

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held online, on Thursday, 23 October 2025.

Panel Members: Mrs Morag Ferguson, Chair of the Hearing Panel
Dr Lezley Stewart
Ms Suzanne Vestri

The Hearing arose in respect of a report referred by Mr Ian Bruce, the Ethical Standards Commissioner (the ESC), further to complaint reference LA/AB/4147, concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Liz McCabe (the Respondent).

The ESC was represented at the Hearing by Mrs Sarah Pollock, Hearings and Investigations Officer. The Respondent represented herself at the Hearing.

REFERRAL

Following an investigation into a complaint received on 6 June 2024 about the conduct of the Respondent, the ESC referred a report to the Standards Commission on 7 August 2025, in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000.

The substance of the referral was that the Respondent had failed to comply with the provisions of the Code and, in particular, that she had contravened paragraphs 3.1, 3.8 and 3.10 (Annex A, paragraphs 24 and 25), 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.

3.8: I will not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public.

3.10: I will follow the Protocol for Relations between Councillors and Employees at Annex A and note that a breach of the Protocol will be considered a breach of this Code. I will also comply with any internal protocol the Council has on councillor / employee relations.

Annex A, paragraph 24: Councillors and employees both have a responsibility to project a positive image of the Council and should avoid making any public comments that could bring it into disrepute.

Annex A, paragraph 25: Councillors should not raise any adverse matters relating to the performance, conduct or capability of employees in public. Employees must ensure they treat councillors with similar respect and courtesy.

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:

- The Respondent was first elected in March 2021 and is an independent councillor, representing the Isle of Bute ward.
- When a member of the public posted a comment on the 'Isle of Bute' Facebook page saying "our beautiful flower beds! What is happening to our town?", the Respondent replied stating "nothing has

been done since Joe retired in November. It is absolutely shocking. That's what happens when someone who has no experience gets the job and doesn't have a clue."

- The Respondent posted her comments from her 'Liz McCabe – Independent for Bute' Facebook account.
- The individual named 'Joe', referenced in the Respondent's comment, is the Respondent's husband, who was previously employed as an Amenity Services Officer for the Council.
- The Respondent did not name any individual in her comments. She subsequently confirmed that the remark, "That's what happens when someone who has no experience gets the job and doesn't have a clue" was directed at a specific Council Officer (Officer A).
- Officer A was appointed to the post of Amenity Services Officer, after the Respondent's husband retired from the role.
- The Respondent removed her Facebook comment shortly after posting it.

Introductory Comments by the ESC's Representative

The ESC's representative advised that the Respondent had first been elected in 2021 and represented the Isle of Bute ward as an independent councillor. The ESC's representative explained that the ESC had concluded the Respondent's conduct, in respect of publishing the post, amounted to a breach of paragraphs 3.1, 3.8 and 3.10 of the Code. The ESC's representative advised that the ESC had also considered whether the Respondent's conduct amounted to bullying or harassment, in terms of paragraph 3.3 of the Code, but had concluded it did not.

Witness Evidence

The Respondent gave evidence on her own behalf.

In terms of whether the Code applied to her conduct, the Respondent accepted she had posted her comment on the 'Isle of Bute' Facebook page and advised she had done so in response to a post made by a friend. The Respondent explained she had a number of Facebook accounts, for her personal and business interests, and had incorrectly assumed she was using her personal one when publishing the post. The Respondent advised that she removed the post when other individuals commented further as she realised that instead of using her personal account, she had posted it from an account entitled 'Liz McCabe – Independent for Bute'. The Respondent advised she had created that account when she had first stood for election. The Respondent explained that while, in her first year as a councillor, she had used the account for constituency related work, she had not since employed it for that purpose. The Respondent explained this was because she had realised and become fed up with the fact that the only time anyone interacted with the page was to make a complaint about the Council.

The Respondent indicated that she received complaints about the Council both on the 'Liz McCabe – Independent for Bute' account and her personal one. The Respondent accepted, therefore, that she could be perceived reasonably as acting as a councillor when posting her comment on the page, particularly given it concerned a council related matter.

The Respondent explained that, when employed by the Council, her husband Joe had been responsible for amenities in the town and had ensured the flowerbeds were always well maintained. The Respondent advised that the town had previously won awards for its appearance. The Respondent contended that the condition of the flowerbeds deteriorated significantly after her husband retired, which led to her and the other two ward councillors receiving numerous complaints about their state and that of the town in general. The Respondent advised that she was receiving comments and complaints of this nature on a daily basis at the time she published the post in question.

The Respondent explained that contrary to what was alleged in the ESC's report, the 'Isle of Bute' Facebook page was not public and, instead, was a private page. The Respondent contended that only its members could view its contents and that, in order to join, individuals had to apply and answer a number of questions, before

being accepted by the site's Administrator. The Respondent advised that the page was primarily used by individuals who were from or resided in Bute.

The Respondent advised that she had posted the comment because she was frustrated with, and fed up with receiving complaints about, the state of the town. The Respondent advised that she had not been motivated by any personal grudge against the officer in question. In support of this, the Respondent noted that her husband had proposed that he remain at the Council for a period after he was due to retire in order to help with the handover of work, but that this offer had been refused.

Turning to whether the officer to whom she had referred in her post was identifiable, the Respondent explained that the Council employed five Amenity Services Officers. The Respondent explained that while Officer A was responsible for the amenities on Bute, all five provided cover for each other. The Respondent further explained that while Officer A did not maintain the flowerbeds himself, he was responsible for organising the work to be undertaken.

In response to cross-examination by the ESC's representative, the Respondent advised that at the time of posting her comments she had not given any thought as to whether they could be perceived being critical of Officer A. The Respondent explained she was angry as she had been dealing with complaints all day and was frustrated that she and the other two ward councillors were being blamed, despite their best efforts, for the fact that nothing was being done to improve the state of the town. The Respondent contended that her comment would not have bothered Officer A, that she had only removed the post because she realised that she had not used her personal account, and that the comments were not ones she should have made in her capacity as a councillor.

When asked by the Panel whether she considered it would be reasonable for Officer A to have considered the remark about him not having 'a clue' to be disrespectful, the Respondent stated it was not the officer's fault that he had not been trained properly, albeit she suggested he had not asked for help and should have done so.

Submissions made by the ESC's Representative

The ESC's representative noted it was not in dispute that:

- the Respondent had used her 'Liz McCabe – Independent for Bute' Facebook account (being the page from which the comment was posted), as a serving councillor to undertake activities associated with that role; and
- the original post, to which the Respondent had posted her comments in response, concerned a council matter.

The ESC's representative contended, therefore, that the Respondent would be perceived, objectively, as acting in the capacity of a councillor when posting her response (even if she had intended to use a personal account). The ESC's representative argued that, therefore, the Code applied to her conduct at the time.

The ESC's representative contended that the Respondent had posted her comment on the page of a widely followed public Facebook community group that had over 5000 followers.

The ESC's representative noted the Respondent's position was that she had not intended to target Officer A as an individual. The ESC's representative argued, however, that on the balance of probabilities this contention should not be accepted. This was because the Respondent named the individual who retired and implied clearly that the person who replaced him (being the 'someone' referred to in her post), had 'no experience' and did not have 'a clue'. The ESC's representative contended that the Respondent effectively blamed the individual to whom she was referring as being solely responsible for the apparent neglect of council-maintained amenities in the town.

While the ESC's representative accepted Officer A was not named or tagged in the post, she contended he would have been readily identifiable to members of the public in such a small community. The ESC's representative acknowledged it was not in dispute that the Council employed five amenity services officers, whose duties included ensuring flowerbeds were maintained and, as such, the Respondent's comment could have concerned any of these individuals. The ESC's representative noted, however, that the Respondent had referred to the individual officer who had replaced "Joe" upon his retirement.

The ESC's representative confirmed that "Joe" is the Respondent's husband, that they share the same surname and that, until his retirement, the Respondent's husband worked as an Amenity Services Officer for the Council. The ESC's representative suggested it was reasonable to infer that, by referring to "Joe" on a first-name basis only, the Respondent was assuming that the member of the public who had posted the comment to which she responded, and anyone else reading the exchange, would readily understand who "Joe" was. The ESC's representative argued as the Isle of Bute was a small and close-knit community, it was reasonable to assume that many local residents would have been aware that the Respondent's husband had recently retired from his position at the Council and that another officer had been recruited to fill his post. In the circumstances, the ESC's representative contended that members of the local community could have readily identified "Joe" and therefore, by extension, the identity of the officer to whom the Respondent's comment referred. The ESC's representative argued, in any event, that other elected members and Council officers would have known both who "Joe" was and also who replaced him when he retired.

The ESC's representative noted that the Standards Commission's Guidance on the Code states that a test to determine whether an individual employee or group or employees was publicly identifiable was whether "ordinary members of the public in the local areas would be able to understand who they were". The ESC's representative argued, for the reasons outlined above, that in this case this test had been met.

The ESC's representative advised, in support of this, that the Complainer had been able to identify the unnamed employee as the officer who had replaced "Joe" upon his retirement. The ESC's representative further noted that a colleague of the Complainer had taken, and then sent to the Complainer, a screenshot of the Respondent's comment. The ESC's representative contended that this demonstrated that at least two members of the public had been aware both that the Respondent's comment referred to the officer that replaced "Joe" and who that individual was.

The ESC's representative contended that the Respondent's comments implied, publicly, that Officer A (as the new employee in question) was unfit and incompetent. The ESC's representative argued that, given the context and tone, it would be unreasonable for anyone reading the Respondent's post to interpret the comments as anything other than personal criticism and a direct attack on Officer A's capability and performance as a council employee.

The ESC's representative noted that the Standards Commission's Guidance on the Code advises that, in undertaking their scrutiny role, councillors should focus on specific issues, rather than making personal comments about individuals. It further suggests that councillors should consider how their conduct might be perceived reasonably by others, even in circumstances where they do not intend to be disrespectful. In this case, the ESC's representative contended that, when viewed objectively, the Respondent's comments could not be viewed, reasonably, as respectful disagreement or legitimate comment on service performance. The ESC's representative argued, instead, that the comments were disrespectful and amounted to a personal attack on Officer A. The ESC's representative contended, therefore, that the Respondent had breached paragraph 3.1 of the Code.

The ESC's representative advised that as the Respondent's comments were posted on a public Facebook page that had over 5000 followers, a substantial number of individuals within the local community would have access to them. The ESC's representative stated that the Investigating Officer had found the 'Isle of Bute' Facebook page was not a closed group, meaning any member of the public would have been able to view the

Respondent's comments before they were removed. The ESC's representative advised that the Investigating Officer had been able to follow the page without permission from the site's Administrator. As such, the ESC's representative argued that the Respondent's comments had been made in a public forum.

The ESC's representative noted the Respondent had indicated, during the investigation, that she had not intended to be disrespectful to any specific officer and that her comments were aimed at the Council's recruitment process and the training it provided to newly appointed staff. The ESC's representative noted, however, that the Respondent had not referred, in the post, to the Council or to the training provided to officers. Instead, her comments focused on an identifiable employee's alleged lack of experience and understanding of their responsibilities. The ESC's representative argued that it would be reasonable for anyone viewing the post to interpret the comments as being as criticism directed at the individual officer, rather than the Council.

The ESC's representative noted the Standards Commission's Guidance on the Code made it clear that a councillor should raise concerns about an individual officer's capability, conduct or performance privately with the appropriate line manager. The ESC's representative contended that the Respondent had, instead, commented publicly on the performance and capability of a relatively junior and identifiable officer, in a way that criticised and undermined him. In the circumstances, the ESC's representative argued that the Respondent had breached paragraphs 3.8 and 3.10 of the Code.

The ESC's representative suggested that while the Respondent's comments were inappropriate, disrespectful and potentially demoralising to Officer A, her conduct in posting them was not sufficiently serious as to meet the threshold for amounting to bullying or harassment (and therefore to a breach of paragraph 3.3 of the Code). The ESC's representative advised this was because there was no evidence of any pattern or course of conduct by the Respondent towards Officer A. While the ESC's representative accepted Officer A may well have felt undermined or embarrassed by the Respondent's post, she suggested the evidence indicated it amounted to a one-off incident and a "knee-jerk" reaction from the Respondent in response to another individual's comments about the state of the flowerbeds, rather than a deliberate attempt to target and intimidate the officer. The ESC's representative suggested that the fact that the Respondent removed the post shortly after publishing it was also relevant to whether her conduct amounted to bullying. The ESC's representative advised this was because her actions in doing so indicated both that the Respondent recognised it was inappropriate to post the comment on such a forum and that she had sought to limit any potential harm.

The Panel asked whether the Respondent could be said to be exercising, legitimately, her scrutiny role as a councillor. In response, the ESC's representative noted that it was open to the Respondent to have raised any concerns about Officer A's performance or capability in private.

The ESC's representative recognised that any formal finding of a breach of paragraphs 3.1, 3.8 and 3.10 of the Code would represent a restriction on the Respondent's right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). The ESC's representative argued that the Respondent would attract enhanced protection in respect of this right as her comment related to the condition of the local flower beds and her concerns about council service delivery, both of which were matters of public interest and concern.

The ESC's representative noted, however, that the right to freedom of expression is not absolute and that a restriction on this right can be imposed, if necessary and proportionate, to:

- protect the rights and reputations of others; and
- ensure the standards of public debate did not fall below a minimum level.

In this case, the ESC's representative noted a restriction could potentially be imposed to:

- protect the rights and reputation of Officer A to ensure that he was able to perform his duties without undue interference;
- safeguard the trust and working relationship between the Council's elected members and officers; and
- maintain public confidence in the Council so it can continue to perform its functions effectively and deliver services to the community.

The ESC's representative acknowledged that the Courts have held that there is little scope for restrictions on political speech or debates on questions of public interest. The ESC's representative argued, however, that in this case a number of factors, as outlined below, suggested that a restriction on the Respondent's enhanced right to freedom of expression could be justified.

The ESC's representative contended that the Respondent's comment went beyond what could be considered legitimate political expression. This was because it did not focus on council policy or decision-making and, instead, amounted to a criticism of the capability of an identifiable council officer that was levelled in highly pejorative terms.

The ESC's representative noted that as the Respondent's post had been published on a public forum with over 5000 followers, it had the potential to significantly harm the officer's reputation and to undermine public trust in the council's workforce. The ESC's representative again suggested that, in the post, the Respondent had focused on the individual officer's alleged lack of experience and understanding of the role's responsibilities, rather the Council or its processes. The ESC's representative noted, in any event, there was nothing to prevent the Respondent from raising concerns about the recruitment with the appropriate manager, without resorting to a public post.

The ESC's representative suggested the Respondent's comments were also entirely gratuitous. In support of this contention, the ESC's noted that the officer in question had been appointed after completing successfully a recruitment process. The ESC's representative further noted that as councils are currently having to reduce spending in order to balance their budgets, it was entirely possible that any decline in standards, including on the maintenance of amenities, was outwith the sole control of Officer A.

The ESC's representative acknowledged that the comment appeared to have been made in the spur of the moment, was a one-off and was quickly removed. The ESC's representative further accepted that the comment amounted to a value judgement that had a basis in fact (even if incorrect). The ESC's representative argued, however, that it was entirely gratuitous for the Respondent to have made her comment about the performance and capability of a specific officer. This was because there was no reason why the Respondent could not have focused, instead, on the quality of the Council's service or its decision-making as an entity. The ESC's representative noted that the post was published in circumstances where the officer had no right of reply and where anyone could have made a screenshot and shared it more widely.

The ESC's representative concluded that a restriction of the Respondent's enhanced right to freedom of expression was proportionate. This was because:

- any restriction would be narrow and specific, applying only to the comments that were critical of the identifiable officer. Such a restriction would not prevent discussion of council policy or performance more broadly. Instead, it would protect officers from unfair criticism and help to maintain confidence in their integrity and abilities; and
- the Respondent was still entitled to raise concerns about the Council's service standards or decision-making through the appropriate channels.

The ESC's representative therefore argued that, when considered in the context as outlined above, the Respondent's conduct was sufficiently gratuitous as to justify, as proportionate, a restriction on her enhanced right to freedom of expression (that a formal finding of breach and imposition of a sanction would entail).

Submissions made by the Respondent

The Respondent advised that Bute had been her home for over 65 years. The Respondent advised that, during that time, she had been employed locally in various different roles and had also run several businesses. The Respondent explained she had only stood for election as a councillor after being asked by her customers to do so, and that she had only ever wanted to represent their views and help the town. The Respondent explained that her constituents knew her to be hard-working and honest, and understood she would always try to speak up for them. The Respondent advised that she considered she had been elected twice as her constituents had confidence that she would represent them to the best of her ability.

The Respondent contended that the state of the flowerbeds was a matter of legitimate public interest. The Respondent advised that her comments were a response to a post made by a friend, which had resulted in her mistakenly thinking she was commenting in a personal capacity. The Respondent reiterated that she had removed the comments when she had realised they had not been posted from her personal page. The Respondent noted that her comments had been made in the context of her and her two ward colleagues having been the recipients of numerous complaints about the deterioration in the state of the town's amenities.

The Respondent advised that she had contacted Officer A's line manager about his performance on several occasions and had also passed on her constituents' concerns about the state of the town to officers, via the Elected Members' Zone [being a platform used by councillors to request information and action, both for themselves and on behalf of constituents].

The Respondent contended that, contrary to the ESC's representative's submissions, the 'Isle of Bute' Facebook page was not publicly accessible. The Respondent advised that no one could see its content, or post on it, without having first joined. The Respondent further advised that, in order to join, an individual would have to answer some questions and thereafter be given permission to do so by the site Administrator.

The Respondent further disputed the ESC's representative's contention that Officer A was a 'junior' employee. The Respondent advised that Officer A was in his late 50s and had worked for the Council for many years. The Respondent also challenged the suggestion that her comments had the potential to harm the Council's reputation and contended it had already been damaged as a result of the poor state of the town and its amenities.

The Respondent explained that her frustration with being the recipient of so many complaints about the state of the town had led her to publish the comments. The Respondent advised she no longer used social media in her capacity as a councillor or for anything other than personal and family related matters.

In response to a question from the Panel about whether she accepted her comment could have had an adverse effect on Officer A, even if that was not what she had intended, the Respondent agreed it could. The Respondent further accepted that had Officer A read the comments, he may have understood them to be a personal attack. The Respondent contended, nevertheless, that, despite her post, nothing had changed and there had been no improvement in terms of the state of the flowerbeds or other amenities in the town. When asked by the Panel about whether she accepted it could be inappropriate to post a comment about an individual officer on Facebook, the Respondent agreed. The Respondent reiterated, however that by the time she posted the remarks she had already contacted the officer's manager on several occasions and had also raised concerns about the state of the flowerbeds and town on the Elected Members' Zone.

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 McCabe.

2. The Respondent had breached paragraphs 3.1, 3.8 and 3.10 of the Code and a restriction on her right to freedom of expression under Article 10 of the ECHR, that such a finding would entail, could be justified.

Reasons for Decision

1. The Panel noted that there was no dispute the Respondent had posted the comments as outlined above. The Panel accepted the Respondent may have intended to use a private account to make the comments. The Panel found, however, that her post was published from an account entitled “Liz McCabe – Independent for Bute”, which had been set up when she was standing for election as a councillor. The Panel noted that the Respondent had previously used the account to post information about constituent surgeries, and comments on Council matters. The Panel further noted the Respondent’s comments were published in response to a post made, on a local community page, about Council related issues. In the circumstances, the Panel was satisfied both that the Respondent had identified herself as a councillor and that she could be perceived reasonably as acting in that capacity when posting the comments in question on Facebook page. As such, the Panel determined the Code applied to her conduct.
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 particular, in this case, for preventing the disclosure of information received in confidence).

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

3. The Panel noted the Respondent’s position was that she had not intended the comments in her post to be disrespectful. The Panel noted the Respondent contended the comments were directed towards the Council and either the service it was providing, or its recruitment and training processes, as opposed to any individual. The Panel noted, however, that Respondent had referred, in her post, to the person who replaced the retired postholder as having ‘no experience’ or ‘clue. While the Panel noted the Respondent’s contention that the reference to the individual officer not having the requisite experience was intended as a criticism of the Council’s recruitment and training, it noted the Respondent had prefaced her remark with the accusation that ‘nothing had been done’ since her husband had retired from the role. As such, the Panel was satisfied, therefore, that it was evident the references to the individual officer having insufficient experience and knowledge were tied directly, to the accusation that he was not performing adequately in the role. The Panel considered, therefore, that the comments would not be perceived reasonably only as criticisms that the recruitment process was somehow flawed.
4. The Panel further noted the Respondent’s comments referred clearly to an individual postholder, rather than the relevant Council Team or service. The Panel was satisfied that, given this, it would be reasonable for anyone viewing the post to consider it was directed at the individual postholder, rather than the Council itself.
5. The Panel noted that Respondent did not name the individual postholder. The Panel agreed, however, that, for the reasons outlined by the ESC’s representative, the officer in question was readily identifiable. In particular, the Panel noted:
 - The Respondent did not include her husband’s surname, indicating that she considered those reading her comments would know who he was.

- The Isle of Bute was small and close-knit community, meaning it would be reasonable to assume that at least some of the local residents and followers of the 'Isle of Bute' Facebook page would have been aware that the Respondent's husband had recently retired from his position at the Council and that a new officer had been recruited to fill his post.
 - There was evidence that members of the public had been able to identify Officer A (including that the Complainer's colleague had taken, and sent to her, a screenshot of the Respondent's post).
 - Only five Council officers were responsible for the work referenced, with only one Officer A based on Bute. As such, council officers would know who had replaced 'Joe'. The Panel agreed that it was likely, in a small community, that this would also be known by at least some of its residents.
6. The Panel additionally noted that the ESC had submitted, as evidence, a copy of a weekly Elected Member Briefing from the time, which still appeared on the Council's website. The Panel noted that this recorded both that "Joe" had retired as an Amenity Services Officer and named Officer A as the individual who had replaced him. The Panel accepted that the Briefing was directed towards councillors, rather than members of the public. It nevertheless agreed that as the Briefing had been published on the Council's website at the time the Respondent posted her comments, it was also evidence that Officer A's identity, and the fact that he was in the role in question, were in the public domain.
7. The Panel was of the view that, by saying the individual who had replaced her husband had no experience, the Respondent was inferring they should not have got the job. The Panel considered this was inherently disrespectful to the officer in question. The Panel was further of the view that the Respondent had implied, in her post, that the officer was responsible for the 'absolutely shocking' state of the flowerbeds and the alleged failure to do anything about this. The Panel was therefore satisfied that it would be reasonable for anyone reading the post to perceive it as amounting to criticism of both the individual officer's performance and his capability.
8. The Panel acknowledged that members of the public may have had to join the Facebook page in question. The Panel noted, nonetheless, that it was not in dispute that it had over 5,000 individual members. The Panel considered that, given its content and purpose, the vast majority of these members were likely to be local residents or those with a close connection to the community. As such, the Panel was satisfied that regardless of whether the account was only open to members (and what steps individuals may have to take to join the group), the comments criticising the performance and capability Officer A were made publicly.
9. **The Panel concluded, therefore, that the Respondent had, on the face of it, breached paragraphs 3.1, 3.8 and 3.10 of the Code.**
10. In considering whether the conduct in publishing the post could amount to bullying or harassment of Officer A, the Panel noted that, as an elected politician, the Respondent was in a position of power over him. While the Panel noted that bullying can be a one-off objectionable incident that can include making disparaging comments and remarks, it noted that the Respondent deleted the post shortly after publishing it. The Panel further noted there was no evidence or suggestion of repeated conduct towards the officer in question. In the circumstances, the Panel concluded that the Respondent's conduct would not meet the threshold for amounting to a breach of the bullying and harassment provision at 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

11. The Panel noted that enhanced protection of freedom of expression under Article 10 applies to all levels of politics, including local. 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. In this case, the Panel noted that the Respondent's comment related to the condition of the local flowerbeds and her concerns about council service delivery, both of which were matters of public interest and concern. In the circumstances, therefore, the Panel considered that the Respondent would attract the enhanced protection in respect of her 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

12. 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;
- protecting the mutual bond of trust and confidence between councillors and officers;
- ensuring council officers enjoy public confidence in conditions free of undue perturbation to allow them to be successful in performing their tasks;
- enabling local government to function effectively; and
- ensuring public confidence in local government is not undermined and that a council is not brought into disrepute.

13. 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 right to freedom of expression enjoyed by the Respondent 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.
- In a political context, a degree of the offensive, shocking, exaggerated, emotive, non-rational and even aggressive, that would not be acceptable outside that context, should be tolerated².
- 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 required³.
- Council officers are open to criticism, including public criticism; but it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine public confidence in the local authority⁴.
- The level of the position occupied by the officer is a factor that should be considered when assessing the degree of tolerance expected from them⁵.
- The acceptable limits of criticism are wider for non-elected public servants acting in an official capacity than for private individuals, because, as a result of their being in public service, it is appropriate that their actions and behaviour are subject to more thorough scrutiny. The limits are not as wide, however, as for elected politicians, who come to the arena voluntarily and have the ability to respond in kind which such public servants do not⁶.
- A careful distinction is to be made between factual judgements on the one hand, and value judgements on the other. While the existence of facts can be demonstrated, the truth of value judgements is not susceptible to proof⁷.

¹ Thorgeirson v Iceland (1992) 14 EHRR 843

² Heesom v Public Service Ombudsman for Wales (2014) EWHC 1504 (Admin)

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

⁴ Heesom (ibid)

⁵ De Carolis and France Télévisions v. France 29313/10

⁶ Heesom (ibid)

⁷ Lingens v Austria (1986) Series A 103

- Even where a remark amounts to a value judgement, there must exist a sufficient factual basis to support it, failing which it will be deemed excessive. The more serious an allegation, the more solid the factual basis has to be⁸.
- A relevant criterion in determining whether a restriction on an individual's freedom of expression may be justified is whether that individual acted in good or bad faith in making their comment⁹.

14. The Panel noted it had found that it would be reasonable for anyone reading the Respondent's comments to understand them to be a criticism of Officer A. Indeed, the Panel noted that had been the Complainer's perception. The Panel agreed that it would have been reasonable for Officer A to have understood the Respondent's comments to be both as an accusation that he was not capable of undertaking the role and, further, that he was not performing effectively. The Panel agreed that it would be reasonable for the Respondent to have found such public accusations to be shocking. The Panel considered this was particularly the case in the circumstances, given there was no evidence or suggestion the Respondent had given any consideration to, or investigated, whether Officer A (or his wider team) were engaged in any other work, had more pressing priorities, or were unable to maintain the same level of service due to budget cuts.

15. The Panel accepted that council officers can expect to receive a certain level of criticism. It agreed, nevertheless, that officers have a right to be able to perform their roles in conditions free from undue perturbation, without unsubstantiated attacks on their professional reputations. The Panel considered, therefore, there was a clear pressing social need for a restriction to prevent this from occurring.

16. While the Panel accepted the post was a one-off and was removed quickly, it considered the Respondent's comments were personal in nature and amounted to an unwarranted, egregious and offensive personal attack on an officer who was relatively junior in terms of his role. Given the post could have been viewed or even shared by a large number of individuals, and given the officer had no right of reply, the Panel considered it had the potential to undermine both the officer in question and confidence in the Council itself, regardless of how quickly it was removed.

17. The Panel noted the Respondent's contention that it was the poor state of the town and flowerbeds that had damaged or harmed the Council's reputation, rather than her post. The Panel agreed, however that by appearing to place the blame on one officer in particular, without acknowledging there could be other contributing factors (including ones outwith the individual officer's control), the Respondent's post also had the potential to undermine public confidence in the Council's ability to manage performance of officers adequately, in a way that allowed it to perform effectively.

18. The Panel noted the Court in the case of *Lombardo*¹⁰ made comments about the potential "chilling effect" sanctions may have on the exercise of freedom of expression. The Panel noted that in the *Lombardo* case, the sanction imposed could have been considered to have a chilling effect as it was "capable of discouraging [the] making [of] statements critical of the local council's policies in the future". The Panel accepted that councillors have a key scrutiny role and are both entitled, and expected, to scrutinise whether their decisions were being implemented and the level of service being provided by council officers.

19. In this case, the Panel noted the Respondent contended that her comments were intended to be a criticism of the state the amenities in the town (including the flowerbeds) and the way in which the Council had filled the vacancy. The Panel noted it had found, however, that the only reasonable interpretation of the post was that the Respondent was suggesting the officer was incompetent and not undertaking the

⁸ Pedersen and Baadsgaard v Denmark (GC) 49017/99

⁹ Udovychenko v Ukraine 46396/14

¹⁰ Lombardo and others v Malta 7333/06

role effectively. The Panel accepted that the Respondent was fully entitled to exercise her scrutiny role in relation to her dissatisfaction with the town's amenities. The Panel further accepted the Respondent had published the post out of a sense of frustration that nothing was being done to improve these, despite her best efforts. The Panel considered, however, that it would have been entirely possible for the Respondent to have expressed her frustration with:

- the number of complaints she was receiving;
- her dissatisfaction with the Council's performance; and / or how any recruitment process for her husband's post had been conducted on his retirement,

without undermining and demeaning the officer who replaced him in the role in such a public manner. The Panel agreed that the Respondent could have done so without inferring that the officer in question did not have the capability to perform the role adequately and had failed to perform satisfactorily and, as such, that he was responsible for the apparent deterioration in the state of the town and the flowerbeds. The Panel again noted the Respondent had made these inferences without even noting there was a possibility that any deterioration in standards may have been the result of, or affected by, factors outwith the officer's control.

20. The Panel did not consider that any restriction placed on the Respondent's right to freedom of expression in this regard would inhibit her, in any way, from undertaking her scrutiny role in respect of the standards of service. The Panel noted the Respondent could have asked the relevant line manager to review the work being undertaken to maintain the flowerbeds or other amenities, in a manner compatible with the Code, without publicly demeaning Officer A and suggesting he was to blame for the apparent deterioration in standards. 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 scrutiny role.

21. The Panel noted that, in her post, the Respondent expressed value judgements, or opinions, about the reason for the deterioration in the town's amenities and Officer A's capability and performance. The Panel was not fully satisfied, however, that the Respondent had expressed such value judgements in good faith. This was because it was apparent from the evidence the Respondent gave at the Hearing that she was unhappy that the Council had not accepted her husband's offer to remain in post for a period to help, after he was due to retire. In addition, while the Respondent claimed that she had intended her comments to be directed towards the Council, and not Officer A, she had reiterated some of her concerns about his performance and capability at the Hearing. The Panel further noted the ESC had found, during the investigation, as outlined in the referral report, that another of the Respondent's relatives had applied for the post when her husband retired but had been unsuccessful. In the circumstances, the Panel concluded that it appeared the Respondent had a vested personal interest in the officer's performance and, therefore, that her concerns had not arisen solely as a result of being frustrated at the state of the amenities or from being the recipient of numerous complaints from members of the public.

22. Taking all the foregoing into account, the Panel concluded the Respondent's conduct was gratuitous, shocking, inappropriate and potentially damaging to Officer A's reputation. The Panel agreed that a restriction on the Respondent's right to freedom of expression was proportionate, relevant and necessary, in the circumstances, in order to meet the aims outlined above, and in particular to:

- protect the reputation and rights of Officer A;
- act as a deterrent to the Respondent and others from engaging in unfounded public attacks and / or making serious and false accusations about officers;
- protecting the mutual bond of trust and confidence between councillors and officers that enables local government to function effectively; and
- prevent public confidence in local government and the Council from being undermined.

23. As such, the Panel concluded that the finding of a breach of the Code would not contravene Article 10 and determined that a finding of a breach of paragraphs 3.1, 3.8 and 3.10 of the Code could be made.

Evidence in Mitigation

The Respondent declined to make any specific submissions in mitigation. The Panel advised it would take into account any it had identified in the evidence provided at the Hearing and previously in writing. The Panel further advised it would also consider the Respondent's contribution to her town and public life, as outlined in her earlier submissions.

SANCTION

The decision of the Hearing Panel was to suspend, for a period of one month, with effect from 3 November 2025, the Respondent, Councillor McCabe, 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 or body.

The 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
 - 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 at: <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 requirement for councillors to treat council officers with respect and to refrain from criticising their performance, conduct or capability in public are key requirements of the Code. The Panel noted that a failure to comply with the Code's provisions in this regard can have a detrimental impact on officers and can also erode the mutual bond of trust and confidence between them and councillors that allows local government to function effectively. In this case, the Panel noted that the Respondent had agreed, as part of her acceptance of office as a councillor, that she would abide by the terms of the Code, which clearly included the requirements outlined above.
4. The Panel noted it had found that the Respondent's comments were personal in nature and amounted to an unwarranted egregious and offensive personal attack on an officer. The Panel agreed that while council officers can expect their performance to be scrutinised, they have a right to be able to undertake their roles without being subjected to such unwarranted attacks. The Panel considered that the Respondent's comment about the officer could have caused him to have felt undermined in his role and affected both his confidence and professional reputation. The Panel was of the view, therefore, that the breach of the Code was serious in nature.
5. 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.

6. The Panel noted that the conduct in question was restricted to one social media post, which had been removed quickly by the Respondent. As such, the Panel noted the breach was limited in duration. The Panel further noted that the Respondent had co-operated with the investigative and Hearing processes. There was also no evidence of repeated behaviour and there had not been any previous finding of a contravention of the Code by the Respondent. The Panel also acknowledged the Respondent's contribution to her town and public life in general.
7. The Panel then proceeded to consider whether there were any aggravating factors; being ones that may increase the severity or culpability of the breach.
8. The Panel acknowledged the state of the town and flowerbeds was clearly a matter of concern for local residents. The Panel noted that the Respondent was frustrated and angry at the time she published the post as she had received numerous complaints about the apparent deterioration in standards and did not feel that matters were improving, despite her having raised her concerns with officers.
9. The Panel further acknowledged that the Respondent had every right to highlight issues about the service being provided with the Council. It accepted that she had the right to raise concerns about the capability, conduct or performance of any individual officer in private, by approaching their line manager. While the Panel accepted the Respondent's contention that she had already taken such a step and noted that it may have been the case that nothing changed as a result, it did not consider this was a reason or justification for her decision to then air her criticisms about him in public, in breach of the Code. This was because the Panel agreed the Respondent could have escalated her concerns, if she was of the view that matters had not improved, by asking a more senior Council officer to investigate them. The Panel considered this was particularly important in circumstances where the Respondent could not possibly have had knowledge of all the relevant facts, such as the officer's workload and any budgetary constraints or conflicting priorities. In any event, for the reasons outlined above, the Panel was not wholly satisfied that the Respondent had made her comments in good faith.
10. The Panel agreed that, as an experienced member, the Respondent should have known how to undertake her scrutiny role and express any dissatisfaction she may have had with the Council's performance without undermining and demeaning the officer in public. The Panel was disappointed to note the Respondent had not demonstrated insight into how her comment may have affected the officer in question (in terms of his confidence and reputation) and had not proffered an apology. Instead, the Respondent had indicated she considered it should have resulted in an improvement in his performance.
11. The Panel considered 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, both on the officer in question and on the wider relationships between elected members and officers. The Panel further considered 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 Code of Conduct and, in particular, to the requirement to treat Council officers with courtesy and respect;
 - 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.
12. Having considered the nature and seriousness of the breach, as well as the aggravating and mitigating factors identified, the Panel concluded that a one-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, given she had deleted the post shortly after publishing it. As such, the Panel did not consider that a disqualification or lengthier suspension was warranted or justified.

13. The Panel was satisfied that the imposition of a one-month suspension was the minimum necessary to achieve the aims outlined above and to reflect the seriousness of the breach. The Panel determined, therefore, to suspend the right of the Respondent to attend all meetings of the Council and of any committee or sub-committee thereof, and of any other body on which she was a representative or nominee of the Council, for a period of one month with effect from 3 November 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: 31 October 2025



**Morag Ferguson
Chair of the Hearing Panel**