

Report of the Monitoring Officer

Case law update – Harvey v Ledbury Town Council Summary

1. This report advises Members of a recent High Court decision which has implications for the Committee and the Councils for whom it has responsibilities.

Background

2. Councillor Harvey was a member of Ledbury Town Council. The town clerk and deputy town clerk brought grievances alleging that Councillor Harvey had bullied, intimidated and harassed staff. These grievances were heard by a panel of Town councillors. Councillor Harvey did not attend, stating that she did not recognise the authority of the Panel, and she requested that the matter be Investigated under the standards procedures. Councillor Harvey made a self referral under those procedures. However, the Panel upheld the grievance in her absence. 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;
 - She should not represent the council on any outside body;
 - That all communications between her and its clerk and deputy clerk should go through the mayor.
3. 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. The Town Council decided to maintain its restrictions on Councillor Harvey and subsequently expanded them to prevent her from communicating with all staff.

4. The Code of Conduct investigation found no breach by Councillor Harvey of the Town Council's Code of Conduct and so no further action was taken on the standards complaint.
5. 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:
 - The restrictions were 'ultra vires' as they constituted sanctions which could only be imposed as a result of a standards process under the Act
 - The decision making process was substantively unfair and in breach of the human rights
 - Procedurally unfair as the process followed was improper in that there was an absence of investigation, absence of identified basis, absence of disclosure to the decision-making body of full evidence, absence of an opportunity to respond or to defend herself
6. The Town Council argued that it was entitled to conduct an investigation as part of an employee grievance process and to take action to fulfil its obligations as an employer.

The decision

7. The Court found in favour of Cllr. Harvey on all three issues. In relation to the vires point the Judge was clear that sanctions had been imposed on Cllr. Harvey and these could only properly be imposed having followed a standards process. Circumventing this removed the protection afforded by the Act – in particular that provided by the involvement of Independent Persons.
8. The Judge also considered whether all investigation needed to be carried out under the standards process. She said that what was contemplated was actually a four stage process:
 1. the making of an allegation;
 2. (optionally) a non-formal investigatory or mediation stage ("informal resolution") or a pause pending other relevant steps being taken (e.g. criminal proceedings);
 3. a formal stage, involving an independent person, leading to a decision on breach;

4. (if breach is found) a formal stage, again involving the independent person, dealing with action.

Once a case reached stage 3 it must be handled formally under standards procedures. Earlier stages could be informal. This approach supports the City Council's encouragement of the informal resolution of complaints.

9. The Judge also found that had the procedures followed by the Town Council were deficient and that the sanctions were unreasonable and disproportionate.

Implications of the decision

10. To a large extent the decision is not a surprise. The Act is clear that breaches of the code are to be considered under procedures established by the Principal Authority. Any investigatory process must be fair and any sanctions must be proportionate.
11. Where there is now some uncertainty is the extent to which grievance procedures can be used to deal with complaints by employees against councillors. This is, of course, relevant to both the Parish and City Councils. Some commentators have argued that all cases must now be considered under the Code.
12. NALC have said:

This decision confines most complaints about councillors to the code of conduct process. Employees will now not generally 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 fairly quickly within a council will take substantively longer when dealt with by the principal authority.

13. NALC 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.

14. Other commentators have said that complaints may still be investigated under a grievance procedure but no findings can be made about a breach and any resolutions must not amount to a sanction. Clearly this leaves considerable room for grey areas.
15. Councils do still have a responsibility to ensure grievances are dealt with in a timely way. They must also 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.
16. Given that the Committee on Standards in Public Life are currently reviewing local government arrangements, it may well be that this issue will be picked up by them.

Recommendations

17. Members are recommended to:

- 1) Note the report.

Reason: To ensure that the Committee is aware of this important case.

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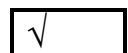
**Report
Approved**



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Wards Affected:

All



For further information please contact the author of the report

Annexes: None

Background Papers: None