

## Appendix 2

### High Court backs approach taken by district council in standards case



Thursday, 29 December 2016 15:00

A decision taken by East Devon District Council as principal authority over a code of conduct breach by a town councillor and the sanctions it recommended – including a requirement for training – was lawful, a High Court judge has ruled.

However, in *Taylor v Honiton Town Council & Anor* [2016] EWHC 3307 Mr Justice Edis quashed additional sanctions imposed by Honiton on the claimant, Cllr John Taylor, over and above those recommended by the district.

The case arose after Cllr Taylor, a member of the town council since 2007, became concerned about the funding of a major project in Honiton, the building of the 'Beehive Community Centre'.

The councillor published a letter in January 2015 about the town council's extension of borrowing from the Public Works Loan Board (PWLB) by £98,000 to cover a shortfall. It included an allegation of impropriety and a request for a police investigation.

Honiton's town clerk complained that she had been slandered in the letter, details of which had appeared in a local paper, and her professional reputation had been affected.

Attempts by East Devon's monitoring officer to resolve the complaint informally were unsuccessful as Cllr Taylor refused to make an unreserved apology. East Devon therefore asked Tim Darsley to investigate.

Mr Darsley concluded on the facts that statements made by the councillor had been inaccurate and given a misleading account of what the town clerk had said at the meeting about the PWLB loan extension. His findings also included that there was no evidence that the loan application was in any way illegal and was used for an improper purpose.

In his report Mr Darsley also found that Cllr Taylor had publicly made claims of illegality and impropriety associated with the town clerk and that, in the absence of any reasonable justification for his claims, this constituted a failure to treat her with respect.

The standards hearings sub-committee at East Devon subsequently found Cllr Taylor to have breached a paragraph of the code of conduct because he had not treated the town clerk with respect in that he had publicly accused her of criminal behaviour, namely conspiracy to obtain a loan by deception in that its true purpose was misstated on the application.

On advice from its officers, the sub-committee recommended that the town council:

censure Cllr Taylor for his breach of the code of conduct;

publish the findings of the hearing sub-committee. (East Devon would anyway publish the findings on its own website as a matter of procedure).

instruct East Devon's monitoring officer to arrange training for Cllr Taylor in respect of the code of conduct and councillor conduct – such training by the end of the current financial year ("the training requirement").

Honiton went on to impose the sanctions recommended by East Devon and also applied a new policy on code of conduct sanctions it had adopted in October 2015.

These additional measures – to remain in place until Cllr Taylor had complied with the training requirement – involved:

- (i) A restriction preventing the claimant/Cllr Taylor from speaking at any meeting including the council meeting.
- (ii) The removal of Cllr Taylor from the five committees and working groups on which he served.
- (iii) A restriction preventing him from attending any meeting as a member of the public together with a restriction from speaking as a member of the public at any meeting.
- (iv) A restriction preventing Cllr Taylor from attending at the council offices unless accompanied by the mayor of the council.

Cllr Taylor brought judicial review proceedings on the following grounds: illegality; the sanctions not being imposed on a proper basis in the light of East Devon's conclusions on the investigation; and the hearing before the standards sub-committee being procedurally unfair. Honiton subsequently withdrew all sanctions imposed on Cllr Taylor but said it would consider the issue of sanctions again after any fresh decision by East Devon, and/or the outcome of the judicial review proceedings against the district.

In the end the proceedings were issued against the town council. (East Devon becoming an interested party because it wanted to establish that imposing a requirement for training on Cllr Taylor was lawful)

Honiton expressed the hope that the claim would be withdrawn because, amongst other things, it agreed that its decision of 14 December 2015 should be treated as never having been made. It also agreed that it would not seek to re-impose all of the sanctions that were imposed.

Mr Justice Edis decided, given Honiton's approach, he would address two questions:

1. whether Honiton was bound by the findings of East Devon as to the facts and as to whether there was a breach of the code. "This is because the Decision actually involves two stages: breach and sanction. Honiton has certainly withdrawn the second, but says that it is still bound by the first. The point is not academic to the Decision and to the order which should be made. Whatever the outcome of this issue, I will quash the Decision. This does not mean that the route to that result is irrelevant. If the claimant is right I will quash the finding that there was a breach of the Code because no such finding was made by Honiton which wrongly simply adopted East Devon's decision. If Honiton and East Devon are right I will quash the Decision because Honiton has conceded that it wrongly included sanctions which are beyond its powers."
2. whether there was a power to impose a training requirement.

Mr Justice Edis decided that the effect of provisions in the Localism Act 2011 was to place the duty of investigation and decision of allegations against members of Honiton on East Devon as principal authority.

"The arrangements for decision making must involve independent persons and it would frustrate that important safeguard to hold that a parish council had a duty to reconsider the principal authority's decision and substitute its own if it chose to do so," he said.

The judge noted that in this case East Devon had decided the issue of breach but made recommendations to Honiton about what action it should take consequent on that finding. Honiton then took the decision on sanctions.

"The challenge in these proceedings is based on the proposition that East Devon's role was limited to that of investigator and adviser on both questions and contends that Honiton was the ultimate decision maker on both issues. This appears to me to be clearly wrong....." Mr Justice Edis said.

"A natural reading of the Act gives decision making power to the principal authority and requires it to have arrangements for the exercise of that power in place. It would make a nonsense of that scheme if the parish council were able to take its own decision without having any of those arrangements in place."

The judge added: "The whole point of the scheme is to remove decision making powers and duties from very small authorities which do not have the resources to manage them effectively and who may be so small that any real independence is unattainable. I therefore reject the challenge."

Mr Justice Edis added that in doing so, he declined to decide that the Act required the splitting of the decisions as between breach and sanction between the two relevant authorities in the way in which this happened in Cllr Taylor's case.

On the imposition of a training requirement, Mr Justice Edis said Honiton was under a statutory duty to maintain high standards of conduct under s.27(1) of the Localism Act 2011 in relation to its members. Section 27(2) required it to have a code of its own or to adopt that of

East Devon.

The judge said: "The existence of a code of conduct is regarded by Parliament as an important aspect of the maintenance of standards. It appears to me to be proportionate to a significant breach of it for a relevant authority to require the person in breach to be trained in its meaning and application.

"There is no point in having a code of conduct if members of the authority are not aware of its meaning and effect and where a member has demonstrated by his conduct that this is the case, a reasonable amount of training appears to be a sensible measure. A local authority should be able to require its members to undertake training which is designed to enable them to fulfil their public functions safely and effectively."

Mr Justice Edis said it had been reasonably open to the decision maker to conclude that there had been a serious breach of the code.

He added: "There is no finding as to the claimant's motives and it may be that he acted in good faith, believing that his statement about the town clerk was justified. However, it was not. He accused her of criminal conduct when there was not the slightest justification for doing so. This was a very serious error of judgement. Therefore, a requirement of training was proportionate."

The judge noted that if such a requirement was made but the member refused to comply, the only sanction was publicity.

"Such conduct may reduce the confidence of the electorate in the member so that he or she is not re-elected. Equally, it may not," he said. "That is a matter for the electorate to decide which it can do only if it has the relevant information. For these reasons I consider that it is open to a relevant authority exercising its power as contemplated by s.28(11) to take action following a failure to comply with a code of conduct to require the member to undertake training. That decision will usually be published and it will be open to the authority to publish what happens as a result of the requirement."