

Standards Committee 9 October 2018

Case law update – Harvey v Ledbury Town Council (2018)

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Wards affected: All

PROPOSED DECISION

To note the report.

Reason for Decision

To ensure the Committee is aware of case law relating to standards issues and procedures and in particular to provide the Committee with information about a recent High Court judgement concerning the lawfulness of sanctions imposed by a Town Council against a Town Councillor, following a complaint about her conduct.

Corporate Implications

1. The Localism Act 2011 sets out the framework for member conduct and complaint handling for District and Town/Parish Councils; case law, as it emerges, is persuasive and provides guidance as to the interpretation of legislation, and informs behaviours in the future.

Executive Summary

2. This report outlines the background to the case of Harvey v Ledbury Town Council, a case which was heard in the High Court on 15 May 2018, and dealt with the issue of what sanctions can legally be imposed against a town councillor in respect of perceived misconduct, and through what process.

Sustainable Community Strategy/Council Priorities – Implications

3. This report helps support the “Efficient and Effective” strand of the Council’s Corporate Plan, by supporting the aim of continuing to develop and value our elected members and staff, and behaving in accordance with our values.

Background and Issues

4. Complaints were made in relation to the alleged behaviour of Councillor Harvey, a member of Ledbury Town Council, by the Town Clerk. The Town Clerk lodged a grievance alleging that Councillor Harvey had bullied, intimidated and harassed staff. The grievance was heard by a panel of senior Town Councillors. Councillor Harvey did not attend, indicating that she did not recognise the authority of the Panel, and she requested that the matter be properly investigated under the Standards procedure. The Town Council’s Panel went on to consider the grievance, and upheld it in Cllr Harvey’s absence, proceeding to resolve to impose a number of restrictions on Councillor Harvey, for a year, including that she should not sit on any committees, sub-committees, panels or working groups, nor represent the council on any outside body, and that all communications between her and its clerk and deputy clerk should go through the mayor. No reasons were provided, and an appeal was rejected. After a year, the restrictions were

reviewed, when again Cllr Harvey was absent, and evidence relied upon was not provided to her, with the restrictions being maintained and further expanded to prevent Cllr Harvey from communicating with all staff.

5. Councillor Harvey “self-referred” the complaints about her behaviour to the Monitoring Officer of Herefordshire Council to be dealt with as a Code of Conduct complaint. Herefordshire Council advised the Town Council that the complaint was sufficiently serious to require further investigation, and that it was making arrangements for the complaint to be investigated by an external investigator. The Monitoring Officer advised the Town Council that although the allegations had been made under the grievance procedure, they were in fact allegations that a member had failed to comply with the authority's Code of Conduct and therefore should be dealt with in accordance with the standards regime (for English authorities this regime is made under Section 28(6) of the Localism Act 2011).
6. The external Code of Conduct investigation was concluded and Herefordshire Council notified the parties that the investigator had found no breach by Councillor Harvey of the Town Council's Code of Conduct and so it would be taking no further action on the standards complaint.
7. Councillor Harvey then challenged, by way of a judicial review application, the Town Council's decision to impose sanctions on her under its grievance procedures on the basis that:
 - a. the restrictions were ‘ultra vires’ (i.e. beyond the powers of the Town Council and therefore unlawful) because they constituted sanctions which could only be imposed as a result of a standards process; and
 - b. the decision making process had been unfair, both substantively and procedurally.
8. The Town Council argued that its decision was not ultra vires, because it believed that the standards regime set under the Localism Act 2011 did not prohibit it from instigating proceedings under its grievance procedure where the matter at issue involved internal relations concerning its staff. It also rejected the complaints that its decision making process was substantively and procedurally unfair.
9. The High Court judge decided in favour of Councillor Harvey on both grounds of her challenge, and quashed (overturned) the decision to impose the sanctions.
10. The full judgement is accessible at:
<http://www.bailii.org/ew/cases/EWHC/Admin/2018/1151.html>
11. Key points from the case are:
 - a. The Town Council had no power to sanction Councillor Harvey other than going through the procedural safeguards of a Code of Conduct

process. The council's restrictions on Councillor Harvey (continued even after she was found not to have been in breach of the code) were an unlawful sanction; and

- b. The conduct of the grievance process through which the restrictions were imposed was unfair.

12. This case makes clear that a council cannot pursue a grievance procedure against a councillor alongside, or as an alternative to, a standards regime procedure, and that complaints regarding a councillor's conduct must be dealt with under the authority's standards arrangements under the Localism Act. It also provides a reminder that any process must be fair and in accordance with the principles of "natural justice"; the right to a fair hearing by an unbiased and impartial body, requires that individuals should have been given prior notice of the allegations made against them, a fair opportunity to answer them, and the opportunity to present their own side of the story. The right to a fair hearing is also guaranteed by Article 6(1) European Convention on Human Rights, which complements the common law rather than replaces it.

13. It should be noted that the issue of Councillor Harvey's conduct was not the point which was in dispute in this case; rather, it was the process used to consider it that was challenged. It remains the case that councils must continue to be mindful of their responsibilities to protect their employees from bullying, intimidation and harassment, since it is possible for a council to be liable for the actions of its councillors, a principle which was established in the case of *Moores v Bude-Stratton Town Council*, a case determined in 2000. However, the key point in the *Harvey v Ledbury Town Council* case is that the proper course for the investigation of behaviour of councillors and the imposition of any sanctions if a breach is found to have occurred is under the Code of Conduct and the statutory standards framework; councils must also ensure that any hearing is fair and any informal action is proportionate in all the circumstances of the case.

Options

The report is for noting only.

Conclusions

The case provides clarification of the law and guidance for future reference and will be taken into consideration in providing advice where relevant.

Next Steps

Case law will be monitored, and reported to Standards Committee as appropriate.

Background Papers

None which are not already in the public domain.