

CASE DETAILS

[R \(on the application of LEWIS MALCOLM CALVER\) \(Claimant\) v ADJUDICATION PANEL FOR WALES \(Defendant\) & PUBLIC SERVICES OMBUDSMAN FOR WALES \(Interested Party\) \(2012\)](#)

In light of the strength of the right to freedom of expression and the fact that the majority of comments posted by a councillor on his website were directed at other councillors, a decision by the Adjudication Panel of Wales that those comments broke the local authority code of conduct was a disproportionate interference with his rights under the [European Convention on Human Rights 1950 art.10](#).

The claimant councillor (C) applied for judicial review of a decision of the defendant panel that a number of comments posted on C's website breached a local authority's code of conduct.

As a member of the community council, C was required to abide by the code of conduct which had been adopted by the local authority pursuant to its obligations under the [Local Government Act 2000](#). C had posted comments containing his opinions on other councillors and the general running of the council. The local authority standards committee found that he had breached paras.4(b), which required members to show respect and consideration for others, and para.6(1)(a), bringing C's office into disrepute, of the code of conduct and required him to attend a training session. The panel found that his comments did not constitute political expressions and so did not attract the enhanced level of protection of the [European Convention on Human Rights 1950 art.10](#) and dismissed C's appeal.

C submitted that the findings of the standards committee and the panel breached his right to freedom of expression under art.10.

HELD: (1) The committee and the panel were entitled to conclude that C's comments breached the code, [Sanders v Kingston \(No.1\) \[2005\] EWHC 1145 \(Admin\), \[2005\] B.L.G.R. 719](#) applied. The comments were sarcastic and mocking and the panel was entitled to take into account the cumulative view of the effect of C's postings and conclude that their tone publicly ridiculed his fellow councillors. The regular conduct over a long period of time did prima facie bring C's office into disrepute (see paras 66-67, 70 of judgment). (2) However, the real issue concerned whether the restriction on C's right to freedom of expression was justified by reason of the requirements of art.10(2). The code of conduct was prescribed by law for the purposes of art.10(2). The panel fell into error in a number of respects. It took an over-narrow view of what amounted to "political expression". The majority of the comments related to the way council meetings were run and recorded and the competence of other councillors. Those comments fell within the term "political expression". No account was taken by the panel of the need for politicians to have thicker skins. The requirement of necessity in a democratic society in art.10(2) set a high threshold and most of C's comments were not purely personal abuse or a breach of obligation, [Livingstone v Adjudication Panel for England \[2006\] EWHC 2533 \(Admin\), \[2006\] H.R.L.R. 45](#) and [R. \(on the application of Mullaney\) v Adjudication Panel for England \[2009\] EWHC 72 \(Admin\), \[2010\] B.L.G.R. 354](#) considered. In light of the strength of the right to freedom of expression and the fact that the majority of the comments were directed at other councillors, the panel's decision that those comments broke the code was a disproportionate interference with C's rights under art.10. The panel's decision was set aside (paras 71,76-77, 80-84, 90).

Application granted