

6. Can Parish Councils still carry out a grievance investigation when there is a Complaint from a member of staff that could be considered under sections 27 to 35 of the Localism Act 2011?

The case of R (Harvey)-v-Ledbury Town Council and Herefordshire County Council

REPORT OF: Solicitor & Head of Regulatory Services
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Wards Affected: All
Key Decision: No
Report to: Standards Committee on 25th June 2018

Purpose of Report

1. To present to the Standards Committee for discussion the judgement in the recent case of the Queen (on the application of Elizabeth Harvey) and Ledbury Town Council and Herefordshire County Council and interested party Andrew Harrison.

Summary

2. The full judgement is at Appendix 1 to this report. It establishes that where there is a potential breach of the Code of Conduct by a Member of a Council relating to their behaviour to staff of that Council the matter should be referred to the relevant authority to undertake a review of the conduct in the light of the provisions in the Localism Act 2011 and not by use of the general power under Section 111 of the Local Government Act 1972. It also confirms that where sanctions are imposed they must be reasonable and that in determining what is reasonable there must be an opportunity for all parties to know what is being said and to submit their views on the matter and for the deciding body to have an open mind about these matters. These are standard principles of public law.

Recommendations

3. **Members of the Standard Committee are asked to consider this report and the judgment on the understanding that the Monitoring Officer intends to report the matter to parish clerks.**
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Background

4. Following complaints from both the clerk and deputy clerk against the conduct of Cllr. Harvey the Town Council set up a grievance panel. The allegations were that she had bullied, intimidated and harassed the two members of staff. There were similar allegations against Cllr. Andrew Harrison. The alleged bullying, intimidation and harassment were not set out in any detail and Cllr. Harvey was not provided with the details of these allegations. She was invited to attend the Grievance Panel hearing but did not do so. The outcome of this hearing was that Cllr. Harvey could not sit on any Committee, Sub Committee, Panels or Working Groups nor represent the Council on any outside body and that all communications between her and the clerk and deputy clerk should go through the Mayor. This was in 2016.
5. Under the Localism Act 2011 Herefordshire County Council (a Unitary Council) was responsible for investigating Code of Conduct complaints. Cllr. Harvey reported herself to Herefordshire Council. They made some preliminary enquiries and determined the matter should be investigated. The Town Council were advised by Herefordshire Council that the matter would be investigated as a potential Code of Conduct breach under Section 28(6) of the Localism Act 2011.
6. On 8th May 2017, a year after the original sanctions were imposed, the Town Council met again and decided to extend sanctions so that Cllr. Harvey was not able to communicate with any member of staff at the Council. At this point Cllr. Harvey applied for Judicial Review of that decision on the basis that if there was a question about a councillor's conduct then it should be considered under the Code of Conduct procedures in the Localism Act 2011. She had been treated unfairly pursuant to the European Convention on Human Rights Article 10 or under the common law and that proper procedures had not been followed in allowing her to explain her position before the sanctions were imposed by the Town Council.
7. The Town Council claimed to have powers to conduct the grievance procedure under Section 111 of the Local Government Act 1972 and impose the sanctions.
8. On 9th May the Monitoring officer from Herefordshire Council wrote to the Claimant confirming that following the Code of Conduct investigation there was no breach of the Code of Conduct. On 11th May the Monitoring officer wrote to the Parish Mayor saying that the sanctions against Councillor Harvey could only be imposed following a recommendation from the Authority charged with investigating the Code of Conduct complaint. The Parish Council did not agree and defended their actions in the case brought by Councillor Harvey.

The Judgment:

9. The Court found that any powers that existed before 2011 for the Parish Council to carry out such a grievance procedure had been quashed by the Localism Act 2011. If there was a potential breach of the Code of Conduct the matter should be referred to the relevant authority who in turn should try and resolve the dispute or conduct a full investigation, with a public hearing if the investigators report disclosed a potential breach of the Code of Conduct. All parties should be advised of the allegations and be given the chance to appear at the public hearing. This meant that the grievance findings and sanctions flowing from them were ultra-virus the powers of the Parish Council.

10. The judge went on to explore whether the sanctions against Councillor Harvey were in accordance with the European Convention of Human Rights Article 10. She concluded that these sanctions were excessive and disproportionate. It was noted the only complaints were against from the clerk and the deputy clerk yet the amended sanctions include all staff at the Town Council. It was also not clear how the attendance of Councillor Harvey at other meetings would prejudice the position of the Clerk and Deputy Clerk.
11. The Judge also reaffirmed the Public Law principle of parties being informed of any allegations and being given a chance to explain them.

The outcome of the Case.

12. The case establishes that where there is a potential breach of the Code of Conduct then matters should be reported to the relevant authority and Town and Parish Councils should not seek to take their own formal action and impose their own sanctions. Any general power that existed to carry out such grievance hearings prior to the Localism Act 2011 is now gone.
13. The case reminds authorities in placing such sanctions on elected members they must be proportionate, and in dealing with complaints all parties must know the nature of the complaint and be given the opportunity to speak about such complaint.

Policy Context

14. Sections 26 – 37 inclusive of the Localism Act 2011 require District Councils to deal with Standards Complaints to promote good standards in its area. The case involving Cllr. Harvey indicates these powers override any former powers Parish or Town councils had to deal with matters potentially involving Code of Conduct under Section 111 of the Local Government Act 1972.

Financial Implications

15. Having a full hearing of a case at the High Court will have been expensive to all parties and will be very large charge on the Council Tax payers in Ledbury. It clearly shows the importance of maintaining good relationships in Councils and avoiding matters reaching the level where parties are considering legal proceedings.

Risk Management Implications

16. Early intervention should assist in ensuring working relationships are maintained in Town and Parish Councils.

Equality and customer service implications

15. The case emphasises the need for parties to be treated on an equal basis and being given the chance to explain their position.

Appendix.

16. The full report of the case of Harvey and Ledbury Town Council.