

NOTE: Hussain v Sandwell Metropolitan Borough Council

(This Note is not part of the judgment)

The claim for judicial review

1. This claim for judicial review concerns an attempt to prevent Sandwell Metropolitan Borough (“the Council”) from continuing with an investigation into alleged wrongdoing by elected Council members relating to disposal of Council property. The Council is a Labour controlled authority and the Claimant was an elected Labour member of the Council.

The alleged wrongdoing

2. The Claimant is alleged to have been engaged in various transactions in early 2012 which involved procuring the sale of Council assets (property) to family friends at a substantial undervalue. He is also alleged to have used his power and influence as a senior politician within the Council to have parking tickets issued to his family expunged.

The “culture”

3. Evidence before the Court refers generally to a “*culture*” whereby elected members of the Council were “*the bosses*” and the Council was “*open for business*”. Evidence refers to members bullying employed officials and officers who were compliant in carrying out the members wishes. In 2014 various allegations were circulating in the press (including on the BBC) and on social media to the effect that there was serial and long standing wrongdoing by elected members.

The Council’s investigation

4. The Audit Committee of the Council commenced an investigation. An external firm of solicitors was instructed to assist. They interviewed the Claimant upon two separate occasions about the allegations made against him. The interviews were recorded and transcripts made. Regrettably, towards the end of the process, the solicitor conducting the investigation made a personal and derogatory observation

about the Claimant and his family to a Council Official (the Chief Executive). This caused the Chief Executive to address whether it was proper to continue with the external lawyers given the risk of bias. It was decided however that, given the advanced stage of the investigation, the work should be completed but that the evidence and report should then be submitted to Leading Counsel for independent advice. The solicitor's report was presented to the Council in April 2016. Leading Counsel was instructed and he advised in May 2016. The gist of the advice was that there was a serious case to be met by the Claimant and that the solicitors report and the Opinion should be placed into the public domain to address criticisms then being made in the press that the Authority was suppressing wrongdoing and not taking its obligations seriously. Counsel also advised that a formal investigation of the allegations against the Claimant under the Localism Act 2011 (which enshrines in statutory form the *Nolan Principles* on the standards to be expected of those in public office) be initiated.

Politicisation of the investigation

5. A complication arose because elections to appoint a new Leader of the Council occurred at that time. Several members indicated that they would stand for election. This included a member who was a subject of the investigation. The investigation became "*political*" in the sense that it was then used by members against each other in the press. Leaks of the solicitor's report and Counsels Opinion occurred. The Council indicated to the Claimant that to demonstrate to the public that it was taking its investigative duties seriously, and to ensure that the full picture was placed into the public domain, it intended to publish the solicitors report and Opinion.

The application for judicial review and the stay of the investigation

6. This led the Claimant to seek permission to apply for judicial review and for an order prohibiting publication. Permission was refused by the High Court. On the day of the refusal the Council placed the solicitors report and the Opinion into the public domain. Subsequently the Court of Appeal granted permission to claim judicial review but by this time the application for an injunction to restrain publication had become academic. The Council's investigation was later stayed by the High Court pending the outcome of this judicial review. This prevents the Council from

continuing with its investigation and from convening a Standards Committee investigation to hear and then rule upon the allegations against the Claimant.

The grounds of challenge

7. In this judicial review the Claimant has launched a wide-ranging attack on the power of the Council to conduct investigations of alleged wrongdoing by members *and* the publication of the solicitor's report and Opinion. The Grounds of challenge raise issues about the scope of the powers of local authorities generally to investigate alleged wrongdoing under the Local Government Act 1972 (LGA 1972) and the Localism Act 2011 (LA 2011) and the interaction between these measures and the Data Protection Act 1998 (DPA 1998).
8. For example, the Claimant argues that the investigation was and remains flawed and unlawful because it is infected by bias, politically motivated, oppressive, irrational and unreasonable. It is also argued that there is no lawful power to investigate alleged misconduct pre-dating the coming into effect of the LA 2011 (1st July 2012), and no power more generally to invoke the powers in the LGA 1972 and the LA 2011 in support of investigations into this sort of alleged misconduct.
9. In relation to the decision to place the solicitors report and the Opinion into the public domain it is argued that this was an irrational and politically motivated act, that it was infected by bias, and in any event the decision was unlawful under data protection legislation and violated the rights of Councillor Hussain and his family under Article 8 ECHR.

Conclusion: The claim fails

10. I have concluded that the claim for judicial review fails.
11. On the evidence before the Court there is a serious *prima facie* case against the Claimant. The allegations should now be investigated properly in accordance with the formal arrangement instituted by the Council under the LA 2011. The Council has ample powers to conduct investigations into this sort of impropriety. The argument that Parliament intended an amnesty to be accorded to those engaged in wrongdoing before the coming into effect of the LA 2011 (on 1st July 2011) is rejected. The

decision to publish the solicitors report and the Opinion were fully justified and in the public interest and were not prohibited by data protection laws or Article 8 ECHR.

12. I have also decided that even if I were wrong in my analysis of the powers of the Authority and that it has in the past acted unlawfully that none of these breaches would be material or have any real impact on the fairness of the investigatory procedure going forward. A striking feature of the case is that the Standards Committee, which will hear and adjudicate upon allegations made against the Claimant, has not yet been convened, due to the stay that the Claimant successfully obtained from the High Court. When the stay is lifted, which it will be by Order of this Court, the Claimant will have a full opportunity to present his case and establish that the allegation against him are to be rejected.

The importance of a thorough investigation in the public interest

13. I agree with the position adopted by the Council that the allegations are serious and that there is a powerful public interest in those allegations being thoroughly and fairly tested and adjudicated upon. The fact that the issues have acquired a “*political*” flavour to them is not a reason for the Council, as a body, to act differently. On the contrary it must act independently and objectively throughout, as it has done.
14. In conclusion, I reject the Claim for judicial review. I order that the stay on all proceedings be lifted forthwith.

Mr Justice Green

29th June 2017