[1] It is submitted on behalf of the respondent that Article 10 of the European Convention of Human Rights is engaged in relation to the matter under adjudication by the Local Government Commissioner for Standards (LGCS). Article 10 of the ECHR, incorporated in the Human Rights Act 1998, 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. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.*
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] Section 3 of the Human Rights Act 1998 makes clear that legislation must be read as compatible with the Convention rights, so far as is possible to do so. Section 6 of the act stipulates that it is unlawful for a public authority to act in a manner incompatible with Convention rights.

[3] It is further submitted on behalf of the respondent that enhanced protection of freedom of expression applies. Given the lack of Northern Ireland specific case law, it is necessary to turn to the judgements of equivalent courts elsewhere in the United Kingdom. In Heeson v Public Services Ombudsman for Wales [2014] EWHC 1504 the court recognised that politicians have enhanced protection in relation to Article 10 and that such protection applies to all levels of politics. The court also held that political expression is a broad concept and should be widely interpreted. The matter under adjudication took place in a local council meeting as part of the respondent’s role as an elected representative during a discussion in relation to the granting of permission for usage of public land, therefore the discussion, and decision flowing from it, was clearly one of public interest.

[4] The respondent asserts that her comments were true and accurate. There has been no dispute as to the accuracy of the respondent’s comments, as a matter of fact one person self-identified himself as the individual to which the description applied and confirmed within his witness statement that he was vice-Chairman of the club in question. He was further voluntarily identified by a number other witnesses. It is submitted by the respondent that by virtue of the witness statements gathered by the Deputy Commissioner, specifically the individual who self-identified as the person to whom the comments referred, that it is accepted the comments were not false, inaccurate or misleading.

[5] It is submitted that the 3 stage process to be adopted is as follows:

1. To consider whether there has been a breach of the Code of Conduct;
2. If so, whether the finding of a breach and the imposition of a sanction was a limitation of the right to freedom of expression;
3. If so, whether the restriction involved is one which is justified by Article 10 (2).

[6] One of the earliest cases dealing with the application of Article 10 of the Convention is Castells v Spain (1992) 14 EHRR 445. The case concerned the publication in a weekly magazine of an article by an opposition senator which was highly critical of the Spanish Government, accusing it of having been responsible for the murders and attacks perpetrated in the Basque Country by extremist organisations who acted (the article said) with total impunity.

[7] The senator was prosecuted and convicted and took his case to the European Court of Human Rights. The court said the following;

*"42. The Court recalls that the freedom of expression, enshrined in paragraph 1 of article 10, constitutes one of the most essential foundations of a democratic society and one of the basic conditions for its progress. Subject to paragraph 2 of article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'.*

*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. Accordingly, interferences 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.*

*43. In the case under review, Mr Castells did not express his opinion from the senate floor, as he might have done without fear of sanctions, but chose to do so in a periodical. That does not mean, however, that he lost his right to criticise the Government.*

*In this respect, the pre-eminent role of the press in a State governed by the rule of law must not be forgotten. Although it must not overstep various bounds set, inter alia, from the prevention of disorder and the protection of the reputation of others, it is nevertheless incumbent on it to impart information and ideas on political questions and on other matters of interest.*

*Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society."*

[8] The basis of the judgement in Castells is a bedrock of later European Court judgements and is quoted in similar terms as above in Heeson v Public Services Ombudsman for Wales [2014] EWHC 1504 and a wide range of other cases which is set out by Hickinbottom J at [37] of the Heesom judgement.

[9] At [33] vi) of *Heeson* , Hickinbottom J outlines one of the propositions derived from the body of case law. The judgement, inter-alia, states;

*“[33] vi) 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 (e.g. Lombardo at [58], Jerusalem at [42] and following, and Morel at [36]). What amounts to a value judgment as opposed to fact will be generously construed in favour of the former (see, e.g., Morel at [41]); 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 (Lombardo at [59]).”*

[10] The respondents comments were true, however even if they were not they would have still benefitted from enhanced protection given it is the respondents submission that they had been articulated in good faith and there was some factual basis for saying it. There is no evidence presented by the Deputy Commissioner which suggests that the respondent’s comments were made in bad faith or that there was no reasonable factual basis for the comments.

[11] The comments related to an office bearer within Crumlin Star Football Club having a senior and proactive role within a proscribed terrorist organisation, namely the Provisional IRA. This individual’s role within the club, which applied for use of public facilities, was clearly a matter of public interest. Membership of a terrorist organisation is not a protected characteristic and if the individual who has self-identified himself believed the comments were defamatory or otherwise false or malicious then he could have initiated proceedings against the respondent. He has not done so.

[12] The individual who has self-identified has been consistently named by a range of media outlets and by the Police Service of Northern Ireland as a senior member of the Provisional IRA’s so called ‘Belfast Brigade’ and it has been repeatedly alleged that he was the IRA commander responsible for the planning of the Shankill bomb. In 2015 the individual was arrested in relation to a murder carried out in Belfast by the Provisional IRA, this would suggest at least prima facie evidence that the individual remains a committed terrorist.

[13] It is clear that the individual’s role in a club applying for use of public facilities is a relevant matter of public concern and therefore the respondent’s comments are protected by Article 10 and even if a breach of the code is found, there are no grounds to infringe upon the respondents Convention right in the circumstances.

**Submitted by Jamie Bryson**

**On Behalf of Alderman Ruth Patterson**