

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at Aberdeenshire Council Headquarters, Woodhill House, Aberdeen, on Tuesday, 1 July 2025.

Panel Members: Ms Helen Donaldson, Chair of the Hearing Panel
Dr Lezley Stewart
Mr Malcolm Bell

The Hearing arose in respect of a report referred by Mr Ian Bruce, the Ethical Standards Commissioner (the ESC), further to complaint reference LA/As/4024, concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Wendy Agnew (the Respondent).

The ESC represented himself at the Hearing. The Respondent was represented at the Hearing by Mr John Agnew.

REFERRAL

Following an investigation into a complaint about the conduct of the Respondent made by another elected member of Aberdeenshire Council on 4 December 2023, the ESC referred a report to the Standards Commission on 4 April 2025, in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000.

The referral concerned whether the Respondent had failed to comply with the provisions of the Code and, in particular, paragraphs 3.1, 3.2, 7.4(a), 7.4(c) and 7.5(a) which were as follows:

Respect and Courtesy

3.1: I will treat everyone with courtesy and respect. This includes in person, in writing, at meetings, when I am online and when I am using social media.

3.2: I will not discriminate unlawfully on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity; I will advance equality of opportunity and seek to foster good relations between different people.

Quasi-Judicial and Regulatory Matters

*7.4: In dealing with these applications,
I WILL:*

- a) throughout my involvement with the entire application process act fairly and be seen to act fairly;*
- c) deal fairly and impartially with all parties involved in the application.*

*7.5: In dealing with these applications,
I WILL NOT:*

- a) pre-judge or demonstrate bias or be seen to pre-judge or demonstrate bias.*

The ESC advised that the Respondent had also made a self-referral to his office. It should be noted, however, that all references in this document to the 'Complainer', concern the other elected member who made the complaint.

EVIDENCE PRESENTED AT THE HEARING

Joint Statement of Facts

The Panel noted that the complaint concerned the conduct of the Respondent at a meeting of the Council's Kincardine and Mearns Area Committee on 21 November 2023. At the time of the meeting, the Respondent was the Committee Chair. The Panel noted that one of the items being considered by the Committee was a retrospective application for planning permission, for a change of use from recreational ground to form a permanent caravan park site for gypsy travellers. The officer report on the application recommended that

the Committee refer the application to a full Council meeting for determination. A committee member moved a motion that the application be so referred. Another Committee member then moved an amendment that the application be refused. The motion was carried by six votes to four.

The Panel noted that a joint statement of facts had been agreed between the ESC and the Respondent. This recorded that it was not in dispute that the Respondent was acting as councillor during meeting and, as such, the Code applied to her conduct. The Panel further noted that the Council had provided the ESC with an unedited recording of the meeting during the investigation and that it was not in dispute that a transcript produced by his office accurately reflected the Respondent's contributions on the application at the meeting, which are outlined below:

- The Respondent's noted the application was retrospective. The Respondent noted this "means obviously that they put their caravans there without permission and that gives me alarm bells, in other words they seem to want to do what they want without permission. I know there's been, as well, the same thing in [...]". The Respondent advised that she supported the amendment.
- After a Council officer confirmed that, following a vote, the motion on the application was carried, the Respondent noted she had previously questioned the "retrospective" aspect of the application. In response, another councillor, Councillor A asked whether its "retrospectivity" was "appropriate". Councillor A noted retrospective planning applications were being brought frequently before the Committee and that it was being asked to treat them as though they were new.
- The Respondent then said she was concerned "history could repeat itself". Councillor A indicated, in response, that raising that as an issue, when discussing the application, could make it sound as though the Committee "might not be treating it equally". In reply, the Respondent stated, "I don't want it repeated. If they're ignoring this, they may ignore other things, let travellers in, and we've got a travellers site and that is that what's...that's my thoughts."
- Advice was then sought from a senior planning officer, who indicated that the Council was required to assess every application based on its own merits. The officer stated that whether an application was retrospective or not was not relevant.
- The Respondent proceeded to state, "I am worried that if they've done it once, other things can happen" and explained she did not want to upset constituents who lived in the area. The Respondent then stated "there's just something saying to me, be careful, that's all. And it's nothing to do with the travellers. Just be careful, it's a massive site".
- The Complainer (another elected member) intervened at that point and stated, "it is not acceptable to suddenly make comment about retrospective planning applications and refer to the people that are putting the application in as 'they'. You are clearly speaking about travellers and gypsy travellers, so - and they have protected characteristics and it's absolutely not acceptable to be putting forward those views in this forum."
- In response, the Respondent stated, "I'm speaking about anything; they could put a caravan site there. It is a massive site. Anything could happen there. That's all. It's slightly worrying to me and I'm not saying it just because they are gypsies. It would be the same if it were a British person, I would be worried about this massive site. That's all."
- The Complainer then asked the Respondent whether she had just said "if it was a British person as opposed to a gypsy person". In response, the Respondent stated "no, I said it wasn't anything to do with gypsies. I would have said the same thing if it was a British... You were bringing up gypsies, not me."

- When the Complainer stated that the Respondent was “insinuating that gypsy people are not British people”, the Respondent replied “no, I’m not. I am not doing that at all. Have to be very firm that this is a planning application, and any comments have to be relevant to the planning application.”

ESC Introductory Remarks

The ESC advised the Respondent was first elected as a councillor in May 2003 and represented the same ward as the Complainer. The ESC advised that both the Complainer and Respondent were members of the Council’s Kincardine and Mearns Area Committee (with the Respondent being its Chair) and attended a meeting on 21 November 2023, at which an item seeking retrospective planning permission for a change of use of a site, was discussed. The applicant was seeking permission for a permanent site for gypsy travellers and the report before the Committee recommended that the matter be referred to full Council for a decision.

The ESC explained that, after the Committee had voted, the Respondent indicated she wanted her comments on the application to be noted and, specifically, her comments regarding its retrospective nature. The exchange outlined above had then occurred.

The ESC advised that, before the recording of the meeting was made publicly available, it was edited by the Council to remove the Respondent’s comments and the subsequent discussion on these. The ESC advised that while the Respondent had also made a self-referral to his office, the complaint being considered by the Panel was based on the one made by the Complainer.

Witness Evidence on behalf of the ESC

The ESC led evidence from the Council’s Head of Legal and People, who was also its Monitoring Officer.

The Monitoring Officer advised that she had not attended the Kincardine and Mearns Area Committee meeting on 21 November 2023, but that a member of her team had been present. A member of her team had advised her, almost immediately after the meeting, that comments had been made that were of concern, as they were potentially offensive. The team member advised that other councillors present at the meeting had expressed similar concerns.

The Monitoring Officer confirmed she sent an email to the Respondent two days after the meeting advising her the published recording of the webcast had been edited, provisionally, to remove the comments in question, pending a full review. The Monitoring Officer explained she had asked for the recording to be edited because she was concerned that comments had been made about gypsy travellers and, in particular, that the Respondent had differentiated between them and other British people. The Monitoring Officer advised she was concerned that this comment was potentially offensive (given the two terms were not mutually exclusive).

The Monitoring Officer advised that while no decision, other than to refer the matter to full Council, was made on the application that day, and she did not necessarily have concerns about a potential legal challenge, the fact that concerns had been raised was sufficient for her to consider she had to review the comments in question. The Monitoring Officer advised, however, that the poor quality of the audio recording made it difficult to understand exactly what had been said at the meeting.

Following her full review of the matter, the Monitoring Officer advised she sent a further email to the Respondent, on 30 November 2023, in which she confirmed that the unedited version of the meeting would not be published. The Monitoring Officer confirmed that discussions with her team, and in particular the Depute Monitoring Officer and the solicitor present at the meeting, had informed her decision-making on the matter.

In response to questions from the ESC about planning matters in general, the Monitoring Officer confirmed that no negative inference should be drawn from an application being retrospective, that retrospectivity is

not a material planning consideration, and that the determination of an application should solely be on material planning issues. The Monitoring Officer suggested that councillors should not make references to retrospectivity.

The Monitoring Officer advised the ethnicity of an applicant could be a material consideration and, as such, was not necessarily irrelevant. The Monitoring Officer confirmed, nonetheless, that negative inferences about an applicant could not be made on the basis of ethnicity.

The Monitoring Officer confirmed that she subsequently spoke to the Respondent about her potential participation in the decision on the application when it was to be considered at full Council. The Monitoring Officer advised that she explained she was concerned the Respondent had failed to avoid any perception of bias at the committee meeting and, as such, her participation in the final decision may have an impact on the Council's ability to defend any subsequent legal challenge, should the application be rejected. The Monitoring Officer advised that the Respondent did not accept, during their discussion, that she had acted in a manner that was incompatible with the Code. The Monitoring Officer advised that the Respondent nevertheless recused herself when the decision on the application was made at full Council.

The Monitoring Officer confirmed, when asked, that she considered the Respondent's comments implied that the applicant would not adhere to any planning rules or conditions imposed, based on her ethnicity.

In response to cross examination, the Monitoring Officer confirmed it was a matter of fact that the application before the meeting on 21 November 2023 was retrospective in nature. The Monitoring Officer advised it was her understanding that the fact that an application was retrospective would always be mentioned in the officer's report to be considered by the relevant committee but noted this does not, in itself, make it a material planning consideration. The Monitoring Officer noted that as she did not have the report before her in this case, she could not state categorically whether retrospectivity was a material consideration. The Monitoring Officer noted, however, that when the matter was raised at the meeting, both the solicitor and senior planner present had confirmed that while retrospectivity was mentioned in the report before the Committee, it was not a material consideration. The Monitoring Officer advised she had confidence that the solicitor and senior planner would have been correct in this regard.

When asked whether the Council had received any complaints about the Respondent's conduct at the meeting (notwithstanding the one made by the Complainer to the ESC), the Monitoring Officer advised she did not know.

In response to questions from the Panel, the Monitoring Officer advised it was unusual for the Council to decide not to publish recordings of meetings in full. The Monitoring Officer stated that it was rare for her to recommend that a recording of a meeting be edited, as she was conscious that doing so could be perceived as an attempt to censor elected members. The Monitoring Officer advised that, in this case, she felt that the risk to the Council's reputation was greater than the risk of any concerns being raised about a lack of transparency.

When asked by the Panel, the Monitoring Officer confirmed that there was a distinction between, on the one hand, referring to the fact that an application was of a retrospective nature in discussions on it and, on the other, to using this as a material consideration in decision-making. The Monitoring Officer confirmed that the former was acceptable, whereas the latter was not. The Monitoring Officer advised that it was not the Respondent's comments on retrospectivity that had caused her concern, as these had been easily dealt with at the meeting by the solicitor and senior planner present. The Monitoring Officer stated, instead, that her concerns related to the Respondent having apparently distinguished between gypsy travellers and British people and that, in doing so, inferred gypsy travellers were not British. The Monitoring Officer advised that she had also been concerned the Respondent had failed to avoid any perception that her discussion and

decision-making on the matter could have been based on the ethnicity of the applicant and, as such, could be biased.

The Monitoring Officer confirmed that it was her concerns about the perception of potential bias that had led her to advise the Respondent not to take part in the decision-making on the application at the subsequent full Council meeting. The Monitoring Officer noted it was quite unusual for her to give such advice to an elected member but stressed that it was ultimately a matter for them to decide whether to participate.

Witness Evidence on behalf of the Respondent

The Respondent's representative led evidence from the Respondent.

The Respondent advised she had enjoyed positive engagements with gypsy travellers before becoming a councillor. The Respondent further advised that when a constituent telephoned earlier in the year complaining about the arrival of gypsy travellers at a specific location, she had made contact with them. The Respondent advised that the gypsy travellers confirmed they were only staying at the location for one night. The Respondent explained that she had been content with this and had asked them to avoid using a cricket pitch located nearby.

In response to cross-examination from the ESC, the Respondent confirmed that she had not been aware from reading the papers that the applicant was a gypsy traveller.

When asked whether it was reasonable for those present at the meeting to have interpreted her use of the word to 'they' as a reference to the applicant only (as opposed to gypsy travellers in general), the Respondent said yes. The Respondent explained her concerns related to the application being retrospective and were nothing to do with the applicant being a gypsy traveller. The Respondent advised she was aware of occasions where other applicants who were not gypsy travellers had failed, repeatedly, to comply with planning conditions. The Respondent advised that, as such, she did not consider it was reasonable to characterise her comments as expressing a view that gypsy travellers were untrustworthy.

The Respondent advised that her mention of the same thing having happened elsewhere concerned the application and specific site in question. The Respondent advised that while she had no difficulty with the proposed location of the caravans, the site in question was huge and concerns had been raised by objectors about the use of other parts of it, including a football pitch. The Respondent advised she was trying to address these concerns.

The Respondent accepted that by the time she had made her comments at the meeting on 21 November 2023 she was aware the applicant was a gypsy traveller.

The Respondent confirmed that she did not consider the ethnicity of an applicant to be a material consideration. The Respondent reiterated that her concern about the application in question related to the use of the overall site and her experience of certain retrospective applications in general. The Respondent denied that her starting point was that gypsy travellers could or would not follow the rules and advised that, instead, her difficulty was with applicants in general who did not follow the rules or conditions and then submitted retrospective planning applications.

The Respondent denied having implied the existence of a gypsy traveller site at the particular location was undesirable and advised, again, that her concerns related to the potential use of other areas of the site, including the football pitch, notwithstanding any conditions that could be attached should the application be granted.

When asked why the Council had edited the recording of the meeting, the Respondent advised she had understood the decision had been taken to do so to prevent any complaints being made. The Respondent noted, however, that as far as she was aware, no complaints had been made.

The Respondent confirmed she had discussed, with the Monitoring Officer, her potential participation in consideration of the application at the subsequent Council meeting. The Respondent advised that while she had not agreed with the Monitoring Officer's advice (or assessment that she had potentially breached the Code), she had nevertheless felt obliged to follow it and recuse herself.

In response to questions from the Panel about what she had meant at the committee meeting when she had referred to something happening elsewhere and to history repeating itself, the Respondent advised she could not recall the specifics, but reiterated her concerns had related to the wider use of the site by gypsy travellers. The Respondent advised her references to being worried related, in part, to her knowledge of a fight that had involved gypsy travellers at another site, when its use had been extended. The Respondent advised her concerns also stemmed from her knowledge that traveller families often sought to displace other traveller families at sites.

When asked whether she accepted that the language she had used could reasonably be understood as her making inferences about gypsy travellers, the Respondent advised she considered her language had been 'clumsy', which was something she regretted. The Respondent stated that she considered she had been too focused on how large the site was and that this had resulted in her not thinking clearly. The Respondent further stated that she could understand why those present at the meeting may have understood her to be drawing a distinction between gypsy travellers and British people. The Respondent advised, however, that she had not intended to be disrespectful. Instead, she was merely trying to provide assurance that she would have made the same comments had the applicant been anyone else.

The Panel noted that the Respondent had indicated, in written representations, that she had made the distinction deliberately and asked whether that was the case. In response, the Respondent advised she made the distinction deliberately because she had been told previously by a gypsy traveller that she did not identify as being British and, instead, identified herself solely as a gypsy traveller.

The Respondent accepted that she had an issue with retrospective applications, as she considered they caused the most difficulties, in terms of adherence to planning conditions. The Respondent noted that it was sometimes the case that applicants were not complying with the rules or conditions, and it was only when this was reported that a retrospective application was submitted. The Respondent reiterated that, in this case, her concern was that while the retrospective part of the application before the Committee on 21 November 2023 related to the part of the site where existing caravans were located, the application in full concerned a much wider site. The Respondent advised that the remarks she made at the meeting related to this.

Submissions made by the ESC

The ESC noted there was no dispute that the Respondent was acting in her capacity as a councillor at the meeting on 21 November 2023 and that the Code was engaged.

The ESC noted the Respondent stated clearly, at the meeting, that she wanted her comments on the retrospective nature of the application to be recorded. The ESC questioned why the Respondent would want her comments about retrospectivity recorded if it was the case that the part of the application that was retrospective was not the part of the site about which she was concerned. The ESC suggested that this was not "a coherent position".

The ESC contended that the Respondent had implied "clearly" that the applicant was untrustworthy both because the application was retrospective in nature and because she was a gypsy traveller. The ESC

contended that the Respondent then proceeded to draw a distinction between gypsy travellers and British people. The ESC argued that, when her remarks were considered as a whole, the Respondent's assertion that she would have treated the applicant in the same way had she not been a gypsy traveller was implausible.

The ESC noted that the key issue before the Panel was not that the application was retrospective but that the Respondent made comments about how she considered the applicant, and gypsy traveller community in general, behaved and, further, that she applied these considerations when assessing the application.

The ESC suggested it was apparent that the Complainer and, council officers considered the Respondent's comments were inappropriate. The ESC advised he had concluded that the Respondent had inferred strongly that the applicant could not be trusted.

The ESC contended that the Respondent's comments clearly concerned sites occupied by gypsy travellers in particular rather than, as she contended, other sites in respect of which retrospective applications had been made. The ESC considered the Respondent's position in this regard to be "implausible" and contended that even if her comments had been general in nature, they had been prejudicial to the gypsy traveller community in general, as well as to the specific applicant in question. The ESC noted that he understood retrospective applications to be fairly common in the gypsy traveller community, due to a lack of provision of sites. The ESC noted, however, that this was not a material planning consideration, and that the Respondent had been advised accordingly at the meeting. The ESC contended that the Respondent's remarks could be categorised as critical judgement of the applicant and her future intentions, in a situation where the making of such a judgement was not required or appropriate.

The ESC highlighted that council officers suggested, during the meeting, that comments should not be made about the future intentions of the applicant, and in particular, that negative assumptions about the likelihood of adherence to planning conditions should not be made.

The ESC contended that, in making negative suggestions about the intentions and likely conduct of the applicant in the circumstances, the Respondent's conduct was inappropriate, discourteous and disrespectful and amounted to a breach of paragraph 3.1 of the Code.

The ESC advised he accepted the Respondent had not intended to state that the applicant was not British by virtue of being a gypsy traveller. The ESC noted the Respondent explained, in her evidence, that she had made a distinction following her interaction with a gypsy traveller within her ward and that she had clarified she had not intended to imply that gypsy travellers were not, or could not be, British.

The ESC contended, nevertheless, that the Respondent made assumptions, during the meeting, about the future intentions of the applicant based on the fact that she was a gypsy traveller. The ESC contended it was evident the Respondent made her decision on the motion on the basis of a stereotype rather than on the individual merits of the application. The ESC argued that, in doing so, that the Respondent drew a distinction between the applicant and others and failed to foster good relations between different people, in breach of paragraph 3.2 of the Code.

The ESC acknowledged the Respondent's position was that she had approached the application with an open mind. The ESC further advised that he was satisfied there was no clear evidence to the contrary and, therefore, he had not found the Respondent had breached paragraph 7.5 of the Code.

The ESC recognised the majority of the Respondent's comments were made after the Committee had voted and also that she had not attended the full Council meeting at which the final decision on the application was made. The ESC noted, however, that Section 7 of the Code applies during the whole of the decision-making process, which would include the part of the committee meeting after the vote on the motion was taken. The ESC contended that the Respondent's comments about the applicant indicated a failure on her part to

deal with the applicant fairly. The ESC advised that as he was of the view that her comments were both disrespectful, and based on racial stereotyping, he was satisfied the Respondent had breached paragraph 7.4 of the Code. The ESC suggested it was evident from the fact the recording was edited that the Council shared these concerns.

The ESC acknowledged that the Respondent had a right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). The ESC noted that politicians are afforded enhanced protection in respect of this right when engaged in political debates or discussing matters of public interest. The ESC contended, nonetheless, that the meeting on 21 November 2023 was not a political debate or meeting and, instead, was a quasi-judicial forum at which a live application was being considered. The ESC noted that the Respondent's role at the meeting was to consider specific applications, rather than to discuss general policies or matters of public concern. The ESC argued, therefore, that she would not attract any enhanced protection in respect of her right to freedom of expression.

The ESC argued it was clear the Respondent's discussion and decision-making on the application were based, in part, on it being retrospective, despite this not being a material or relevant consideration. The ESC contended the Respondent had implied clearly that she would be voting against the application, not only because it was retrospective but also because she considered the applicant to be untrustworthy. The ESC contended that fellow councillors, due to vote on the application at the full Council meeting, could be inappropriately influenced by this. The ESC argued that the Respondent's comments perpetuated stereotypes about the gypsy traveller community and had the scope to undo all the Council's work to ensure that community's rights were respected. The ESC advised he understood fully why the Council felt the need to edit the recording, given that a failure to do so could have caused it to suffer significant reputational damage.

The ESC argued that the Respondent's comments were not relevant to the application and as such, were gratuitous in terms of the Committee's consideration of the matter. The ESC contended that the Respondent's comments could have exposed the Council to a legal challenge and, indeed, noted the Monitoring Officer had confirmed the Council had been concerned about this possibility. The ESC noted that such a challenge could have caused the Council reputational damage and led it to incurring costs, even if ultimately unsuccessful. The ESC contended, therefore, that a restriction on the Respondent's right to freedom of expression could be justified.

The Panel noted the ESC had contended that the retrospective nature of the application was not a key issue and questioned whether he had taken this into consideration when concluding the Respondent had breached the Code. In response, the ESC stated that he believed the Respondent's views were based on her understanding that gypsy travellers often made retrospective applications. The ESC contended that was the key point, rather than the application being retrospective in and of itself. The ESC contended that it was evident the Respondent, in noting the application was retrospective and the applicant was a gypsy traveller, was suggesting gypsy travellers did not adhere to planning conditions, therefore, was implying the applicant could not be trusted.

The Panel noted the ESC had referred, in his report, to the Respondent's tone as being disrespectful and asked why that was the case. In response, the ESC advised it was the Respondent's insinuations he had found to be problematic.

The Panel asked whether, when considering if a restriction on the Respondent's right to freedom of expression could be justified, the ESC had considered the rights of the applicant. In response, the ESC advised he considered individuals saying gypsy travellers could not be trusted was "a racist trope and one of many directed towards the gypsy traveller community". The ESC stated that "assumptions made about gypsy travellers on the basis of ethnicity" seemed to be "one of the last areas" of racism that was seen as acceptable in society. The ESC noted that general assumptions were made about gypsy traveller "sites being unkempt

and not made up” and that gypsy travellers were “not to be trusted”. The ESC argued that proceeding “to apply those tropes” to an applicant “perpetuates racial stereotyping”, when councils have been working hard to prevent this from occurring.

The Panel asked why, if that was the ESC’s view of the Respondent’s conduct, he had not concluded the remarks were a matter of public interest or concern (which would mean she would attract enhanced protection in respect of her right to freedom of expression). In response, the ESC advised he considered this would have been a possibility had they been made in the context of a discussion on council policy. The ESC suggested, however, that as the remarks were made in the context of the consideration of a specific quasi-judicial matter, being a live planning application, they could not be categorised as being part of a discussion on a matter of wider public interest and concern.

The Panel noted that the ESC appeared to consider the Respondent’s references to ‘they’ as applying both to the applicant and gypsy travellers in general. Given this, the Panel asked whether they could be said to refer to the one specific planning application only (and not, therefore, to more general matters of public concern). In response, the ESC advised that he did not consider the Respondent would attract enhanced protection in respect of her right to freedom of expression as her comments had been made in the context of a quasi-judicial meeting.

When asked whether his view was that the Respondent had acted unfairly or that she had simply failed to avoid a perception of having done so, the ESC contended it was inappropriate for the Respondent to have made general remarks about other applications in the course of considering the specific one before the Committee and that doing so could be prejudicial. The ESC advised that while he considered it a “fine line”, it was his view that the Respondent had failed to avoid a perception of unfairness, rather than having been unfair.

When asked why he did not consider, given his other conclusions, that the Respondent had unlawfully discriminated against the applicant, the ESC advised it was because the Committee was not making a final decision on the application and, therefore, there was no clear detriment to the applicant.

In response to a question about whether a councillor being disrespectful in a quasi-judicial or regulatory setting, would necessarily give rise to a perception of unfairness, as suggested in his report, the ESC accepted it did not. The ESC contended nevertheless that, in this case, the Respondent had made and voiced inappropriate assumptions and, as such, had failed to avoid any perception of unfairness.

Submissions made by the Respondent’s representative

The Respondent’s representative noted that the Respondent had made her comments in the context of the application being considered by the Committee, prior to its further consideration and determination at full Council.

The Respondent’s representative advised that local authorities were obliged under statute to apply the public sector equality duty when preparing local development plans. The Respondent’s representative noted that this included requirements to advance equality of opportunity between those who did and did not share protected characteristics and to foster good relations. The Respondent’s representative noted that the Council’s policies relating to gypsy travellers recognised, protected and advanced their protected characteristics.

The Respondent’s representative noted, however, that while the duty obliges local authorities to have due regard to specific matters, it does not require the achievement of a specific result. The Respondent’s representative contended that the Council complied with this requirement at the meeting on 21 November 2023, without any interference with or breach of this duty, on the part of the Respondent.

The Respondent's representative further noted that the planning system was broadly intended to control development in the public interest, with powers to grant permissions being discretionary depending on the merits of each individual application. In this case, the Respondent's representative suggested that the ESC's report displayed a material misunderstanding of the context in which the Respondent's remarks should be considered and the complaint determined. In particular, the Respondent's representative noted the ESC had stated, in the report, that the Respondent's conduct did not take place during a debate on a question of public interest. The Respondent's representative contended that the ESC's failure to recognise the planning system was broadly intended to control development in the public interest, and that applications were approved with regard to the public interest, was both a material omission of fact and a flaw in reasoning.

The Respondent's representative noted that the ESC appeared to rely upon the assertion that retrospectivity was not a material consideration. The Respondent's representative pointed out, however, that there were three separate paragraphs in the officer's report before the Committee that referred to the retrospective nature of the application. The Respondent's representative noted, in addition, that the report did not recommend that conditions be imposed in respect of the use of the football pitch on the site, as the existing caravans that were the subject of the retrospective application were located at a different part of it. The Respondent's representative noted that planning legislation provides for the variation of applications, so imposing further conditions was an option available to the Council. The Respondent's representative contended that as the retrospective nature of the application was outlined in the report and was clearly a material factor in the officer's recommendation, and as further planning conditions could have been imposed, both matters were relevant in terms of the consideration of the item. As such, the Respondent had been entitled to refer to them at the meeting.

The Respondent's representative argued that the Respondent had done nothing more than voice concerns about matters that were relevant and had been referenced in both the officer's report and the applicant's design and access statement; being what gypsy travellers have been forced to do to obtain a site and the extent and nature of the application. As such, her comments were not gratuitous and could not be understood reasonably as being disrespectful. The Respondent's representative noted the Respondent had agreed with what others had stated at the meeting and that she had not attacked the reputation or rights of gypsy travellers or treated the applicant less favourably than anyone else. The Respondent's representative contended it followed, therefore, that it was not necessary to restrict the Respondent's right to freedom of expression in order to protect the rights and reputation of others.

The Respondent's representative advised that the Respondent's vote at the meeting was cast in support of a ward councillor who was concerned that insufficient weight had been given to the objections against the application. The Respondent's representative noted that the Respondent did not take part in the consideration of the item at full Council when the application was determined. The Respondent's representative noted that the ESC considered the Respondent's conduct opened the Council up to the risk of judicial review. The Respondent's representative noted, however, that such a challenge would proceed only if an applicant could demonstrate there was a possibility of success on the grounds of: illegality (if the law was applied incorrectly in the making of the decision on the application); irrationality; or procedural impropriety. The Respondent's representative suggested that none of those grounds would apply in this case and, as such, there was and had not been any realistic danger of judicial review.

The Respondent's representative noted the ESC stated, in his report, that the Respondent's comments and the tone in which she made them, suggested she considered the applicant could not be trusted and would not comply with any planning conditions imposed. The Respondent's representative submitted, however, that there was no evidence to support that view or conclusion. The Respondent's representative contended it was arguable that the fact that conditions could be imposed in relation to any grant of planning permission suggested, in itself, that applicants generally could not be trusted. The Respondent's representative noted, however, the key matter of relevance was the Council's duty, as a local authority, to control the nature, scale and design of any development in the public interest. The Respondent's representative contended, in this

case, the Respondent was concerned that the assessment by officers of the impact of the application was restricted to the part of the site covered by the retrospective application only (irrespective of any conditions imposed) and that the potential for the change of use to be applied to whole site had not been fully considered. The Respondent's representative submitted that the Respondent's comments related to this and were justified in the public interest, given the potential consequences of the change of use of the site should have been assessed in full.

The Respondent's representative noted that the recording of the meeting on 21 November 2023 was of a poor quality and incomplete. As it was not possible to hear exactly what was said, the Respondent's representative suggested that the Panel should be careful not make inferences in this regard. The Respondent's representative further suggested that the Panel should not place too much reliance on specific comments in the absence of knowing, and taking into account, the full context in which they had been made.

The Respondent's representative noted that the Panel was obliged to apply the balance of probabilities and to determine what was more likely that not to have occurred, in terms of the Respondent's conduct. The Respondent's representative suggested the Panel should also apply common sense and have regard to the whole context in which the Respondent's comments were made. In this case, the Respondent's representative contended that there was insufficient evidence before the Panel to support a conclusion, on the balance of probabilities, that the Respondent's conduct met the threshold for amounting to a breach of the Code.

The Respondent's representative submitted that the Panel should find the Respondent to be a credible and honest witness and accept her evidence in full. The Respondent's representative suggested, in particular, it should accept (as the ESC had) that the Respondent had not unlawfully discriminated against the applicant and had not intended to state she was not British by virtue of being a gypsy traveller.

The Respondent's representative noted that there was a difference between, on the one hand, protecting the rights of an individual with protected characteristics in general (as reflected in the Council's policies), and, on the other, being required to balance the rights of an individual applicant and the merits of their application, against the right of others to make legitimate and valid objections on the merits of these. The Respondent's representative suggested the Respondent was merely undertaking this balancing act and, when doing so, had not discriminated against the applicant, on the basis of her protected characteristics.

The Panel asked the Respondent's representative about whether he considered members of the public might reasonably consider the Respondent's comments insinuated the applicant and other gypsy travellers were not British and, if so, whether this could be considered offensive. In response, the Respondent's representative noted that it would be foolish to suggest that no member of the public could possibly consider it offensive, but the degree to which they might do so was unknown.

The Panel asked whether the Respondent had said anything that implied the applicant could not be trusted. In response, the Respondent's representative confirmed that while the Respondent had suggested some of the proposed conditions should be strengthened, doing so was not intended to imply the applicant could not be trusted. Instead, the Respondent was attempting to ensure there was no future, expanded use of the wider site.

The Panel noted the Respondent had stated, when giving evidence, that she had a difficulty with retrospective applications and suggested that the gypsy travellers used these as a way of obtaining permissions. In response, the Respondent's representative advised he had not heard the Respondent making such a statement. The Respondent's representative contended that the Respondent had been making a general comment about retrospective applications and what can, and does happen, in such cases.

The Panel noted that the Respondent had advised both that it had not been her intention to state the applicant was not British and that she had made the distinction deliberately following a conversation with a gypsy traveller. The Panel asked whether these positions were contradictory. In response, the Respondent's representative stated that it had been deliberate and had arisen from the conversation in question.

DECISION

The Hearing Panel considered the submissions made both in writing and orally at the Hearing. It concluded that:

1. The Councillors' Code of Conduct applied to the Respondent, Councillor Agnew.
2. The Respondent had breached paragraphs 3.1, 3.2, 7.4. and 7.5 of the Code and a restriction on her right to freedom of expression that such a finding would entail could be justified.

Reasons for Decision

1. The Panel noted it was not in dispute, and found, that the Respondent attended, contributed and voted at the Council's Kincardine and Mearns Area Committee on 21 November 2023 in her capacity as an elected member and Chair of the Committee. The Panel was satisfied, therefore, that the Code applied to her conduct at the time of the events in question.
2. In reaching its decision as to whether there had been a breach of the Code, the Panel took the following three-stage approach, as outlined in the Standards Commission's Advice Note on the Application of Article 10 of the ECHR:
 - Firstly, it would consider whether the facts found led it to conclude, on the balance of probabilities, that the Respondent had failed to comply with the Code.
 - Secondly, if so, it would then consider whether such a finding in itself was, on the face of it, a breach of the Respondent's right to freedom of expression under Article 10.
 - Thirdly, if so, the Panel would proceed to consider whether the restriction involved by the finding was justified by Article 10(2), which allows restrictions that are necessary in a democratic society.

Stage 1: Whether the Respondent's conduct amounted, on the face of it, to a breach of the Code

3. The Hearing Panel considered carefully the evidence led, and submissions made orally at the Hearing and in writing.
4. The Panel noted that the complaint concerned the Respondent's conduct at a meeting of the Council's Kincardine and Mearns Area Committee on 21 November 2023.
5. The Panel noted it was not in dispute that, at the meeting, the Respondent made various remarks about a planning application under consideration. These included raising concerns that part of the application was retrospective and questioning whether the fact that the applicant and others had already put their caravans on the site without permission would mean they might consider they could do what they wanted going forward, in the absence of any relevant approval (and that they would just ignore any other restrictions on the use of the site).
6. The Panel noted the ESC suggested the Respondent's position that she was concerned about the potential wider use of the site, and not just the fact that the application was retrospective, was not coherent or credible. This was because it was clear she had wanted her comments about its retrospective nature to be recorded, but the retrospective aspect of the site was limited to the part where the caravans were located. The Panel was of the view, however, the two concerns were not necessarily mutually exclusive as it did not consider the fact the Respondent asked for her concerns about the retrospective nature of the application to be recorded was evidence that she did not also have concerns about the potential future use of the site.

7. The Panel found that the officer's report on the application stated that the use of the site for unauthorised traveller accommodation was ongoing. The Panel considered, therefore, that it was reasonable for the Respondent to have raised concerns about this and the possibility that a similar situation might arise in respect of the future use of the site, regardless of whether its retrospective nature was a material consideration that could be considered in terms of any decision-making on the application. The Panel concluded, therefore, that the Respondent's conduct in raising concerns about this matter was not inherently disrespectful towards the applicant.
8. The Panel found, however, that the Respondent stated, "I know there's been, as well, the same thing in...", and that she also referred to another site. While the recording of the meeting was incomplete and the Panel could not determine exactly what the Respondent had said, it was satisfied from her evidence that she had been referring to the unauthorised use of different sites. The Panel noted that the Respondent proceeded to state "they seem to do what they want", "history could repeat itself", "if they've done it once, other things can happen".
9. The Panel noted that the Respondent's position was that, when making these comments, she had not been referring to the use of other sites by gypsy travellers in particular. The Panel noted, however, that the Respondent confirmed, in evidence, that her concerns had arisen, at least in part, from her knowledge of a fight involving gypsy travellers at another site, when its use had been extended. The Panel further noted that the Respondent provided conflicting evidence as to whether she was referring, when expressing these concerns, to the potential extended use of the site that was the subject of the application before the Committee or, more generally, to applicants who made retrospective applications.
10. The Panel noted that the Respondent had indicated she was unaware the applicant was a gypsy traveller before the meeting. The Panel agreed that, regardless of whether that was the case, it was evident from the discussions on the application that she was aware of this fact at the meeting and when making the comments outlined above. Given its findings that:
 - the Respondent had referred to the unauthorised use of least one other site;
 - the Respondent was aware the applicant was a gypsy traveller;
 - there were clear inconsistencies in the Respondent's evidence with regard to whom she had been referring when using the word "they"; and
 - The Respondent indicated, in her evidence, that her concerns were based, in part on her knowledge of a fight that had taken place between gypsy travellers at another site,the Panel was satisfied on the balance of probabilities that, when making her remarks, the Respondent was referring not only to the potential continued unauthorised use by the applicant at the specific site in question, but also to the unauthorised use of sites by gypsy travellers more widely. The Panel therefore found that the Respondent's comments were not based solely on, or confined to, information in the report about the continued unauthorised use of the specific site in question.
11. The Panel agreed that it would have been understandable and indeed reasonable for anyone at the meeting, or observing it, to conclude the Respondent's use of 'they' was a reference to gypsy travellers in general. This was because they would have been aware that the applicant was a gypsy traveller and would not have the benefit of any further clarification from the Respondent as to what she had meant.
12. The Panel considered that in using the word 'they' in the context of making references to her apparent knowledge of unauthorised use of different sites and in the context of having raised concerns about retrospective applications and about the specific application itself, the Respondent assumed and inferred that gypsy travellers, including the applicant, were more likely to breach planning conditions. The Panel agreed that the making of such an assumption, and such an inference, was inherently disrespectful both to the applicant and the gypsy traveller community in general.

13. The Panel however did not agree with the ESC's inference that if gypsy travellers could not be trusted to comply with planning conditions, they could not be trusted in general. The Panel did not consider there was anything in what the Respondent had said, either at the meeting or in her evidence at the Hearing, to support this (indeed, it noted the Respondent's own evidence suggested otherwise). The Panel noted the ESC had also referred to general assumptions being made about "sites being unkempt and not made up" and the gypsy travellers were "not to be trusted", and had noted these were "racist tropes". The Panel was concerned that in doing so, the ESC had inferred the Respondent had made these assumptions, when in fact she had made no mention of such matters. The Panel wished to be clear that it had not found the Respondent had used or inferred any racist tropes and confirmed that its finding was limited to the Respondent having inferred the applicant, and other gypsy travellers, may not comply with planning conditions.
14. The Panel noted that the ESC had not mentioned in his report, or provided evidence to support, his argument that the Respondent's comments perpetuated stereotypes about the gypsy traveller community or that they had the scope to undo "all of the Council's work" to ensure this community's rights were respected. The Panel noted, therefore, that the Respondent had not been afforded the opportunity to respond to or address these accusations. The Panel considered the ESC's contentions in this regard were speculative at best and agreed they should be disregarded.
15. The Panel found that when another councillor challenged the Respondent's remarks and stated that gypsy travellers had protected characteristics and it was unacceptable for the Respondent to be putting across her views in that forum, the Respondent advised she had not made her comments just because the applicant and others occupying the site were gypsy travellers. The Respondent proceeded to say, and then repeat following a request for clarification, that her concerns stemmed from the size of the site and that she would also have expressed them if the applicant had been "a British person".
16. The Panel acknowledged it was evident that the Respondent made her comment about a British person in an attempt to explain and confirm that her concerns about the application had nothing to do with the protected characteristics of the applicant or others. The Panel had no reason to doubt the Respondent's position that she had been informed by a gypsy traveller that she did not consider herself and her family to be British.
17. The Panel found, nevertheless, that the Respondent effectively made a distinction between gypsy travellers and other British people, based on an assumption or perception of their nationality or ethnicity. The Panel was of the view that it could be reasonably inferred from this that the Respondent did not consider gypsy travellers to be British. The Panel agreed that while it may not have been the Respondent's intention, it would be understandable for the applicant and other gypsy travellers to have found the making of such an assumption to be disrespectful, given it was such a sweeping generalisation and appeared to be based on a single interaction (which would have been unknown to those present at or observing the meeting).
18. The Panel noted that paragraph 3.2 of the Code, obliges councillors to seek to foster good relations between different people. The Panel noted that the ESC had sought to rely, in his submissions, on previous decisions of the Standards Commission in respect of alleged breaches of this provision. The Panel noted, however, that the facts and circumstances of these cases were very different to the one before it and agreed, therefore, that they were not analogous or relevant to its considerations.
19. The Panel nevertheless agreed, in this case, that by making a distinction by implying both that gypsy travellers were not British and, further, by implying that, as a group, they were more likely to breach planning conditions, the Respondent failed to foster good relations between gypsy travellers and the wider community.

20. The Panel therefore concluded that the Respondent had, on the face of it, breached both paragraphs 3.1 and 3.2 of the Code.
21. The Panel noted that paragraph 7.4 of the Code obliges councillors, when considering quasi-judicial matters (such as planning applications), to act fairly and be seen to be acting fairly throughout the entire application process. The Panel noted that paragraph 7.5 states that, in doing so, they must not demonstrate bias or be seen to be demonstrating bias.
22. The Panel agreed that the fact that a councillor was disrespectful towards an applicant at a meeting would not necessarily, in itself, mean they were, or could be perceived as being, unfair or biased towards that individual.
23. In this case, however, the Panel was satisfied anyone at or observing the meeting would reasonably consider that, by raising concerns about other sites and in inferring gypsy travellers as a group could not be trusted to comply with planning conditions, the Respondent was not focused solely on the individual merits of the application. The Panel instead agreed that anyone at or observing the meeting would reasonably conclude that the Respondent's consideration of the application was based, at least in part, on her knowledge of alleged breaches of planning conditions elsewhere, and an assumption that the applicant, as a gypsy traveller, would behave in a similar manner.
24. The Panel noted the Respondent had made her comment to the effect that she would have raised the same concerns had the applicant been British, in the context of explaining that the applicant's protected characteristic had not been a factor in her consideration of the application. The Panel considered, however, that it would be reasonable for those present or observing the meeting, to consider the Respondent's comment, both when taken alone, and when considered with her previous remarks that had implied gypsy travellers were more likely to breach planning conditions, as evidence she viewed the applicant differently to, and distinct from, other British people because she was a gypsy traveller. As such, the Panel considered the Respondent had failed to avoid any perception of unfairness or bias.
25. The Panel concluded, therefore, that the Respondent had also breached paragraphs 7.4 and 7.5 of the Code.

Stage 2: Whether a finding of a contravention of the Code would be a breach of the Respondent's right to freedom of expression under Article 10 of the ECHR

26. The Panel noted that enhanced protection of freedom of expression under Article 10 applies to all levels of politics, including local politics. The Panel further noted that the Courts have held that political expression is a broad concept and that there is little distinction between political discussion and discussion of matters of public concern¹. The Panel nevertheless noted, however, that not every comment or statement made by a politician attracts enhanced protection.
27. The Panel noted that the ESC appeared to suggest, in his response to Panel questioning, that the fact the Respondent's comments took place in a quasi-judicial context meant that she would not benefit from enhanced protection. The Panel wished to make it clear that it is not the case that enhanced protection would never apply in a quasi-judicial setting. The Panel noted that while the Standards Commission's Advice Note on the Application of Article 10 of the ECHR states that a comment, made in a quasi-judicial setting, *may* not attract the same level of protection as it would in another environment, it does not state that it *will* not.

¹ Thorgeirson v Iceland (1992) 14 EHRR 843

28. The Panel agreed that the approach taken by local politicians, as members of quasi-judicial and regulatory decision-making committees, was a matter of public interest or concern. The Panel acknowledged that it was arguable, in this case, when making some of her comments, the Respondent was outlining her approach to quasi-judicial decision-making in general. The Panel considered, nevertheless, that the Respondent made the comments when discussing a specific applicant and application and then later, when attempting to justify why she had done so. The Panel determined, therefore, that it would be reasonable to conclude the Respondent was discussing her approach to determining the specific application and her views on the applicant. The Panel agreed, therefore, that the comments were not made in context of making a political speech or during a debate on questions of public interest, and instead were made in the course of determining an application for planning permission; being a quasi-judicial setting. The Panel noted that the Courts have held that in such a setting, where a councillor is not indulging in political commentary, engaging in commercial observation or discussing council policy or matters of public concern, it would not be wrong for a Panel to conclude that enhanced protection does not apply². As such, the Panel was satisfied that the Respondent would not attract enhanced protection in respect of her right to freedom of expression.

Stage 3: Whether any restriction on the Respondent's right to freedom of expression involved by a finding of a contravention of the Code would be justified by Article 10(2) of the ECHR

29. The Panel nevertheless noted that the right to freedom of expression is not absolute. Article 10(2) states that restrictions can be imposed, provided they are necessary in order to achieve a legitimate aim. The Panel noted that legitimate aims can include to:

- protect the rights and reputations of others;
- enable local government to function effectively; and
- ensure public confidence in local government is not undermined and that a council is not brought into disrepute.

30. The Panel accepted, however, that the Courts have found any restriction on freedom of expression must also be proportionate to the legitimate aim being pursued. As such, the Panel was required to undertake a balancing exercise, weighing the protection enjoyed by the Respondent in respect of her right to freedom of expression against any restriction imposed by the application of the Code and the imposition of any sanction. In doing so, the Panel had regard to the following findings that have been made by the Courts.

- The necessity of any restriction on the exercise of freedom of expression must be established convincingly and be in response to a pressing social need.
- The less egregious the conduct in question, the harder it is for a Panel, when undertaking its balancing exercise, to justifiably conclude that a restriction on an individual's right to freedom of expression is required³.

31. The Panel noted it had found, in this case, that the Respondent's conduct in making her remarks was disrespectful towards the applicant and the wider gypsy traveller community and, further, that she had failed to foster good relations between this community and others. The Panel noted it had found that this could have led to a perception that she had not treated the applicant fairly, had treated her differently, or may have been biased against her, because of a protected characteristic. The Panel noted that councillors are required to consider planning applications fairly, without bias and on their individual merits, and that applicants (and the public in general) have a right to expect they will do so. Given this expectation, the Panel considered that any perception a councillor may not be doing so and, instead, might be basing their consideration of the application, at least in part, on the protected characteristics of an applicant would be shocking.

² Macdiarmid v The Standards Commission for Scotland 17 July 2019

³ R (Calver) v Adjudication Panel for Wales (2012) EWHC 1172 (Admin)

32. The Panel was of the view that a perception that an elected member was taking into account irrelevant considerations (in this case, the protected characteristics of the applicant) when considering and determining quasi-judicial matters, such as planning application, also had the potential to damage the public's confidence in the Council and its decision-making, as well as leaving it at risk of a legal challenge (with associated reputational and cost implications). The Panel considered, therefore, there was a clear pressing social need for a restriction to prevent this from occurring.
33. In this case, the Panel considered that a restriction was proportionate as the Respondent could have raised any concerns she had about the specific application without implying both that gypsy travellers were not British and that, as a group, they were more likely to breach planning conditions. The Panel did not consider, therefore, that a restriction on the Respondent's right to freedom of expression would, in any way, restrict her ability, or that of any other councillor, to undertake properly the scrutiny and determination of planning applications and to raise any concerns they may have about their individual merits (including the extent of any proposed conditions). As such, the Panel was satisfied that a finding of breach and imposition of a sanction was sufficient and proportionate and could not be said to have a chilling effect on the ability of the Respondent to undertake her role as a member of the Committee.
34. Taking all the foregoing into account, the Panel determined that the Respondent's conduct in making the comments was sufficiently excessive as to justify a restriction on her right to freedom of expression. The Panel was satisfied therefore that a restriction on the Respondent's right to freedom of expression was relevant and necessary, in order to meet the aims outlined at the beginning of Stage 3, and in particular to:
- protect the rights of the applicant and others;
 - prevent public confidence in the Council from being undermined; and
 - act as a deterrent to the Respondent and others from engaging in similar conduct.
35. As such, the Panel was satisfied that the finding of a breach of the Code and the subsequent application of a sanction, would not contravene Article 10. It concluded that a finding of a breach of paragraphs 3.1, 3.2, 7.4 and 7.5 could be made.

Evidence in Mitigation

The Respondent's representative noted that the Respondent had nothing to gain by either approving or refusing the application and had no personal interest in the matter. The Respondent's representative explained that as the site was not in her ward, the Respondent was not under any pressure from constituents. As such, she was only concerned with the public interest, as a councillor, when considering the application.

SANCTION

The decision of the Hearing Panel was to suspend, for a period of two months with effect from 9 July 2025, the Respondent, Councillor Agnew, from all meetings of the council and of any committee or sub-committee thereof and of any other body on which she is a representative or nominee of the Council.

This sanction was made under section 19(1)(c) terms of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

Reasons for Sanction

1. In determining the appropriate sanction, the Panel considered:
 - firstly, whether the interference (i.e. the proposed sanction) was the minimum necessary, or whether less restrictive means could be employed; and then
 - secondly, whether the benefit of that least restrictive measure outweighs its adverse impact on the Respondent's right to freedom of expression. For example, whether any benefit in applying a

sanction in respect of protecting the rights and reputations of others, and ensuring confidence in local government, would outweigh any impact on the Respondent.

2. In making its decision on sanction, the Panel had regard to the Standards Commission's Policy on the Application of Sanctions. A copy of the policy can be found on the Standards Commission's website, here: <https://www.standardscommissionscotland.org.uk/cases/hearing-rules>
3. The Panel began by assessing the nature and seriousness of the breach of the Code. The Panel agreed that the provisions that state councillors must be respectful, must foster good relations between different people and must avoid any perception that they are not acting fairly and without bias when making decisions on quasi-judicial matters, such as planning applications, are key requirements of the Councillors' Code. The Panel noted that a failure to comply with the Code's provisions in this regard was serious and can erode public confidence in the role of a councillor. Such a failure also had the potential to bring the committee, the Council and its decisions into disrepute and open it up to the risk of a successful legal challenge.
4. The Panel noted it had found that the Respondent's conduct could have led to a perception that she had not treated the applicant fairly, or may have been biased against her, because of a protected characteristic. The Panel agreed that while the Respondent had not taken part in the final consideration of the application at full Council, it considered, nonetheless, that her conduct could have led to such a perception. The Panel considered it was evident the Respondent's conduct had caused concern amongst those present at the meeting and, further, that it led to the Monitoring Officer having to make a difficult decision between being transparent and publishing the full meeting, and protecting the Council's reputation by editing it. The Panel was of the view, therefore, that the breach of the Code was relatively serious in nature.
5. The Panel noted, nevertheless, that that the conduct in question essentially amounted to comments made at one committee meeting and, as such, was limited in duration. The Panel further acknowledged that the Respondent's decision to recuse herself from taking part in the consideration of the item when it was determined at the full Council meeting was likely to have reduced the risk of a legal challenge being made on the basis of her conduct.
6. The Panel then considered the aggravating and mitigating factors as set out in the Policy on the Application of Sanctions, beginning with those in mitigation. The Panel noted that mitigating factors are those which may lessen the severity or culpability of the breach.
7. The Panel was pleased to note that the Respondent had referred herself to the ESC, had co-operated with the investigative and Hearing processes and that she had not been the subject of any previous finding of a previous contravention of the Code. The Panel further noted that the Respondent had acknowledged, during her evidence, that the language she had used had been clumsy.
8. The Panel then proceeded to consider whether there were any aggravating factors; being ones that may increase the severity or culpability of the breach.
9. The Panel agreed that, as an experienced member of the Committee, the Respondent should have known how to raise any concerns she may have had about any application before it, without being disrespectful and making assumptions about the applicant and others. The Panel was concerned that while it was apparent the Respondent had not intended to be disrespectful or divisive, she had not demonstrated any understanding of the need to avoid making assumptions or any insight into how her comments could be reasonably perceived, until the Hearing itself.

10. The Panel was of the view that a censure, being the minimum sanction available to the Panel, was not appropriate in light of the seriousness of the conduct and impact it had or could have had on the applicant and confidence in the Council's decision-making. This was because the Panel agreed that a censure would not achieve the aims, as outlined in the Policy on the Application of Sanctions, of:

- preserving the ethical standards framework;
- promoting adherence to the Councillors' Code of Conduct;
- maintaining and improving the public's confidence that councillors will comply with the Code and will be held accountable if they fail to do so; and
- achieving credible deterrence.

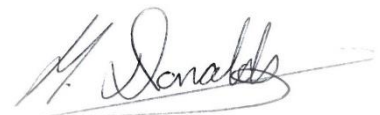
11. Having considered the nature and seriousness of the breach, as well as the aggravating and mitigating factors identified, the Panel concluded that a short suspension was the appropriate sanction in the circumstances. The Panel accepted that the Respondent's conduct had been limited in duration and did not consider, therefore, that a disqualification or more lengthy suspension was warranted or justified.

12. The Panel was satisfied that the imposition of a short suspension was proportionate and the minimum necessary to achieve the aims outlined above and, in particular, to promote adherence to the provisions in Section 7 of the Code, which regulate how councillors should conduct themselves when dealing with quasi-judicial and regulatory matters. Having considered all of the matters outlined above, the Panel concluded, on balance, that the appropriate sanction, was to suspend the right of the Respondent for a period of two month(s) with effect from 9 July 2025.

RIGHT OF APPEAL

The Respondent has a right of appeal in respect of this decision, as outlined in Section 22 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

Date: 7 July 2025



**Helen Donaldson
Chair of the Hearing Panel**