to call against me? Full details, please.
4. What documents do you intend to present?
5. On what statutory authority do you refuse me the minutes of previous meetings?

27. For the trial you suggest the week beginning August 24. I am ready to attend that week; however, in view of the volume of evidence to be considered by the Standards Committee, one week may not be enough. Please note that due to a previous engagement I cannot attend on Wednesday, September 2.

28. I request that the findings of the Standards Committee shall be published in two local newspapers – one daily, one weekly; that the text of the advertisement shall be shown to me before publication; and that copies of the advertisement in each newspaper shall be supplied to me free of charge.

29. Finally, you promised three weeks ago to furnish me with a copy of Section 63 of the Local Government Act 2000. You didn't. Please do.

Yours faithfully,

A handwritten signature in cursive script that reads "Tom Sharratt". The signature is written in black ink and is positioned above a horizontal line.

TOM SHARRATT