

FLINTSHIRE COUNTY COUNCIL

REPORT TO: STANDARDS COMMITTEE

DATE: MONDAY, 7 JULY 2014

REPORT BY: MONITORING OFFICER

SUBJECT: HEESOM V THE PUBLIC SERVICES OMBUDSMAN FOR WALES

1.00 PURPOSE OF REPORT

1.01 To brief members on the outcome of the recent High Court decision and its implications for the Council.

2.00 BACKGROUND

2.01 In March 2009 the members of the then Corporate Management Team sent a complaint to the Public Services Ombudsman for Wales about the behaviour of Councillor Patrick Heesom. The complaint centred around allegations of bullying and disrespectful behaviour towards officers. Following a lengthy investigation and hearing, on the 18 July 2013 the then Councillor Heesom was found to have committed 14 breaches of the Code of Conduct and was disqualified for two and a half years.

2.02 An appeal against that decision was made to the High Court. The High Court decision was made on 15 May 2014 upholding all but three of the findings of breach and imposing a disqualification of 18 months.

3.00 CONSIDERATIONS

3.01 The findings of breach had been challenged on the basis that they restricted Mr Heesom's Article 10(1), rights under the European Convention of Human Rights, namely:

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas about interference by public authority and regardless of frontiers."

Freedom of expression is particularly important in the political sphere and the European Courts have long recognised that what is said by politicians is subject to enhanced protection.

3.02 Article 10 (1) is not an absolute right however and Article 10 (2) provides;

“the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to formalities, conditions, restrictions and penalties as prescribed by law and are necessary in a democratic society ... for the protection of the rights and interests of others ...”.

3.03 Therefore the scope for the appeal was to decide whether the findings of the panel were a breach of Article 10(1), and if so, whether they were justified by reason of Article 10 (2).

3.04 In his Judgment, Mr Justice Hingbottom observed that the following principles could be derived from case law:

- That enhanced protection applies to all levels of politics, including the local.
- Article 10 protects the form as well as the substance of expression, therefore immoderate, offensive, shocking or evocative expression that would not be acceptable is tolerated if it is political. However this does not apply to a statement which the maker knows to be false.
- Politicians are expected to have thicker skins and have more tolerance to adverse comments than ordinary citizens.
- Enhanced protection applies to those who comment upon politics as well as the politicians themselves.
- What amounts to “political expression” is a broad concept that extends:

“to all matters of public administration and public concern, including comments about the adequacy or inadequacy of performance of public duties by others”.

However this does not extend to gratuitous personal comment.

- Comment on matters of public interest involving value judgement are tolerated even if untrue so long as they have some/any factual basis.
- Public servants can likewise be subject to scrutiny and challenge, however;

“it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine public confidence in the administration”.

- “Where a critical comment is made of a civil servant such that the public interest in protecting him as well as his private interests are in play, the requirement to protect that civil servant must be weighed against the interests of open discussion of matters of public concern”.
- If a court or tribunal finds a councillor to be in breach of the Code of Conduct, that in itself amounts to interference with Article 10(1) and any penalty would be a further interference with that right that also needs to be proportionate and justified.
- Imposing a sanction upon a councillor who has breached the Code of Conduct has a proper objective, namely the public interest in good administration and fostering public confidence. Therefore it is potentially justified provided that the minimum necessary penalty is imposed and the benefits of the sanction outweigh the adverse impact on the rights of the member concerned.

3.05 Having reviewed the facts the judge determined that only 11 of the 14 findings of breach were proportionate. He therefore quashed the 3 that he did not regard as sufficiently serious to justify a finding of breach.

3.06 Having considered the legal matters the Judge turned then to the issue of whether the sanction was appropriate. He found that there was a failing to heed appropriate advice and warnings and that there was a lack of remorse or insight into the misconduct. Further he found that the Appellant was seeking to obtain political gain by improperly seeking to favour his constituents and that no sanction short of disqualification would have been appropriate in view of the seriousness of the misconduct. He went on to contrast the sanction imposed with the automatic disqualification from being a councillor imposed by being convicted of very serious criminal offences. He did not regard the misconduct to be comparable to those serious offences and so reduced the penalty to one of 18 months.

4.00 RECOMMENDATIONS

4.01 That the report be noted.

5.00 FINANCIAL IMPLICATIONS

5.01 The Council gave Mr Heesom an indemnity in respect of his legal costs at the Case Tribunal (but not the High Court) under the Local Authorities (Indemnities for Members and Officers)(Wales) Regulations 2006. Under those regulations the Council is specifically prevented from paying any indemnity where the action is found to be deliberate. Given the tribunal and the judge’s findings the Council has therefore declined to make any payment.

6.00 ANTI POVERTY IMPACT

6.01 None as a result of this report.

7.00 ENVIRONMENTAL IMPACT

7.01 None as a result of this report.

8.00 EQUALITIES IMPACT

8.01 None as a result of this report.

9.00 PERSONNEL IMPLICATIONS

9.01 None as a result of this report.

10.00 CONSULTATION REQUIRED

10.01 None as a result of this report.

11.00 CONSULTATION UNDERTAKEN

11.01 None as a result of this report.

12.00 APPENDICES

None

**LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985
BACKGROUND DOCUMENTS**

As referred to in the report.

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