

Investigating conduct in public office (Hussain v Sandwell MBC)

07/07/2017

Local Government analysis: James Goudie QC at 11KBW, advises that the judgment in *Hussain v Sandwell MBC* upholds the scope of the powers of local authorities generally to investigate alleged member impropriety, and ultimately to do so in accordance with the formal arrangements under the Localism Act 2011 (LA 2011).

Original news

Hussain v Sandwell Metropolitan Borough Council [\[2017\] EWHC 1641 \(Admin\)](#), [\[2017\] All ER \(D\) 176 \(Jun\)](#)

The Administrative Court dismissed the application by the claimant elected member of the defendant local authority for judicial review of the defendant's initiation of formal investigatory procedures and publication of documents. The authority had power to conduct the investigations it had and did not find itself tainted by bias, nor had it erred by publishing the documents, which had been within its powers and which were not in breach of data protection principles.

What was the background to the case?

The background to this judicial review case is investigations by and on behalf of the council into alleged wrongdoing by elected council members. The claimant is a member of the council. He is alleged to have been engaged in procuring the sale of council assets at a substantial undervalue and using his influence to have parking tickets issued to his family cancelled. He challenged the investigations and attempted to prevent the council concluding them and summoning him before its Standards Committee under [LA 2011, ss 27](#) and [28](#). The council had conducted a 'pre-formal investigation', ie an investigation not conducted under the arrangements put in place under [LA 2011](#) for the formal investigation of breaches under the Code of Conduct applicable to elected members, enshrining the Nolan Principles on the standards to be expected of those in public office.

What issues were raised? What arguments were made by the parties?

The claimant launched a wide-ranging attack. His grounds included that the council had acted ultra vires, that the process had been politically motivated, and that there had been bias which continued to taint the process going forward. He also challenged under the [Data Protection Act 1998 \(DPA 1998\)](#) and the European Convention on Human Rights (ECHR) reports into the allegations being put in the public domain.

What did the court decide, and why? To what extent does the judgment clarify the law in this area?

The judgment clarifies that 'pre-formal investigations' are permissible and that there is no gap between the pre and post [LA 2011](#) standards regimes. Green J ruled that the council had 'ample power' (for example under [section 151](#) of the Local Government Act 1972) to conduct the initial pre-formal investigation into allegations of serious misconduct. He also rejected the submission that the council did not have the power to investigate under [LA 2011](#) any alleged misconduct occurring prior to the coming into force of [LA 2011](#) in July 2012. There was no amnesty for serious misconduct. An allegation submitted to formal investigatory arrangements can cover conduct pre and post-dating the coming into effect of [LA 2011](#). The Code that will then govern the conduct being investigated will be that operative at the time of the behaviour in question. Green J also rejected complaints that the council had erred by publishing the report of the pre-formal investigation. There is an important public interest, with respect to allegations against a councillor, in openness and transparency. Both go hand in glove with accountability. There was no breach of [DPA 1998](#) or Article 8 ECHR.

Public confidence in financial probity is very important. Green J further rejected the allegations of causative actual and apparent bias and political motivation. He reached a clear conclusion and ruled that the council's procedures can continue. He held that even if he had found that the council had acted unlawfully, he would not have granted the relief sought. Even in that case, he would have allowed the council to continue with its procedures, on the grounds that none of the alleged breaches would be material or have any real impact on the fairness of the investigatory procedure going

forward. Also the claimant will have a full opportunity to present his case and establish that the allegations against him are to be rejected at any hearing of the Standards Committee in due course.

What are the practical implications of the judgment?

The judgment upholds the scope of the powers of local authorities generally to investigate alleged member impropriety, and ultimately to do so in accordance with the formal arrangements under [LA 2011](#). The forum for the member to present his case fully will then be the Standards Committee. The judgment recognises that there is a powerful public interest in serious allegations being thoroughly and fairly tested and adjudicated upon. Moreover, when there is a flaw in a pre-formal investigation steps can and should be taken to prevent this infecting what follows.

What are the takeaway points for practitioners?

Any standards investigation must always be subject to the overriding principle of fairness. Subject to that, primacy must be given to the importance of a thorough investigation in the public interest when there is a prima facie case. If issues acquire a 'political' flavour to them that is not a reason for the council, as a body, to act differently.

James Goudie QC is a very experienced senior silk with a broad practice in and out of court. He covers the entire field of 11KBW practice, especially acting for and against clients operating in and with the public sector. James is listed as a leading silk in administrative and public law, education, employment, local government and public procurement in Chambers and Partners and Legal 500.

James has been Head of Chambers since 1997, alongside John Cavanagh QC.

Interviewed by Kate Beaumont.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.



CLICK HERE FOR
A FREE TRIAL OF
LEXIS®PSL

About LexisNexis | Terms & Conditions | Privacy & Cookies Policy
Copyright © 2015 LexisNexis. All rights reserved.