



INTEGRITY IN PUBLIC LIFE

**FREEDOM OF EXPRESSION -
ADVICE NOTE ON THE
APPLICATION OF
ARTICLE 10 OF THE ECHR
AND
THE COUNCILLORS' CODE OF
CONDUCT**

EXECUTIVE SUMMARY

1. This Advice Note outlines the approach the Standards Commission will take when issues that concern the application of Article 10 of the European Convention on Human Rights (ECHR) and the right to freedom of expression arise. It also suggests issues councillors should consider in order for them to ensure compliance with the provisions in the Councillors' Code of Conduct (the Code).
2. Article 10 is a qualified right and, as such, the right to freedom of expression may be limited by a restriction such as the imposition of a sanction for a breach of a regulatory code of conduct. However, any restriction on freedom of expression needs to:
 - be in response to a pressing social need;
 - be for relevant and sufficient reasons; and
 - be proportionate to the legitimate aim being pursued.
3. Enhanced protection of freedom of expression applies to all levels of politics including local. There is little scope under Article 10(2) for restrictions on political speech or on debate on questions of public interest. In a political context, a **degree** of the offensive, shocking, and exaggerated, that would not be acceptable outside that context, is tolerated.
4. Public servants are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. It may be necessary, for example, to protect officers from offensive and abusive verbal attacks as it is in the public interest that officers are not subjected to unwarranted comments that prevent them from performing their duties.
5. In determining at Hearings whether there has been a contravention of the Code, the Standards Commission will take a three-stage approach and consider:
 - 1) Whether the facts found lead it to conclude, on the balance of probabilities, that the Respondent has failed to comply with the Code.
 - 2) If so, whether such a finding in itself is, on the face of it, a breach of the right to freedom of expression under Article 10.
 - 3) If so, whether the restriction involved by the finding is justified by Article 10(2), which allows restrictions that are necessary in a democratic society.
6. While councillors have a right to freedom of expression, they are nevertheless required by the Code to behave with courtesy and respect at all times when they are acting as a councillor or when they could reasonably be regarded as acting as such. Councillors should, therefore, consider both what they are expressing and the way they are expressing it. They should be able to:
 - undertake their scrutiny role;
 - represent the public and any constituents; and
 - make political pointsin a respectful, courteous and appropriate manner, without resorting to personal attacks and without being offensive, abusive and / or unduly disruptive.
7. If a councillor is making a gratuitous personal comment and / or is simply indulging in offensive abuse, it is unlikely they will attract the protection of freedom of expression afforded under Article 10.

ADVICE NOTE FOR COUNCILLORS ON THE APPLICATION OF ARTICLE 10 OF THE ECHR

1. Introduction

- 1.1 This Advice Note, issued by the Standards Commission, aims to outline the approach it will take when issues that concern the application of Article 10 of the ECHR arise.
- 1.2 The Advice Note also suggests issues councillors should consider in order for them to ensure compliance with the provisions concerning courtesy, respect and confidentiality in the Code.
- 1.3 Councillors have a personal responsibility to comply with the provisions of the Code. This Advice Note is intended to assist them in interpreting the provisions in the Code, in order to do so. The Advice Note should, therefore, be read in conjunction with the Code.

2. Background

- 2.1 The Standards Commission's functions are provided for by the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act). The 2000 Act created an ethical standards framework whereby councillors and members of devolved public bodies are required to comply with their respective Codes of Conduct, as approved by the Scottish Parliament.
- 2.2 The role of the Standards Commission is to:
 - encourage high ethical standards in public life by promoting the Codes of Conduct and by issuing guidance to councils and devolved public bodies; and
 - adjudicate on alleged breaches of the Codes of Conduct, and where a breach is found, to apply a sanction.
- 2.3 Article 10 of the ECHR (as incorporated in the Human Rights Act 1998) concerns freedom of expression. It states that:
 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
- 2.4 The inclusion of Article 10(2) above means that Article 10 is a qualified right. As such, the right to freedom of expression may be limited by imposition of sanctions in respect of provisions prescribed by law, such as ones contained in the Code, provided the restrictions are necessary and proportionate

and are in pursuance of a legitimate aim. The approach the Standards Commission will take in conducting such an analysis is outlined in Section 5 below.

3. Relevant Provisions in the Code

3.1 The Code contains provisions relating to respect that impact on a councillors’ right to freedom of expression. Specific applicable paragraphs in the Code include:

- 3.1 I will treat everyone with courtesy and respect. This includes in person, in writing, when I am online and when I am using social media.
- 3.2 I will not discriminate unlawfully on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity; I will advance equality of opportunity and seek to foster good relations between different people.
- 3.3 I will not engage in any conduct that could amount to bullying or harassment (which includes sexual harassment). I accept that such conduct is completely unacceptable and will be considered to be a breach of this Code.
- 3.8 I will not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public.
- 3.9 I will not take, or seek to take, unfair advantage of my position in my dealings with employees or bring any undue influence to bear on employees to take a certain action. I will not ask or direct employees to do something which I know, or should reasonably know, could compromise them or prevent them from undertaking their duties properly and appropriately.
- 3.21 I will not disclose confidential information or information which should reasonably be regarded as being of a confidential or private nature, without the express consent of a person or body authorised to give such consent, or unless required to do so by law. I note that if I cannot obtain such express consent, I will assume it is not given.
- 3.23 I will only use confidential information to undertake my duties as a councillor. I will not use it in any way for personal or party-political advantage or to discredit my council (even if my personal view is that the information should be publicly available).

4. How Article 10 has been interpreted by the Courts

4.1 There have been a number of cases on the application of restrictions under Article 10(2) on freedom of expression. Summaries of some relevant cases are outlined at Annex A.

4.2 The points below summarise some of the principles established by the Courts, in the cases outlined in the annex, in respect of the application of Article 10. It should be noted that decisions made by the Courts, and by Hearing Panels of the Standards Commission, are entirely dependent on context, and the facts and circumstances of each individual case. As such, the statements listed below should be taken as general principles only.

Enhanced protection of freedom of expression applies to all levels of politics, including local.
There is little scope under Article 10(2) for restrictions on political speech or on debate on questions of public interest.
Political expression is a broad concept. There is little distinction between political discussion and discussion of matters of public concern.

In a political context, a degree of the offensive, shocking and exaggerated, that would not be acceptable outside that context, is tolerated.
The right to freedom of expression is not, however, absolute. Restrictions may be imposed to ensure that the conduct of public life at the local government level, including public debate, does not fall below a minimum level. This is so that public confidence in democracy is not eroded.
It may be necessary, for example, to protect officers from offensive and abusive verbal attacks. It is in the public interest that officers are not subjected to unwarranted comments that prevent them from performing their duties in conditions free from disturbance.
Public servants, such as council officers, are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits are not as wide as they are for elected politicians.
Public interest in particular information can sometimes be as strong as to override even a legally imposed duty of confidence. In determining whether a restriction is legitimate, however, consideration should be given to whether or not there were sufficient other opportunities for the individual imparting the information to achieve their objective.
Any restriction on freedom of expression needs to respond to a pressing social need, to be for relevant and sufficient reasons, and to be proportionate to the legitimate aim being pursued. In other words, a restriction on freedom of expression may not be allowed if there is any other way of achieving the restriction's objective.
The less bad or shocking the conduct, the more difficult it is to justify any restriction on freedom of expression. Conversely, the more disturbing or shocking the conduct, the easier it is to justify a restriction.
Communications protected by Article 10 are not limited to speech. They include communications of any kind such as spoken or written words (including those posted on social media); pictures, dress, graffiti, acts of protest and even wearing a beard. They include opinion or speculation even if not objectively true. However, the communication must be made in a public way.
Hate speech is not protected. This includes any expressions of hatred toward someone on account of that person's colour, race, disability, nationality (including citizenship), ethnic or national origin, religion, or sexual orientation.

5. The Standards Commission's Approach

5.1 Following investigation, the Ethical Standards Commissioner (ESC) refers complaints to the Standards Commission for it to make a decision under Section 16 of the 2000 Act as to whether to:

- hold a Hearing;
- direct the ESC to undertake further investigation; or
- do neither.

While any decision made under Section 16 would not be a finding that directly results in a restriction being imposed, if relevant, the Standards Commission may consider the potential application of Article 10 when determining whether it is proportionate and in the public interest to hold a Hearing.

- 5.2 The Standards Commission recognises, nevertheless, that a finding of a contravention of one or more of the provisions in the Code, and the subsequent application of a sanction at one of its Hearings, may impact on the councillor's right to freedom of expression.
- 5.3 In determining at Hearings whether there has been a contravention of the Code, the Standards Commission, through its Hearing Panel, will follow a three-stage approach. Firstly, it will consider whether the facts found lead it to conclude, on the balance of probabilities, that the Respondent has failed to comply with the Code of Conduct.
- 5.4 Secondly, if so, the Standards Commission will then consider whether such a finding in itself is, on the face of it, a breach of the right to freedom of expression under Article 10.
- 5.5 Thirdly, if so, the Standards Commission will proceed to consider whether the restriction involved by the finding is justified by Article 10(2), which allows restrictions that are necessary in a democratic society.
- 5.6 **Stage 1:** The Hearing Panel will determine whether the facts as established and / or as admitted lead it to conclude, on the balance of probabilities, that there has on the face of it been a contravention of any of the provisions in the Code, as alleged. If not, the Hearing Panel will announce its decision and the reasons behind the finding and will proceed to conclude the Hearing on that basis.

If the Hearing Panel concludes, on the balance of probabilities, that there has on the face of it been a contravention of any of the provisions in the Code, it will, consider the provisions of Article 10, as set out in Stage 2 and 3 below, before coming to a finding on the matter.

- 5.7 **Stage 2:** If the Hearing Panel has concluded that there has, on the face of it, been a contravention of the Code, it will proceed to determine whether such a finding would interfere with the Respondent's right to freedom of expression under Article 10. In doing so, the Hearing Panel will consider whether the comments were made and / or the behaviour occurred in a political context or in respect of a discussion on a matter of public interest. This is so the Hearing Panel can determine whether the enhanced protection afforded to political expression applies.
- 5.8 The Standards Commission notes that enhanced protection of freedom of expression applies to all levels of politics, including local. Therefore, if the conduct being considered concerns comments and/or behaviour by a councillor in a political forum or context, or in respect of matters of public concern, it is likely that the Hearing Panel will conclude that the enhanced protection applies. However, a Hearing Panel will consider the context on a case by case basis, depending on the specific and relevant facts and circumstances of the matter before it.
- 5.9 **Stage 3:** The Hearing Panel will then consider, in terms of Article 10(2) whether any interference to freedom of expression it is considering making, in determining a breach of the Code has occurred and in applying a sanction, is justified. The Hearing Panel, in making such an evaluative judgement, must consider the following questions:

a) **Is the restriction prescribed by law?** The answer to this will be yes, as the Code and the Standards Commission's remit to adjudicate on alleged contraventions of it are prescribed by the 2000 Act.

b) **Is the restriction in pursuit of a legitimate aim, and necessary in a democratic society?** The Standards Commission considers that one of the objectives of the Code and the imposition of any sanction if a breach is found, is to maintain standards and ensure the conduct of public life at the local government level (including public debate), does not fall below a minimum level. A further aim is to protect the reputation and rights of others; for example, from offensive, abusive and defamatory remarks.

The Standards Commission considers that another intention of the Code is to ensure that council officers are free from undue disturbance so they can perform their duties. The Code aims to protect the mutual bond of trust and confidence between councillors and officers, to enable local government to function effectively. Other aims of the Code are to:

- prevent the disclosure of information received in confidence;
- ensure the council or office of a councillor is not brought into disrepute;
- allow good administration; and
- ensure public confidence in the council or democracy itself is not undermined.

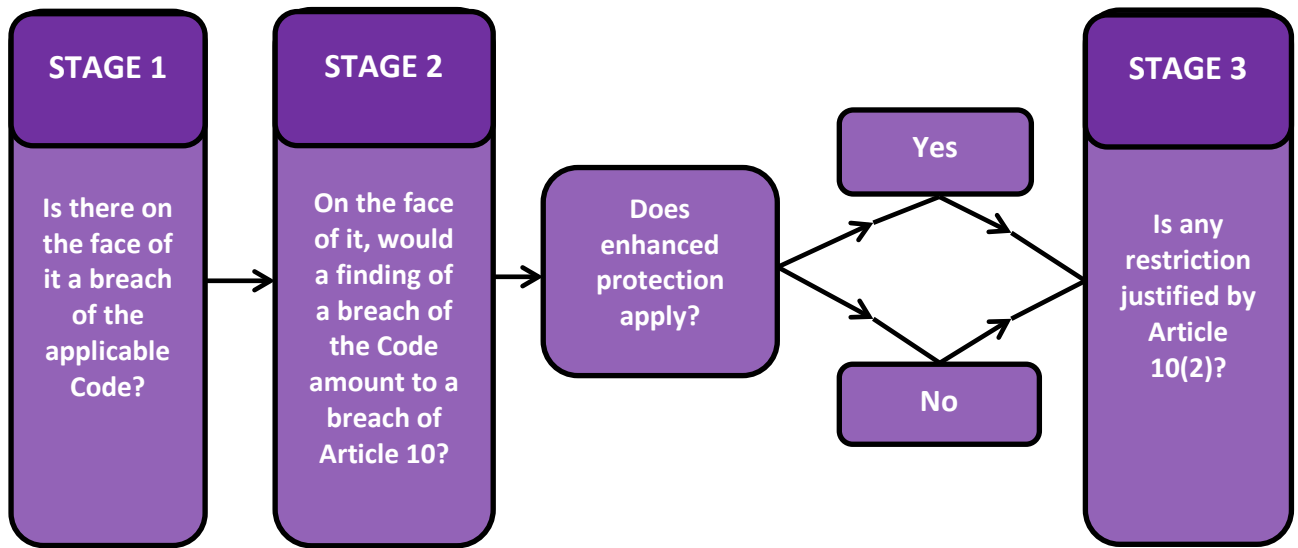
It may be, therefore, that the answer to the question of whether the intended restriction is in pursuance of a legitimate aim will be yes. However, the Standards Commission recognises that Hearing Panels, in determining whether such a restriction is necessary, must also consider whether there are relevant and sufficient reasons to justify the interference to the Respondent's right to freedom of expression and whether the restriction is proportionate.

c) **Is a restriction proportionate?** In considering proportionality, the Hearing Panel will reflect on whether the objective of the finding of a breach and the imposition of a sanction can be achieved by means which are less interfering of the Respondent's rights. The Hearing Panel will also take into account the question of whether any restriction would have a disproportionate effect; for example on a councillor's ability to make a political point or to undertake their scrutiny role in an open and transparent manner. In cases of an alleged breach of confidentiality, a Hearing Panel will consider whether or not there were other opportunities for the councillor imparting the information to have achieved their objective.

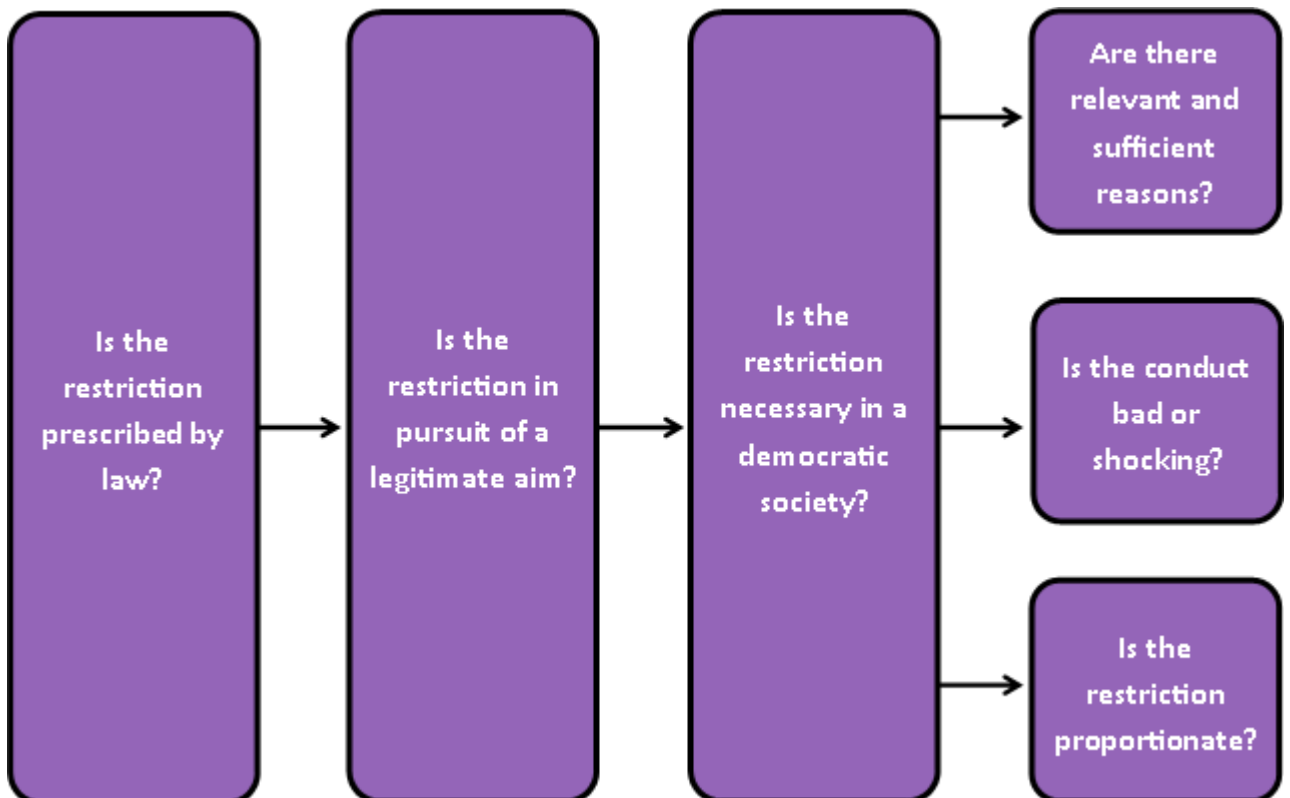
d) **Is the conduct in question bad or shocking?** If the conduct in question is less bad or shocking, it is more difficult to justify any restriction, particularly if the Respondent enjoys enhanced protection afforded to political expression.

- 5.10 The Standards Commission recognises that Hearing Panels will be required to make evaluative judgements and will, therefore, need to weigh all factors outlined above together. In doing so, Hearing Panels will be undertaking a balancing exercise and their decisions at each stage will depend on the facts and circumstances of the particular case under consideration.
- 5.11 The Standards Commission further recognises that undertaking such a balancing exercise will be particularly challenging in some cases. It notes, therefore, that previous Hearing decisions may be useful in terms of outlining the Hearing Panel's approach, but should not be relied on as precedent cases in respect of findings of fact.
- 5.12 The Standards Commission will follow the process outlined above in any cases where it appears to the Hearing Panel that Article 10 considerations may apply, regardless of whether the parties to the case make any submissions, refer to case law or lead evidence to that effect.
- 5.13 In its written decisions of Hearings, the Standards Commission will announce the Hearing Panel's findings on each distinct stage.

Standards Commission's Approach



Standards Commission's Considerations at Stage 3



6. Advice for Councillors

- 6.1 The approach outlined above concerns how the Standards Commission will apply Article 10 considerations when adjudicating on complaints referred to it. The Scottish public has a high expectation of councillors and the way in which they should conduct themselves in undertaking their duties. Councillors should seek to meet those expectations by ensuring that they conduct themselves in accordance with the provisions of the Code.
- 6.2 Councillors must act in the public interest and have a duty to undertake a scrutiny role to ensure their Council uses its resources properly and in accordance with law. Councillors operate in a political environment and must be free to make political points and discuss matters of public concern without undue interference. However, as outlined under Section 4 above, the right to freedom of expression is not absolute. It is important that Councillors understand that restrictions can be imposed for a number of reasons, including to:
- protect the rights and reputations of others;
 - prevent the disclosure of information received in confidence;
 - prevent disruption and disorder so as to ensure the effective operation of the Council; and
 - to ensure officers can undertake their tasks without undue disturbance.
- 6.3 Councillors should consider, therefore, both what they are expressing and the way they are expressing it. They should also consider how their conduct could be perceived. Councillors should be able to:
- undertake a scrutiny role;
 - represent the public and any constituents; and
 - make political points in a respectful, courteous and appropriate manner, without resorting to personal attacks, being offensive, abusive and / or unduly disruptive.
- 6.4 Councillors may wish to consider whether:
- they are making a gratuitous personal comment and / or simply indulging in offensive abuse. If so, it is unlikely they will attract the enhanced protection of freedom of expression afforded under Article 10.
 - their conduct, particularly when taken together with that of colleagues, could amount to disrespect, bullying or harassment.
 - their conduct, when considered over a period of time, amounts to disrespect, bullying or harassment.
 - they are being dishonest or engaging in misleading conduct towards officers, other councillors or members of the public.
 - their communication is factual, made in good faith and has a reasonable basis.
 - their behaviour could bring the council or office of a councillor into disrepute.
 - their conduct could undermine good administration.
 - they have taken advice about what they intend to do or say.
 - they have been warned about similar conduct or behaviour in the past. If so, councillors should consider whether they should be heeding such advice and warnings.
 - there is a way of expressing their point that does not involve disclosing confidential information.
 - their conduct could be perceived or reasonably regarded as raising negative issues about performance, conduct or capability of specific and identifiable officers in public.
 - they have considered what the appropriate channels for raising concerns about officers are.
 - there could be an impact on the mutual bond of trust between councillor and officers.
- 6.5 Councillors may also wish to consider demonstrating insight and remorse by issuing a genuine and sincere apology, if they realise they have behaved in an offensive way in the heat of a moment. Doing so may well put an end to the matter.

- 6.6 If they are in a quasi-judicial or regulatory setting, such as a planning or licensing committee where an application is being discussed, then councillors may also wish to consider whether any remarks they make could bring the council's decision-making processes into disrepute, or leave it open to legal challenge. Councillors should recognise that, when dealing with applications in such a setting, they are not engaging in political debate. Instead, they are required by Section 7 of the Code to make such decisions solely on the merits of the application before them. Section 7 also requires councillors, in dealing with such applications, to not only act fairly and without bias, but also to avoid any impression of having failed to do so. This means that a comment, made in this environment, may not attract the same level of protection as it would in another environment.
- 6.7 The Court in *Heesom v Public Services Ombudsman for Wales* (see summary at Appendix B) noted if a councillor is guilty of a breach of the Code, their re-election does not and cannot act as an absolution for their misconduct because popularism is not determinative. In any event, the fact that a councillor is re-elected by their own ward, does not mean that democracy has not been adversely affected by their conduct. For example, their misconduct may have comprised of improperly favouring their own constituents or it may have had a negative impact on the rights and interests of other individuals or the public interest in terms of good administration.
- 6.8 Councillors should note that the fact that their conduct may not amount to a breach of the Code does not mean there may not be other consequences, for example, they may be the subject of a defamation action.

7. Further Sources of Information

- 7.1 The Standards Commission has published guidance on how to interpret, and act in accordance with, the provisions in the Code, including those relating to courtesy and respect. It has also produced an Advice Note for Councillors on Bullying and Harassment. The guidance can be found on the Standards Commission's website at: www.standardscommissionscotland.org.uk/guidance/guidance-notes and the Advice Note at: www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings.
- 7.2 The Standards Commission also publishes written decisions of Hearings held on its website, which can be found at: www.standardscommissionscotland.org.uk/cases/case-list.
- 7.3 If councillors have any queries or concerns about how to interpret or act in accordance with the provisions in the Code, they should seek assistance from their Monitoring Officer. Further information can also be obtained from the Standards Commission via email: enquiries@standardscommission.org.uk.



ANNEX A: CASE LAW ON ARTICLE 10

Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)

The High Court confirmed that politicians have an enhanced protection in respect of political expression, which applies to all levels of politics, including local, and that political expression in itself is a broad concept, extending to all matters of public administration and public concern. It was noted that in the political context, “*a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside the political context, is tolerated*”.

The Court further held that public servants are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits were not as wide as they were for elected politicians - politicians are expected and required to have thicker skins and have more tolerance to comment than ordinary citizens. The Court stated that the need to protect officers when imposing a restriction, in terms of Article 10(2), on freedom of expression must be weighed up against a politician’s right to enhanced protection.

The Court noted that the right to freedom of expression was not absolute but that any restriction was required to respond to a ‘pressing social need’, to be for relevant and sufficient reasons, and to be proportionate to the legitimate aim being pursued. The Court found, however, that margin must be construed narrowly in this context, as there was little scope under Article 10(2) for restrictions on political speech or on debate on questions of public interest.

The Court further recognised that it was in the public interest that officers were not subjected to unwarranted comments that prevented them from performing their public duties and undermining public confidence in the administration. Therefore, in the public interest, it was held to be a legitimate aim of the State to protect public servants from unwarranted comments that have, or may have, an adverse effect of good administration. The Court recognised that local government could not ‘sensibly function’ without a mutual bond of trust and confidence between councillors and officers.

Sanders v Kingston (2005) EWHC 1145 (Admin)

This case formulated the process a Tribunal would require to follow when considering Article 10, which was firstly whether there had been a breach of the Code; secondly, if so, whether the finding of a breach and the imposition of a sanction was a limitation of the right to freedom of expression afforded by Article 10; and thirdly, if so, whether the restriction involved was one that was justified by Article 10(2).

R (Calver) v Adjudication Panel for Wales (2012) EWHC 1172 (Admin)

The High Court noted that if the conduct in question is less egregious, it is more difficult to justify any restriction.

The Court further noted that ‘political expression’ had to be interpreted widely and it included open discussion on political issues including public administration and public concern, including comments about the adequacy or inadequacy of the performance of public duties by others. The Court noted that there was no distinction between political discussion and discussion of matters of public concern.

In making observations about the general purpose of a Code that proscribed conduct, the High Court noted that a Code could seek to maintain standards and to ensure that the conduct of public life at the local government level, including political debate, does not fall below a minimum level so as to maintain public confidence in local democracy.

Guja v Moldova (2011) 53 EHRR 16

The European Court of Human Rights (ECtHR) found that the signalling or disclosure of wrongdoing by an officer should be made in the first place to the individual’s superior or other competent authority or body

and that the question of whether there was any other effective means of remedying the wrongdoing should be considered before information was disclosed in public.

The ECtHR further found that the public interest in particular information could sometimes be as strong as to override even a legally imposed duty of confidence.

Lombardo v Malta (2009) 48 EHRR 23

The ECtHR stated that a very narrow margin of appreciation must be afforded to competent national authorities to restrict discussions on matters of public interest. Comments in the political context, which amount to value judgements, are tolerated even if untrue, as long as they have some or any factual basis. Even a statement that something is a fact, where that statement is inaccurate, will be tolerated if what was expressed was said in good faith and there is some reasonable (even if incorrect) factual basis for saying it.

The Court noted it did not matter whether the restriction was imposed by civil or criminal proceedings when determining whether interference with the freedom of expression was proportionate to the aim pursued and was necessary in a democratic society.

Mamère v France (2009) 49 EHRR 39

The ECtHR noted that while individuals taking part in public debates on matters of general concern must not overstep certain limits, particularly with regard to respect of the reputation and rights of others, a degree of exaggeration or even provocation is permitted. The requirement to protect civil servants had to be weighed against the interests of freedom of the press or of open discussion on matters of public concern.

The Court noted that Article 10 protects all modes of expression but that the means of disseminating information can be of significance in determining whether measures taken by a competent authority to restrict freedom of expression were proportionate to the legitimate aim being pursued.

Busuioc v Moldova (2006) 42 EHRR 14

The ECtHR noted that even if comments are made as part of a debate on an issue of public interest, there are limits to the right to freedom of expression where an individual's reputation is at stake.

Livingstone v Adjudication Panel for England (2006) EWHC 2533

The High Court noted that restraints imposed by a code of conduct, designed to uphold proper standards in public life, are in principle likely to fall within Article 10(2) ECHR, but that such restraints should not extend beyond what is necessary to maintain those standards.

The Court noted that interference with the right of free speech, which impedes political debate, must be subjected to particularly close scrutiny but that simply indulging in offensive behaviour was not to be regarded as expressing a political opinion, which attracts the enhanced level of protection.

Pederson v Denmark (2004) 42 EHRR 24

The ECtHR recognised that there can be a conflict between the right to impart information and the protection of the rights and reputation of others. In determining whether a restriction on freedom of expression was legitimate, consideration should be given to whether or not there were sufficient other opportunities for the person imparting the information to achieve their objective.

Janowski v Poland (1999) 29 EHRR 705

The ECtHR considered rights of public servants and their entitlement to protection, but noted they are subject to the wider limits of acceptable criticism, meaning such criticism could be harsh or expressed in strong form. The Court recognised that public servants can expect criticism of a higher level than members of the public, but not quite the same level as politicians. This was because public servants did not knowingly lay themselves open to close scrutiny of their every word and deed, to the extent to which politicians do, and that they should not, therefore, be treated on an equal footing with the latter when it comes to criticism of their actions.

The Court noted that civil servants can expect protection if there is a pressing social need. Any such protection must also be proportionate to the legitimate aim being pursued and be relevant and sufficient. Civil servants must enjoy public confidence in conditions free from undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks.

Thorgeirson v Iceland (1992) 14 EHRR 843

The ECtHR noted that freedom of expression was not just applicable to information and ideas that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those which shock, offend or disturb. The Court observed that there was no distinction between political discussion and discussion on matters of public concern.

MacDiarmid v The Standards Commission for Scotland (unreported, 17 July 2019)

The Appellant was a councillor member of Fife Council's Regulation and Licensing Committee. In a hearing on a taxi driver's application for renewal of his licence, the councillor told the applicant 'I don't understand why two women would live with you never mind get married to you.' He was found to be in breach of the respect provisions of the Councillors' Code. On appeal to the Sheriff Principal, the Court held that the Standards Commission's Panel had carefully considered the potential application of Article 10, and had been entitled to find that the comments had not been made in the context of commenting on a political matter. The Court determined that the councillor was commenting in the context of a quasi-judicial setting. What he said was not political commentary, engaging in commercial observation or discussing Council policy or matters of public concern. An applicant at a licensing hearing was not open to wider criticism than a member of the public. The Court found that the Standards Commission's Panel was entitled to conclude that the councillor did not benefit from the enhanced protection afforded to politicians under Article 10 when finding him in breach of the Code.