

Monitoring Officer

North Kesteven Parish/Town Councils – Code of Conduct/Employee Grievance



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North Kesteven
DISTRICT COUNCIL

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Introduction

This briefing note has been prepared on behalf of North Kesteven District Council (NKDC) to assist the Parish and Town Councils within its area to manage situations where an employee submits a grievance against an Elected Member. Reference to the words 'Councillor' and 'Elected Member' have the same meaning in this context and apply to a councillor who is co-opted to the Council when an election is not called to fill a vacant seat.

Whilst this note is intended to provide general advice as to the relevant legal principles, every Parish or Town Council (hereinafter referred to as Local Councils) should take its own legal or HR advice on specific matters pertaining to employment law issues to ensure legal compliance with both local government and employment law provisions.

Background to Councillor Code of Conduct Complaints

Under the Localism Act 2011, all Councils must have a Code of Conduct for Members, which must be consistent with the Nolan Committee's principles of selflessness, honesty, integrity, objectivity, accountability, openness and leadership.

Principal Councils (other than Local Councils) must have procedures in place to deal with complaints about Member conduct. It is for the Principal Authority to decide the details of those procedures, but they must appoint at least one Independent Person whose views are to be taken into account before making a decision on a complaint that they have decided to investigate.

Complaints about the individual conduct of Parish and Town councillors are handled by the Principal Authority, which is North Kesteven District Council for Councils within their area. A Code of Conduct complaint cannot be made against a Local Council as a corporate body. Details as to how to make a complaint can be found on NKDC's website:

<https://www.n-kesteven.gov.uk/your-council/how-the-council-works/your-councillors/complain-about-a-councillor/>

Managing Employee Grievances

Every employer should have in place a process whereby employees can raise issues regarding their employment, commonly known as a grievance process. It is good practice to have a formal written policy which outlines the steps in place to resolve workplace disputes both informally and formally if they are not capable of resolution informally.

ACAS has produced guidance for employers when a grievance is raised and the steps that should be taken by an employer in seeking to resolve any issue raised. The link can be found below

<https://www.acas.org.uk/grievance-procedure-step-by-step>

A grievance effectively has two outcomes, either upheld or dismissed. It is prudent to ascertain the outcome that an employee is seeking as resolution to their grievance as

this may be possible even if a grievance is not upheld. However, it is important to remember that a sanction or action against an employee because of a grievance finding does not automatically follow and should be as a result of a separate disciplinary process.

Employee Grievances against Members

In the operation and running of a local council, it is not inconceivable that relationships between Members and officers can sometimes become strained as there can be an inevitable degree of challenge between the two roles with some disagreements from time to time.

Councillors can question and probe poor officer performance provided it is done in an appropriate way. In some cases, officers have been known to reject reasonable criticism appropriately made and describe it as disrespectful or bullying.

It is important that councillors raise issues about poor performance in the correct way and at the appropriate forum in accordance with the authority's processes and procedures, and not in a public meeting. Having clearly defined policies and procedures in place for managing such workplace conflict which is consistent with both local government and employment law principles will assist.

Case Law: R (Harvey) –v- Ledbury Town Council 2018.

This specific issue was considered by the Courts in the case of *R (Harvey) –v- Ledbury Town Council 2018*. In the *Harvey* case, Councillor Harvey was a Town Councillor. The Clerk and Deputy Clerk submitted a grievance against Councillor Harvey alleging that she had bullied, intimidated, and harassed staff. Rather than referring the complaint to the appropriate Monitoring Officer, the Town Council dealt with the matter under its grievance procedure.

Councillor Harvey self-referred the matter as a Code of Conduct complaint though the Town Council proceeded to consider the matter under their grievance procedure and found against the Member. They proceeded to impose sanctions against Councillor Harvey.

In parallel, the Monitoring Office instigated an independent investigation who found that there had been no breach of the Code of Conduct and took no further action. The Town Council effectively disregarded the findings of the independent investigation and continued with the sanctions imposed.

Councillor Harvey initiated judicial review proceedings against the Town Council on the grounds that included that it had acted ultra vires (i.e. outside the scope of its legal powers) in determining the complaint under its grievance procedure rather than under the Code of Conduct procedure established under the Localism Act.

The basis of Councillor Harvey's claim was, in essence that the two procedures essentially covered the same ground, and the Town Council could not "cherry pick" or duplicate proceedings on the same issue. She also sought review of the sanctions imposed on the basis that the Town Council had no authority to impose them under the grievance procedure.

The High Court found that there is no general power to run a grievance procedure in tandem with, or as an alternative to a Code of Conduct procedure. Further, the High Court held that any sanction imposed through any other procedure than the Code of Conduct process is unlawful.

The effect of this decision means that where an employee of a Council submits a grievance against a Member, that grievance must be referred to the Principal Authority for consideration under the Code of Conduct procedures and should not seek to consider it under their own grievance procedure. *Harvey* is clear that the two cannot be run in tandem and a Code of Conduct complaint must be dealt with first.

What action needs to be taken?

In the event that an employee submits a grievance against a Member, this should be referred to the Monitoring Officer for consideration under the Code of Conduct process and a Local Council should not seek to resolve the matter through its own grievance procedure.

- 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. Local 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.
- c. Local Councils must not impose sanctions on councillors, other than on the recommendation of North Kesteven District Council.

It is recommended that in the first instance, the Chair of the Local Council submits the formal code of conduct complaint on behalf of a Parish Clerk. If the Chair is the Subject Member, then the Vice-Chair of Council, the Chair of a Staffing Committee or the Clerk may submit the complaint.

Local Council Processes

It would be prudent to include a statement under your grievance procedure that complaints about Members are excluded from that process and should be addressed through the Code of Conduct process. That way, there is clarity for all concerned and employees do not have an expectation that their grievance will be considered under the grievance process and that there may be a delay in any resolution if the responsibility to assess whether there is a potential breach of the Code of Conduct.

Councils should always seek their own legal and HR advice if they are in doubt as to the correct process to follow and this briefing note should not replace that step. However, it is hoped that this briefing note provides a degree of clarity as to the steps that should be taken in the event of a grievance being submitted against a Member.

Is there anything else that the Local Council could do?

Whilst the *Harvey-Ledbury judgment* makes it clear that local councils cannot make decisions on the merits of complaints that fall within the Code of Conduct and cannot

impose sanctions, there is still a responsibility to employees and that may include the need to manage situations in which there is dispute between employees and Members. The Ledbury decision does not provide guidance on this.

So, although there is uncertainty, and the judgement decision makes it difficult for local councils to manage situations in which employees allege bullying behaviour against councillors, there are some administrative and practical steps that could be taken, for example:

- i. consider changing the reporting responsibilities of the employee so that they have less contact with the Member(s) or arrange for a second employee to be present when the Member and employee need to meet; or
- ii. agree with the Member for alternative means of contact, e.g. by email rather than by telephone or in person.
- iii. There might be agreement between the parties to pursue mediation. However, care needs to be taken not to cross the line by imposing a sanction.

Conclusion

The Code of Conduct is not intended to constrain councillors' involvement in local governance, including the role of councillors to express disagreement with officers. It is only where councillors' conduct is unfair, unreasonable, or demeaning that the Code of Conduct will be relevant. If a councillor's criticism is abusive or offensive, it is likely to breach the Code of Conduct.

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