

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO STANDARDS COMMITTEE

31 JULY 2014

REPORT OF THE MONITORING OFFICER

OMBUDSMAN LITIGATION – HEESOM V PUBLIC SERVICES OMBUDSMAN FOR WALES

1. Purpose of Report

- 1.1 To provide Members with a summary of the recent case Heesom v Public Services Ombudsman for Wales [2014].

2. Connection to Corporate Improvement Plan / Other Corporate Priority

- 2.1 Standards are an implicit requirement in the successful implementation of the Corporate Themes.

3. Background

- 3.1 Councillor Patrick Heesom, the appellant (H) was a long standing local councillor of Flintshire County Council who had served since 1990. In 2009, a number of allegations of misconduct were made against him by the non-elected officers of the Council. The allegations led to him standing down from the Executive but continuing to perform his duties as a Councillor. A complaint was then made about him to the Public Services Ombudsman for Wales and after an enquiry, he was found to have breached the Council's Code of Conduct. As the breaches were considered to be serious, the matter was sent by the Ombudsman to the Adjudication Panel for Wales for adjudication by a case tribunal.
- 3.2 The proceedings before the Panel had, it appears, proceeded at extraordinary length and cost (58 hearing days, 48 witnesses, 7000 documents etc). The Panel found that H had committed 14 breaches of the Council's Codes of Conduct by failing to show respect and consideration for Council Officers, using bullying behaviour, attempting to compromise the impartiality of officers, conducting himself in a manner likely to bring his office or the Council in to disrepute. In terms of sanction, the tribunal disqualified H from being a Member of the Council or of any other local authority for two and a half years. H challenged the tribunal's decision by bringing a statutory appeal to the High Court on the basis that the misconduct findings and the subsequent sanction were both unlawful.
- 3.3 The appeal raised a number of interesting points. The first was the proper approach of the High Court to appeal from the Adjudication Panel. Hickinbottom J found that appropriate weight should be given to the Panel's determination as a decision of a specialist tribunal. It is necessary to show that the Panel's decision is wrong, and the starting point is that it is right until the contrary is shown. The

second was as to the standard of proof applicable in proceedings before the Adjudication Panel. Was it the civil standard (the balance of probabilities) or the criminal (beyond reasonable doubt)? Hickinbottom J's view was that it was the civil standard. There was nothing in the gravity of the charges or the potential consequences to justify introducing the criminal standard. These were disciplinary proceedings which were exclusively civil in nature.

- 3.4 Thirdly, the Judge considered at length what constituted a politician's right of freedom of expression under Article 10 of the European Convention on Human Rights. Article 10 provides for the right to freedom of expression and information therefore, comments and assertions made within a political setting are acceptable but the same comments could be considered unacceptable behaviour in a non-political environment. However, within a political environment a politician would be shielded as long as any comments made by him were honestly held and not knowingly untrue.
- 3.5 The European legislation provides politicians with greater protection than non-politicians as the Court acknowledged that the environment in which they inhabit makes them susceptible to adverse criticism and haranguing and as such they are obliged to accept this and respond in a manner befitting their office, in contrast to a non-political individual. This protection also covers political commentators and those who write about politicians e.g. the newspapers.
- 3.6 Whereby the Tribunal found H had committed 14 breaches of the code of conduct on an array of matters including bullying behavior and failing to show respect to other Councillors, the Judge found, where for example, he had verbally abused two members of an appointment panel, this would amount to political expression. However, the Judge on reviewing the breaches and applying the protection of "political expression" found that all but two of the fourteen breaches, even with the greater protection afforded to politicians, had been a breach of the Code of Conduct because of the seriousness of the behaviour of H.
- 3.7 The Judge found that on the facts, interference with H's article 10 rights was justified, however, a proportionate sanction would be 18 months and therefore the period of disqualification was so reduced. Hickinbottom J concluded that "*mindful of the requirement of article 10 to impose the minimum sanction consistent with the aims of maintaining standards in public life, I have come to the view that a period of disqualification of 2 years and 6 months was excessive, and manifestly so*".

4. Current situation / proposal

- 4.1 The decision offers useful guidance on the application of article 10 where critical comments are made of a civil servant or officer, as opposed to a politician. Where 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 interest of open discussion of matters of public concern, and if the relevant comment is made by a politician in political expression, the enhanced protection given to his right of freedom of expression. It is worth noting that the existence of a relationship of trust between H as Councillor and the subject of his criticism as Council officers weighed heavily in the Judge's conclusion that a restriction on article 10 was justified.

4.2 Flintshire Council has said it would now consider holding a by-election for the vacant seat, but Cllr Heesom has announced he will appeal the latest judgment in a case that has run for almost four years and which he says has cost the taxpayer “millions of pounds”.

5. Effect upon Policy Framework& Procedure Rules

5.1 There is no impact on the policy framework and procedure rules.

6. Equality Impact Assessment

6.1 None.

7. Financial Implications

7.1 None.

8. Recommendation

8.1 Members are requested to note the report.

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Background Documents

None