

LEDBURY TOWN COUNCIL
STATEMENT ON RECOVERING COMPENSATION FOR COSTS OF FIGHTING
Cllr HARVEY'S JUDICIAL REVIEW CASE
HAVING RECEIVED ADVICE FROM SENIOR QC

On 15 May 2018 the Council lost the judicial review case brought against it by Cllr Elizabeth Harvey. Cllr Harvey successfully challenged the Council's decision on 11 May 2017 to restrict her duties as a councillor- following complaints against her by the Parish Council Clerk and Deputy Clerk. The Council's fundamental legal problem was that it dealt with the complaint by breaching the statutory procedure for complaints against councillors under the Localism Act 2011. Unfortunately, the Council pursued allegations against Cllr Harvey as an employment grievance question and unlawfully bypassed the statutory protection she had under the Localism Act which was secured by the Council's Code of Conduct for councillors. Section 28(3) of the Localism Act requires that a failure to comply with the Council's Code of Conduct "is not to be dealt with otherwise than in accordance with arrangements" under that provision. But the Council decided to ignore the statutory procedure altogether.

As a result, the Council was comprehensively defeated by Cllr Harvey. She won on every ground she raised in her judicial review case. Consequently, Council tax payers have had to pay legal costs exceeding £200,000. The Council therefore instructed a senior lawyer, Richard Clayton QC, to advise on whether it could recover compensation for the way the case was handled.

Cllr Harvey is a local councillor who represents the constituents of Ledbury North in Herefordshire, as well as a County Councillor. She has been a civil servant, a defence research scientist, a strategic planner and an engineer. She sat on all three of the Council's main committees (Finance & General Purposes, Economic Development & Planning, and Environment & Leisure), and was the Chair of the Economic Development & Planning Committee. Mrs Justice Cockerill decided that Cllr Harvey had serious Council

responsibilities, feels passionately about the issues affecting the Council and was very robust when debating issues with other councillors.

On 15 December 2015 a formal complaint was made against Cllr Harvey by the then Clerk (Ms Mitchell) and the then Deputy (Ms Bradman). Both alleged they were bullied by Cllr Harvey. On 22 December 2015 the Council's Standing Committee comprising: Annette Crowe (Standing Committee Chairman), Martin Eager, Keith Francis, Maria Mackness (substituting for Elizabeth Harvey), Andrew Warmington (substituting for Andrew Harrison) and in attendance, Lynda Wilcox (Chief Executive of HALC) met. The meeting was confidential, excluded the public and non-members of the Committee, and decided to meet again on 19 January 2016 to informally consider the substance of their complaints.

On 19 January 2016 the Council held an Extraordinary Full Council Meeting. The following councillors attended: Annette Crowe (Town Mayor and Committee Chairman), Debbie Baker, Robert Barnes, Phillip Bettington, Anthony Bradford, Martin Eager, Elaine Fieldhouse, Keith Francis, Andrew Harrison, Elizabeth Harvey, Maria Mackness, Nick Morris, Jayne Roberts, Noel Roberts, Andrew Warmington, Robert Yeoman and in attendance, Karen Mitchell (Clerk to the Council) and Maria Bradman (Deputy Clerk to the Council). That Meeting decided new Terms of Reference for the Grievance Panel to investigate and determine what it described as the grievances against Cllr Harvey. The meeting also established an Appeal Panel to investigate and determine any appeal. Cllr Harvey was informed that she was to attend a meeting of the Grievance Panel on 29 February to deal with these grievances.

However, Cllr Harvey did not believe that using the Grievance Panel was the appropriate way to handle the complaint against her. She believed that the Council should have used

the statutory process under the Localism Act and decided to refer the complaint against her to the Council's Monitoring Officer, who is the Council officer responsible for monitoring the Council's legal responsibilities and has a specific statutory duty to ensure that councillors maintain the highest standards of conduct. Cllr Harvey then decided not to attend the Grievance Panel, after taking legal advice.

Nevertheless, on 21 March the Grievance Panel (comprising Keith Francis, Phillip Bettington, Elaine Fieldhouse, Nick Morris and Noel Roberts; and chaired by Lynda Wilcox, Chief Executive of HALC) met - even though Cllr Harvey did not attend the meeting. Afterwards, the Chair of the Grievance Panel sent her an email, explaining that the Panel had found in favour of the complainants and had reported its conclusions to a Full Council meeting to consider what action should be taken against Cllr Harvey. On 29 March 2016 she appealed the Panel's decision, pointing out that she had not been given any reasons for the Council's decision- so that it was impossible to know what conclusions the Council reached and what were the reasons for those conclusions.

On 5 May 2016 the Council held an Extraordinary Full Council Meeting to consider what action to take in light of its previous decisions. The following councillors attended: Annette Crowe (Town Mayor and Committee Chairman), Debbie Baker, Robert Barnes, Phillip Bettington, Anthony Bradford, Martin Eager, Elaine Fieldhouse, Keith Francis, Andrew Harrison, Elizabeth Harvey, Nick Morris, Jayne Roberts, Noel Roberts, Andrew Warmington, Robert Yeoman and in attendance Lynda Wilcox (Chief Executive of HALC). Mrs Justice Cockerill decided that there is some doubt about what materials were available to the Meeting – other than the complaint itself. Even so, after an oral debate, the Council decided to impose various sanctions on Cllr Harvey.

The Meeting resolved that Cllr Harvey should not serve on any of the Parish Council's committees, sub-committees, panels or working / steering groups, should not be eligible to

substitute for a member of any of the Parish Council's committees, sub-committees, panels or working / steering groups, should not represent the Parish Council on any outside body, that all her communication with the Clerk or Deputy Clerk should go through the Parish Council Mayor (or Deputy Mayor in his / her absence), that the Council be informed of all these actions, that all bodies affiliated to the Council be informed of these actions and that the prohibitions should remain in place until its Annual Meeting in May 2017, when the matter may be reviewed. Cllr Harvey responded by complaining that these prohibitions hollowed-out a core part of her councillor role.

On 8 May 2017 the Council's Standing Committee (consisting of Elaine Fieldhouse (who chaired the first part of the meeting), Debbie Baker (who chaired the remainder of the meeting from agenda item 6), Robert Barnes, Martin Eager, Jayne Roberts and, in attendance, Lynda Wilcox (Chief Executive of HALC) of the Council met to review the May 2016 decision. Cllr Fieldhouse (Deputy Mayor) said that, in advance of the Standing Committee meeting, she and the then Mayor (Debbie Baker) interviewed the Clerk and a former Clerical Officer at the Council's offices. But neither of them took notes of these meetings and no other information was given to Cllr Harvey or the Standing Committee, itself, concerning its "review" of the 2016 prohibitions. Furthermore, the Council at no stage asked Cllr Harvey to explain the continuing impact of the prohibitions on her ability to perform her duties as a councillor. Due to poor health Cllr Harvey could not attend the meeting itself, but the way the Standing Committee behaved made Mrs Justice Cockerill question whether Cllr Harvey could effectively participate, even if she had been able to attend. In fact, the Standing Committee decided to continue the prohibitions on Cllr Harvey and to impose further sanctions on her.

On 11 May 2017 a meeting of full Council next decided by 8 votes (Debbie Baker, Robert Barnes, Annette Crowe, Martin Eager, Elaine Fieldhouse, Andrew Manns, Jayne Roberts and Jean Simpson) to 6 (Keith Francis, Andrew Harrison, Elizabeth Harvey, Nick Morris, Andrew Warmington and Harrison Wilce), with two abstentions (Anthony Bradford and

Matthew Eakin) to adopt the Standing Committee's decision. The day afterwards on 9 May 2017, the Council's Monitoring Officer wrote to Cllr Harvey about the statutory complaints procedure for councillors under the Localism Act. The Monitoring Officer explained that the investigation into the statutory complaint against Cllr Harvey had not found that the Cllr Harvey had breached the Code although bullying is an offence under the Code- and concluded that the Code had not been breached.

Cllr Harvey then brought judicial review proceedings against the Council's decision. She complained that the decision was outside the Council's powers and *ultra vires* since the allegations against her should have been addressed under statutory complaints procedure under the Localism Act. Cllr Harvey also argued that the decision was substantively unfair as a breach of freedom of expression under the Human Rights Act and substantively unfair at common law. She also criticised the decision for being procedurally unfair - due to the absence of a statutory investigation, the absence of an identifiable basis for making a statutory complaint against her, the failure of the decision-making body to disclose the full evidence against Cllr Harvey and the absence of any opportunity for Cllr Harvey to respond or to defend herself.

In fact, the Council lost in relation to every complaint Cllr Harvey made in the judicial review proceedings when Mrs Justice Cockerill ruled in her favour. The Council is out of pocket for over £200,000 as a result.

When the Council first dealt with Cllr Harvey's case, they were advised by the Hereford Association of Local Councillors. The Council later engaged outside solicitors who initially instructed a junior barrister, who advised that the Court would quash the Council's decision made on 17 May 2017 and that the correct approach the Council should have taken is to refer the grievance to the statutory procedure under the Localism Act. The Council then decided that the outside solicitors should seek advice from a Queen's Counsel with significant public

law experience. The Council's QC advised on several occasions that the Council had not acted unlawfully in addressing the complaints against Cllr Harvey as an employment issue rather than under the statutory procedure prescribed by the Localism Act, and just before the trial, rated the Council's chances of successfully defending the case at 75%.

The Council recently instructed Richard Clayton QC, a senior and experienced local government barrister, to examine in detail every possible avenue which would enable the Council to recover compensation for the amount the Council has been forced to pay. Mr Clayton has advised that, even if the Council could establish that the Hereford Association had acted negligently, the Council would not be entitled to compensation as a result. The fact that the Council relied on the positive advice of its QC to defend the case meant that the Hereford Association could not be responsible for any of the Council's subsequent financial losses. Mr Clayton also advised the Council that the legal issues in the case were complex and that the mere fact that the QC's view of Cllr Harvey's case was rejected by Mrs Justice Cockerill provided no basis whatsoever for alleging that the QC had acted negligently.

The Council is satisfied that Mr Clayton rigorously considered all available options and have reluctantly accepted his advice that there is no realistic prospect of recovering any money back.

The Council has now decided to draw a line under this whole unfortunate saga. The Chairman of the Council, Cllr Nina Shields says *'This has been an extremely difficult time for the Council. The case has had national impact. I understand that a report has gone to Parliament looking at amending the law so that there is clarity for all councils with regard to handling complaints against councillors. Ledbury can now choose to look forward and I hope it will do so. If we can build on the ability to debate differences of opinion in a constructive way that develops better solutions, we have the opportunity to go from strength to strength.'*

NB Early in 2018 both the Clerk and the Deputy Clerk resigned and by May 2018, once the judgement was made, Robert Barnes, Annette Crowe, Martin Eager, and Elaine Fieldhouse all resigned.

28th March 2019