

IN THE MATTER OF THE LOCALISM ACT 2011

STANDARDS HEARING PANEL RE: COUNCILLOR MIKE TAYLOR

LEGAL SUBMISSIONS ON THE RIGHT TO FREEDOM OF EXPRESSION UNDER ARTICLE 10 OF THE CONVENTION ON HUMAN RIGHTS

It is established through case law that imposing sanctions on a member can engage the Right to Freedom of Expression under Article 10 of the Convention on Human Rights. It is therefore necessary for the Panel to consider whether Article 10 is engaged in this case and if so, whether any interference is justified under the terms expressed in the HRA and Convention.

The right, according to Article 10(1) *“shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority...”*

Art 10(2) provides the circumstances where such rights can be interfered with. It says that *“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... for (inter alia) the protection of the reputation or rights of others.”*

Under the European jurisprudence, the ECHR has said that *“while freedom of expression is important for everybody, it is especially so for an elected representative of the people...”*¹

The British Courts have also said that, when considering justification for interference under Article 10(2), “political expression” or “the expression of a political view” attract a higher degree of protection, whilst expressions in personal or abusive terms do not attract the same higher level of protection.²

The ECHR draws a distinction between political expression and criticism of civil servants, which by extension must in my submission also apply to Council Officers exercising their official duties. In its judgement in Janowski v Poland³, the Court said that:

“...It cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to the criticism of their actions. What is more, civil servants must enjoy public confidence in conditions free of 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 when on duty...”

In considering whether a finding that a member has breached a code of conduct and/or any sanction imposed had contravened article 10, the Courts have established⁴ that there are 3 questions to be asked:

- (1) Was the tribunal entitled as a matter of fact to conclude that the Cllr’s conduct was in breach of the Code;
- (2) If so, was the finding in itself, or the imposition of a sanction prima facie a breach of article 10; and
- (3) If so, was the restriction involved one which was justified by reason of the requirements of article 10(2)

Turning to the facts of this case, on question (1), it can clearly be said on the evidence that the Panel in this case is entitled, as a matter of fact, to conclude that Cllr Taylor was in breach of the code in the manner already set out.

As to question (2), that finding is, prima facie a breach of Cllr Taylor’s Freedom of Expression. In essence, by saying he has breached the code by writing the emails and posting the website comments, the Council is interfering with Cllr Taylor’s right to impart information and ideas.

¹ Castells v Spain (1992) 14 EHRR 445

² R (Dennehy) v London Borough of Ealing [2013] EWHC 4102 at para 24

³ECHR Judgement, January 21, 1999

⁴ Sanders v Kingston (No.1) [2005] EWHC 1145 (Admin)

The third question therefore falls to be considered: firstly, to the finding of a breach, and second to any sanction.

In my submission, whilst general criticism of the Council (and to a lesser degree officers of the Council) could be said to be the expression of a political view thus attracting a higher degree of protection from interference, the same cannot be said of personal comments, such as “little devious tricks”⁵, “you lot in the Developer’s pocket”⁶ and referring to an email from Mr Stanfield, publicly, as “bollocks”⁷. In my view such comments do not attract that higher level of protection under Article 10.

Furthermore, the ECHR says that officials should be protected from such attacks, in other words that in order to allow an officer to do his job properly it may be more justifiable under Article 10(2) to restrict someone else’s freedom to impart information and ideas, in this case, Cllr Taylor’s.

In my submission therefore, the Panel is justified in interfering with Cllr Taylor’s right to freedom of expression, by its finding of a breach, as that interference is necessary in a democratic society for the protection of the reputation or rights of others.

Kevin Toogood

12 October 2015

=====

M Taylor – Note on Sanctions

I have three headings under which I would like to address the panel:

- The questions which the panel must consider, according to paragraph 4.1 of the Hearing Procedure at Annex 4 of the Arrangements
- The Right to Freedom of Expression, and in particular Political Expression
- Sanctions

The Questions which the Panel must address

Under the Hearing Procedure, the Panel is required to consider a series of questions, a to k, and in addition any other relevant circumstances or other factors specific to the local environment.

I will briefly touch upon each of those questions in order to draw to your attention those facts which have been established which are of particular relevance to each question:

- (a) What was the subject member’s intention and did they know they were failing to follow the Borough Code of Conduct?

⁵ JTG12, Borough Green News 30/6/2014 at page 112 of the Schedule of Evidence

⁶ Interview, page 60 of the Schedule of Evidence

⁷JTG10, email 13 June 2014 at page 91 of the Schedule of Evidence

According to the report of Jonathan Goolden, at paragraph 7.29 “publicly calling a person a liar and questioning an individual’s competence in their job... appears to be intended to humiliate them by circulating those comments to other individuals.”

There are a number of instances throughout the course of conduct complained of where comments of this nature are circulated either to a wider audience of PC and/or BC members, and in some occasions, indiscriminately and globally by way of publication on a publicly accessible website.

In particular, I highlight two comments levelled at Adrian Stanfield: (i) an email to all BC members on 14 June 2014 stating that “Adrian’s email/ Counsel’s opinion is intended to mislead rather than inform” and (ii) a comment, posted on Cllr Taylor’s “Borough Green News” website that Mr Stanfield had employed “little devious tricks”.

In my submission, these comments clearly call into question Mr Stanfield’s professional standing as a Solicitor and it was clearly Cllr Taylor’s intention, as set out in the transcript of his interview at page 68 of the Schedule of Evidence, to “challenge the integrity of the senior solicitor”.

The intemperate nature of the language used, and Cllr Taylor’s confirmation in interview, demonstrates that his intention was to impugn the standing of the senior officers, in front of the members of the Council and BG Parish Council, and the wider public in those instances where the exchanges were subsequently published on his website.

Whilst Cllr Taylor maintains that he believed he was justified in taking the approach that he did, and believes he was the “right side of the line” in relation to the Code of Conduct, in my submission no reasonable person in Cllr Taylor’s position could have thought they were complying with the code of the conduct when making these accusations in such a public manner.

(b) Did the subject member receive advice from officers before the incident and was that advice acted on in good faith?

Cllr Taylor received training on bias and predetermination from the MO on 6 March 2014. However I am not aware that Cllr Taylor received any general training on the Code of Conduct, nor is this generally offered. Cllr Taylor is, however, an experienced Parish Council member and would have been aware of and familiar with acting under a member code of conduct.

The “offending” behaviour, however, continued beyond the 27th June meeting with the MO- the “little devious tricks” comment appearing on the BG News website on 30 June. It therefore seems apparent that Cllr Taylor did not act to change his behaviour even after the MO had taken steps to ensure Cllr Taylor was aware that his behaviour was not acceptable.

(c) Has there been a breach of trust?

It is apparent that Cllr Taylor has a difficult relationship with a number of the senior officers of the Council, in particular Steve Humphrey, Adrian Stanfield and Julie Bielby. Lindsay Pearson has now retired so any difficulty there is no longer relevant.

There appears to have been no loss of trust with other officers within the Council, and this is demonstrated to some extent by the email exchange with Glenda Egerton on 25 June at page 107 of the Schedule of Evidence and his explanation at pages 71 and 72 of the Schedule of Evidence.

Cllr Taylor characterises his relationship with officers generally as a good relationship, but at times “robust” (Interview, p58 of the Schedule of Evidence). However, it is clear that there is a loss of trust between Cllr Taylor and the three senior officers who have given evidence today. Given the very senior positions of the officers who Cllr Taylor has sought to impugn, and that this was done in a very public manner, I can only conclude that there has been a breach of trust.

(d) Has there been financial impropriety?

There is no allegation or evidence of any financial impropriety by Cllr Taylor.

(e) What was the result of failing to follow the code?

- *Cllr Taylor has publicly accused senior officers, including the Council's most senior solicitor, of lying*
- *These accusations were made to a global audience*
- *Such comments damage the reputation of the Council*
- *Comments of this nature also damage the reputation of Councillors generally*

(f) How serious was the incident?

Given the identity of the officers subject to Cllr Taylor's comments, and the very public nature by which his allegations were made, the incident must be characterised as being particularly serious.

(g) Does the Subject Member accept that they were at fault?

It is clear that Cllr Taylor believes his course of action was justified under the circumstances, and therefore does not accept that he is at fault.

(h) Did the Subject Member apologise to the relevant persons?

Cllr Taylor has already indicated that he will not apologise for his conduct.

(i) Has the Subject Member previously been reprimanded or warned for similar misconduct?

No.

(j) Has the Subject Member previously breached the Borough Council's code of Conduct?

No.

(k) Is there likely to be a repetition of the incident?

As the Subject Member has indicated a number of times, he believes that his conduct is "acceptable" and "justified" because of the way he feels he has been treated by officers of the Council. He says "respect needs to be earned" and as he sees it, the senior officers concerned have not earned that respect.

Even after being warned that his conduct was unacceptable, the conduct continued. Therefore there is a real risk that there could be further incidents of this nature.

The Right to Freedom of Political Expression

It is established through case law that imposing sanctions on a member can engage the Right to Freedom of Expression under Article 10 of the Convention on Human Rights. It is therefore necessary for the Panel to consider whether Article 10 is engaged in this case and if so, whether any interference is justified under the terms expressed in the HRA and Convention.

I will therefore need to make some rather technical submissions to you now regarding the law in this area. I apologise in advance that this is both technical and lengthy- but your legal adviser should be able to provide further guidance and this forms an important part of your consideration today.

I will begin by setting out the law, both in the Convention on Human Rights and as established through both European and British jurisprudence. I will then apply the law to the present circumstances in order to present you with my conclusions on how Art 10 impacts upon this case.

The right, according to Article 10(1) *“shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority...”*

Art 10(2) provides the circumstances where such rights can be interfered with. It says that *“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... for (inter alia) the protection of the reputation or rights of others.”*

Under the European jurisprudence, the ECHR has said that *“while freedom of expression is important for everybody, it is especially so for an elected representative of the people...”*

The British Courts have also said that, when considering justification for interference under Article 10(2), “political expression” or “the expression of a political view” attract a higher degree of protection, whilst expressions in personal or abusive terms do not attract the same higher level of protection.

The ECHR draws a distinction between political expression and criticism of civil servants, which by extension must in my submission also apply to Council Officers exercising their official duties. In its judgement in Janowski v Poland, the Court said that:

“...It cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to the criticism of their actions. What is more, civil servants must enjoy public confidence in conditions free of 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 when on duty...”

In considering whether a finding that a member has breached a code of conduct and/or any sanction imposed had contravened article 10, the Courts have established that there are 3 questions to be asked:

- (4) Was the tribunal entitled as a matter of fact to conclude that the Cllr’s conduct was in breach of the Code;
- (5) If so, was the finding in itself, or the imposition of a sanction prima facie a breach of article 10; and
- (6) If so, was the restriction involved one which was justified by reason of the requirements of article 10(2)

Turning to the facts of this case, on question (1), it can clearly be said on the evidence that the Panel in this case is entitled, as a matter of fact, to conclude that Cllr Taylor was in breach of the code in the manner already set out.

As to question (2), that finding is, prima facie a breach of Cllr Taylor’s Freedom of Expression. In essence, by saying he has breached the code by writing the emails and posting the website comments, the Council is interfering with Cllr Taylor’s right to impart information and ideas.

The third question therefore falls to be considered: firstly, to the finding of a breach, and second to any sanction.

In my submission, whilst general criticism of the Council (and to a lesser degree officers of the Council) could be said to be the expression of a political view thus attracting a higher degree of protection from interference, the same cannot be said of personal comments, such as “little devious tricks”, “you lot in the Developer’s pocket” and referring to an email from Mr Stanfield, publicly, as “bollocks”. In my view such comments do not attract that higher level of protection under Article 10.

Furthermore, the ECHR says that officials should be protected from such attacks, in other words that in order to allow an officer to do his job properly it may be more justifiable under Article 10(2) to restrict someone else's freedom to impart information and ideas, in this case, Cllr Taylor's.

In my submission therefore, the Panel is justified in interfering with Cllr Taylor's right to freedom of expression, by its finding of a breach, as that interference is necessary in a democratic society for the protection of the reputation or rights of others.

That third question also needs to be considered in relation to any sanction which the Panel might impose, and I turn now to those sanctions.

Sanctions

[IF BULLYING...:]

Cllr Taylor's conduct has been found to fall well below the standard expected of a member. He has sought to intimidate and insult senior officers of the Council, in a concerted and public campaign against them. This cannot be considered as anything other than a very serious matter.

[IF DISREPUTE]

Cllr Taylor has called into question the integrity of the Council's senior officers in a public manner. Furthermore, he has impugned the professional standing of the Council's senior solicitor.

These are serious issues which clearly bring both the Council and Cllr Taylor's own office into disrepute.]

When advised about his conduct, Cllr Taylor considered this as "an attempt to silence him" and instead of heeding the advice, continued the offending behaviour.

Cllr Taylor appears to take some satisfaction in behaving in this manner, and it seems to be a matter of some pride from the tone of posts on his website, that his conduct has been under investigation.

Regardless of what Cllr Taylor believes might "justify" such behaviour, there are standards of conduct which are required of members, even in those circumstances.

Cllr Taylor has received advice on his conduct and it seems apparent that he has not and will not act on that advice. I do not, therefore, recommend training.

In my submission, the matter is not suitable for informal resolution.

Cllr Taylor has already indicated that he will not apologise, and therefore this is not available as part of the range of sanctions should the matter be considered appropriate for informal resolution.

I recommend, in the first instance, that a formal censure should be issued by the Council, reprimanding Cllr Taylor for his behaviour. In my submission this is proportionate and justified in the terms of Article 10(2) of the Convention.

The Council needs to make clear, in a public manner such that those who read or may read the BG News website will also be aware that the posts they have read, were inappropriate and constituted a breach of the members code of conduct. Therefore I also recommend that the findings of the Panel are published on the Council's website, and a press release is issued.

Cllr Taylor sits on two committees- Licensing and Appeals, and Area 2 Planning Committee. The offending behaviour arises directly from planning issues.

The Panel needs to consider whether, in light of the very serious nature of the breaches of the code, it is appropriate for Cllr Taylor to continue to sit on these committees. It is open to the Panel to recommend to Full Council that Cllr Taylor be removed from either one or both of these committees.

I have considered at length whether my representations to the Panel should advocate imposing such a sanction. However, on balance I have decided not to seek to influence the Panel in either direction. Instead, I ask the panel to consider the following 3 points as to whether the sanction is appropriate in this case:

- In light of the nature of the comments made by Cllr Taylor, and who they were made against, is any other sanction sufficiently punitive?
- Would any other sanction be effective in correcting the offending behaviour or sending the "right message" about serious breaches of the code?
- Given that the background to Cllr Taylor's comments about the officers stem from planning issues, is it appropriate for Cllr Taylor to continue to sit on that committee and be a decision maker in respect of planning matters?

In addition, the Panel must again give careful consideration whether imposing such a penalty and restriction on Cllr Taylor's political activity is justified in the terms of Article 10(2) of the Convention.