
**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL
SERVICES AND MONITORING OFFICER**

R (HARVEY) v. LEDBURY TOWN COUNCIL (2018) – CASELAW UPDATE

Reason for this 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. 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. 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.
3. 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).
4. 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.
5. 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.

6. 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.
7. 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.

Issues

8. 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. (The full judgement is accessible here:
<http://www.bailii.org/ew/cases/EWHC/Admin/2018/1151.html>)
9. 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 process through which the restrictions were imposed was unfair.
10. 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.
11. 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, which complements the common law rather than replaces it.
12. 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.
13. 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 *Moore 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.

Legal Implications

14. The relevant legal provisions are set out in the body of the report.

Financial Implications

15. There are no direct financial implications arising from the report.

RECOMMENDATIONS

That the Committee note the information set out in the report.

Davina Fiore

Director Governance and Legal Services and Monitoring Officer

6th June 2018

Background papers

Local Government Lawyer, Article 'Councillor succeeds in High Court challenge to imposition of sanctions', 21/05/18

https://localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=35349%3Acouncillor-succeeds-in-high-court-challenge-to-imposition-of-sanctions&catid=59&Itemid=27

Bevan Brittan, Commentary 'Use of grievance procedures to impose sanctions for councillors' misconduct' 24/05/18 [https://www.bevanbrittan.com/insights/articles/2018/ledbury-use-of-grievance-procedures/?utm_source=Bevan%20Brittan%20LLP%20&utm_medium=email&utm_campaign=9514423_Alert%3A%20Use%20of%20grievance%20procedures%20to%20impose%20sanctions%20for%20councillors%27%20misconduct&utm_content=Ledbury20180524&dm_i=1DMN,5NXDJ,OMKGLU,M1AOV,1](https://www.bevanbrittan.com/insights/articles/2018/ledbury-use-of-grievance-procedures/?utm_source=Bevan%20Brittan%20LLP%20&utm_medium=email&utm_campaign=9514423_Alert%3A%20Use%20of%20grievance%20procedures%20to%20impose%20sanctions%20for%20councillors%27%20misconduct&utm_content=Ledbury20180524&dm_i=1DMN,5NXDJ,OMKGLU,M1AOV,1&utm_source=Bevan%20Brittan%20LLP%20&utm_medium=email&utm_campaign=9514423_Alert%3A%20Use%20of%20grievance%20procedures%20to%20impose%20sanctions%20for%20councillors%27%20misconduct&utm_content=Ledbury20180524&dm_i=1DMN,5NXDJ,OMKGLU,M1AOV,1)