

Committee: Standards Committee
Title: Standards Committee and Employment Issues following Harvey v Ledbury Town Council
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Summary

1. This report summarises issues raised by a recent court case and its implications for the Standards Committee and Monitoring Officer. The case (Harvey v Ledbury Town Council) concerned action taken by the Town Council in respect of an allegation of bullying against a councillor. The judgment sheds light on the roles of the Town Council and the council responsible for Standards (in this case Herefordshire County Council).

Recommendations

2. To note.

Financial Implications

3. None

Background Papers

4. There are no background papers but the judgment in Harvey v Ledbury Town Council may be found at <http://www.bailii.org/ew/cases/EWHC/Admin/2018/1151.html>

Impact

- 5.

Communication/Consultation	None.
Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	The judgment in this case has legal implications, which are explained in the body of the report.

Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	There are implications for councils in how they handle employment-related matters where complaints are made against councillors.

Situation

6. Cllr Harvey was a member of Ledbury Town Council. Complaints were made against her by the Clerk and by the Deputy Clerk. The complainants alleged a campaign of bullying against them. The Clerk asked for the matter to be dealt with under the Council's Harassment Grievance Procedure and asked the Council to impose sanctions against Cllr Harvey. Ledbury Town Council then set up a "grievance panel" to consider the complaints against Cllr Harvey.
7. Cllr Harvey said that she did not accept that this was the appropriate way to deal with the complaint and self-referred herself to the Monitoring Officer at Herefordshire County Council. The Monitoring Officer informed Cllr Harvey that that, having sought the views of the "independent person", she could not resolve the Complaint informally, that it was sufficiently serious to require further investigation, and that she was making arrangements for the complaint to be investigated by an external investigator.
8. The Grievance Panel met and resolved to take action, *"in order to reduce contact between the two officers and the two concerned, and thereby help prevent the on-going bullying, intimidation and harassment of staff ..."*. The action taken in respect of Cllr Harvey was:
 - i) she should not serve on any of the Parish Council's committees, sub-committees, panels or working / steering groups;*
 - ii) she should not be eligible to substitute for a member of any of the Parish Council's committees, sub-committees, panels or working / steering groups;*
 - iii) she should not represent the Parish Council on any outside body;*
 - iv) all of her communication with the Clerk or Deputy Clerk should go through the Parish Council Mayor (or Deputy Mayor in his / her absence);*
 - v) the LA be informed of the above actions taken by the Council;*
 - vi) all bodies affiliated to the Council be informed of the above actions; and that the prohibitions should remain in place "until the Annual Meeting of [the Parish Council] in May 2017, when the matter may be reviewed".*
9. Shortly afterwards, the independent investigation commissioned by the Monitoring Officer found that there was no basis to support a finding that the Claimant had breached the Code. The Monitoring Officer's decision was that

there had been no breach of the Code, and she would be taking no further action on the Complaints.

10. Cllr Harvey challenged the decision of Ledbury Town Council on various grounds but the one that is of relevance to the Standards Committee is that its decision was *ultra vires*; i.e. that it did not have the power to investigate the complaint and to impose sanctions other than on the recommendation of the principal Council, in this instance Herefordshire County Council.
11. The High Court agreed with Cllr Harvey and set aside the decision made by Ledbury Town Council. The behaviour alleged fell within the scope of Ledbury TC's Code of Conduct. The Localism Act set out a procedure for dealing with Code of Conduct complaints; in particular, it made the higher tier local authority responsible for determining Code of Conduct complaints. The Court judgment commented, in particular, that circumventing this would remove from members the protection afforded by the role of the Independent Person.
12. The High Court also held that the Town Council could only impose sanctions on its councillors on the recommendation of the council responsible for Code of Conduct complaints. It could not impose sanctions of its own accord.
13. The judgment has led to concern and uncertainty on the part of town and parish councils, in particular regarding the scope of established grievance procedures. It is, unfortunately, not uncommon for town or parish council employees to make complaints against councillors, especially of bullying. Whilst the judgment makes it clear that town and parish councils cannot make decisions on the merits of complaints that fall within the Code of Conduct and cannot impose sanctions, they also have a responsibility to their employees and will need to manage situations in which there is dispute between employees and members. The Ledbury decision does not provide guidance on this.
14. Whilst there is uncertainty, and whilst the decision makes it difficult for town and parish councils to manage situations in which employees allege bullying behaviour against councillors, my advice is that there are still steps that they can take. This is the advice I have given when asked about the position:
 - a. Formal complaints about bullying (or other behaviour within the scope of the Code of Conduct must be referred to the Monitoring Officer for formal consideration and, where appropriate, investigation.
 - b. Town and parish councils must not make judgments, in response to complaints, as to whether or not a councillor is guilty of conduct falling within the Code of Conduct. They also must not impose sanctions on councillors, other than on the recommendation of UDC's Standards Committee.
 - c. The Ledbury decision does not prevent town and parish councils taking administrative steps that do not involve making findings against councillors or the imposition of sanctions. They can take practical measures to manage the situation. For example:

- i. they might consider changing the reporting responsibilities of the employee so that they have less contact with the member,
- ii. they might arrange for a second employee to be present when the councillor and employee need to meet or
- iii. they might agree with the councillor for alternative means of contact; e.g. by email rather than by telephone or in person.
- iv. They might agree with the parties to pursue mediation.

However, care needs to be taken not to cross the line by imposing a sanction, and there will be grey areas. The right of employees to pursue a formal standards complaint also needs to be respected.

15. The Standards Committee raised this issue in its recent representations to the Committee on Standards in Public Life. It is likely that it was widely raised by other consultees. Members can further consider the point when the Committee on Standards in Public Life publishes its report.

Risk Analysis

16.

Risk	Likelihood	Impact	Mitigating actions
The primary risk is to town and parish councils if they mishandle complaints. However, there is a risk to UDC if incorrect advice is given regarding the remit of the Standards regime.	2	2	If the Monitoring Officer is consulted by town or parish councils, he will advise as outlined in this report.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.