

Recent Case Law on the Code of Conduct

Standards Committee - 12 September 2017

Report Author	Director of Corporate Governance and Monitoring Officer
Portfolio Holder	Cllr Derek Crowe Brown
Status	For Information
Classification:	Unrestricted
Ward:	All

Executive Summary:

This is a report on two court decisions relevant to the role of the Standards Committee.

Recommendation(s):

It is recommended that Members note the cases and the implications for dealing with breaches of the Code of Conduct.

CORPORATE IMPLICATIONS

Financial and Value for Money	There are no financial implications arising from this report.
Legal	The legal implications are set out in the report
Corporate	<p>The Localism Act 2011 places a general obligation on councils (including town and parish) to "promote and maintain high standards of conduct by members and co-opted members of the authority" and to "adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity".</p> <p>The first part of the code sets out the behaviours and characteristics required of councillors. It is important to appreciate that the code applies when a councillor or co-opted member is acting in that role, and that it is their responsibility to comply with its provisions.</p>
Equality Act 2010 & Public Sector Equality Duty	<p>Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.</p> <p>Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.</p>

	Please indicate which aim is relevant to the report.	
	Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act,	✓
	Advance equality of opportunity between people who share a protected characteristic and people who do not share it	✓
	Foster good relations between people who share a protected characteristic and people who do not share it.	
There are no particular equality issues or matters raised by this report.		

CORPORATE PRIORITIES (tick those relevant)✓	
A clean and welcoming Environment	
Promoting inward investment and job creation	
Supporting neighbourhoods	

CORPORATE VALUES (tick those relevant)✓	
Delivering value for money	✓
Supporting the Workforce	
Promoting open communications	✓

1.0 Taylor v Honiton Town Council 2016, Queen's Bench Division (Administrative Court)

- 1.1 In the case of Taylor v Honiton Town Council, a town councillor (Cllr Taylor) applied for judicial review of a decision by the town council to impose sanctions on him for a breach of its code of conduct.
- 1.2 The East Devon District Council was the parish council's principal authority. It had more resources and performed certain functions on behalf of the parish council. They worked together fulfilling the functions of a local authority, and sought to comply with the duty under the Localism Act 2011 s.27(1) to promote and maintain high standards of conduct by their members.
- 1.3 Cllr Taylor became concerned about the funding of a project for a community centre and wrote a letter to local newspapers. The town clerk complained that she had been slandered. Cllr Taylor refused to make an unreserved apology and the district council appointed an officer to investigate. Cllr Taylor was found to have publicly made claims of illegality and impropriety associated with the town clerk, without reasonable justification, in breach of the code of conduct. The district council's standards committee recommended sanctions, including censure and training requirements.
- 1.4 The parish council imposed the recommended sanctions, and imposed additional sanctions, including Cllr Taylor's removal from committees and working groups on which he served, and restrictions from attending or speaking at meetings or attending parish council offices.
- 1.4 The issues before the court were whether (1) the parish council was bound by the district council's findings of fact and as to whether there had been a breach of the code; (2) there was a power to impose a training requirement.

2.0 The Decision in Taylor v Honiton Town Council

- 2.1 The district council, as principal authority, was required to have arrangements in place, including the involvement of independent persons, for the investigation of allegations against members of the parish council, and for making decisions on those allegations. To hold that a parish council had a duty to reconsider the principal

authority's decision and substitute its own decision if it chose to would frustrate that important independent safeguard.

- 2.2 In the instant case, the district council decided the issue of breach but made recommendations to the parish council about what action it should take consequent on that finding. The parish council took the decision on sanctions. Cllr Taylor's challenge was based on the proposition that the district council's role was limited to that of investigator and adviser, and that the parish council was the ultimate decision-maker on both issues. On a natural reading of the Act, that was clearly wrong. It gave decision-making power to the principal authority and required it to have arrangements in place for the exercise of that power.
- 2.3 It would make a nonsense of the scheme if the parish council were able to take its own decisions without having any arrangements in place. The point of the scheme was to remove decision-making powers and duties from very small authorities which did not have the resources to manage them effectively.
- 2.4 Parliament clearly contemplated that a relevant authority could take "action" following a finding of non-compliance with a code of conduct, and did not define or limit what action that might be. The abolition of the old regime carried with it the abolition of the power to disqualify and suspend, but otherwise the powers appeared to be largely undefined. Any action which required a councillor to do anything could not therefore be enforced by suspension as a means of securing compliance. However, that did not mean that the requirement should not be imposed. Provided that it was lawful, such a sanction could be imposed. It had to be proportionate to the breach.
- 2.5 The parish council was under the statutory duty to maintain high standards of conduct. The law required it to have a code of its own or to adopt that of the district council. A code of conduct was regarded by Parliament as an important aspect of the maintenance of standards. It was proportionate to a significant breach of the code for a relevant authority to require the person in breach to be trained in its meaning and application.

3.0 Hussain v Sandwell Metropolitan Borough Council 2017, Queen's Bench Division (Administrative Court)

- 3.1 In the case of Hussain v Sandwell MBC a councillor (Cllr Hussain) applied for judicial review of the council's initiation of formal investigatory procedures and publication of documents relating to the complaint.
- 3.2 It was alleged that Cllr Hussain was engaged in procuring council assets at a substantial undervalue and using his influence to have parking tickets issued to his family cancelled. He challenged the investigations and attempted to prevent the council concluding them and summoning him before the Standards Committee. The council had conducted a 'pre-formal' investigation (which was not conducted under the 'arrangements' in place for dealing with breaches of the code of conduct).
- 3.3 Cllr Hussain's grounds of claim included that the council had acted ultra-vires, that the process had been politically motivated and that there had been bias which continued to taint the process going forward. He also challenged under the Data Protection Act 1998 and the European Convention on Human Rights (ECHR) reports into the allegations being put in the public domain.

4.0 The Decision in Hussain v Sandwell MBC

- 4.1 The judgement clarifies that 'pre-formal investigations' are permissible. The Judge said the council had 'ample power' to conduct the initial informal investigation into allegations of serious misconduct and there was no amnesty for serious misconduct if it occurred before the new standards regime came into force. The judge also rejected the complaint about the publication of the report of the pre-formal investigation. There is an important public interest, with respect to allegations against a councillor, in openness and transparency.
- 4.2 The judgement upholds the scope of the powers of local authorities generally to investigate member impropriety, and ultimately to do so in accordance with the formal arrangements under the Localism Act 2011. The forum for the member to present their case fully will then be the Standards Committee. If issues acquire a 'political flavour' to them, that is not a reason for the council, as a body, to act differently.

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Background Papers

Title	Details of where to access copy
<i>None</i>	

Corporate Consultation

Finance	Ramesh Prashar – Head of Financial Services
Legal	Tim Howes, Director of Corporate Governance