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Llywodraeth Cymru
Welsh Government

John Griffiths MS
Chair, Local Government and Housing Committee
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Dear John

During my attendance at the Committee's evidence session of its Inquiry into Diversity in Local Government on 13th July, we discussed the recognition by the courts that councillors should have a 'thicker skin' when dealing with comments made by others. I confirmed this has arisen out of case law and agreed to provide you with further information.

As I mentioned at Committee, during my recent meeting with the Public Services Ombudsman of Wales ("Ombudsman"), the Ombudsman advised that there is a balancing act when considering where the line between 'thicker skin' and abuse is drawn.

The Case

In the first of a line of cases on this topic, [Calver, R \(On the Application Of\) v The Adjudication Panel for Wales \(Rev 2\) \[2012\] EWHC 1172 \(Admin\) \(03 May 2012\)](#), the Administrative Court held that the decision to censure a Welsh community councillor for comments on his blog was a disproportionate interference with his right to freedom of expression. This right requires a broad interpretation of what counts as "political speech" – even when the speech is sarcastic and mocking.

The judgment was made following an Ombudsman investigation of the councillor which resulted in a referral to the relevant county council's standards committee which decided that a number of the councillor's blogs which criticised individual councillors breached the community council's Code of Conduct. The councillor appealed to the Adjudication Panel for Wales ("APW") on grounds that included violation of Article 10 of the European Convention on Rights (the right to freedom of expression), which the APW dismissed. The councillor then requested judicial review of this decision.

In the judicial review, it was concluded that the APW took an over-narrow view of what amounts to 'political expression' under Article 10. Mr Justice Beatson determined, amongst other things, that no account had been taken in the Panel's decision of what was said in the Strasbourg jurisprudence "about the need for politicians to have thicker skins than others". In particular, he referred to the "enhanced protection" for statements in the political sphere and the expectation that, if the subjects of such statements are politicians acting in their public capacity, they lay themselves open to close scrutiny of their words and deeds and are

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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expected to possess a thicker skin and greater tolerance than ordinary members of the public.

Mr Justice Beatson ruled that not allowing criticism of councillors on a personal level was a “disproportional interference of rights enshrined in Article 10 of the European Convention on Human Rights”.

As a result of this case law the Ombudsman, when considering complaints, has the difficult task of distinguishing whether a case includes behaviours which constitute legitimate political debate and challenge (which has been interpreted widely by the Courts), or whether there are steps beyond this which fall into unacceptable behaviour, such as bullying, harassment or intimidation, which we all agree is unacceptable. Mr Justice Beatson recognised that there was no “bright line” between these competing imperatives.

In summary, the European Convention on Human Rights is incorporated into domestic law by the Human Rights Act 1998, and *Calver*, and subsequent relevant cases, show the extent to which local authorities and the APW must make their decisions in accordance with the tenets of the Convention.

Yours sincerely,



Rebecca Evans AS/MS

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