


Our ref: PT/KS/mm

Ask for: Katrin Shaw

Your ref:

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 Katrin.shaw@ombudsman-wales.org.uk

Mr Steve Thomas CBE
Chief Executive
Welsh Local Government Association
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Dear Steve

I thought it would be helpful to contact you in the light of a recent decision of the High Court concerning the Code of Conduct for members.¹

As you may be aware a member challenged the findings of the Adjudication Panel for Wales to uphold his Council's Standards Committee's decision to censure him for breaching paragraph 4(b) of the Code of Conduct by failing to show respect and consideration to his fellow councillors. The court found that whilst the comments which were posted on a website operated by the member were sarcastic and mocking and the tone ridiculed his fellow Councillors, because the majority of the comments related to the way in which the Council was run and the competence of the Councillors, the comments were "political expression". The ruling found that the Panel took an over-narrow view of what amounts to political expression and no account had been taken of the need for politicians to have "thicker skins". In view of the member's entitlement to freedom of expression, and the fact that the majority of comments were directed at fellow Councillors, the finding of a breach of the Code in this case was a disproportionate interference with the member's rights under Article 10 of the European Convention on Human Rights. The Standards Committee's decision to censure the member was therefore set aside.

The impact of this ruling is that my staff will have to apply a higher threshold when deciding whether to investigate any conduct complained about which may be regarded as being "political expression". I will not therefore investigate such cases where 'political' criticisms are made, regardless of the tone of the exchange.

¹ Calver, R (On the Application Of) v The Adjudication Panel for Wales (Rev 1) [2012] EWHC 1172 (Admin) (03 May 2012).

Allegations of disrespectful behaviour towards officers, particularly those who may hold senior positions, must also be considered in the light of this ruling.

I have today issued my revised Guidance on the Code of Conduct which includes the impact of this ruling and other amendments. It is available on my website www.ombudsman-wales.org.uk .

I would be grateful if you would bring this issue to the attention of your members so as to avoid complaints being made which stand no prospect of being investigated in the light of this ruling. You may wish to incorporate this issue into the training materials which you recently prepared for members.

Yours sincerely

Peter Tyndall
Ombudsman