

# The Code of Conduct – difficult areas

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# Capacity

- **Localism Act**

- Code applies ‘when acting as a councillor or as a representative of the authority’

- **LGA Code definition**

- Goes beyond that? When your actions would give the impression to a reasonable member of the public...’
- But any ‘private matters’? Grey areas about when acting as councillor or individual
- What about social media?

# Criminal convictions

- A councillor is automatically disqualified if they receive a custodial sentence of 3 months, whether or not it is suspended

## **AND since 2022**

- Certain sexual offences, even if they do not result in a custodial sentence e.g. being placed on Sex Offenders Register or subject to a Sexual Harm Prevention Order

# Private lives – what isn't covered?

- Shortly before being re-elected, a councillor was convicted of assault by beating against his partner
- He was given a two-year community order, told to attend a violence reduction programme and ordered to pay fines totalling £180.
- The case only became public after his re-election and led to complaints to his authority
- A Code of Conduct issue?
- What action, if any, can/should the Council take?

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# Private lives – what isn't covered?

- A vice-chair of the planning committee breached a notice from his own Council ordering him to remove building materials, goods and 20ft storage containers from his land
- He received a £1000 fine
- The Council issued a press release welcoming the prosecution but didn't name the Councillor
- Is this a Code issue?
- What action can/should the Council take?

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# Bullying, disrespect and civility

- LGA Civility Work
- NALC/SLCC Civility and Respect Project
- Jo Cox Foundation
- The Code of Conduct says:

## As a councillor:

- I treat other councillors and members of the public with respect.
  - I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.
- BUT...

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# Bullying, disrespect and civility – Article 10

Article 10 of the Human Rights Act: Freedom of expression

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.
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 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.

# Bullying, disrespect and civility – the case of Councillor Heesom

- a) While freedom of expression is important for everyone, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests.
- b) The enhanced protection applies to all levels of politics, including local.
- c) Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, 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 that context, is tolerated



# Bullying, disrespect and civility – the case of Councillor Heesom

- d) Whilst, in a political context, article 10 protects the right to make incorrect but honestly made statements, it does not protect statements which the publisher knows to be false.
- e) The protection goes to “political expression”; but that is a broad concept in this context. It is not limited to expressions of or critiques of political views, but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others.

# Bullying, disrespect and civility – the case of Councillor Heesom

- f) Past cases draw a distinction between fact on the one hand, and comment on matters of public interest involving value judgment on the other. As the latter is unsusceptible of proof, comments in the political context amounting to value judgments are tolerated even if untrue, so long as they have some – any – factual basis. What amounts to a value judgment as opposed to fact will be generously construed in favour of the former; and, even where something expressed is not a value judgment but a statement of fact (e.g. that a council has not consulted on a project), that will be tolerated if what is expressed is said in good faith and there is some reasonable (even if incorrect) factual basis for saying it, “reasonableness” here taking account of the political context in which the thing was said
- g) As article 10(2) expressly recognises, the right to freedom of speech brings with it duties and responsibilities. However, any restriction must respond to a “pressing social need”.

# Bullying, disrespect and civility – the case of Councillor Heesom

- h) Politicians are required to have a thick skin and be tolerant of criticism and other adverse comment. Civil servants are, like politicians, subject to the wider limits of acceptable criticism. However, unlike politicians they are involved in assisting with and implementing policies, not making them. As such they must enjoy public confidence in conditions free from perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive attacks when on duty.

# Bullying, disrespect and civility

- How to reconcile rights to free speech with common civility?
- When does political knockabout cross the line?
- Is bullying subjective or objective?
- “When allegations of bullying are considered it’s likely that the person handling the complaint will consider both the perspective of the alleged victim, and whether the councillor intended their actions to be bullying. They will also consider whether the individual was reasonably entitled to believe they were being bullied.” (LGA Guidance)
- “We mustn’t be too snowflakey about Raab bullying claims” says Rees-Mogg

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# Bullying – the ‘Williamson test’

- A. Did the subject member’s conduct involve offensive, intimidating, malicious or insulting behaviour?
- B. If it was, was an abuse or misuse of power involved in that behaviour?
- C. Was the complainant left feeling vulnerable, upset, undermined, humiliated, denigrated or threatened?
- D. Was it reasonable for the complainant to have perceived the subject member’s behaviour as bullying?

# Social media

- Commenting on a news story about a rape in a neighbouring borough a councillor commented on his Twitter account 'more likely a punter who refused to pay'
- Is this a Code issue?
- Does it depend on how he identifies himself in his Twitter handle/profile?
- How, if at all, does this relate to Article 10?
- What action can/should the Council take?

# Social media

- Recently the Church of England General Synod discussed using gender-neutral pronouns to describe God
- “A councillor tweeted ‘Wonder when those woke muppets at the CofE will change ‘my kingdom come’ to ‘my safe space come’ – t\*\*\*\*.”
- Is this a Code issue?
- How, if at all, does this relate to Article 10?
- What action can/should the Council take?

# Social media

- Following the annual mayor-making ceremony a councillor posted a number of photos on various local Facebook sites showing himself wearing a T-shirt in the council chamber after the meeting bearing an offensive slogan about the outgoing mayor who had been unpopular with his political party
- Is this a Code issue?
- Does it depend on how he identifies himself on the Facebook page? Or what the Facebook page was?
- How, if at all, does this relate to Article 10?
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# Bullying, disrespect and civility

- A councillor accuses a fellow councillor during a meeting of being 'economical with the truth' and deliberately misleading the committee.
- Is that disrespectful or just 'rough and tumble'?
- Would it be different if they had said it to an officer presenting a report?

# Bullying, disrespect and civility – some conclusions

- Is there a higher bar for politicians before they are found to be disrespectful/offensive? Or is the bar lower because we would expect them to set an example?
- Why should people be spoken to/written about in such personal terms in councils when that behaviour wouldn't be acceptable in other workplaces?
- How do we make judgments on views which we may find offensive? Does freedom of speech mean we have to tolerate such things?