

The logo for Weightmans, featuring the name in white text on a dark teal, wavy rectangular background.

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ADSO Conference

You be the Judge! A local authority case law update.

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A decorative graphic at the bottom of the slide consisting of several overlapping, wavy lines in shades of orange, brown, and green, flowing from left to right.

Introduction

- You be the judge!
- Themes:
 - Local authority powers
 - Powers of secretary of state
 - Member conduct
 - Data protection
 - Freedom of information

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You be the judge!!



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R v AB and others [2017] EWCA Crim 534

Thurrock Council agreed to undertake prosecutions for the Legal Aid Agency.

The Council prosecuted a solicitors' practice for fraud. The practice was not based in the Council's area but some addresses of people used as part of the alleged fraud were.

The practice challenged the Council's power to bring the prosecution. The Council argued it had power under section 222 of the Local Government Act 1972 to bring cases where it considered it "expedient for the promotion or protection of the interests of the inhabitants of their area"

R v AB and others [2017] EWCA Crim 534

You be the Judge – was the decision quashed or did it stand, and why?

- A. It stood because the Council has power to prosecute for other public bodies.
- B. It stood because local authorities have power to bring prosecutions to protect people in their area.
- C. It was quashed because local authorities have no power to prosecute for anyone else.
- D. It was quashed because there was insufficient connection between the alleged offences and the inhabitants of the Council's area.

**R. (on the application of TW) v
Hillingdon LBC [2018] EWHC 1791
(Admin)**

The Council's housing policy gave additional priority to people who had lived in the Borough for 10 years or more.

A group of Irish Travellers challenged this on the basis that it discriminated them.

R. (on the application of TW) v
Hillingdon LBC [2018] EWHC 1791
(Admin)

You be the Judge – was the decision quashed or did it stand, and why?

- A. It stood because the Council had the legal powers to give priority to residents.
- B. It was quashed because a policy should not give priority to existing residents.
- C. It was quashed because it was automatically discriminatory.
- D. It was quashed because it had an adverse impact on Irish Travellers which the Council had not properly considered

R. (on the application of Palestine Solidarity Campaign Ltd) v Secretary of State for Communities and Local Government [2018] EWCA Civ 1284

DCLG issued guidance on LGPS pensions policies which stated, “pension policies to pursue boycotts, divestment and sanctions against foreign nations and UK defence industries are [sic] inappropriate, other than where formal legal sanctions, embargoes and restrictions have been put in place by the Government” and local authorities were bound not to “pursue policies that are contrary to UK foreign policy or UK defence policy”.

**R. (on the application of Palestine
Solidarity Campaign Ltd) v Secretary of
State for Communities and Local
Government [2018] EWCA Civ 1284**

The guidance was challenged by the Palestine Solidarity Campaign as unlawful because it prevented authorities from adopting policies restricting investments which affected the Palestinian people

R. (on the application of Palestine Solidarity Campaign Ltd) v Secretary of State for Communities and Local Government [2018] EWCA Civ 1284

You be the judge – was the decision quashed or did it stand, and why?

A – it was quashed, guidance should be for pensions reasons not political reasons

B – it was quashed DCLG should not interfere in local political decisions

C – it was upheld as lawful DCLG was entitled to issue guidance covering such issues

Hussain v Sandwell MBC [2017] EWHC 1641 (Admin)

Cllr H challenged an investigation into allegations against him about alleged misconduct. These were not carried out under the Localism Act arrangements but resulted in a report being published stating that he had failed to comply with the Code of Conduct. The investigator had made a very unfortunate comment about Cllr H and his family. He argued:

- that the Council had acted ultra vires;
- the process had been politically motivated or infected by actual or apparent bias; and
- publication breached his rights under Article 8(1) ECHR and as a data subject under the Data Protection Act 1998

Hussain v Sandwell MBC [2017] EWHC 1641 (Admin)

You be the Judge – was the decision quashed or did it stand, and why?

- A. It stood because the Council had the legal powers and any bias was not enough to taint the process.
- B. It was quashed because the comments of the investigator made the process unfair.
- C. It was quashed because the Council did not follow the Localism Act process.
- D. It was quashed because nothing should have been published until the case was heard by the Standards Committee.

R (Harvey) v Ledbury Town Council [2018] EWHC 1151 (Admin)

Cllr H was a member of LBT. She was the subject of complaints that she had bullied, intimidated and harassed staff.

A grievance panel of LBC imposed restrictions

There was an investigation by Herefordshire Council (the principal authority) under the Localism Act 2011 which found that Cllr H had not breached the Code.

The grievance panel held a further meeting and extended the restrictions on Cllr H

R (Harvey) v Ledbury Town Council [2018] EWHC 1151 (Admin)

You be the judge – were the town council’s actions lawful or not, and why?

- A. It was lawful. The Council had a duty to its employees and had to protect them.
- B. It was lawful. The town council had a broad discretion how to manage the behaviour of its members
- C. It was unlawful. Any restrictions on members could only be imposed through the Localism Act process.
- D. It was unlawful. The process had been unfair to Cllr H.

Cllr Robert Davis Westminster CC

Cllr D was the former chair of the planning committee.

He accepted over 500 separate offers of hospitality over a period of just over 3 years.

All were registered properly in accordance with the Council's Code.

Concerns were raised in the press about this and Cllr Davis referred himself to the Council's Monitoring Officer through the Localism Act arrangements.

An investigation was carried out.

Cllr Robert Davis

You be the judge – what did the investigate conclude and why?

- A. Cllr Davis had done nothing wrong he had followed the Code and registered the hospitality.
- B. There was a case for saying that Cllr Davis had breached the code because of the scale of the hospitality and the public perception

Wm Morrison Supermarkets Plc v Various Claimants [2018] EWCA Civ 2339

S, who had worked for Morrisons as an internal IT auditor, developed a grudge against them. He copied personal data, including payroll data, of a large number of employees onto a USB stick. He took the stick home and posted the data on the web, using another employee's details in an attempt to conceal his actions. S was convicted of criminal offences, including an offence under the Data Protection Act 1998 s.55. The employees whose data had been published claimed damages from the employer for misuse of private information and breach of confidence, and for breach of statutory duty under the Act.

Wm Morrison Supermarkets Plc v Various Claimants [2018] EWCA Civ 2339

You be the judge – was Morrisons liable for damages?

- A. No this was a rogue employee there was nothing they could have done so they shouldn't be liable.
- B. No there was no real damage done
- C. Yes they were liable for the acts of their employee even though they were unauthorised and outside of their procedures

Cyril Bennis v ICO and Stratford upon Avon DC UKFTT EA/2017/0220

CB made a complaint about a councillor alleging that they had not complied with the Code of Conduct.

CB's complaint was not upheld.

He made a request to the Council under the FOIA for advice given by the Monitoring Officer and Independent Person.

The Council refused and this was upheld by the ICO. CB appealed to the FTT

Cyril Bennis v ICO and Stratford upon Avon DC UKFTT EA/2017/0220

You be the judge – did the Council have to disclose the advice?

- A. No disclosure would have an adverse impact on the conduct of public affairs and it was not in the public interest to disclose.
- B. No it contained information personal information about the councillor and unsubstantiated claims should not be made public.
- C. Yes it is in the public interest that complaints against members are dealt with openly and transparently.

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Questions



- Thank you!