

IN THE MATTER OF JOHN HUMPHREYS

ADVICE

1. I am instructed to advise East Devon District Council (“the Council”) on matters arising out of the conviction of former councillor John Humphreys for multiple sex offences against two boys between 1990 and 2002. The background is very helpfully explained in my instructions and since it is very well known to my instructing solicitor I will not repeat it here. Instead I turn directly to the questions asked.

(1) What is the statutory framework within which the Council operates in terms of the appointment/removal of the status of honorary alderman?

2. The power to confer the status of honorary alderman is given by s 249 of the Local Government Act 1972 (“the 1972 Act”) which as principally relevant provides:-

249 Honorary titles

(1) A principal council may, by a resolution passed by not less than two-thirds of the members voting thereon at a meeting of the council specially convened for the purpose with notice of the object, confer the title of honorary aldermen or honorary alderwomen on persons who have, in the opinion of the council, rendered eminent services to the council as past members of that council, but who are not then members of the council.

3. S 249 does not provide expressly for the status of honorary alderman to terminate or to be rescinded. However, it would seem unlikely that Parliament intended that a person given this status should in all cases retain it until death e.g. no matter how heinous their behaviour after the award or (belatedly discovered) before the award, or even if they wished no longer to hold it.

4. Accordingly I think it likely that the Council either has the implied power to rescind it (Attorney General v Great Eastern Railway Co (1880) 5 App Cas 473 at 478), or has the express power to do so either under general power of competence in s 1 of the Localism Act 2011 (“GPOC”) or under s 111 of the Local Government Act 1972 (“the 1972 Act”), as explained by the House of Lords in Hazell v London Borough of Hammersmith and Fulham [1992] 2 AC 1, in conjunction with s 249.

(2) What statutory duties does the Council, as lower tier authority, have in relation to child safeguarding? What action could the Council take if a safeguarding concern is raised about a serving member?

5. It may be that, as a district council, the Council does not engage directly with child safeguarding duties as frequently as upper or single tier authorities do, save perhaps in undertaking its housing, leisure or (to some extent) planning functions. I will not set out the legislative framework for those specific services.

6. However a number of broader and very important safeguarding duties apply to the Council. These include s 11 of the Children Act 2004 (“the 2004 Act”) which provides:-

(2) Each person and body to whom this section applies must make arrangements for ensuring that—

(a) their functions are discharged having regard to the need to safeguard and promote the welfare of children; and

(b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need.

7. The Secretary of State has issued significant “have regard” guidance to all authorities discharging functions under s 11, entitled “Working Together to Safeguard Children A guide to inter-agency working to safeguard and promote the welfare of children”: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942454/Working_together_to_safeguard_children_inter_agency_guidance.pdf. “Have regard” guidance must be followed unless there good reason not to: R (X) v Tower Hamlets LBC [2013] BLGR 721, paragraphs 28, 41-42.

8. S 10 of the 2004 Act is also significant. The Council is not a “local authority” for the purposes of the opening words of s 10(1) (see the definition in s 65) but under s 10(4) it is a “partner” for the purposes of s 10(1)(b):-

10 Co-operation to improve well-being

(1) Each local authority in England must make arrangements to promote co-operation between—

(a) the authority;

(b) each of the authority's relevant partners; and

(c) such other persons or bodies as the authority consider appropriate, being persons or bodies of any nature who exercise functions or are engaged in activities in relation to children in the authority's area.

(2) The arrangements are to be made with a view to improving the well-being of children in the authority's area so far as relating to—

(a) physical and mental health and emotional well-being;

(b) protection from harm and neglect;

...

9. Under s 12 of the 2004 Act, arrangements under s 10 will include establishing a Children's Trust Board, and by s 12(2) the Board will include a representative of district councils. By s 12D:-

12D Supply of information to CTBs

(1) A person or body represented on a Children's Trust Board must supply to the Board any information requested by the Board for the purpose of enabling or assisting it to perform its functions.

10. Under reg 18 of, and paragraph 24 of the Schedule to, the Child Safeguarding Practice Review and Relevant Agency (England) Regulations 2018, district councils are "relevant agencies" for the purposes of s 16E(1)(b) of the 2004 Act which in context provides:-

16E Local arrangements for safeguarding and promoting welfare of children

(1) The safeguarding partners for a local authority area in England must make arrangements for—

(a) the safeguarding partners, and

(b) any relevant agencies that they consider appropriate,

to work together in exercising their functions, so far as the functions are exercised for the purpose of safeguarding and promoting the welfare of children in the area.

(2) The arrangements must include arrangements for the safeguarding partners to work together to identify and respond to the needs of children in the area.

11. This is not, and is not intended to be, a complete list of all the Council's statutory powers and duties which may relate in some way to child safeguarding. For instance, in certain circumstances, the Council (like any other organization) will have the power to refer its concerns to the police. In the Council's case this might be done pursuant to its ancillary powers under s 111 of the 1972 Act and/or GPOC.

12. However, it will be seen that, to a large extent, legislation provides that the child safeguarding role of a district council, when not specifically engaged in the delivery of particular services, is as a partner with other authorities some of which may have more extensive powers and duties to take steps to safeguard children in the particular circumstances.

13. The practical effect of these duties for the Council will of course vary from case to case. It may be that in the particular circumstances it needs to take action directly and quickly. But it may be that their effect will be to require the Council to liaise with other authorities and persons (including, for instance, local authorities, schools and the police) with more direct responsibility for safeguarding, so as to alert them to circumstances which may require the latter to take action to prevent harm in the particular circumstances

14. The LGA has published some useful material explaining safeguarding duties for district councils and their members. This material includes "The role of district councils in safeguarding children and young people - Briefing for councillors", which for some reason I can find only on an old Northampton Borough Council website at <https://www.northampton.gov.uk/download/downloads/id/5447/the-role-of-district-councillors-in-safeguarding-%E2%80%93-young-people.pdf>. While out of date, in that it does not refer to the latest amendments to the relevant legislation (for instance referring to the Local Safeguarding Children Board rather than the Children's Trust Board), its observations are I think valuable as guidance for the kind of corporate and governance expectations which should be in place to allow district councils to perform the partnering functions described above.

15. Also useful is "Tackling child exploitation: resources pack" at <https://www.local.gov.uk/publications/tackling-child-exploitation-resources-pack>.

16. As to the question of what action the Council should take if alerted to a safeguarding issue concerning a district councillor, in immediate safeguarding terms the concerns should be dealt with in the same way as the district council would deal with concerns brought to their attention about any other person, pursuant to the powers and duties referred to above.

17. Apart from alerting such partners as it is appropriate to alert in the circumstances, so as to allow them to take any necessary action, the Council's powers of intervention in how such a member carries out his or her duties are relatively limited. For instance, the leader may appoint the executive in such a way as to exclude the member or ensure that they do not undertake child related roles, but under the Local Government Act 2000 ("the 2000 Act"), this is a matter for the leader. Political groups may do the same when notifying the proper officer of appointments to committees, but under the Local Government and Housing Act 1989 ("the 1989 Act") and associated regulations, this is a matter for the groups. Members and officers do not in my view have general powers of intervention to countermand such appointments. I do not think that GPOC stretches this far, since the rules of appointments to the executive in the 2000 Act, and to politically balanced bodies in the 1989 Act and regulations thereunder, are likely to amount to pre-commencement limitations for the purposes of s 2 of the Localism Act 2011 preventing such intervention.

18. The position may be different for membership of Council committees which are not politically balanced: Manton v Brighton Corp [1951] 2 KB 393. But even in these limited cases, the Council should assume that rules of natural justice would apply prior to effecting removal of such a member.

19. No doubt a finding by the appropriate agency that a member had intentionally harmed a child would amount to a breach of the Council's code of conduct, and would lead to sanctions, though it is to be hoped that the member would already have resigned or have been imprisoned in such circumstances. As to the Council conducting its own investigation of such issues, the Monitoring Officer would have to ensure that any standards process did not prejudice an investigation being undertaken by the police or other agency.

20. It might also be a breach of the code if the member, without harming a child, failed in their safeguarding duties in some way e.g. to report a concern to the appropriate agency.

(3) What specific powers does the Council have to conduct any investigation or enquiry into the issues surrounding John Humphreys and what powers of compulsion would the Council have in relation to potential witnesses – whether employees, serving or former councillors, officers of another authority (Devon County Council or the police for example), or members of the public generally?

21. In my view the Council has power to undertake such an investigation as long as it is reasonable to do so in all the circumstances and:-

(1) as regards members, it does not actually or in effect usurp the role of standards arrangements provided for by s 28 of the Localism Act 2011: R (Hussain) v Sandwell MBC [2017] EWHC 1641; R (Harvey) v Ledbury Town Council [2018] EWHC 1151;

(2) as regards officers, it is not actually or in effect an investigation of an officer's conduct or capability outside the terms of the procedures or policies to which the officer has a contractual right, or in the case of certain chief officers to which they have a statutory right under the Local Authorities Standing Orders (England) Regulations 2001. Such a departure would very likely amount to a fundamental breach of contract allowing the employee to resign and claim to have been constructively dismissed. In the latter case it would also open the Council to the possibility of a judicial review claim or failing to follow statutory requirements;

(3) in any event it does not prejudice any investigation which is being undertaken by the appropriate authority, typically the police, but possibly also other agencies.

22. No such investigation carries powers of compulsion of any witness, though I suppose that a refusal to co-operate might, in the particular circumstances, amount to a breach of a member's standards obligations and thus be subject to a standards complaint, or (in the case of an officer) might amount to a breach of their contractual obligation of trust and confidence and/or to comply with a reasonable management instruction, and thus subject to possible disciplinary sanction. However whether this was so would be highly fact sensitive.

23. I am asked specifically to consider what powers the Council has, as part of such an investigation, to look into the way the police handled the initial complaints brought by the victims/alleged victims as well as considering the later actions of the police.

24. Whilst the Council might have some powers of observation as regards such matters, particularly in the light of GPOC, it must recall that it is not a police authority, nor a police complaints authority. It will not generally be reasonable, and therefore lawful, for the Council to seek actually, or in effect, to act as such or to seek to redetermine discretionary issues which the police have considered.

25. If the Council is concerned that the police have not undertaken appropriate investigations, or have not taken other steps which they should have taken, that is a matter which should be raised with the police in the normal way, and possibly through

any police complaints system if there are proper grounds to do so. It should not in my view be undertaken through a separate investigation of the Council's own.

26. There are the further dangers that the Council will simply not have the information to make any determination about whether the police acted appropriately, and will not have the expertise to decide what actions should and should not be taken to ensure that criminal justice is put into proper effect.

27. Furthermore, whilst I am not a defamation or data protection expert, it seems to me that there is a grave danger that by entering into investigations more properly undertaken by the police, or going over ground which the police have already gone over, the Council could be making allegations which are defamatory and/or processing information unlawfully.

28. I stress that nothing I say should prevent the Council from taking the swiftest possible action to prevent harm to the welfare of any child, whether by informing the police or otherwise. But that will be not be effected by the Council seeking to put itself in the position of the police, or trying to judge how the police performed in the past.

(4) What role does Cabinet and/or Council have in relation to the internal workings of a political group? In that regard, would it be lawful for Cabinet to resolve, or to resolve to ask, that the Conservative group conduct an inquiry along the lines of the one identified by Cllr Bailey?

29. Political groups are recognised in the 1989 Act, and regulations thereunder, as the basis for the distribution of committee and sub-committee seats according to political balance. They have very little other express statutory function or recognition. That said, the Courts have long recognised that political activity is inherent to local authority decision making: R v Waltham Forest LBC, ex parte Baxter [1988] QB 419. As a matter of common sense the inner workings of a political group should, in general and on a day to day basis, be private to that group should they wish it to be, and officers, with their duties of impartiality, will be properly be reluctant, in general, to be involved in action directed against or towards one political group but not others.

30. Cabinet and Council have no specific legislative power to conduct an investigation into a political group's activity or alleged failings, nor to require a group to conduct it. I can see an argument that in an appropriate case Cabinet or Council might have the power to request the group to do so, whether under GPOC, or s 111 of the 1972 Act coupled with the Council's safeguarding duties under s 11 of the 2004 Act (as to which see above). Even this would I think be highly unusual, since there is very little in local government legislation to suggest that political groups are intended to be supervised

in this way by any organ of the Council. That said, if it was the only real way, or best way, to ensure safeguarding, the Council would probably have power to make such a request. But I imagine it would generally be possible for safeguarding to be ensured in other ways, for instance by causing the activities of certain members to be investigated, rather than requesting their political group to do so. In the case of real ongoing concern, the natural response would be to contact the police or other appropriate agencies.

31. In any event I do not think that in practice the Council is likely to have an enforceable right to compel a political group to undertake such an investigation. For instance if the Council resolved that unless the group conducted an investigation, its members would not be permitted to attend certain Council or committee meetings, this would probably be contrary to the legislative provisions for Council meetings and appointments to committees referred to above.

(5) In light of the above what would Counsel advise in terms of whether there should be an investigation or inquiry and, assuming the advice is that there is one, or that one is possible, what advice would Counsel given in terms of its scope, remit and terms of reference?

32. It is not I think for me to advise whether there should be an investigation. Though the scope of an investigation, and the manner in which it is carried out, raise legal issues, the question of whether there should be some form of investigation is in itself a merits matter for members.

33. However any investigation should in my view observe the principles referred to in paragraphs 16, and paragraphs 23-28, above.

34. This might suggest that the investigation should be limited to consideration of the Council's safeguarding structures and practices, how they have performed and how they could be improved, and avoiding any imputation which could contravene those principles.

35. I should stress that, as my instructing solicitor will appreciate, nothing in this advice should be read as preventing the Council from taking all necessary and appropriate steps to prevent harm to children, or as limiting its normal powers under standards procedures as regards members, and under its employment terms and policies as regards officers.

36. I hope that this advice is helpful, but my instructing solicitor should not hesitate to contact me with any comments or questions which she may have.

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