

North East Derbyshire District Council

Standards Committee

12 July 2018

High Court Case - Ledbury Town Council

Report of the Joint Head of Corporate Governance and Monitoring Officer

This report is public

Purpose of the Report

- To advise the Standards Committee on a recent High Court ruling on the obligation of Local Authorities to discipline Councillors under the Code of Conduct procedure.

1 Report Details

- 1.1 The High Court has handed down an important ruling which clarifies how a Council should deal with complaints against a Councillor and has implications for Town and Parish Councils throughout England. Any Local Authority will be acting unlawfully if it tries to bypass the Code of Conduct procedure under the Localism Act 2011 when addressing alleged misconduct of Councillors.
- 1.2 This ruling followed a claim brought by a Councillor of Ledbury Town Council in Herefordshire, Complaints of bullying and harassment were made against the Councillor by the Town Clerk and Deputy.
- 1.3 The Town Council decided to follow guidance adopted by at least one county association of local councils, which said that it was appropriate to deal with allegations of bullying under a grievance procedure because issues concerning employee relations should be addressed more expeditiously than the Code of Conduct process contemplated.
- 1.4 The Councillor disagreed that this was the appropriate way to deal with complaints and self-referred a Code of Conduct complaint to the Monitoring Officer of Herefordshire Council (the principal authority for the area).
- 1.5 The Town Council continued to proceed under its grievance and appeals procedure, found against the Councillor and imposed various disciplinary sanctions including preventing the Councillor from serving on a committee, sub-committee panels or working/steering groups and that she could not represent the Council on any outside body.
- 1.6 These measures were maintained even after external investigators instructed by Herefordshire Council's Monitoring Officer found that the councillor **had not** breached

the Town Council's Code of Conduct. The Councillor brought judicial review proceedings claiming that the Town Council was acting *ultra vires*.

- 1.7 Section 28 of the Localism Act 2011, makes detailed provision for the Code of Practice procedure. The Councillor argued that the 2011 Act required that allegations under s 28(9)(b) must only be dealt with under "*arrangements*" made under s 28(6), so that a complaint made against her had to be addressed exclusively under the local authority arrangements. The Judge in the High Court case found for the Councillor.
- 1.8 The Judge's decision in this case was consistent with previous decisions and Members may recall at Standards Committee on 26 January 2017, considering the High Court case into Honiton Town Council. The Judge in the Honiton case held that the important safeguard of involving Independent Persons in the process would be frustrated if a Parish/Town Council could reconsider the principal authority's decision and substitute its own decision if it chose to do so.
- 1.9 In the Ledbury case, the Judge emphasised that the s 28 process contemplates a potentially four stage process;
 - (i) making an allegation
 - (ii) optionally) a non-formal investigatory or mediation stage or other relevant steps being taken (e.g. criminal proceedings)
 - (iii) a formal stage, involving an independent person, leading to a decision on breach
 - (iv) (if breach is found) a formal stage, again involving the independent person, dealing with action.

The Judge stressed that that an Independent Person must be involved and consulted under the 2011 Act procedure, both at the decision-making (breach finding) stage and the sanction stage. This was essential to ensure the safeguard at the key stages of decision-making and action, while leaving the possibility of more flexible approaches in appropriate cases.

- 1.10 The decision in this case shows that Local Authority's governance arrangements are centre stage when imposing disciplinary sanctions on councillors. A Local Authority would be acting unlawfully if it tried to by-pass the Code of Practice Procedure under the Localism Act 2011 when seeking to address alleged misconduct by members.
- 1.11 Following the judgment being issued, the National Association of Local Councils and the Society of Local Council Clerks 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 their concerns. They said:

"The judgment will make it more difficult for local (parish and town) councils to resolve disputes between councillors and their employees. This decision confines most complaints about councillors to the code of conduct process. Employees will now (generally) not be able to use their councils' grievance procedures if the subject of their grievance is a complaint about a councillor.

“Inevitably, this will lead to more principal authority involvement in local council matters and place additional burdens on already hard-pressed monitoring officers. It is also likely that matters which previously would have been dealt with within a council will take substantively longer when dealt with by a principal authority.”

2 Conclusions and Reasons for Recommendation

- 2.1 The judgment delivers a key message to Local Authorities that they will be at risk of challenge if they depart from procedures set out in the Localism Act. It is important for the Standards Committee to consider the report and the judgment with regards to how the Monitoring Officer and the Council conducts investigations into breaches of Code of Conduct.

3 Consultation and Equality Impact

- 3.1 Not application as this report is for information only.

4 Alternative Options and Reasons for Rejection

- 4.1 Not application as this report is for information only.

5 Implications

5.1 Finance and Risk Implications

- 5.1.1 There are none arising directly from this report.

5.2 Legal Implications including Data Protection

- 5.2.1 There are no direct legal implications arising from this report.

5.3 Human Resources Implications

- 5.3.1 There are none arising directly from the report.

6 Recommendations

- 6.1 That the Standards Committee note the report.

7 Decision Information

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/> <i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	No
<p>Has the relevant Portfolio Holder been informed</p>	Yes
<p>District Wards Affected</p>	None directly
<p>Links to Corporate Plan priorities or Policy Framework</p>	N/A

8 Document Information

Appendix No	Title
<p>Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)</p>	
<p>High Court Judgment in the case of R. (on the application of Harvey) v Ledbury Town Council</p>	
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