

**Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at North Ayrshire Council Headquarters, Cunninghame House, Irvine on Wednesday, 30 July 2025.**

**Panel Members:** Dr Lezley Stewart, Chair of the Hearing Panel  
Mrs Morag Ferguson  
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/NA/4086, concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Donald Reid (the Respondent).

The ESC and Respondent represented themselves at the Hearing.

**REFERRAL**

Following an investigation into complaints received in March 2024 about the conduct of the Respondent, the ESC referred a report to the Standards Commission on 27 May 2025, in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000.

On receipt of the report, the Standards Commission determined to take no action in respect of two issues of complaint, which alleged that the Respondent had breached confidentiality and failed to declare an interest. In making this decision, the Standards Commission noted the ESC had found the information the Respondent had disclosed was not confidential and that any connection he may have had to the matter being discussed would not amount to a declarable interest.

Having reviewed the ESC's report, the Standards Commission was satisfied that the Respondent's conduct in respect of these two issues would not amount to a breach of the Code. In the circumstances, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to consider the two issues at a Hearing.

The Standards Commission nevertheless decided to hold a Hearing in respect of the other issue of complaint, as outlined in the referral report. The substance of this was that the Respondent had failed to comply with paragraphs 3.1 and 3.3 of the Code, 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.*

*3.3: I will not engage in any conduct that could amount to bullying or harassment (which includes sexual harassment). I accept that such conduct is completely unacceptable and will be considered to be a breach of this Code.*

**Preliminary Matters**

The Hearing Panel noted that the ESC found that the Respondent had, on the face of it, contravened the Code in respect of the issue to be considered at the Hearing. The Panel noted that the ESC concluded, nonetheless, that a restriction on the Respondent's right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) could not be justified and, as such, a formal finding of breach could not be made.

The Panel advised those present that the Standards Commission decided it was both proportionate and in the public interest to hold a Hearing on the issue. This was because the Standards Commission considered that holding a Hearing (and the associated publicity) could promote the provisions of the Codes of Conduct and the ethical standards framework. It further considered that the alleged breach that was the subject of the issue was not insignificant or of a technical, minor nature.

The Panel noted it was its role to make a final decision on whether the Code had been breached, and that in doing so, it could reach a different conclusion to that of the ESC's report.

## **EVIDENCE PRESENTED AT THE HEARING**

### **Joint Statement of Facts**

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:

- Complaints had been received from four individuals concerning the conduct of the Respondent during an online scoping meeting of the Kilwinning Locality Partnership on 12 February 2024.
- The Respondent was acting in his capacity as a councillor at the time of the events in question and, as such, the Code was engaged.
- The meeting had been convened to allow the Locality Partnership to discuss an 'expression of interest' from Kilwinning Heritage and to consider whether it could apply for funding. Kilwinning Heritage is a local history society, comprised of volunteers, which receives funding from the Council, and the expression of interest was for a prospective award of grant funding of up to £62,500.
- The expression of interest was presented by a member of the public, Ms A, on behalf of Kilwinning Heritage.

### **Introductory Remarks from the ESC**

The ESC explained that the Respondent was first elected as a councillor in 2002 and served in the role until 2007. Having been re-elected in 2012, the Respondent had remained in post since then, meaning he was an experienced councillor.

The ESC explained that four individuals had complained to his office about the conduct of the Respondent during an online scoping meeting of the Kilwinning Locality Partnership on 12 February 2024. The ESC advised that all four Complainers had a connection to a local history society, Kilwinning Heritage, which received funding from, *inter alia*, North Ayrshire Council. The ESC advised that, at the meeting, the first Complainer, Ms A, was representing Kilwinning Heritage in respect of an expression of interest. The ESC advised that he had found the way the Respondent had treated Ms A at the meeting on 12 February 2024 was discourteous and disrespectful, and amounted, on the face of it, to a breach of paragraph 3.1 of the Code. The ESC explained that this was because while he was satisfied the Respondent had not directed any personal comments towards Ms A, he had nevertheless found that he had been rude, aggressive and confrontational. The ESC advised, however, that he was not persuaded the Respondent's conduct would meet the threshold for being a breach of paragraph 3.3 of the Code (being the provision that requires councillors to refrain from any conduct that could amount to bullying or harassment).

The ESC noted, in any event, that the Respondent was entitled to freedom of expression under Article 10 of the ECHR. The ESC advised he did not consider, in the circumstances of the case, that a restriction on this right, which a formal finding of a breach of the Code and imposition of a sanction would entail, could be justified.

### **Witness Evidence on behalf of the ESC**

The ESC led evidence from four witnesses, all of whom had attended the meeting on 12 February 2024.

**Ms A:** Ms A confirmed she had been representing Kilwinning Heritage at the meeting. Ms A advised that after a Council officer had made some introductory remarks, the Respondent had put questions to her “for the majority” of the meeting. Ms A advised that, other than one question at the end, the Respondent had been the only individual to put questions to her. Ms A explained that while she could not recall exactly how many he had asked she felt, at the time, that they were “coming thick and fast”.

Ms A noted she had advised the ESC, in her complaint, that she had been subjected to a series of interrogative and bullying questions. When asked why she considered the Respondent’s conduct had been inappropriate, Ms A explained she felt his questions were aggressive and accusatory in nature. Ms A contended that the Respondent had not let her finish an answer before asking another question, and that he had been speaking over her. Ms A explained this made her feel as though she was not providing answers, when she had been trying to do so. Ms A advised that the Respondent repeatedly told her that answers she gave were “not right”, before immediately asking another question. Ms A noted that she had not been expecting to provide the level of detail that the Respondent expected (and did not consider it appropriate he was seeking such information), given she was only speaking to an expression of interest (as opposed to a full funding application).

Ms A advised that she felt bullied by the Respondent. Ms A explained this was because he was constantly interrupting her and was clearly not listening to her answers. Ms A acknowledged the Respondent had not directed any personal comments towards her but recalled when she mentioned something about documents in the archives, the Respondent has stated that the last time he checked, Kilwinning was not on the sea so there would be no reason for Kilwinning Heritage to retain documents about boats. Ms A advised she had considered this comment to be “very rude” and dismissive.

Ms A explained that Kilwinning Heritage had put in a great deal of effort, and had worked with Council officers, to ensure the application submitted met the requirements for this stage of the funding process. Ms A advised it was her understanding that the matter would not have moved to the expression of interest stage had it not met these. Ms A advised that while she had never previously appeared before the Kilwinning Locality Partnership, she had a great deal of experience of presenting to funding bodies in her professional role and had never previously experienced such aggressive questioning.

Ms A advised that, on two occasions, the Respondent interrupted her before she had even managed to get halfway through her answer. He had then repeated the same question before speaking over her again. Ms A advised that it was also apparent from the Respondent’s questions that he had not read the paperwork properly. Ms A advised that the Respondent’s camera was switched off during the meeting, meaning she was unable to get any visual clues or prompts from him. Ms A indicated that both these factors may have contributed to the situation and her perception that he was being rude and disrespectful.

When asked why she considered some of the Respondent’s questions to be inappropriate, Ms A explained he had asked a number of challenging questions about part of the bid that related to renting property, when all that was required at the expression of interest stage was high level figures. Ms A noted that it was not until the next stage of the process that a full business case, including a breakdown of figures, would be provided.

Ms A was asked whether it would have been evident to those in attendance during the online meeting that she was upset. Ms A advised she thought this would have been the case as she had become flustered, her face had turned bright red, she had been on the verge of tears and had begun to stutter over her words. Ms A advised that no council officers or other elected members had intervened, but she had observed that several individuals present appeared to be exasperated by the Respondent’s conduct.

Ms A advised that, at one point, the Respondent alleged that Kilwinning Heritage was struggling for members. Ms A advised she did not consider this to be the case, and in any event the issue was irrelevant to the

expression of interest. Ms A advised the extent of the Respondent's questions about the financial matters meant she was unable to speak about the potential community benefits associated with the application.

When asked how the Respondent's conduct had made her feel, Ms A advised she had been very upset. Ms A explained she had telephoned her daughter immediately after the meeting and had been crying so much during the call that, until she had managed to calm down, she had been unable to explain what had happened. Ms A advised that, in her entire professional career, she had never previously been treated in that manner. Ms A noted that she and everyone else involved with Kilwinning Heritage were unpaid volunteers and that the application for council funding was made in good faith. Ms A acknowledged that councillors had every right to decide not to support an application but contended the Respondent's conduct had been very poor and wholly unnecessary.

In response to questions in cross-examination from the Respondent, Ms A acknowledged that normally the individual who submitted an application would be the one to appear and speak to it at meetings. Ms A advised, however, that she was the Project Manager for this proposal and, in this case, was the person who knew the detail of what was being proposed for the archive and why funding was required.

**Mr B:** Mr B advised that he attended the online meeting on 12 February 2024 because, as Vice Chair of Kilwinning Heritage, he had worked with Ms A and others to prepare the expression of interest.

Mr B recalled that the Respondent's questioning of Ms A had lasted about ten minutes. Mr B advised that the Respondent's interventions were more statements or criticisms, than questions. Mr B advised that the Respondent made a number of incorrect assumptions and was both critical and "needlessly difficult" in his approach. Mr B noted that there was a clear imbalance of power between the Respondent and Ms A, and it felt like the Respondent was abusing his position.

Mr B explained that he had previously been a member of Kilwinning Locality Partnership and, despite having over nine years' experience of assessing funding applications from community groups, had never experienced anything like the Respondent's conduct before. As such, he had been both taken aback and shocked. Mr B advised he considered it was clear from his questions that the Respondent did not understand the archive project (that was the subject of the application) and, therefore, it was both discourteous and disrespectful for him to have made statements about what could and should be done with it.

Mr B explained he considered the Respondent made statements to Ms A at the meeting that came across as a verbal attack on her. This was because the Respondent had been loud and short tempered, when it was apparent Ms A was trying her best to respond and provide the information being sought. Mr B contended what even though it had been evident Ms A was unhappy and quite upset, particularly towards the end of the meeting, the Respondent failed to show any patience or understanding.

Mr B advised that the Respondent had stated that the project would run out of money. Mr B explained that he considered this to be inappropriate as, at that stage, Kilwinning Heritage had only submitted an expression of interest (as opposed to a detailed funding application). Mr B advised the Respondent's remark was evidently a criticism, based on nothing more than an assumption.

Mr B advised he considered the Respondent's conduct was disrespectful and discourteous, and amounted to bullying of Ms A. Mr B stated he did not consider the expression of interest merited such behaviour, given council officers had previously advised Kilwinning Heritage that the information and level of detail provided was sufficient at that stage. Mr B stated that he felt it was clear, from the outset of the meeting, that the Respondent was critical of the expression of interest and had no intention of considering it in a fair and reasonable way. Mr B stated that it was also evident the Respondent's interventions were not designed to elicit more information and, instead, were intended as criticisms.

Mr B confirmed his concerns about the Respondent's conduct related to both his manner and approach towards Ms A, and also his criticism of the detail in the expression of interest.

Mr B advised that he had first met the Respondent in 2006 when he (Mr B) had been a member of a community council. Mr B explained that while he had witnessed the Respondent engaging in lively debate at community council meetings, this was in marked contrast to his behaviour at the Kilwinning Locality Partnership meeting on 12 February 2024. Mr B reiterated that the Respondent had been short tempered towards Ms A at that meeting and had come across as aggressive. Mr B reported that this was to the extent that there had been a stunned silence and a pause before anyone else spoke after he completed his questions and interventions.

In response to questions in cross-examination from the Respondent, Mr B acknowledged that the Respondent usually asked questions and sought further information at Kilwinning Locality Partnership meetings when matters involving council funding were being considered.

In response to questions from the Panel, Mr B advised he would have expected some questions to be put to Ms A at the meeting but advised he had been surprised by the tone employed by the Respondent and how critical he had been. Mr B advised that the Respondent became impatient with Ms A when she tried to answer the points he was making, particularly when it was evident she was not able to provide the level of detail about the finances that he was seeking.

**Council Officer A:** Officer A advised she attended the Kilwinning Locality Partnership meeting on 12 February 2024 in her capacity as the Council's Head of Service for Connected Communities.

Officer A could not recollect how many questions the Respondent had put to Ms A at the meeting, or how long he had taken to do so. Officer A advised she considered the Respondent's approach had been robust. When asked what she meant by 'robust', Officer A explained she considered the Respondent had taken a thorough approach and had asked "extended questions" to make sure he understood the project. Officer A confirmed that the Respondent's questions were focused on the funding application and had not been personal in nature.

Officer A advised she recalled Ms A had handled the situation well and had been able to provide the information and respond appropriately. Officer A stated that she considered Ms A appeared composed, albeit she noted it was difficult to read body language during an online meeting.

Officer A explained that, after the meeting, her colleague brought to her attention an email she had received from Ms A expressing concerns about the Respondent's conduct. Officer A advised she had discussed the email with the colleague and then later with the Council's Head of Democratic Services. Following these discussions, Ms A had been directed to the ESC.

Officer A advised she could not recall the volume at which the Respondent had been speaking but noted she did not remember being concerned about this. Officer A recalled that it was evident from the Respondent's tone that he was interested in the project and felt strongly about the question of whether funding should be awarded.

In response to cross-examination from the Respondent, Officer A confirmed that she was aware, from being employed by the Council for some two to three years, that he was known for asking lots of questions, in order to make informed decisions. Officer A advised she considered he had taken such an approach at the meeting on 12 February 2024.

The Panel asked Officer A whether, given the matter was only at the expression of interest stage, she had been surprised at the level of detail being sought by the Respondent. In response, Officer A noted the level

of detail provided or required depended on the specific project, and that individual elected members tended to take different approaches. Officer A advised her recollection was that the Respondent had concerns about the expression of interest and was attempting to explore these with Ms A at the meeting.

Officer A explained that if the Locality Partnership had agreed the expression of interest, a full application would then be prepared. Officer A noted that the process of expressing an interest allowed applicants to understand the areas that could be seen as lacking, so that they could then provide more information or detail as required.

The Panel asked whether, given she felt Ms A had been composed and able to handle the ‘robust’ questions from the Respondent, Officer A had been surprised to learn Ms A had raised concerns after the meeting. In response, Officer A advised that this was not “entirely unexpected” as she had been expecting to hear from Kilwinning Heritage in respect of the application.

The Panel asked Officer A whether, given some witnesses had characterised the Respondent’s approach as aggressive in nature, she was steadfast in her view it had not been inappropriate. In response, Officer A advised she was used to interacting with lots of people with varying personalities in different environments and had become accustomed to the way the individuals she worked with behaved and operated.

In response to a question about whether Council officers were satisfied, at the time, that sufficient detail had been provided by Kilwinning Heritage in advance, to allow the expression of interest to be considered at the meeting, Officer A confirmed that was the case.

**Council Officer B:** Council Officer B advised that she was a Locality Officer for Community Learning and Development. Officer B advised that she was responsible for considering all funding applications for the area and for chairing the part of any meetings where they were considered. Officer B confirmed, therefore, that she had chaired the part of the Kilwinning Locality Partnership meeting on 12 February 2024 when the expression of interest from Kilwinning Heritage was considered. Officer B further confirmed that she had not intervened when the Respondent was questioning Ms A.

Officer B advised she could not recall the duration of the Respondent’s questions or how many he had put to Ms A, but that she remembered he had been “robust” in his approach. Officer B advised that she recalled some other attendees had also asked questions. Officer B noted she had advised the ESC, during the investigation, that the Respondent had been “quite abrupt in some of his questioning” and that she thought this had left Ms A feeling “a little uncomfortable”. Officer B explained she had reached this view due to the Respondent’s “mannerisms” and because he repeated the same questions a few times. Officer B advised that while she felt Ms A had been able to answer the questions well, it appeared from her body language that she was somewhat uncomfortable.

When asked whether she would have expected the Respondent to have spoken to a member of the public in the manner in which he had, Officer B advised that while she did not regard his conduct to amount to bullying, he had been robust and very “to the point”.

Officer B advised that, after the representatives from Kilwinning Heritage left the meeting, the Kilwinning Locality Partnership agreed that the application was not ready to be moved to the next stage. Officer B acknowledged that the notes of the meeting recorded that the Respondent reiterated, during the discussion, that he did not consider the application met the criteria for Community Investment funding, but advised the consensus amongst all attendees was that it was not ready to be progressed at that time.

Officer B noted she had been advised, by email on 19 February 2024, that Ms A had raised concerns about the Respondent’s conduct by email of 16 February 2024. Officer B advised that council officers had continued

to support Kilwinning Heritage after the meeting to try to identify options available to them, in terms of securing funding.

In response to a question from the Respondent about when councillors had received the papers for the meeting on 12 February 2024, and whether this had been the day of the meeting, Officer B advised she could not recall.

When asked by the Respondent if she could recall whether he had experienced difficulties in connecting to the meeting on 12 February 2024, that he had to use his phone to join and could not access his camera, Officer B advised she did not remember but was aware that had been the case in some previous meetings.

The Panel noted that while Officer B had indicated she thought other attendees had also put questions to Ms A, the note of the meeting only recorded that the Respondent had done so. When asked about this, Officer B advised she thought at least one other person had asked a question.

The Panel noted that, in her email to Council officers of 16 February 2024, Ms A had described the Respondent's tone as being rude and aggressive. The Panel asked Officer B whether she had been surprised by this. In response, Officer B advised that she would have been taken aback as she had never previously been involved in a situation where someone was raising concerns about the conduct of an elected member.

The Panel noted that in an email she sent to colleagues, on 19 February 2024, forwarding Ms A's email of 16 February 2024, Officer B stated, "you already know I had my concerns about the way the meeting went". The Panel asked what Officer B's concerns were. In response, Officer B advised she thought she had been referring to the way the questions were asked and put across, but noted this could also have been a reference to the connectivity issues experienced by the Respondent.

When asked for her perception of the Respondent's tone and manner towards Ms A, Officer B advised that she considered he had come across as a "bit abrupt".

Officer B confirmed that Kilwinning Heritage had worked with officers when preparing the expression of interest and that officers were satisfied that the level of detail provided was appropriate for that stage of the process. When asked whether, therefore, she had any concerns about the level of detail being sought by the Respondent at the meeting, Officer B advised it was not unusual for attendees to seek further information and to ask questions. Officer B confirmed that representatives of Kilwinning Heritage had told her that the events at the meeting had put them off from applying for funding through the Locality Partnership again but noted that was their prerogative.

### **Submissions made by the ESC**

The ESC noted that both the evidence provided by witnesses at the Hearing and during his investigation generally supported the Complainers' positions in respect of how the Respondent had conducted himself at the meeting on 12 February 2024.

The ESC acknowledged that the Respondent had experienced difficulties connecting to the online meeting and accepted he could not always see Ms A's reaction to his questions. The ESC accepted the Respondent's intention had been to ensure sufficient information had been provided to allow a decision to be made to progress the matter to the full application stage and, further, that he was motivated by a desire to ensure public funds were distributed appropriately. The ESC further acknowledged that it may not have been the Respondent's intention to upset Ms A.

The ESC contended it was clear nevertheless that the Respondent spoke to, or questioned, Ms A at length and was both frustrated and irritated when doing so. The ESC contended it was also apparent from the

witness accounts that the Respondent had been critical, and that his manner was impolite, blunt and confrontational.

The ESC noted that although it had been apparent to (at least some) attendees that Ms A had been upset and shocked, the Respondent had failed to recognise this, had proceeded regardless, and had not moderated his tone or volume or changed his manner. The ESC recognised that any difficulties the Respondent may have experienced in terms of being able to see Ms A may have exacerbated the situation. The ESC noted, however, that some of the witnesses had indicated that while they were accustomed to the Respondent being generally blunt and robust, they considered he had been more adversarial than usual at the meeting in question.

The ESC noted that everyone has a different personality and way of communicating and suggested that, based on the Respondent's "speaking style", he might come across as "quite rough". The ESC argued, nevertheless, that it would have been possible for him to have spoken to Ms A without being as confrontational and disrespectful.

The ESC contended it was evident the Respondent had allowed his frustration to affect how he spoke to Ms A at the meeting and that this had caused upset to others in attendance. The ESC argued that, in the circumstances, it was understandable for the Complainers to have characterised the Respondent's conduct as rude, aggressive and confrontational. This was particularly the case as his camera had been off so any views on his demeanour would have been based solely on his voice and the tone he employed. For the reasons outlined above, the ESC advised he had concluded that the Respondent had been disrespectful and discourteous to Ms A and had, on the face of it, breached paragraph 3.1 of the Code.

Turning to whether the Respondent's conduct could amount to bullying or harassment, the ESC acknowledged the Standards Commission's Guidance notes it is the impact of any behaviour, not the intent, that is the key. The ESC further acknowledged that there was a power imbalance between the Respondent and Ms A, with the Respondent being an experienced and senior councillor, who was a decision-maker in terms of whether the application could progress.

The ESC accepted that Ms A felt humiliated, flustered and upset as a result of the Respondent's conduct. The ESC nevertheless contended that the Panel, in assessing whether his behaviour would meet the threshold for amounting to a breach of the bullying and harassment provision in the Code, must assess, objectively, whether this was a "reasonably foreseeable impact". The ESC argued that, in doing so, the Panel should take into consideration the fact that, as Ms A was representing a community group which was seeking a not inconsiderable amount of public funds, it would be reasonable to conclude she should have expected to face robust and challenging questions in respect of the expression of interest.

The ESC noted that there was no suggestion that the matters the Respondent raised were not pertinent or that his line of questioning was not legitimate. The ESC contended that it was "clear the consensus" of the decision-makers present at the meeting was that the application was not ready and did not meet the funding criteria. The ESC noted that it was also evident the Respondent was frustrated by what he considered to be a lack of information, and that his questioning of Ms A only lasted some ten minutes or so.

The ESC accepted Ms A was visibly upset, but noted it was apparent that, as the Respondent was not looking at her on his screen, he was unaware of the impact his questioning was having on her. The ESC further suggested that as the meeting was held online, the impact of the Respondent's confrontational style would have been reduced.

In these circumstances and given that none of the questions the Respondent directed at her were personal in nature, the ESC contended it was not reasonable for Ms A to have felt humiliated or upset. The ESC stated he wished to make it clear that he did not wish to undermine how she felt but reiterated that he was required to consider the matter objectively.

For the reasons outlined above, the ESC contended the Respondent's conduct would not amount to a breach of the bullying and harassment provision at paragraph 3.3 of the Code.

The ESC recognised that a formal finding of a breach of paragraph 3.1 of the Code would represent a restriction on the Respondent's right to freedom of expression under Article 10.

The ESC argued that the Respondent would attract enhanced protection in respect of this right given that, at the time of the conduct in question, he was engaged, as an elected member, in discussing an application from a community group for discretionary funding (being a matter of public concern).

The ESC noted that the right to freedom of expression is not absolute, and that a restriction can be imposed, if it is necessary and proportionate in order to:

- protect the rights and reputations of others; and
- ensure the standards of public debate did not fall below a minimum level as to bring the Council into disrepute.

The ESC noted, nevertheless, that the Courts have held that there is little scope for restrictions on political speech or on debates on questions of public interest. The ESC further noted that in a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, controversial, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.

In this case, the ESC argued that while the Respondent had been rude and confrontational, he had not directed any personal comments, abuse or profanities towards Ms A and it was evident his frustration and criticisms concerned the content of the expression of interest and the presentation, as opposed to her as an individual. As such, the ESC argued it did not amount to a direct attack on her reputation.

The ESC noted that the Respondent was entitled to put questions to Ms A if he considered the expression of interest was lacking in detail and that he did not have sufficient information to make an informed decision. The ESC noted that the consensus of all decision-makers at the meeting was that the application needed to be developed further before it could be moved to the next stage. As such, the ESC contended that the Respondent's questions were opinion or value judgements that had a basis in fact.

The ESC advised he did not consider a restriction on the Respondent's right to freedom of expression was necessary to protect the rights and reputations of those making applications to have a fair hearing. The ESC advised this was because he considered it was clear the Respondent would have employed the same line of questioning to anyone presenting what he considered to be an incomplete expression of interest. The ESC argued a restriction was also not necessary to protect the community group's right to make a further application, as he noted that they were not precluded from doing so. The ESC argued that while Ms A's experience had been upsetting, it was not so damaging as to prevent the group from asking for help from officers and submitting a further application in the future.

The ESC advised that, in the circumstances, he was not convinced that it was appropriate to apply a restriction that could preclude robust questioning. The ESC argued that while the Respondent's conduct had been disrespectful, it was not so offensive or egregious as to justify a restriction on his right to freedom of expression. The ESC suggested this was particularly the case given that members of the public should anticipate they may have to face robust questioning when applying for public funds.

The Panel noted that the ESC had concluded the Respondent had been rude, aggressive and confrontational towards Ms A and asked why, given this conclusion, he did not consider it was reasonable for her to have felt both upset and uncomfortable. In response, the ESC noted that the Standards Commission's Guidance made it clear that, when considering whether conduct amounted to bullying or harassment, it was the impact of

the behaviour that was the key. The ESC noted, however, that in considering whether the threshold for a breach of the bullying and harassment provision in the Code had been met, he and the Panel were required not only required to consider the impact on the specific individual in question, but to also assess, objectively, what the likely impact would be on reasonable person. The ESC noted, in this case, that the Respondent had not directed any personal comments towards Ms A.

The Panel then asked whether, given Ms A was a volunteer, representing a community group, she would have been entitled to expect a level of courtesy and respect and that it would have been reasonable for her to have felt upset and uncomfortable when this was not extended. In response, the ESC agreed but noted that anyone applying for public funding should be expected to be questioned robustly and, as such, he did not consider the Respondent's conduct amounted to either bullying or harassment.

When asked whether he considered the Respondent's questioning had gone beyond what could reasonably be described as 'robust', the ESC agreed but contended it had not extended so far as to amount to bullying or harassment. The ESC accepted, nevertheless, that there was a power imbalance between the Respondent and Ms A and that she may have felt more uncomfortable as she would not have been able to respond in kind.

Turning to his submissions in respect of Article 10, the Panel asked the ESC why he had not considered the Respondent's conduct towards Ms A to be personal in nature. In reply, the ESC advised that while he had found the Respondent to be gruff, rude and confrontational, all his questions had concerned the application, and not her as an individual.

The Panel asked whether it would not be reasonable for anyone being interrupted and talked over in such a manner to take it personally. In response, the ESC noted that he had been subjected to robust questioning when appearing before Parliamentary committees and had not taken that personally. The ESC advised he did not consider it was unreasonable for Ms A to have taken the Respondent's conduct personally, but again reiterated that both he and the Panel were obliged to take a wider view and consider the matter objectively. The Panel noted that the ESC had taken into account the fact that the meeting was online, and that the Respondent's camera was off, when considering his conduct. The Panel asked, however, whether the ESC considered that, as an experienced politician, the Respondent should have known whether his conduct was appropriate and should have been aware of how it would be perceived, regardless of whether he could see Ms A or whether other attendees could see him. The ESC suggested, in response, that it might not be fair to reach that conclusion given most people rely on visual clues to help them understand the impact of their behaviour.

The Panel noted the ESC had referred to the Respondent as having a generally blunt and robust style but asked the ESC whether this absolved his behaviour, given the Code sets a minimum standard and does not differentiate between individuals with different backgrounds, life experiences or personalities. The ESC advised he had not investigated how the Respondent behaved in other contexts but noted the approach he had taken at the Hearing itself suggested he was somewhat "gruff" in his manner. The ESC contended that the Respondent had perhaps gone further than normal at the meeting but suggested this was probably out of frustration.

When asked whether he considered Ms A should have been aware of the Respondent's normal manner or any frustration he was experiencing and have taken this into account in determining whether she should feel upset, the ESC agreed she should not. The ESC argued, nevertheless, that robust questioning was "part of politics".

In response to a question from the Panel about whether it was possible to question robustly without being rude, the ESC advised that he was not excusing the Respondent's conduct but had to note that all councillors

had different backgrounds and individual communication styles. The ESC accepted, nonetheless, that the Code set a minimum standard in terms of their conduct.

The Panel asked whether not paying attention to Ms A's reactions at the meeting was disrespectful in itself. In response, the ESC agreed this was possible, but noted the Respondent was trying to look at the papers. The ESC advised the Respondent was not initially meant to be at the meeting and had only attended because he had been told it would not be quorate if he did not do so. The ESC accepted, however, that by agreeing to attend, the Respondent was accepting the Code was engaged and that he was obliged to abide by its provisions.

The Panel noted that the ESC had indicated that as the meeting had been held online, the Respondent's conduct would have felt less intimidating. The Panel questioned whether it was possible it may have felt more intimidating as Ms A was isolated and did not have anyone with her for support. In response, the ESC advised he had not investigated whether she was alone and did not have access to any support. The ESC contended, however, that it was more likely that there would be a greater impact if someone physically present in the same room was being aggressive.

### **Submissions made by the Respondent**

The Respondent advised he had not intended, or set out, to upset anyone or make them feel uncomfortable at the meeting. The Respondent advised that, having been made aware that he had done so, and having reflected on the matter, he was upset with himself.

The Respondent explained that he had a background in audit and his aim was always to "follow the public pound" [ensuring clear accountability and proper use of public funds]. The Respondent advised that his intention at the meeting was to seek a conclusion in respect of the application as he was conscious, at the time, of the pressure on public funds and the need for increased scrutiny in respect of expenditure.

The Respondent explained that as he was working on the day of the meeting, he had never intended to attend. The Respondent advised, however, that he had been told it could not go ahead unless he was there. The Respondent explained that he had only received the report on the application some three hours before the meeting and had not had time to print a copy. As such, he had been following the slides and had been trying to look at the report on screen when Ms A finished her presentation. The Respondent contended that all of this had led to him feeling confused about the application and having a number of questions he wanted answered.

The Respondent acknowledged he had been robust in his approach but reiterated that he had not said anything personal or, indeed, intended that Ms A should take anything he said personally. The Respondent noted that all his questions had concerned the application and how it could be progressed.

The Respondent further noted the meeting Chair, Officer B, could have intervened if she considered his approach to be inappropriate but that it was clear from her evidence that she had not considered any intervention necessary.

The Respondent accepted there had been a pause when the questioning of Ms A concluded but noted that there were always gaps in online meetings while attendees made sure anyone who had been speaking had finished making their contribution.

The Respondent further accepted that he had stopped Ms A on one occasion when she was answering but explained he had done so to ensure she focused on the question being posed and did not simply repeat an answer already provided. The Respondent acknowledged that he "probably came across as gruff", but advised this was because he became frustrated when he did not have access to all the information required to make an informed decision.

The Respondent explained that he had experienced issues connecting to the meeting, which meant he was unable to use his camera. The Respondent advised he was watching the slideshow and taking notes while listening. As such, he was not being disrespectful in terms of whether he could be seen or because he was not watching Ms A when she was responding.

The Respondent advised he was aware that three individuals from Kilwinning Heritage were present at the meeting and, as such, his questioning was aimed at them as a group, as opposed to Ms A as an individual. The Respondent noted that either of the other two individuals present could have intervened and answered, had Ms A felt unable to do so.

The Respondent noted that the ESC had made assumptions about his background and personality but advised he agreed with these.

The Panel asked the Respondent whether he adopted a different tone when speaking to members of the public, to that he employed in Council meetings when interacting with fellow elected members or council officers. In response, the Respondent advised that an application for funding had to meet the set criteria in order to be granted. The Respondent compared the scenario to council officers presenting reports, and noted that if he was questioning them, it was always about any potential issues of concern.

Having considered that the Respondent had not answered the previous question, the Panel again enquired if there was a difference in the tone employed by the Respondent in a political environment and that he used, or should use, when interacting with members of the public. In response, the Respondent advised that he always discussed policy and potential obstacles with officers.

The Panel noted that when the ESC had put the Complainers' various descriptions of his conduct to him during the investigation (which included the terms 'rude', 'aggressive', 'belittling' and 'confrontational'), it appeared the only one to which he had taken exception was 'smug'. The Panel asked whether this meant the Respondent accepted the other descriptors as being accurate. In response, the Respondent advised that as it was apparent the Complainers had spoken to each other after the meeting, it was to be expected that they would have similar opinions. The Respondent advised he tended to be "fairly gruff" and, on this occasion, had been frustrated with the application and the fact that it had been brought forward at such an early stage while still lacking the information that would be required to assess it against the funding criteria.

The Panel asked the Respondent whether he considered his approach and manner were appropriate given it was an early-stage scoping meeting where an expression of interest was being considered and where it might well be the case that not all information would be available. The Respondent replied that the reason he was seeking more information was so the application could be progressed.

The Panel noted the process was intended to be supportive, so that any gaps or areas in applications that might require strengthening could be identified and made known to applicants. The Panel asked whether, given this, there would be an expectation that any questions would be posed in a supportive and positive manner and, if so, whether the Respondent felt he had done so. In response, the Respondent advised that he and other attendees were supporting the applicant, Kilwinning Heritage, by trying to identify whether the Council could provide support (in terms of potential accommodation), without the need for funding. The Respondent accepted that he could have been more positive, supportive and courteous but explained he had wanted answers there and then.

The Panel noted that representatives of Kilwinning Heritage had advised Council officers that the Respondent's conduct had made them reluctant to apply for further funding and asked whether the Respondent agreed this was an undesirable outcome. The Respondent stated, in response, that he considered it was important that funding was only awarded when an application met the agreed criteria.

In response to a question from the Panel as to whether, on reflection, he considered Ms A was entitled to feel upset, the Respondent advised he accepted she had felt that way. The Respondent reiterated, however, that all his questions concerned the application, and he had never intended for her to take anything personally. Having been asked by the Panel whether, on reflection, he would still have posed the questions in the same manner, the Respondent advised that, knowing he had caused offence, he would have taken a different approach.

Turning to the Respondent's point that the Chair had not felt compelled to intervene, the Panel asked whether the Respondent accepted that, regardless of this, he was responsible for moderating his own behaviour. The Respondent replied that had he been aware of the impact on Ms A, he would have changed his tone. The Respondent reiterated, however, that as he had been forced to use his phone (which had a small screen) to connect to the meeting, he had not been able to focus on facial expressions and, instead, had been concentrating on Ms A's answers and the information required.

The Panel noted that the Respondent had described himself as 'gruff'. It asked whether he accepted he could be robust in terms of his questioning without causing upset. In response, the Respondent reiterated that he was always robust in terms of the number of questions he asked, but that he accepted he was required by the Code to behave with courtesy and respect.

#### **DECISION**

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

1. The Councillors' Code of Conduct applied to the Respondent, Councillor Reid.
2. The Respondent breached paragraphs 3.1 and 3.3 of the Code and a restriction on his right to freedom of expression that such a finding would entail could be justified.

#### **Reasons for Decision**

1. The Panel noted that the Respondent had attended the online meeting of the Kilwinning Locality Partnership on 12 February 2024 in his capacity as a ward councillor for Kilwinning. The Panel was satisfied, therefore, that the Code applied to his 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 (and in this case, in particular, to protect the rights and reputations of others).

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

3. The Panel noted the complaint concerned the Respondent's behaviour towards a member of the public, Ms A, at the online meeting of the Kilwinning Locality Partnership on 12 February 2024. The Panel noted that Ms A was representing Kilwinning Heritage, a local history society, that was seeking funding from the Council by way of presenting an 'expression of interest' at the meeting.
4. The Panel was satisfied, on the balance of probabilities, from the evidence led, that the Respondent had:

- been rude, aggressive and confrontational in his questioning of Ms A, which included making critical statements about the application rather than posing questions;
  - unnecessarily interrupted and spoke over her on various occasions; and
  - framed his interventions in a negative and excessively critical manner so as to belittle or give the appearance of belittling her, Kilwinning Heritage and the expression of interest.
5. The Panel acknowledged the Respondent, as an elected member, had an important role in scrutinising funding applications, to ensure that Council funds were distributed fairly and in the public interest. The Panel further acknowledged that the Respondent was frustrated because he had experienced difficulties in connecting to the meeting (which meant he was forced to join using his mobile phone while at work) and had only received the papers a few hours beforehand. In addition, the Respondent was frustrated because he considered Kilwinning Heritage had failed to provide sufficient information to support its application.
6. The Panel noted, however, that the Locality Partnership was not determining any final application at the meeting; it was only considering an expression of interest. The Panel was satisfied that not only was the Respondent's approach in the circumstances disproportionate, but also that the manner in which he had talked to, and questioned Ms A (a member of the public who was representing a community group as an unpaid volunteer) was wholly inappropriate.
7. The Panel acknowledged the Respondent may not have intended to upset Ms A. The Panel was of the view, however, that it would be reasonable for those observing the meeting to perceive his conduct as an attack on both Kilwinning Heritage and on Ms A, as its representative. The Panel noted, in support of this conclusion, that other witnesses had perceived this to be the case.
8. The Panel agreed it would be reasonable for members of the public representing local groups making applications for funding to the Council, particularly in a non-paid voluntary capacity, to expect to be given the opportunity to present information in a respectful environment. The Panel considered that while such representatives and volunteers should understand they may have to answer questions, they have a right to expect any will be put to them in a respectful and non-confrontational matter, and that they will be allowed to answer without facing excessive criticism or being interrupted repeatedly and belittled.
9. The Panel rejected entirely the suggestion that the decision made at the meeting not to progress the application to the next stage (as it required to be developed further), was relevant to the question of whether the Respondent had breached the Code. This was because the Code applies at all times when a councillor is acting in that capacity. It does not differentiate between times where they may be frustrated or are being presented with what they consider to be incomplete or even incomprehensible information. In that regard, the Panel noted it was entirely possible that, despite their best efforts or intentions, members of the public may not be able to present all the information a councillor may require or be capable of articulating themselves in a manner a councillor may desire or deem appropriate (for example if they had language or learning difficulties). This would not, however, absolve a councillor from the requirement to comply with the Code and, therefore, to behave with courtesy and respect, when interacting with them. The Panel noted, in any event, that it was evident Kilwinning Heritage's members understood, from their interactions with Council officers before the meeting, that they had provided sufficient information for the applicable stage of the process (being the expression of interest).
10. The Panel agreed that by being aggressive, interrupting repeatedly and asking questions in a confrontational and inappropriate manner, the Respondent was disrespectful and discourteous towards Ms A. The Panel determined therefore that he had, on the face of it, breached paragraph 3.1 of the Code.
11. The Panel agreed that the Respondent, as an elected politician, was in a position of relative power over Ms A. The Panel acknowledged there was no evidence or suggestion of a course of persistent behaviour

by the Respondent and noted his conduct had been limited to the one meeting. The Panel noted, nevertheless, that Ms A's position was that the Respondent's conduct left her feeling deeply upset, bullied, humiliated and in tears. The Panel found Ms A had been subjected to what was, effectively, an unwarranted public attack. The Panel considered that this would have been wholly unexpected, given that while Ms A would have been aware that questions would be put to her and that more information may be sought at the meeting, she would not have anticipated that any elected member would act in the manner in which the Respondent chose to engage. In the circumstances, the Panel disagreed with the ESC and considered Ms A's reaction was, objectively, both understandable and reasonable.

12. The Panel did not accept ESC contention that it was necessarily the case that as the meeting was held online the Respondent's conduct would have been less intimidating. The Panel considered it was equally possible that it may have felt more intimidating if Ms A was isolated and did not have anyone present with her for support.
13. The Panel noted that the Respondent was using his phone to participate in the meeting and accepted this would have made it more difficult for him to observe Ms A's reactions to his interventions. The Panel noted the Respondent indicated he had also not looked at Ms A when questioning her, as he was either viewing the slides or trying to read the paperwork. The Panel considered, however, that the Respondent would have been able to view the other meeting participants, including Ms A, even when using his phone. The Panel further considered that given the number of questions he was posing and given he accepted he interrupted Ms A on at least one occasion, the Respondent should have taken the time to check that she understood what he was asking and was coping with the demands being placed on her. In this regard, the Panel again noted that Ms A was a member of the public and not an officer who might be accustomed to presenting information to councillors and responding to their questions.
14. The Panel agreed, in any event, that it was reasonable to assume the Respondent, as an experienced politician, would and should have been able to discern the impact of the type of conduct in which he was engaging. The Panel was of the view that the Respondent should have known whether his conduct was appropriate and should have been aware of how it would be perceived, regardless of whether he could see Ms A or she could see him.
15. The Panel noted the ESC had referred to the Respondent as having, generally, a blunt and robust style. The Panel agreed, however, that a clear aim of Code was to ensure a minimum standard of conduct that all councillors should meet. It did not accept any suggestion that the Code made, or should make, any distinction between councillors based on their different personalities, styles, backgrounds or lived experiences. The Panel noted that the Standards Commission had made this clear in a number of previous decisions.
16. The Panel accepted similar conduct might be characterised as being 'robust' and that some of it may even, in certain circumstances, be acceptable, if directed towards other elected members during a political debate, or even senior council officers who were presenting reports. This is because both are accustomed to working in a political environment and might be expected to have more tolerance. The Panel noted, however, that Ms A was an unpaid volunteer member of the public who was giving up her time for a local heritage society. The Panel was concerned that the Respondent seemed to suggest he took a similar approach when questioning council officers who were presenting reports, and that he did not appear to acknowledge the situation was different and might call for a more considered approach.
17. The Panel noted that both the ESC and Respondent had argued that, as the questions solely concerned the application, and as no personal comments had been directed towards Ms A, she should not have felt she was being targeted. The Panel disagreed, however, as it was of the view that it would be reasonable for anyone being interrupted and talked over in such a manner to take it personally. The Panel rejected the ESC's analogy about him not taking robust questions personally when he appeared before

Parliamentary committees. This was because he was a paid, appointed public officeholder who managed public funds and, therefore, could be expected to face robust scrutiny and challenge; whereas, in contrast, Ms A was an unpaid volunteer member of the public appearing before council committee expressing interest in seeking funding on behalf of a community group. The Panel noted, in any event, that regardless of the status of the person answering, it should be possible to be robust in questioning without coming across as rude, aggressive or overbearing.

18. The Panel did not consider the fact that the meeting Chair had not intervened to be of any significance. This was because the Respondent had a personal responsibility to comply with the Code and to abide by its provisions. The Panel noted, in any event, that the part of the meeting in question had been chaired by a council officer. Given there was also a power imbalance between the officer and the Respondent, as an elected member, and that she would be required to continue working with him, the Panel considered it was not reasonable to expect or rely on her to intervene or criticise his behaviour at the meeting.

19. The Panel also rejected the Respondent's suggestion that he had not bullied Ms A as other individuals present from Kilwinning Heritage could have answered his questions. This was because the Panel considered it was clear from the evidence of all witnesses that not only was he directing his questions to Ms A but that everyone present understood him to be doing so.

20. The Panel considered, in the circumstances outlined above, that the manner in which the Respondent conducted himself towards Ms A at the meeting was both intimidating and disparaging and left her feeling upset, humiliated and belittled. For the reasons outlined above, the Panel considered this was an entirely reasonable reaction and, while this may not have been the Respondent's intention, he should have realised his actions would likely have this impact. The Panel therefore agreed, on balance, that it would meet the threshold for amounting to a breach of the bullying provision under paragraph 3.3 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**

21. 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 concern<sup>1</sup>. In this case, the Panel noted that the Respondent's interaction with Ms A took place during a meeting of a Council Locality Partnership, in the context of considering a potential application for council funding, being a matter of public interest and concern. In the circumstances, therefore, the Panel considered that the Respondent would attract the enhanced protection of freedom of expression afforded to politicians, including local politicians, under Article 10.

**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**

22. 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:

- protecting the rights and reputations of others;
- enabling local government to function effectively; and
- ensuring public confidence in local government was not undermined and that a council was not brought into disrepute.

23. 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 enhanced protection to freedom of expression enjoyed by the

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<sup>1</sup> Thorgeirson v Iceland (1992) 14 EHRR 843

Respondent against any restriction imposed by the application of the Code and the imposition of any sanction.

24. In conducting its balancing exercise, 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.
- There is little scope under Article 10(2) for restrictions on political speech or on the debate of questions of public interest. Further, given the importance of freedom of expression in the political arena, any interference with that right requires the closest scrutiny<sup>2</sup>.
- In a political context, a degree of the offensive, shocking, exaggerated, emotive, non-rational and aggressive, that would not be acceptable outside that context, should be tolerated<sup>3</sup>.
- The less egregious the conduct in question, the harder it is for a Panel, when undertaking its balancing exercise, to conclude justifiably that a restriction on an individual's right to freedom of expression is required<sup>4</sup>.
- Politicians (as individuals who have entered the political arena voluntarily) are subject to wider levels of acceptable criticism<sup>5</sup> and are, therefore, expected and required to have thicker skins and more tolerance to comment than ordinary citizens<sup>6</sup>.

25. In taking those findings into account, and so determining whether the Respondent's conduct was excessive and egregious, the Panel considered that the degree of latitude that should be afforded to the Respondent's conduct was narrow. This was because it considered Ms A, as a member of the public and volunteer member of the local heritage society giving a presentation, had a right to expect she would be treated respectfully and would not be subjected to disrespectful and bullying behaviour.

26. The Panel accepted that councillors have a key scrutiny role and are both entitled, and expected by the public, to discharge this thoroughly, especially in the context of making decisions about the distribution of public funds. The Panel further accepted that in discharging this role, councillors might be expected to pose robust questions. The Panel accepted, therefore, that the Respondent was fully entitled to scrutinise the expression of interest before him at the meeting in question, and indeed entitled to do so robustly. The Panel was concerned, however, that it had found the manner of the Respondent's questioning to have gone beyond the level of robustness that might be expected in the circumstances and amounted to disrespectful and bullying behaviour. To support this conclusion, the Panel again noted Ms A was a member of the public acting in a volunteer capacity on behalf of a community group and was not a council officer fielding questions on a report or an elected member engaging in political debate. As such, the Panel did not consider that she should be expected to tolerate the same level of comment or criticism that might be expected of others or to have a "thicker" skin.

27. The Panel noted the Court in the case of *Lombardo*<sup>7</sup> made comments about the potential "chilling effect" sanctions may have on the exercise of freedom of expression. The Panel further noted that while the ESC had not directly referenced this case, he had expressed concerns that a restriction on the Respondent's right to freedom of expression could preclude 'robust' questioning and had argued that enquiries of this type were "part of politics". While the Panel accepted the meeting was a political setting, given it was a council committee considering council-related matters, it did not accept this meant the discussions at it

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<sup>2</sup> Castells v Spain (1992) 14 EHRR 445

<sup>3</sup> Heesom v Public Services Ombudsman for Wales (2014) EWHC 1504 (Admin)

<sup>4</sup> R (Calver) v Adjudication Panel for Wales (2012) EWHC 1172 (Admin)

<sup>5</sup> Janowski v Poland (1999) 29 EHRR 705

<sup>6</sup> Heesom (ibid)

<sup>7</sup> Lombardo v Malta (2009) 48 EHRR 843

could be classed as 'political debate' or, as suggested by the ESC, any concerns about the robustness of such discussions should be dismissed as just being "part of politics".

28. Taking this into consideration, the Panel rejected the ESC's concern that a restriction in the circumstances could preclude robust questioning. This was because the Panel considered it was entirely possible to:

- seek further information;
- be robust in questioning; and
- scrutinise thoroughly applications for public funding;

while complying with the requirements of the Code and without being rude, aggressive or confrontational. The Panel did not, therefore, consider that imposing a restriction on the Respondent's freedom of expression would have any disproportionate or unintended effect on his ability (or that of any other councillor) to carry out a scrutiny role effectively.

29. The Panel again noted that the ESC suggested that a factor that should be considered was that all councillors have different backgrounds and individual communication styles. As noted above, however, the Panel rejected this suggestion as the main aim of the Code is to outline the minimum standards of conduct expected of all councillors, regardless of any differences in their styles, personalities or backgrounds.

30. The Panel noted that the ESC advised he did not consider a restriction on the Respondent's right to freedom of expression was necessary to protect the rights and reputations of those making applications as he considered it was clear the Respondent would have employed the same line of questioning to anyone who had presented what he considered to be an incomplete expression of interest. The Panel did not consider, however, that this was indeed clear or that there was any evidence to support this contention. Indeed, the Panel considered it contradicted the ESC's own position that the Respondent's had been particularly frustrated at this meeting and that witnesses had described him as having been more adversarial than usual.

31. The Panel noted that ESC had argued that the Respondent's interventions were value judgements that had a basis in fact, given the consensus decision at the meeting was that the application required to be developed before it could be progressed. The Panel rejected this argument as irrelevant, however, as it noted that there was no suggestion a restriction was necessary to restrict any opinion expressed by the Respondent on the application. Instead, the Panel was considering whether a restriction was justified in terms of the *manner* in which he had expressed himself and asked questions.

32. Taking all the foregoing into account, the Panel concluded the Respondent's conduct was excessive and egregious, and wholly inappropriate in the circumstances. The Panel was satisfied therefore that a restriction on the Respondent's right to freedom of expression was proportionate, relevant and necessary, in order to meet the aims outlined above (at the beginning of Stage 3), and in particular to:

- protect the reputation and rights of Ms A;
- act as a deterrent to the Respondent and others from engaging in such conduct in the future; and
- prevent public confidence in the role of a councillor, the Council and its processes, and local government from being undermined.

33. As such, the Panel determined a restriction on the Respondent's enhanced right to freedom of expression was justified and that a formal finding of a breach of paragraphs 3.1 and 3.3 of the Code could be made.

#### **Evidence in Mitigation**

The Panel noted three of the Complainers had submitted impact statements. The Panel advised the Respondent that it would take into account the fact that the statements were not taken under oath.

The Panel noted that the Complainers advised, in their impact statements, that:

- The impact of the Respondent's behaviour had been profound, both personally and on Kilwinning Heritage, and most of all on Ms A, a member of the community the Respondent represents.
- Ms A felt upset and shocked and was angry with herself for not being more assertive.
- Confidence in council processes had been shaken and the Respondent's behaviour had left the Complainers feeling Kilwinning Heritage's contribution to the town had been maligned, which could potentially cause it reputational harm and impact negatively on future funding applications.
- They were wary of submitting further applications, which has had a negative impact on the progress of its projects, and were concerned that other community groups may also have to endure hostile behaviour in a similar situation.

In mitigation, the Respondent reiterated that it had never been his intention to upset or belittle Ms A. The Respondent noted he had a responsibility to scrutinise the application, given public funding was at stake, and that his sole intention at the meeting was to ask question and obtain information to allow him to undertake this task effectively. The Respondent nevertheless apologised for any upset he had caused.

### **SANCTION**

The decision of the Hearing Panel was to suspend, for a period of two months with effect from 8 August 2025, the Respondent, Councillor Reid, from all meetings of the council and of any committee or sub-committee thereof and of any other body on which the councillor is a representative or nominee of the council or body.

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 to ensure good administration which enables local government to function effectively, 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 requirements for councillors to treat members of the public with respect and courtesy and to refrain from any conduct that could amount to bullying are fundamental requirements of the Councillors' Code. The Panel noted that a failure to comply with the Code's provisions in this regard can have a detrimental impact on the public's confidence in the role of a councillor, the Council itself (and its functions and processes) and local democracy.
4. The Panel noted it had found the Respondent had been rude, aggressive and confrontational in his questioning of Ms A, had unnecessarily interrupted and spoken over her on various occasions and had belittled, or given the appearance of belittling her, Kilwinning Heritage and its expression of interest. The Panel agreed that while members of the public presenting such expressions of interest can, and indeed should, expect their contents to be scrutinised, they are also entitled to have a reasonable expectation any questions from councillors will be put to them in a respectful and courteous manner.

5. The Panel noted it had found that it was reasonable for the manner of the Respondent's questioning of Ms A to have caused her to feel upset, bullied and humiliated. The Panel noted that Ms A had confirmed that had been the effect and, further, that she had been left in tears. The Panel considered the Respondent's conduct was particularly inappropriate given he was an experienced councillor who was aware he was interacting with a volunteer member of a community group.
6. The Panel acknowledged that the Respondent had every right to scrutinise the expression of interest being considered at the meeting and that he was entitled to ask questions, including those that could be characterised as being of a 'robust' nature. The Panel was concerned, however, that the Respondent had gone far beyond the robust and instead had acted disrespectfully and discourteously, in a wholly inappropriate manner that was incompatible with the Code and that amounted, under its terms, to bullying.
7. The Panel was of the view, therefore, that the breach of the Code was serious in nature.
8. 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.
9. The Panel noted that the conduct in question was essentially limited to one interaction at a meeting and, as such, was limited in duration. The Panel further noted that the Respondent had co-operated fully with the investigative and Hearing processes. There was also no evidence of repeated behaviour, nor had there been any previous finding of a contravention of the Code by the Respondent. The Panel further noted that the Respondent proffered an apology at the Hearing for having caused any upset.
10. The Panel then proceeded to consider whether there were any aggravating factors; being ones that may increase the severity or culpability of the breach.
11. The Panel agreed that, as an experienced member, the Respondent should have been able to discharge his scrutiny role without being disrespectful or bullying a member of the public. While the Panel had accepted this may not have been the Respondent's intention, it was concerned that, at the time, he had not demonstrated any insight, remorse or understanding into how his conduct could be reasonably perceived, and its impact on Ms A.
12. The Panel was of the view that a censure, being the minimum sanction available to it, was not appropriate in light of the seriousness of the conduct and impact it had on Ms A, other members of the group and on other community groups that may be considering applying for Council funding.
13. The Panel agreed that a censure, or the shortest suspension of one month, 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 and, in particular, to the requirement to treat members of the public with courtesy and respect and to refrain from bullying behaviour;
  - 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.
14. Having considered the nature and seriousness of the breach, as well as any aggravating and mitigating factors identified, the Panel concluded that a two-month suspension was the appropriate sanction in the circumstances. In reaching this view, the Panel again noted that the Respondent's conduct had been a

one-off and limited in duration. It further noted it had identified only one aggravating factor. As such, the Panel did not consider that a disqualification or lengthier suspension was warranted or justified.

15. The Panel was satisfied that the imposition of a two-month suspension was the minimum necessary to achieve the aims outlined above and to reflect the seriousness of the breach. The Panel determined to suspend the right of the Respondent to attend all meetings of the Council and of any committee or subcommittee thereof, and of any other body on which he was a representative or nominee of the Council, for a period of two months with effect from 8 August 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:** 6 August 2025



**Dr Lezley Stewart  
Chair of the Hearing Panel**