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Cartergate House  
26 Chantry Lane  
Grimsby  
DN31 2LJ

**DX** 13511 GRIMSBY 1  
**Tel** 01472 262626  
**Fax** 01472 360198

[wilkinchapmanrollits.co.uk](http://wilkinchapmanrollits.co.uk)

Ms S Bearman  
Assistant Director Legal and Democratic Services  
Newark and Sherwood District Council  
Castle House  
Great North Road  
Newark  
NG24 1BY

**By email only:**

[sue.bearman@newark-sherwooddc.gov.uk](mailto:sue.bearman@newark-sherwooddc.gov.uk)

Dear Sue

**STANDARDS COMMITTEE HEARING – COUNCILLOR LEE’S REPRESENTATIONS**

This letter contains representations on behalf of Councillor Lee for the Standards Committee hearing in relation to:

- Complaint 20241126; and
- Complaint 20250205.

These representations relate to the interpretation and application of the provisions of the District Council’s Code of Conduct by the Investigating Officers, Mr Pritchard and Ms Maher.

The representations address an instance in which the Investigating Officers have failed to provide sufficient reasoning for their conclusion.

They then address the failure of the Investigating Officers to apply correctly the right to freedom of expression afforded to Councillor Lee by Article 10 of the European Convention on Human Rights (ECHR).

It is helpful to first set out the provisions of and cases relating to Article 10 as it relates to political speech (paragraphs 1 – 7 below).

**Article 10 ECHR**

**1. Article 10 ECHR states:**

*“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 integrity or public safety, for the prevention of 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.*"

2. Freedom of expression is protected more strongly in the context of political speech. A wide degree of tolerance is accorded, and this enhanced protection applies to all levels of politics, including local government.

***Jerusalem v Austria (2003) 37 EHHR 25***

*"In this respect the court recalls that while freedom of expression is important for everybody, it is especially so for an elected representative of the people. He or she represents the electorate, draws attention to its pre-occupations and defends its interests. Accordingly, interference with the freedom of expression of an opposition member of parliament, like the applicant, call for the closest scrutiny on the part of the court."*

3. Political expression is a broad concept.

***Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504***

*"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. ... 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.*

*...*

*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. The cases are careful not unduly to restrict the concept; although gratuitous personal comments do not fall within it."*

4. Incorrect statements are also protected.

***Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504***

*"The 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..."*

See also *R (Robinson) v Buckinghamshire Council [2021] EWHC 2014 (Admin)* at 6. below.

5. There are three questions which should be considered when dealing with Article 10.

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

Wilkie J stated that, on the issue of freedom of expression, there were three questions to answer: *"1. Was the Case Tribunal entitled as a matter of fact to conclude that Councillor Sanders conduct was in breach of paragraph 2(b) [respect] and/or paragraph 4 [disrepute] of the Code of Conduct?*

*2. If so, was the finding in itself or the imposition of a sanction prima facie a breach of Article 10?*

*3. If so, was the restriction involved one which was justified by reason of the requirements of Article 10(2)?"*

6. A finding of a breach of the Code of Conduct is an interference with Article 10 rights. Where an interference is not proportionate, it is a violation of Article 10.

***R (Robinson) v Buckinghamshire Council [2021] EWHC 2014 (Admin)***

*"In re-making the decision under Article 10(2), I conclude that the interference did not fulfil a pressing social need, and nor was it proportionate to the aim of protecting the reputation of the other councillors. As an elected councillor, taking part in a public meeting called by the PC to discuss the Green Belt, the Claimant was entitled to the enhanced protection afforded to the expression of political opinions on matters of public interest, and the benefits of freedom of expression in a political context outweighed the need to protect the reputation of the other councillors against public criticism, notwithstanding that the criticism was found to be a misrepresentation, untruthful, and offensive. Although no further action was pursued against the Claimant, beyond recommending that he apologise, it was a violation of Article 10 to subject the Claimant to the complaints procedure, and to find him guilty of a breach of the PC Code. Therefore Grounds B and C succeed."*

7. **The Local Government Association Guidance on the Model Councillor Code of Conduct (the LGA Guidance) is clear that this right must be considered when dealing with issues of respect and disrepute.**

Complaint 20241126 – Disrespect

8. In Paragraph 5.16 of the Final Report, the Investigating Officers state that *"Cllr Lee... made what we can only conclude to be a personal attack on another councillor who was not a member of the committee or even present at the meeting."* They do not provide any reasoning as to why they take this view.
9. In the comments provided on the draft report, we asked the Investigating Officers to explain the grounds on which quoting from a Councillor's political Facebook post could be considered a *"personal attack"*. In the response to this comment, they did not provide any reasoning, and simply repeated that *"In our view, the comments Cllr Lee made referencing Cllr Hall can only be reasonably interpreted as a personal attack"*.
10. The recording of the meeting clearly shows that Councillor Lee simply read out Councillor Hall's Facebook post as he disagreed with the political comment it made relating to a controversial political issue. The below is what Councillor Lee said in the meeting which related to Councillor Hall:

*"There is a comment here on social media that was talking about the Kiddey Stones, you're right – by Councillor Jean Hall. And it stated 'The Kiddey Stones consultation is nearly finished these amazing sculptures would really highlight the entrance of Newark... Please join in this consultation and let's grow the town's aspirations.'*

*That had 35 negative comments. No mention of Council Tax in that.”*

11. Oxford Languages (publishers of the Oxford English Dictionary) define personal as *“of or concerning one’s private life, relationships, and emotions rather than one’s career or public life. Referring to an individual’s character, appearance, or private life in an inappropriate or offensive way.”*
12. It is clear that Councillor Lee did not make any comment relating to Councillor Hall as an individual. There is nothing said which concerns her character, appearance, private life, or any other personal attribute. There is no reasonable interpretation upon which Councillor Lee’s comments could be considered personal. They are solely political.
13. The LGA Guidance is clear that: *“Failure to treat others with respect will occur when unreasonable or demeaning behaviour is directed by one person against or about another. ... You will engage in robust debate at times and are expected to express, challenge, criticise and disagree with views, ideas, opinions, and policies. ... In a democracy, members of public bodies should be able to express disagreement publicly with each other.”*
14. Further, the District Council’s Code of Conduct includes, in its definition of respect, that: *“Debate and having different views are part of a healthy democracy...”*
15. Councillor Lee is entitled to disagree with the political comments made by other members of the District Council. That Councillor Hall was not present at the meeting does not change the nature of Councillor Lee’s comments or his entitlement to make them. As they are not personal comments against or about another person, there is nothing disrespectful about what Councillor Lee said.
16. In the comments provided on the draft report, we highlighted to the Investigating Officers that they needed to consider Councillor Lee’s Article 10 rights in making their finding at Paragraph 5.20 of the Final Report. With respect, despite this, the Investigating Officers have failed to appropriately apply Article 10.
17. In Paragraph 5.16 of the Final Report, the Investigating Officers state, *“in our view his rhetoric and demeanour went beyond what was reasonable in the context of the meeting and Cllr Pringle was right to attempt to bring him to order.”*
18. We have set out above that the comments made by Councillor Lee are clearly not a *“personal attack”* and are therefore not disrespectful. If the Investigating Officers wished to maintain that the comments made by Councillor Lee could have been disrespectful (and thus a potential breach of the Code), they should have given consideration to the enhanced protection of Article 10 as it is evident from the case of *Heesom* that the comments were within the realm of political expression.
19. If they had done so, they would have unavoidably concluded that a finding of disrespect was fundamentally a breach of Councillor Lee’s enhanced Article 10 right and that it was not a justified interference as such a finding did not *“fulfil a pressing social need, and nor was it proportionate to the aim of protecting the reputation of the other councillors”*, in line with *Robinson*. There is no basis on which they could reasonably reach any other conclusion.

#### Complaint 20241126 – Disrepute

20. The LGA Guidance states:

*“In general terms, disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a councillor’s behaviour in office will bring their **role** into disrepute if the conduct could reasonably be regarded as either:*

- 1. reducing the public’s confidence in them being able to fulfil their role; or*

2. adversely affecting the reputation of your authority's councillors, in being able to fulfil their role.

*Conduct by a councillor which could reasonably be regarded as reducing public confidence in their local authority being able to fulfil its functions and duties will bring **the authority** into disrepute."*

21. In applying the Code of Conduct to the circumstances of alleged disrepute, it is established that it is not necessary for the Councillor's actions to have actually diminished public confidence or harmed the reputation of their Council. The question is whether or not the conduct could 'reasonably be regarded' as having these effects. **The conduct must be sufficient to damage the reputation of the Councillor's office or their Council, not just the reputation of the Councillor as an individual.**
22. It is clear from the LGA Guidance that the kind of conduct that will be capable of bringing a Councillor or authority into disrepute is quite serious:

*"For example, circulating highly inappropriate, vexatious or malicious e-mails to constituents, making demonstrably dishonest posts about your authority on social media or using abusive and threatening behaviour might well bring the role of councillor into disrepute. Making grossly unfair or patently untrue or unreasonable criticism of your authority in a public arena might well be regarded as bringing your local authority into disrepute."*
23. The Investigating Officers misrepresent the events of the meeting in the Final Report when they state in Paragraph 5.16 that, *"Cllr Lee clearly knew that he was speaking out of order, and yet he persisted and made what we can only conclude to be a personal attack on another councillor..."*.
24. Councillor Lee had been invited to speak on the issue by Councillor Pringle; he was not speaking out of turn. When he commented on Councillor Hall's Facebook post (which we have already explained is not a personal attack), he had only just begun speaking. He did not *"persist"* against the orders of the Chair in order to make his comment.
25. Councillor Pringle then asked Councillor Lee to get to his question, which he did so. Councillor Lee began speaking at timestamp 1:58:59 of the recording and finished speaking at timestamp 2:00:51, when Councillor Pringle ended his speech. Councillor Pringle did not struggle to bring Councillor Lee to order.
26. The Investigating Officers also misrepresent the events of the meeting in Paragraph 5.11 of the Final Report, when they state, *"The episode concluded with Cllr Lee leaving abruptly but continuing to direct comments towards Cllr Pringle from off camera"*.
27. Councillor Lee left as Councillor Pringle was admonishing him, stating that Councillor Lee's response was *"shocking from an elected member"*. Councillor Lee stated *"Answer the question Chairman. Answer the question."* whilst Councillor Pringle is reprimanding him and says nothing further. He does not make any comment once the meeting continues, despite the implication of the Final Report. This is all evident from the recording of the meeting.
28. Councillor Lee's conduct towards Councillor Pringle cannot reasonably be said to have brought his role or the Council into disrepute. It does not have any bearing on the ability of Councillor Lee, nor the District Council, to fulfil their respective roles. It is conduct that can only reasonably be regarded as having a potential impact on Councillor Lee's reputation as an individual, and it is clear that this is not sufficient for a finding of disrepute.

Complaint 20250205

29. In Paragraph 5.65 of the Final Report, the Investigating Officers state that *“we are clear that the information posted on the ‘Johnno Lee’ Facebook page on 29<sup>th</sup> January 2025 relating to the Council’s performance was entirely fictitious and therefore calculated to unfairly damage the reputation of the Council”*. They do not provide any evidence as to their conclusion that the post was deliberately malicious, they simply decide that it is an inevitable conclusion on the basis of the finding that the post was incorrect, which does not necessarily follow.
30. In the comments provided on the draft report, we highlighted to the Investigating Officers that they needed to consider Councillor Lee’s Article 10 rights in making their finding at Paragraph 5.68 of the Final Report. With respect, despite this, the Investigating Officers have failed to appropriately apply Article 10.
31. As set out at paragraph 4 of this letter, Article 10 protects the right to make incorrect but honestly made statements in a political context. Incorrect statements of fact are tolerated as long as there is some reasonable factual basis for saying them. Having briefly reviewed the reports in question, there are comments which support some points made in the post. For example, in relation to missed bins, page 33 of the Q2 Performance Report states the number of missed bins was 66.1 per 100,000 households compared to a target of 45.0. In relation to slow responses, page 7 of the Q2 Performance Report states that 74 complaints were responded to late.
32. The post was published on 29<sup>th</sup> January 2025. At the time the post was made, the statements within it were clearly honestly made. Councillor Lee was not told by the Monitoring Officer to remove the post until 2 months after it was originally published, which was also after the complaint was made. The complaint is that he published the post in the first place, not that he did not subsequently take it down. As set out above, the post is protected by Councillor Lee’s enhanced Article 10 right. A finding of disrepute is in breach of that Article 10 right.

Yours sincerely

[Redacted Signature]

Jonathan Goolden  
Partner  
WILKIN CHAPMAN ROLLITS  
Email [Redacted]  
Tel [Redacted]