

Wiltshire Council

Standards Committee

26 September 2018

Briefing Note: Use of grievance procedures to impose sanctions

R (Harvey) v Ledbury Town Council [2018] EWHC 1151 (Admin) 24/05/2018

1. The High Court has recently considered local authority staff grievance procedures and their relationship with the Code of Conduct regime under the Localism Act 2011. The court decided that a council cannot run a grievance procedure alongside, or as an alternative to, a standards regime procedure under the Localism Act 2011, and that complaints regarding a councillor's conduct have to be dealt with under the authority's standards arrangements.
2. The case of concerned the Town Council's decision to impose sanctions on a councillor under its grievance procedures, banning her from serving on any committees and from communicating with any staff, following complaints of bullying and harassment. The councillor contended that any such complaints had to be dealt with under the Localism Act procedures; the council said that the 2011 Act did not prohibit parish councils from instigating proceedings under their grievance procedure where the matters in issue involved internal relations between its employees and staff.

The facts

3. Following complaints that Cllr H had bullied, intimidated and harassed staff, the Town Council's Grievance Panel held a meeting to discuss the allegations. Cllr H 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. The Panel upheld the accusations and the Town Council then resolved to impose a number of prohibitions on Cllr H, 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.

4. Herefordshire Council (HC), a unitary council, which had responsibility for investigating complaints about parish councillors, advised the Town Council that Cllr H's 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 of HC wrote to the Town Council advising that although these allegations were made under the grievance procedure, they were concerned with a member's failure to comply with the authority's Code of Conduct and so had to be dealt with in accordance with the arrangements under s.28(6) of the Localism Act 2011.
5. A year later the Town Council reviewed the restrictions, in Cllr H's absence, and decided that the restrictions should not only continue but should also be expanded to prevent her from communicating with all staff. HC then advised that its external investigator had found no breach by Cllr H of the Town Council's Code of Conduct and so HC would be taking no further action on the standards complaint.
6. Cllr H applied for judicial review of the Town Council's decision to impose sanctions under its grievance procedures. She contended that the decision was:
 - ultra vires as a councillor's conduct must always and only be considered under the Code of Conduct procedures required by the Localism Act 2011;
 - substantively unfair and in breach of Article 10 of the European Convention on Human Rights (ECHR) or at common law; and
 - procedurally unfair in the absence of following proper procedures including the absence of an opportunity to respond or defend herself.
7. The Town Council claimed that it had powers to determine complaints about councillors through its grievance procedure and under s.111 of the Local Government Act 1972.

Effect of Localism Act 2011

8. The court granted the application, and ruled that the Town Council's decision to continue and enlarge the prohibitions must be quashed. That decision was in line with previous authorities.
9. The judge ruled that there was no general power to run a grievance procedure process in tandem with or as an alternative to the Code of Conduct process envisaged by the 2011 Act, as that would be contrary to the intention of Parliament. The judge emphasised that what s.28(11) of the 2011 Act contemplated was actually a four-stage process:

- i. the making of an allegation;
- ii. (optionally) a non-formal investigatory or mediation stage ("informal resolution") or a pause pending 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.

10. She stressed that an independent person had to be involved and consulted not just at the sanction stage, but also at the decision-making (breach finding) stage, as 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.

Comment

11. The judgment 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.

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