

NORTHUMBERLAND

Northumberland County Council

STANDARDS COMMITTEE

DATE: 25TH OCTOBER 2018

R (HARVEY) V LEDBURY TOWN COUNCIL - POTENTIAL IMPLICATIONS FOR NORTHUMBERLAND COUNTY COUNCIL

Report of the Monitoring Officer

Cabinet Member: Councillor Nick Oliver - Corporate Services & Cabinet Secretary

Purpose of report

To provide an update to the Standards Committee on a recent High Court decision which sets out how a council should handle a complaint against a councillor.

Recommendations

To consider the report and to note the potential implications of the decision for the Standards Committee and Monitoring Officer in the operation of the ethical framework under the Localism Act 2011.

Link to Corporate Plan

This report is relevant to the “We want to be efficient, open and work for everyone” or “How” priority included in the draft NCC Corporate Plan 2017-2021.

Key issues

High Court decision involving what might have been considered an “employment issue” is now also, if not exclusively, a code of conduct issue.

Background

1. Councillor Harvey had served as a Ledbury Town Councillor since 2011. The town clerk and deputy town clerk brought a grievance alleging that Councillor Harvey had bullied, intimidated and harassed staff.
2. Rather than refer the complaint to the Monitoring Officer under the Code of Conduct process set out in the Localism Act 2011 it was dealt with under the Town Council’s grievance procedure. Councillor Harvey was not content with this action taken and self-referred as a Code of Conduct complaint to the Monitoring Officer of Herefordshire Council. Notwithstanding that referral the Town Council proceeded with the grievance and found against Councillor Harvey. It further imposed sanctions

namely that the Councillor could not serve on any committee, sub-committee or outside body and that all correspondence from her had to go via the Mayor.

3. Meanwhile the Monitoring Officer instructed an independent investigator who found that there was no breach of the Code of Conduct and consequently the Monitoring Officer took no further action. The Town Council, despite the independent investigator's finding, made a further decision to continue with the sanctions.
4. Councillor Harvey initiated judicial review proceedings against the Town Council. The grounds being:
 - That the council had acted ultra vires in determining the complaint through the grievance procedure instead of the Code of Conduct procedure
 - The council's actions were unfair and in breach of Article 10 European Convention on Human Rights (ECHR)
 - Procedural unfairness
5. The matter was heard in the High Court in Cardiff by Mrs Justice Cockerill on 15th May 2018.
6. Essentially Cllr Harvey's case was that the Town Council's Grievance Procedure and the County Council's Code of Conduct process covered the same ground. One could not cherry pick a particular process, or duplicate proceedings on the same issues. She also said that the Town Council did not have the power to impose the sanctions that it did. The Town Council's case was that the two procedures served different roles and functions. One was concerned with employee protection, the other was concerned with standards in public life.
7. The High Court found for the councillor on all grounds and the decision was quashed. The High Court found that there is no general power to run a grievance procedure in tandem with, or as an alternative to, a Code of Conduct procedure. The decisions makes it clear that:
 - A sanction imposed through any other procedure than the Code of Conduct process is unlawful;
 - Any grievance process must be fair and accord with the principles of natural justice. The right to a fair hearing under Article 6 of the ECHR has to be complied with.
 - The action taken was disproportionate to the conduct alleged and had been imposed in a process by which the councillor had not meaningfully been able to participate.
8. The National Association of Local Councils (NALC) and Society of Local Councils Clerks (SLCC) on behalf of local councils have written to the Ministry of Housing, Communities and Local Government, the Committee on Standards in Public Life and the Local Government Association to highlight concerns about this judgement as they believe that it will make it more difficult for local (parish and town) councils to resolve disputes between councillors and their employees.

9. This decision appears to confine most complaints about councillors to the members code of conduct process under the Localism Act 2011 in respect of which this authority, as a principal authority, in common with all other principal authorities, have a duty to adopt arrangements under which allegations of misconduct against all councillors in their administrative area, including parish and town councillors, can be considered.
10. As a result of the judgement will now (generally) not be able to use their councils' grievance procedures if the subject of their grievance is a complaint about a councillor.
11. While it is much too early to tell it is considered by some commentators that this will lead to more principal authority involvement in local council matters concerning alleged misconduct and place additional burdens on Monitoring Officers and their staff as well as, in the more serious instances, such democratic structures as principal authorities may have included within their arrangements for such complaints such as the Council's own Standards Committee.
12. Both the National Association of Local Councils and the Society of Local Council Clerks are concerned about the impact that this decision will have on the corporate well being of local councils and have called for urgent talks with Government to, in their words "try and find a sensible way forward to ensure quick and fair resolution of disputes".
13. In Northumberland, Mr Rickett, the Chief Officer of the Northumberland Association of Local Councils has, following the issue of the judgement, made all of his member councils aware of the decision and made available further details to this councils who may require more information. Mr Rickett, has also, on behalf of the Northumberland Association of Local Councils, written to the Standards Committee on the matter and a copy of his correspondence is attached to this report as Appendix 1.
14. The effect of the judgement is something which all councils will now have to be aware of, at least in principle, should similar circumstances to those at Ledbury arise in the future.

Implications

Policy	N/A
Finance and value for money	None significant although the report outlines a statutory requirement or a requirement to ensure the Council's decision making framework is robust, mitigating risk or legal challenge
Legal	As set out in the report
Procurement	N/A
Human Resources	Any work resulting from this report will have an impact from staffing resources the extent of which is, as yet, unquantifiable
Property	N/A
Equalities	N/A

(Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	
Risk Assessment	The impact of the ethical standards regime, the emerging statutory framework for local government and the need to produce appropriate guidance for Members' clarification is having an impact on delivery of other corporate priorities.
Crime & Disorder	N/A
Customer Consideration	
Carbon reduction	N/A
Wards	All divisions

Background papers:

Localism Act 2011

Report sign off.

	initials
Finance Officer	n/a
Monitoring Officer/Legal	LH
Human Resources	n/a
Procurement	n/a
I.T.	n/a
Executive Director	KA
Portfolio Holder(s)	NO

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