

Emma James

From: David Fairbairn <David.Fairbairn@swdevon.gov.uk>
Sent: 10 March 2021 15:34
To: SH-All Parish Clerks; WD-Parish Clerks
Cc: Cara Stobart
Subject: In defence of town and parish clerks - preventing bullying and harrassment FAO Mayor/Chairman

Importance: High

Dear Mayor/Chairman,

I am writing to you and to all the town/parish councils in the South Hams District and West Devon Borough Councils' areas. I have been a monitoring officer with various local authorities for in excess of 20 years. I have noticed that in the past couple of years a worrying trend in the nature of complaints about the behaviour of town and parish councillors towards their clerks and other employees. The complaints allege bullying, harassment and being treated with a lack of respect by a councillor or councillors. Such is the scale of the issue that the new LGA Model Code specifically refers to degree of respect that is to be given to clerks being greater than between councillors. I am aware that such behaviour has resulted in clerks being unwell and has led to their resignation.

Ultimately, it is not in the clerk's interests or the public interest that clerks and other employees are subject to unwarranted comments that disenable them from performing their duties and which undermine public confidence.

Bullying, harassment and being treated with a lack of respect are all matters covered by the Councillor Code of Conduct. Complaints alleging such behaviour must since the decision in R(Harvey) v Ledbury in 2018 be dealt with under the District/Borough Council's arrangements under the Localism Act 2011. While a town/parish council is able to carry out an initial investigation, it cannot deal with an established breach of the code of conduct by imposing sanctions.

This does not mean that a town/parish council cannot do anything or indeed has no duties towards the clerk. The clerk is an employee. As in any employment relationship there has to be a mutual bond of trust and confidence between councillors and officers. The Employment Appeal Tribunal has held that a councillor is a quasi-employer and that a council can therefore be held liable for the actions of just one councillor. As an employer a town/parish council has a duty under the Health and Safety at Work etc Act 1974 to protect their employees from harm and the failure to provide a safe system is a fundamental breach of the employment contract. While a town/parish council cannot impose sanctions it is able to, and indeed is under a duty to, put measures in place to protect its employees. Measures differ from sanctions in that they are:

- the outcome of a review of the risk to the employee;
- intended to be protective of the employee;
- proportionate to the risk to the employee rather than the seriousness of the breach; and
- accord with the town/parish council's dignity at work or health and safety policies.

I would therefore urge you on behalf of your town/parish council to nip bullying, harassment and a lack of respect at source by ensuring that there you have the following measures in place:

- a dignity at work policy or similar in place;
- a member-officer protocol setting out the relationship and what can or should be the legitimate expectations of members and officers;
- regular training;
- early warning and monitoring feedback; and
- induction arrangements that reinforce standards of behaviour.

I understand that there is a Local Council Governance Toolkit currently being promoted by SLCC, ADSO, NALC and LGG. It is a live tool which will be regularly updated and will provide you with a lot of useful advice. The Toolkit is available via the SLCC website. NALC has also published NALC "Good Councillors Guide to Being a Good Employer" <https://www.nalc.gov.uk/publications>"

Yours faithfully

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