

REPORT TO:	ETHICS COMMITTEE 1 FEBRUARY 2017
AGENDA ITEM NO:	9
SUBJECT:	RECENT CASE LAW ON THE REGULATION OF COUNCILLOR CONDUCT
LEAD OFFICER:	ACTING COUNCIL SOLICITOR & ACTING MONITORING OFFICER
CABINET MEMBER:	
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT: The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics and to consider and recommend revisions to the Code of Conduct.	
FINANCIAL IMPACT Implementation of the recommendations contained in this report shall be contained within existing budgets	
FORWARD PLAN KEY DECISION REFERENCE NO.: N/A	

1. RECOMMENDATION

The Committee is asked to:

- 1.1 Note the outcome of recent case law in relation to the regulation of Councillor conduct.

2. EXECUTIVE SUMMARY

- 2.1 This report provides details of the decision by the High Court in relation to a Judicial Review of a decision by a Town Council. Whilst it deals with some procedural issues relating to instances where there is a complaint in relation to a Town Councillor and the correct body to investigate and decide on the complaint, it is of particular interest to the Council in relation to the consideration of sanctions which the court indicated could be imposed on a Councillor found to be in breach of the relevant Code of Conduct.

3. DETAIL

- 3.1 In R(Taylor) V Honiton Town Council [2016] EWHC 3307 (Admin) handed down by the High Court on 21 December 2016, Mr Taylor, the claimant was seeking an order to quash a decision by Honiton Town Council to impose sanctions on him following a breach of the Code of Conduct.

3.2 The issue in the case turned on the exercise of functions regulated by ss27-28 of the Localism Act 2011 relating to standards of conduct. The claimant had raised issues with the Town council's involvement in funding the "Beehive Community Centre" and his disagreement with the direction of travel of the project lead him to publish a letter which alleged "conspiracy to use money ... for an improper purpose", "scams on ratepayers" and "offences" by the Town Council but also make a number of comments which were said to impugn the integrity and professional reputation of the Town Clerk. As a result, the Town Clerk made a complaint to the District Council, East Devon.

For members information, where a Code of Conduct complaint arise in a Town Council, the provisions of the Localism Act require that this complaint be referred to the District Council, unlike in London Boroughs where a complaint about a Councillor would be dealt with by the relevant Borough.

3.3 The Monitoring Officer of the District Council had attempted to resolve the matter informally, however when this was unsuccessful, an investigator was appointed to investigate the allegation of a breach of the Code of Conduct and it was subsequently decided by the investigator that Cllr Taylor had failed to comply with the obligations to treat others with courtesy and respect.

3.4 Following this investigation, the matter was referred to a meeting of East Devon's Standards Hearings Sub-Committee and following a hearing, the Sub-Committee determined that Cllr Taylor had failed to treat the Clerk with respect in that he had publicly accused her of criminal behaviour, namely conspiracy to obtain a loan by deception. It went on to recommend three sanctions: Censure of Cllr Taylor, Publication of the findings of the Hearings Sub-Committee and that Cllr Taylor receive training on the Code of Conduct and Councillor behaviour before the end of the financial year.

3.5 The matter was then remitted back to the Town Council to determine the sanctions to be imposed in light of the finding of fact by the District Council. The Town Council, in addition to imposing the sanctions recommended by the District Council, the Town Council imposed a number of additional sanctions – restrictions on the claimant speaking at meetings, removal of the claimant from committees, restrictions on his attendance at meetings even as a member of the public and restrictions on the claimant attending the Council offices other than in the company of the Mayor.

3.6 Cllr Taylor challenged these sanctions broadly on the basis that the Town Council had no power to make such a decision and were improperly imposed. Following this correspondence and prior to Cllr Taylor issuing the JR proceedings, the Town Council had withdrawn the sanctions imposed however Cllr Taylor still went on and issued proceedings against the Town Council and as part of those proceedings, alleged that the District Council's involvement should only have been as investigator and advisor and that the Town Council should have been decision maker on both the breach and the sanctions. Cllr Taylor did not, however, challenge the decision of the District Council that he had breached the Code.

- 3.7 The Court was satisfied that the effect of the Localism Act provisions was such as to place the duty of investigation and decision regarding the allegations against members of the Town Council on the District Council as the principal authority, particularly as arrangements for decision making must involve independent persons and it would have frustrated that important safeguard to hold that a town or parish council had a duty to reconsider the principal authorities' decision and substitute its own.
- 3.8 The second point which the court considered was whether the District Council was able to recommend that Cllr Taylor undergo training as a sanction following breach of the Code of Conduct.
- 3.9 The court considered previous case law in this area, particularly Hickinbottom J's decision in *Heesom V Public Services Ombudsman for Wales (Welsh Ministers Intervening)* [2014] EWHC 1504 (Admin) [2015 P.T.S.R 22 which undertook an analysis of the ability to impose sanctions following the abolition of the former Standards Regime by the Localism Act 2011.
- 3.10 Of particular interest to members will be the following extract from the Judgement at paragraph 39 onwards:

“Parliament clearly contemplates that a relevant authority may take "action" following a finding of non-compliance with a code, and does not seek to define or limit what action that may be. The abolition of the old regime carries with it, as Hickinbottom J observed, the abolition of the power to disqualify and suspend but otherwise the powers appear to be undefined, at least where the breach does not involve any impropriety in relation to pecuniary interests. It also means that suspension and disqualification are not available as sanctions for non-compliance with any action taken in respect of a failure to comply with a code of conduct. This means that any action which required a councillor to do anything could not be enforced by suspension as a means of securing compliance. As the Welsh Government observed the only sanction where the criminal law was not involved in England was the ballot box.

40. That said, the fact that a requirement cannot be enforced by suspension does not mean that it should not be imposed. Provided that it is lawful, which in this context includes fully respecting the important right to freedom of expression enjoyed by members of local authorities in the interests of effective local democracy, a sanction may be imposed which requires a member of a local authority to do something. It must be proportionate to the breach.”

- 3.11 The Court went on to indicate that Cllr Taylor had made a very serious error of judgement in accusing the Clerk of criminal conduct when there was not the slightest justification for doing so and as such the Court found that training was proportionate.
- 3.12 Where such a requirement is made (i.e training in this instance) but the Member refuses to comply, the Court indicated that the only sanction is publicity of such failure with the impact that such conduct may reduce the

confidence of the electorate in a member so that he or she is not re-elected. Equally, it may not but that is a matter for the electorate.

3.14 Members can view the judgement in full at:
<http://www.bailii.org/ew/cases/EWHC/Admin/2016/3307.html>

4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

4.1 There are no direct financial implications arising from this report.

5. LEGAL IMPLICATIONS

5.1 There are no direct legal consequences arising from the contents of this report beyond those set out in the body of the report.

CONTACT OFFICERS: Jacqueline Harris-Baker Acting Council
Solicitor and Monitoring Officer (ext 62328)

BACKGROUND DOCUMENTS: None