

## **AGENDA 8, Enc iii) CLERK'S NOTE: Updates to Grievance Policy – Employee Complaints about Councillors**

### **Purpose**

This briefing note explains the key changes made to the Council's Grievance Policy to ensure compliance with law and to clarify the Council's position and available actions when employees raise complaints about councillor conduct.

### **Key Legal Constraints**

#### ***The Ledbury Decision***

The High Court in *R (Harvey) v Ledbury Town Council* [2018] EWHC 1151 (Admin) established that:

1. **Employee complaints about councillor conduct that could constitute a breach of the Code of Conduct cannot be dealt with through the formal stages of the Council's grievance procedure.** Such complaints must go through the Monitoring Officer at the principal authority under s.28(6) Localism Act 2011.
2. **The Council cannot impose sanctions on councillors through a grievance process.** Actions such as removing councillors from committees or restricting contact with staff, when imposed as outcomes of a grievance procedure, are ultra vires.
3. **The Code of Conduct process has procedural safeguards** (including the Independent Person) that cannot be circumvented by using employment procedures.

#### ***Northumberland County Council Monitoring Officer Position***

The Monitoring Officer at NCC will **only accept Code of Conduct complaints made directly by individuals**. The MO will not accept complaints from the Council acting as the corporate body or as employer. This creates a significant limitation:

- The Council cannot submit a complaint on behalf of an employee
- The Council cannot be informed of outcomes unless the employee chooses to share this
- The employee bears the burden of personally pursuing any Code of Conduct complaint

#### ***The Moores v Bude-Stratton Case***

*Moores v Bude-Stratton Town Council* [2000] IRLR 676 (EAT) established that councils may be **vicariously liable** for councillor conduct that breaches the implied term of mutual trust and confidence in employment relationships. This means:

- The Council cannot simply "wash its hands" of councillor behaviour towards staff
- Failure to take reasonable protective action could expose the Council to Employment Tribunal claims
- The Council must balance legal constraints on action against councillors with its duty of care to employees

#### ***The Miller v Peake Case***

*Miller v Peake* [2025] EWHC 453 (KB) is a recent High Court decision where a parish clerk was awarded **£20,000 in defamation damages** against a parish councillor. The councillor had conducted a campaign of defamatory social media posts accusing the clerk of being "a dishonest, scheming, devious and threatening liar". The Court found the councillor was

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"consumed with a very strong personal dislike" of the clerk and had made accusations not justified by the evidence.

This case demonstrates that:

- Councillors face **personal liability** for their conduct towards staff
- Even where the Council cannot sanction a councillor, the councillor may face civil claims from affected employees
- Defamatory statements about staff (including on social media) can result in significant damages awards
- The Council should ensure councillors are aware of the potential personal consequences of inappropriate conduct

### The Policy Gap

The current legal framework creates a significant gap:

Situation	Council's Ability to Act
Informal resolution successful	✓ Matter resolved
Informal resolution fails – employee pursues MO complaint	Council cannot be involved in the Code of Conduct process
Informal resolution fails – employee does not pursue MO complaint	Council cannot use formal grievance procedure
Councillor behaviour continues	Council has limited direct remedies

The NALC Advice Note (May 2024) confirms this gap but offers no solution beyond stating the Council's duty of care continues.

### Lawful Actions Available to the Council

The updated policy clarifies what the Council **can** lawfully do:

#### 1. Review Committee Appointments

The Council retains its ordinary power to make and vary committee appointments through proper democratic process. This is **not** a sanction imposed through grievance proceedings – it is the Council exercising its normal constitutional powers. Key distinction:

- ✗ Unlawful: "As a result of the grievance finding, Cllr X is removed from committees"
- ✓ Lawful: "At its Annual Meeting, the Council resolved not to appoint Cllr X to the Staffing Committee"

#### 2. Apply Standing Orders in Meetings

The Chairman has authority under Standing Orders to maintain order. Inappropriate behaviour towards staff during meetings can be addressed as it occurs.

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### **3. Practical Support Measures**

The Council can implement workplace adjustments to protect employees:

- Communication protocols
- Ensuring employees are not required to work alone with particular councillors
- Access to employee assistance programmes
- Risk assessments

These are **protective measures** consistent with duty of care, not sanctions against councillors.

### **4. Offer Mediation**

Independent mediation may be offered, but requires the councillor's voluntary participation.

### **5. Thorough Documentation**

The Council should document:

- All concerns raised
- Steps taken to address them informally
- Support offered to employees
- Practical arrangements made

This documentation protects the Council by demonstrating compliance with duty of care should matters reach an Employment Tribunal.

### **Key Policy Changes**

<b>Section</b>	<b>Change</b>
Introduction (para 3)	Added explicit reference to Localism Act 2011 and Ledbury case
New section (paras 7-13)	Comprehensive section on "Employee Complaints about Councillors – Legal Framework"
Para 7	Clear statement that formal grievance cannot be used for Code of Conduct complaints
Para 8	Explanation of MO process and its limitations
Para 9	Acknowledgment of the policy gap and NALC guidance
Para 10	List of lawful actions available to Council
Para 11	Reference to vicarious liability (Moores case)
Para 12	<b>NEW:</b> Reference to personal liability of councillors (Miller v Peake case)
Para 13	Duty of care provisions

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Section	Change
Informal procedure (paras 15-17)	Explicit statement that informal stage is the <b>only</b> stage for councillor complaints
Formal procedure (para 18)	Clear exclusion of Code of Conduct complaints from formal procedure

### Recommendations

1. **Adopt the updated policy** to ensure compliance and provide clarity for employees and councillors.
2. **Brief all councillors** on the legal constraints and their obligations under the Code of Conduct, including the expectation of appropriate behaviour towards staff.
3. **Ensure robust documentation** of any concerns raised about councillor conduct and the Council's response.
4. **Consider councillor training** on appropriate interactions with staff as a preventive measure.
5. **Support Standing Orders** to ensure the Chairman has clear authority to address inappropriate behaviour in meetings.
6. **Consider committee appointments** carefully at Annual Meeting, taking into account any ongoing concerns about councillor-staff relationships.

### References

- *R (Harvey) v Ledbury Town Council* [2018] EWHC 1151 (Admin)
- *Moore v Bude-Stratton Town Council* [2000] IRLR 676, EAT
- *Miller v Peake* [2025] EWHC 453 (KB)
- NALC Advice Note: Disciplinary and Grievance Arrangements in Local Councils (May 2024)
- Localism Act 2011, s.28(6)
- ACAS Code of Practice on Disciplinary and Grievance Procedures (2015)