

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

13 July 2018

REPORT OF THE HEAD OF LEGAL SERVICES – C.GRIFFITHS

Matter for Information

Wards Affected: All

Update on recent High Court Decision regarding Members Code of Conduct

Purpose of the Report

1. To provide the Committee with information about a recent High Court judgement concerning the lawfulness of sanctions imposed by a Town Council against a Councillor following a complaint about her conduct

Background

2. A recent case regarding the role of a Standards Committee has recently made its way to the High Court and it was felt appropriate by the Monitoring Officer that a report on its outcome be provided to the Standards Committee for Members information. It is rare for there to be a judicial review in respect of Standards Committee remits and a summary of the same is set out below.
3. The case was R (on the application of Harvey) v Ledbury Town Council 2018. Although it relates to a Town Council in England, its findings are very much applicable in Wales.
4. A summary of the case is as follows:
 - (a) Councillor Harvey was a member of Ledbury Town Council and came into conflict with the town clerk who brought a grievance alleging that Councillor Harvey had bullied, intimidated and harassed staff. The grievance was heard by a panel of senior councillors. Councillor Harvey did not attend, stating that she did not recognise the authority of the Panel, and she requested that the matter be properly investigated under the standards procedure.

- (b) However, the Panel upheld the grievance in her absence, and the town council then resolved to impose a number of restrictions on Councillor Harvey, 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.
- (c) Councillor Harvey referred herself to the Monitoring Officer of Herefordshire Council as a Code of Conduct complaint. Herefordshire Council advised the Town Council that the complaint was sufficiently serious to require further investigation, and so it was making arrangements for the complaint to be investigated by an external investigator. The Monitoring Officer advised the Town Council that although these allegations were 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 so had to be dealt with in accordance with the standards regime (for English authorities this regime is made under s.28(6) of the Localism Act 2011).
- (d) Nonetheless, the town council maintained its restrictions on Councillor Harvey; and subsequently decided that the restrictions should not only continue, but should also be expanded to prevent her from communicating with all staff.
- (e) The external Code of Conduct investigation was then concluded; and Herefordshire Council advised 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.
- (f) Councillor Harvey then applied for judicial review to challenge the Town Council's decision to impose sanctions under its grievance procedures on the basis that (1) the restrictions were 'ultra vires' (unlawful) as they constituted sanctions which could only be imposed as a result of a standards process; and (2) the decision making process was unfair, substantively and procedurally.
- (g) The town council argued that its decision was not ultra vires, because it said that the standards regime set under the Localism Act 2011 did not prohibit it from instigating proceedings under its grievance procedure where what was in issue was a matter involving internal relations between its employees and staff. It also rejected the complaints that its decision making process was substantively and procedurally unfair.
- (h) The High Court judge ruled in favour of Councillor Harvey on both grounds of challenge. The judge said the Town Council's decision must be quashed.
- (i) Although the case related to a Town Council and the standards regime applicable in England, the key points from the case are relevant here in Wales, those being that:

- i. The council were not able 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
 - ii. The conduct of the grievance
5. This case makes clear that a council cannot run a grievance procedure against a councillor alongside, or as an alternative to, a standards regime procedure, and that complaints regarding a councillor's conduct have to be dealt with under the authority's standards arrangements.
6. It also provides a reminder that any process must be fair and in accordance with the principles of natural justice, i.e. 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 Art.6(1) European Convention on Human Rights.
7. It should be noted that the issue of Councillor Harvey's conduct was not in dispute in this case, rather it was the process used to consider it.
8. Notwithstanding this judgment, it is clear that local authorities must continue to be mindful of their responsibilities to protect their employees from bullying, intimidation and harassment, since the authority may be liable for the actions of its councillors (this was established in the case of *Moores v Bude-Stratton Town Council* [2000] EAT 313/99). However, the proper course for the investigation of behaviour of councillors is under the Code of Conduct and the statutory standards framework; and authorities must ensure that any hearing is fair and any informal action is proportionate in all the circumstances of the case.

Financial Impact

9. There are no financial impacts associated with this Report.

Equality Impact Assessment

10. There are no equality impacts associated with this Report

Workforce Impacts

11. There are no workforce impacts associated with this Report

Legal Impacts

12. The ethical framework of Members is as derived from the Local Government Act 2000 and the Members Code of Conduct is as set out in the Constitution of Neath Port Talbot County Borough Council (“the Council”) as created by the Conduct of Members (Model Code of Conduct) (Wales) Order 2001.

Consultation

13. There is no requirement under the Constitution for external consultation on this item.

Recommendations

14. That Members note the decision of High Court in the recent judgement relating to the role of a Standards Committee.

Appendices

15. None

List of Background Papers

16. R (on the application of Harvey) v Ledbury Town Council 2018
(<http://www.bailii.org/ew/cases/EWHC/Admin/2018/1151.html>)

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