

# High Court refuses councillor permission to judicially review decision of standards committee

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In *R (Dennehy) v London Borough of Ealing [2013] EWHC 4102 (Admin)*, the High Court has refused the claimant councillor's application for judicial review of a decision by the local authority's standards committee that comments he had posted on a blog breached the authority's code of conduct.

On 20 December 2013, the High Court refused a councillor's (C) application for permission to apply for judicial review of a decision by the London Borough of Ealing's standards committee that comments he had posted on a blog breached its code of conduct. The High Court was satisfied that the standards committee had provided adequate reasons for its decision. In relation to C's allegation that the standards committee had not had regard to his right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR), the High Court held that the committee's findings and the sanctions it proposed, although constituting a breach of Article 10, were a justified interference under Article 10(2) of the ECHR.

The case deals with the sensitive issue of the right of a democratically-elected member of a public authority to freely and frankly express views about matters that he believed (and indeed the standards committee considered) were of topical, social and political concern in his local area. However, local politicians should ensure that comments they make can reasonably and properly be regarded as raising issues of a legitimate topic of political debate rather than an attack, as here, on a section of the public leading to a breach of their authority's code of conduct. (*R (Dennehy) v London Borough of Ealing [2013] EWHC 4012.*)

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## Background

Under section 27 of the Localism Act 2011 (LA 2011), a relevant authority (which includes a London Borough Council) must:

- Promote and maintain high standards of conduct by its members and co-opted members.
- Adopt a voluntary code dealing with the conduct that is expected of its members and co-opted members when they are acting in their capacity as members (that is in an official capacity). The code that a local authority adopts must be consistent with the Seven Principles of Public Life set out in the First Report of the Nolan Committee on Standards in Public Life (see [Legal update, Order made bringing into force Localism Act 2011 provisions dealing with codes of conduct and community right to challenge](#)).

Section 28(6) of the LA 2011 requires a London Borough Council to have in place arrangements under which allegations can be investigated and decisions on those allegations can be made. If an authority finds that a member or co-opted member has failed to comply with its code of conduct, the authority may have regard to the failure in deciding:

- Whether to take action in relation to the member or co-opted member.
- What action to take.

The intention of the legislation is to ensure that the conduct of public life at local government level does not fall below a minimum level and public confidence is maintained in local democracy.

For more information on the standards regime that applies to local authorities in England, see [Practice note, Local government: general principles of conduct for members and the consequences of a breach of conduct: Duty to promote and maintain high standards of conduct](#) and for information on the possible sanctions that can be imposed for a breach of conduct, see [Practice note, Local government: general principles of conduct for members and the consequences of a breach of conduct: Sanctions for breach of code of conduct](#) and [Opinion, Local government: review of 2013 and preview of 2014](#).

## Article 10 ECHR

Article 10 of the European Convention on Human Rights (ECHR) provides that everyone has the right to freedom of expression. However, the right (which carries with it duties and responsibilities) is qualified; it may therefore be subject to such conditions and restrictions as are prescribed by law and which are necessary in a democratic society (*Article 10(2)*).

For more information, see [Practice note, Human Rights Act 1998: overview: Article 10: freedom of expression](#).

## Facts

In accordance with the LA 2011 provisions, the London Borough of Ealing (LBE) had adopted a code that required compliance by its members whenever they conducted council business or acted, claimed to act or gave the impression that they were acting as a representative of LBE. LBE had also adopted a standards procedure to deal with the investigation and hearing of complaints. This procedure provided that if the investigator of a complaint concluded that the code had been breached, the complaint would be referred to LBE's standards committee for determination at a formal hearing.

In 2012, a councillor (C) had posted comments on a blog he maintained under the heading "CLLR Benjamin Dennehy (Conservatives) putting Hanger Hill residents first" concerning illegal immigrants and the Indian community in Southall. The posting of the blog was widely reported and a petition was signed condemning C's statements, particularly his accusation that criminality was endemic in Southall and that the Indian community were exploiting immigrants. A formal complaint about the blog post was lodged by another councillor.

Although in its investigation of the complaint, the LBE's standards committee considered that C's blog entry had raised a number of important and legitimate issues for debate, it:

- Concluded that given the inappropriate and unnecessarily provocative tone of much of the blog content, C had not treated others with respect and had brought the office of councillor into disrepute contrary to LBE's code of conduct.
- Determined that C should be asked to issue an appropriate apology (although it recognised that it had no power to compel him to do so).
- Agreed that a notice summarising its decision should be published in a local newspaper and on LBE's website.

Upon notification of the decision, C issued an application for judicial review of the standard committee's decision.

In his application for permission to apply for judicial review at an oral permission hearing, C raised two grounds of challenge arguing that the standards committee had failed to:

- Give adequate reasons for its conclusions that the tone and content of the blog was inappropriate and unnecessarily provocative (ground 1).
- Have regard to C's protected rights under Article 10 of the ECHR and that it was under an obligation to balance C's right to freedom of expression against the rights of others (ground 2).

## Decision of the High Court

The High Court rejected both grounds of challenge and refused permission.

In relation to ground 1, the court was satisfied that the standards committee had provided adequate reasons for its decision in the minutes of its meeting and in a letter to C.

In relation to ground 2, the High Court accepted that the standard committee's findings and the sanctions constituted a breach of Article 10 of the ECHR; however, it concluded that they were justified under Article 10(2).

What was clear from case law when considering justification, was that "political expression" or the "expression of a political view" attract a higher degree of protection while expressions in personal or abusive terms do not attract the same level of protection. The comments that C had posted were not expressions of a political view but an unjustified personal and generic attack on a section of the public that undermined confidence in local government (which LBE's code of conduct aimed to preserve). Therefore, the standards committee was entitled to find that what had been written brought LBE and the office of councillor into disrepute.

## Comment

This case is interesting in that it deals with the sensitive issue of the right of a democratically-elected member of a public authority freely and frankly to express views about matters that he believed (and indeed LBE's standards committee considered) were of topical, social and political concern in his local area. However, it is important for local politicians to ensure that comments they make can reasonably and properly be regarded as raising issues of a legitimate topic of political debate rather than an attack, as here, on a section of the public leading to a breach of LBE's code of conduct.

Concern has already been expressed about the sanctions for breach of the standards regime in the LA 2011 (see [Legal update, Committee on Standards in Public Life 2012/13 report expresses continued concern about standards regime](#)). What was apparent from this case is that LBE could only request that C apologise for the comments he had posted; it was unable to require him to do so and indeed he did not go on to apologise.

Case: [Dennehy, R \(on the application of\) v London Borough of Ealing \[2013\] EWHC 4102 \(Admin\) \(20 December 2013\)](#).