

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held online on Tuesday, 1 September 2026.

Panel Members: Mr Malcolm Bell, Chair of the Hearing Panel
Dr Lezley Stewart
Mrs Morag Ferguson

The Hearing arose in respect of a report referred by Mr Ian Bruce, the Ethical Standards Commissioner (the ESC), further to complaint reference LA/EA/4394, concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor James Adams (the Respondent).

The ESC was represented at the Hearing by Ms Sarah Pollock. The Respondent represented himself at the Hearing.

REFERRAL

Following an investigation into a complaint received on 22 August 2025 about the conduct of the Respondent, the ESC referred a report to the Standards Commission on 5 June 2026, 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 he had contravened the following provisions:

Respect and Courtesy

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.

Confidentiality

3.21: I will not disclose confidential information or information which should reasonably be regarded as being of a confidential or private nature, without the express consent of a person or body authorised to give such consent, or unless required to do so by law. I note that if I cannot obtain such express consent, I will assume it is not given.

3.22: I accept that confidential information can include discussions, documents, information which is not yet public or never intended to be public, and information deemed confidential by statute.

3.23: I will only use confidential information to undertake my duties as a councillor. I will not use it in any way for personal or party-political advantage or to discredit my council (even if my personal view is that the information should be publicly available).

Use of Council Resources

3.24: I will only use council resources, including employee assistance, facilities, stationery and IT equipment, for carrying out council duties in accordance with all my council's relevant policies.

3.25: I will not use, or in any way enable others to use, council resources: a) imprudently (without thinking about the implications or consequences); b) unlawfully; c) for any party political or campaigning activities or matters relating to these; or d) improperly.

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

Introductory remarks by the ESC's representative

The ESC's representative advised that the Respondent represented the Kilmarnock Ward of the Council and was first elected as an East Ayrshire councillor in May 2022.

The ESC's representative explained that the complaint, made by the Council's former Chief Executive, concerned an email chain, comprising of exchanges between the Respondent and council officers about combustible waste and the risk of fires in the local area. By way of a background, the ESC's representative explained that in mid-July 2025, shortly before exchange, there had been a serious fire in the Respondent's ward. The ESC's representative advised that the Respondent explained, during her office's investigation, that he had longstanding concerns, which he had been raising for a considerable period of time, about combustible waste being stored outside homes and other premises, as he considered this presented an unacceptable fire risk.

The ESC's representative advised that it was not in dispute that the Respondent forwarded the email chain to his personal email account before then sharing it beyond the Council with a third party (being a contributor to a local Facebook page).

The ESC's representative noted that the complaint, as identified by her office, included an allegation that information from the email chain then informed a post the third party published on the Facebook page, in which allegations of neglect and misconduct were made against council officers. The ESC's representative acknowledged, however, that the Panel had made it clear, before the Hearing, that this was a consequence of the Respondent's alleged conduct, rather than being an allegation of a breach of the Code in itself. The ESC's representative confirmed her submissions would be tailored accordingly.

Witness evidence on behalf of the ESC

The ESC's representative led evidence from Mr Craig Young, the Council's Chief Governance Officer. Mr Young confirmed he was also the Council's Monitoring Officer.

The Chief Governance Officer advised that, at the time of the events in question he was the Council's Deputy Monitoring Officer and a Team Leader within the Legal Department, responsible for managing litigation and legal advice. The Chief Governance Officer explained that, in the emails that were the subject of the complaint, the Respondent asked about the collection and storage of commercial refuse, and the Council's approach and response to issues concerning this. The Chief Governance Officer advised that the email chain contained responses from several officers, with others copied in. The Chief Governance Officer explained the Council considered the email chain to be confidential and that officers involved did not expect information from it, including their names, to be disclosed and then shared publicly.

The Chief Governance Officer noted the chain contained emails from the Council's Regulatory Services Manager and the then Monitoring Officer in which the legal position was discussed. The Chief Governance Officer advised he considered that as the then Monitoring Officer was providing advice, as a solicitor acting in a legal capacity, this part of the correspondence was covered by legal privilege and was, therefore, inherently confidential and treated as such by the Council.

The Chief Governance Officer explained that the Council's Information Classification and Protection Policy outlined how councillors were to treat emails that were marked as 'official' or 'public', in order to ensure confidential information was not disclosed. The Chief Governance Officer explained that an email would be marked as 'public' if it was intended for public disclosure, and marked as 'official' if it was intended only for internal use, if it, for example, identified an individual, and / or if it contained business sensitive information. In this case, the Chief Governance Officer advised that although initial emails in the chain were designated 'public', the overall chain of which they formed part was marked with the 'official' classification. The Chief

Governance Officer advised that he considered it was evident the overall email chain was for internal use only and was not intended for public dissemination.

The Chief Governance Officer advised that he was not aware of the Respondent having redacted any information in the email chain, including the names and email addresses of officers and other individuals, before it was disclosed. The Chief Governance Officer advised that the officers in question included not only those at Head of Service or Chief Officer grades, but also some at a more junior level, including a Business Support Administrator. In addition, reference was made in the emails to individuals who did not work for the Council, including one who was employed by the Scottish Fire and Rescue Service.

The Chief Governance Officer advised that the Council's policy governing the use of communication systems outlined examples of the unacceptable use of internal emails accounts. These included forwarding confidential information to a personal email account.

The Chief Governance Officer explained that after concerns were raised by officers following the publication of the Facebook post, he and the Council's former Chief Executive had met with the Respondent and his group leader in August 2025. The Chief Governance Officer advised that the Respondent admitted, at the meeting, that he had both forwarded the email chain to his personal email account and had then sent it to the Facebook group contributor. The Chief Governance Officer said that the Respondent explained that he had forwarded the email chain to his personal email account as he was experiencing difficulties with accessing his council account on his mobile phone at the time. The Respondent further explained that he had then sent it to the Facebook group contributor to try to show that, as the local councillor, he was doing all he could to try to resolve the issue. The Chief Governance Officer advised that the Respondent confirmed he had not sought advice or permission from officers before disclosing the email chain and had explained that was because he had not considered it was confidential or that any information it contained should have been redacted.

The Chief Governance Officer advised that the Respondent also confirmed that, when forwarding the email chain to the Facebook group contributor, he had not expressed any view about the performance, conduct or capability of any council officers and had not intended any ill-will towards them.

In response to cross-examination from the Respondent, the Chief Governance Officer confirmed that the Respondent also advised, at their meeting, that he was not able to access council emails on his mobile phone, despite being told by the Council's IT Department, after seeking assistance, that he should be able to do so.

The Panel noted that at least one email in the chain was designated both as 'official' and 'public' and asked whether this was potentially confusing. In response, the Chief Governance Officer noted the email chain had been disclosed in full and suggested, therefore, that it needed to be considered in entirety. The Chief Governance Officer contended it was clear from its contents and nature that the email chain was, and should be treated as, internal confidential correspondence that was not intended for public disclosure.

When asked by the Panel how the classification reference was added to emails, the Chief Governance Officer explained that the author of an email selects a classification for their email from a drop-down list of options. The Chief Governance Officer noted that was why the designations 'official' and 'public' were frequently repeated in some of the emails as the chain developed. The Chief Governance Officer reiterated that he considered the selection of 'official' for some of the emails in the chain and its appearance in the subject heading made it clear that the email chain as a whole was internal correspondence that was not intended for wider circulation.

Submissions made by the ESC's Representative

The ESC's representative noted the Respondent sent and received the emails in question via his council email account and that he had participated in the exchange in his capacity as a councillor. The ESC's representative submitted, therefore, that the Code applied to his conduct.

The ESC's representative explained that the correspondence concerned issues relating to wilful fire raising, combustible waste and the Council's approach to waste management. The ESC's representative noted that the email chain, which contained correspondence sent between the end of May 2025 and the middle of July 2025, included legal advice and several emails that were marked 'official'. The ESC's representative further noted that the email chain identified and contained the names and email addresses of various council officers as well as individuals from external organisations. The ESC's representative noted that it was not in dispute that the Respondent forwarded the exchange in full to his personal email account before then disclosing it, again in full, to the third party. The ESC's representative noted this meant all the substantive content of the exchange was disclosed to the third party, along with the names and email addresses of council officers and the other individuals from external organisations.

The ESC's representative noted the Respondent's position was that while he accepted he should have redacted any names and email addresses, he had not considered the email chain to be confidential as it was not marked as such. The ESC's representative contended, however, that not only was the email chain confidential, but the Respondent should also have reasonably regarded and understood it to be. This was because it:

- concerned matters being discussed between the Respondent and council officers in connection with council functions and the Council's response to the issues raised.
- contained or referred to legal advice.
- Was marked 'official'.
- Was circulated within a defined group comprising of council officers and individuals from relevant external organisations.
- Was evidently not intended for wider or public circulation.

In addition, the ESC's representative noted there was no evidence that:

- consent had been sought or given for the external disclosure of the email chain;
- it was intended for public disclosure; or
- the information was already in the public domain.

The ESC's representative noted the Respondent had been clear that he had shared the email chain to dispel online criticisms to the effect that he had been inactive in relation to the concerns surrounding combustible waste and the risk of fire. The ESC's representative accepted that these were matters of public interest and that the Respondent was entitled both to raise concerns about these issues and to explain or defend publicly his own actions. The ESC's representative contended, however, that the Respondent did not need to disclose the internal email chain to a third party to do so. The ESC's representative noted that, instead, the Respondent could have simply explained what action he had taken. The ESC's representative argued that by choosing to provide an external third party with unredacted internal council correspondence, without permission, the Respondent disclosed confidential information he had obtained by virtue of his position as a councillor, to advance his own position.

The ESC's representative contended, therefore, that the Respondent had breached paragraphs 3.21, 3.22 and 3.23 of the Code.

The ESC's representative submitted that, in seeking to demonstrate he had taken action in respect of the matter and in trying to present his own actions in that favourable light, the Respondent disclosed the internal correspondence. The ESC's representative noted this, in turn, revealed the involvement, actions and advice

of council officers, which was capable of presenting their response in a less favourable light. The ESC's representative noted councils can only work effectively if an appropriate relationship of trust and confidence between councillors and officers is maintained. The ESC's representative argued that council officers must be able to communicate internally, which would include providing advice to councillors, with the expectation that confidential information will be treated accordingly.

The ESC's representative submitted that, in disclosing the email chain to an external party to support his own position, the Respondent undermined the relationship of trust and confidence between councillors and officers and, as such, breached paragraphs 3.8 and 3.10 (with reference to paragraph 25 of Annex A) of the Code.

The ESC's representative confirmed that the Council's policy on the Use of Communication Systems expressly prohibited the forwarding of confidential council information to external locations, including personal e-mail accounts. The ESC's representative acknowledged that the Respondent had provided explanations as to why he had forwarded the email chain from his councillor email account to his personal account. The ESC's representative submitted, however, that this did not supplant or supersede the requirement for him to comply with the Council's policy. Indeed, the ESC's representative noted that the Respondent acknowledged, during the investigation, that he did not consider the implications or consequences of his actions at the time. The ESC's representative submitted, therefore, that the Respondent used his council email account in a manner that did not accord with the Council's policy and was an improper use of its resources. The ESC's representative contended that, as such, the Respondent also breached para 3.24 and 3.25 of the Code.

The ESC's representative noted that finding the Respondent had breached the Code could represent a restriction on his right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). The ESC's representative submitted that, in this case, the Respondent would benefit from enhanced protection in respect of this right. This was because he was acting as an elected representative and the email chain concerned combustible waste, and the impact and risk of fire on the local community, which were matters of public interest.

The ESC's representative contended, nevertheless, that a restriction on the Respondent's right to freedom of expression could be justified. This was because Article 10(2) made it clear that such a restriction was allowed, if it was necessary and proportionate, in order to achieve the following legitimate aims:

- protecting confidential information;
- protecting the rights and reputations of council officers;
- maintaining the mutual relationship of trust and confidence between councillors and officers; and
- enabling local government to function effectively.

The ESC's representative acknowledged that the Respondent was entitled to publicly:

- raise concerns about the risk of fire and the wider issue of combustible waste;
- criticise any perceived lack of action on the part of the Council; and
- explain the actions he had taken on the matter, as a councillor (which could include posting his own statement on social media).

The ESC's representative argued, however, that the achievement of any or all of these aims did not require the Respondent to disclose internal email chain in full to an external party. The ESC's representative noted, in this regard, that any restriction imposed on the Respondent's right to freedom of expression did not concern what he wished to express, but rather the means he chose to do so. The ESC's representative noted that Article 10(2) clearly provides that a restriction on an individual's right may be imposed to prevent the disclosure of information received in confidence. The ESC's representative contended that as this was what the Respondent had done, a restriction on his right to freedom of expression, that a finding of a breach of the Code and imposition of a sanction would entail, was justified.

Given it was accepted the Respondent had forwarded the email chain to the Facebook contributor without comment, the Panel asked whether it was reasonable to conclude he had undermined officers or had raised concerns about their conduct, performance or capability in public. The ESC's representative suggested, in response, that by disclosing the email chain to demonstrate he had taken action in respect of the issues concerning waste and fire safety, the Respondent's conduct could be considered as being capable of exposing officers to criticisms they had been less active and, as such, to them being perceived in a less favourable light.

Submissions made by the Respondent

The Respondent advised that when he was elected, he was still in external full-time employment, so while training on various matters had been offered at that time, he had not been in a position to attend all sessions.

The Respondent confirmed there had been a major fire in the centre of Kilmarnock in mid-July 2025. The Respondent advised that, two weeks before this, he had been alerted by a constituent to the fact that there was an arson threat in respect of an historic building. This building was subsequently damaged in the fire. The Respondent advised that, prior to the fire, he had raised the issue with a senior council officer. The Respondent noted he was particularly concerned about the risk as he had a personal connection to the area and longstanding family ties to historic buildings in Kilmarnock close to the site of the fire.

The Respondent advised that the reason why he had forwarded the email chain in question to his personal email account was because the Council asked councillors to post certain messages on their social media platforms. The Respondent explained, however, that restrictions in place meant he was unable to copy and paste certain content from emails on his council email account, when using his mobile phone, and furthermore, was not permitted to access social media when using a council laptop. As such, the only way he could copy any content on to his social media accounts was to forward council emails to his personal email account and thereafter access his social media accounts from his phone.

The Respondent advised that when the fire occurred, he was out of the country on holiday and was unable to access council emails on his mobile phone. The Respondent noted that although he had asked the Council's IT Department to provide such access on three occasions, the matter had not been resolved before he left.

The Respondent explained that he was not legally trained and, as such, was not aware of the concept of legal privilege. The Respondent noted that emails from officers all tended to be marked as 'official' and, unless they were also marked as 'protected', he had not understood that information they contained could be considered confidential. The Respondent advised that he was still unclear as to what was and was not confidential. The Respondent advised that he accepted, nevertheless, that he should not have disclosed the names and email addresses contained in the email chain. The Respondent further acknowledged that he could have sought advice if he was unsure about whether any information was confidential and noted that, with hindsight, he accepted he should have done so.

The Respondent explained that when he was on holiday, he was made aware that he and other councillors were being criticised on social media for failing to take action that could have helped prevent the fire. The Respondent reiterated that his sole intention, in disclosing the email chain, was to demonstrate he had been trying actively to prevent such fires, with the potential associated damage to buildings and even loss of life. The Respondent confirmed he had not acted out of any malice or to cause upset, and advised he now accepted he should not have forwarded the email chain to the third party.

In response to a question from the Panel as to why he did not just respond to the criticisms on social media by sending an email to the Facebook contributor confirming he had raised the issue with council officers, the Respondent explained he had wanted to provide evidence to demonstrate he had done so. The Respondent advised he did not consider that forwarding the email chain would necessarily mean officers would be

criticised for not taking action. The Respondent suggested that, instead, the emails tended to show why certain actions could not be taken.

The Panel asked whether, given its satirical nature, he had considered it likely that the Facebook group would be critical of the Council and its officers as a result of the disclosure. In response, the Respondent confirmed that he was familiar with the Facebook page and accepted its content was often critical of the Council. The Respondent contended, however, that the content on the page was not always negative and good practice was occasionally highlighted. The Respondent reiterated that he had simply been trying to address the criticisms levelled at him, as he considered these to be unfair and unjustified.

When asked whether he accepted both that he had a personal responsibility to be familiar with and comply with the Code and that he had signed a declaration of office confirming he would do so, the Respondent advised he could not recall the declaration (although he accepted he had signed it). The Respondent advised he was aware of the Code but was not particularly familiar with its provisions. The Respondent confirmed that he had been invited to a training session on the Code but could not recall whether he had attended.

The Respondent advised he was unaware of the Council's policies in respect of the use of communication systems and how information was classified albeit he accepted that, when he logged into his council email account on his laptop, he was required to check a box drawing his attention to the Council's 'Policy Governing the Use of Communication Systems' and confirming he agreed to abide by its terms. The Respondent reiterated that training had been offered when he was first elected but, as he was still working full-time in another role, he had not been able to attend much of this and, in any event, had not understood it to be mandatory. When asked by the Panel as to whether he should expect to find out about, understand and comply with the relevant policies of any organisation he worked for, the Respondent indicated he would only know to do so if he was aware they existed.

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 Adams.
2. The Respondent had breached paragraphs 3.21, 3.23, 3.24 and 3.25 of the Code and, further, that a restriction on his right to freedom of expression that such a finding would entail could be justified.
3. The Respondent had not breached paragraphs 3.8 and 3.10 of the Code.

Reasons for Decision

1. The Panel noted the complaint concerned the Respondent's conduct in forwarding, without authorisation, a chain of internal council correspondence concerning the management of fire risk posed by combustible waste, from his councillor email account to his personal account. The complaint further alleged that the Respondent then shared the email chain, which included the names and email addresses of individual officers, with a contributor to a local Facebook group.
2. The Panel noted the Respondent accepted that he had forwarded and disclosed the email chain, as alleged, without having obtained prior consent to do so.
3. The Panel noted it was not in dispute, and found, that the Respondent engaged in and was privy to the email exchange that was the subject of the complaint, in his capacity as a councillor. The Panel was satisfied, therefore, that the Code applied to his conduct at the time of the events in question.
4. 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

5. The Panel noted that the email chain in question contained discussions concerning the Council's legal obligations, and its approach to service delivery and operational enforcement, in respect of waste and potential fire prevention. The Panel noted that some of the emails were specifically marked as 'official' and, further, that part of the email chain referred to legal advice provided on the subject. While the Panel was concerned that the classification of some of the emails in the chain was somewhat unclear (as they were marked as being both 'official' and 'public'), it agreed that internal correspondence of such a nature was inherently confidential. This was because council officers have a right to expect they can correspond with elected members, to provide updates and advice, without being concerned that their correspondence will be disclosed publicly without their consent.
6. The Panel agreed that it was evident from the fact that the email chain consisted of internal communications with council officers, in which both legal advice and external individuals were mentioned, that it was inherently confidential and should be treated accordingly. As such, the Panel considered the Respondent should have understood that it was not to be disclosed in full without express consent.
7. The Panel accepted, as truthful, the Respondent's contention that he had not disclosed the exchange either to criticise council officers or to encourage others to do so. This was because he had not made any comment about officers when disclosing it to the third party. The Panel further accepted the Respondent's contention that:
 - he had not understood, at the time, the email chain was to be treated as confidential; and
 - he disclosed it, without thinking of the potential consequence for others, solely to rebut online criticisms that he had failed, as an elected member, to take action in respect of the fire risk posed by combustible waste.

The Panel noted the Respondent was on holiday when he became aware of these criticisms, and when he consequently made the disclosure, and accepted this may have prompted him to act swiftly to rebut the criticisms without necessarily taking the time to consider whether there was a more appropriate way to do so.

8. The Panel nevertheless noted the Respondent's unambiguous position was that he disclosed the email chain to rebut criticisms being levelled at him, as an individual. It was satisfied, therefore, that he did so for personal or political advantage. **The Panel found, therefore, that the Respondent breached paragraphs 3.21 and 3.23 of the Code.**
9. The Panel noted that the Council's 'Use of Communication Systems Policy' stated clearly that the forwarding of council emails to personal email accounts was an example of unacceptable use of its communication system. The Panel acknowledged the Respondent's position was that he regularly forwarded emails to his personal email account as he was unable to either copy and paste from emails on his council phone or to access social media from his council laptop. The Respondent explained this combination meant he was unable to comply with requests from the Council to copy and then post certain information on his social media platforms. The Panel noted, however, that the Respondent had also advised the ESC, during the investigation, that he routinely forwarded council emails to his personal

account as he considered some correspondence he exchanged to be personal in nature and was uncomfortable with council officers, allegedly, having access to this.

10. The Panel agreed, however, that regardless of the Respondent's reasons, the Council's policy was entirely clear that forwarding emails from a council to a personal email was not permitted. The Panel considered that Respondent had a responsibility, as he would in any other job, to ensure he was familiar with such a policy. The Panel further considered the Respondent could have resolved any issue in respect of accessing content to be posted on social media without routinely, and as a matter of practice, forwarding council emails to his personal account. It noted he could either have waited for the IT Department to resolve the issue in respect of being able access to council emails on his council phone or could have asked for any potential social media content or messages to be provided in a different format. The Panel noted, in any event, there was no evidence or suggestion that the Respondent was asked to post any of the content of the email chain in question to his social media accounts. As such, the Panel was satisfied there was no legitimate reason for him to have forwarded it to his personal account, in breach of the Council's policy.
11. The Panel noted that when forwarding the email chain, the Respondent did not redact the names or email addresses of individual council officers and the names of third parties mentioned in the correspondence it contained. The Panel noted that the Respondent advised he now accepted he should not have disclosed the email chain without redacting the names and email address but, at the time, had not considered the consequences of any failure to do so. While the Panel recognised the Respondent did not make any comment about council officers when he forwarded the email chain, it considered that, given the Facebook page contained satirical comment and criticisms, he should have been aware that the individual officers named in the correspondence could be identified and criticised publicly as a consequence of his actions. **The Panel found, therefore, that the Respondent failed to comply with the relevant council policy and imprudently used council resources, in breach of paragraph 3.24 and 3.25 of the Code.**
12. The Panel understood why, in trying to show he had taken action to mitigate against the risk of fire, officers might feel the Respondent, by implication, was suggesting or trying to demonstrate that they had not done so. It noted that, as a consequence of the sharing of the email chain, officers were indeed criticised on the Facebook page. The Panel was not satisfied, however, that the Respondent himself had criticised the conduct, performance or capability, or undermined any identifiable employee or group of employees in public. Indeed, the Panel noted that, in forwarding the emails, it was arguable the Respondent effectively shared why officers were not able to take certain actions. **As such, the Panel did not find that the Respondent had breached paragraphs 3.8 or 3.10 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

13. The Panel did not consider Article 10 was applicable to the Respondent's conduct in forwarding the email chain to his personal email address. This was because the Panel considered this part of the Respondent's conduct did not represent the expression of information or ideas. The Panel agreed, however, that Article 10 applied to the Respondent's conduct in then disclosing the email chain to a third party (being the Facebook page contributor). The Panel again noted the Respondent had done so without making any comment. The Panel concluded, nevertheless, that the disclosure of the email chain was, in itself, an expression of his view he had raised concerns about fire risks with council officers, in order to rebut the suggestion that he had not taken any action.
14. The Panel noted that enhanced protection of freedom of expression under Article 10 applies to all levels of politics, including local politics. The Panel further noted that the Courts have held that political expression is a broad concept and that there is little distinction between political discussion and

discussion of matters of public concern¹. In this case, the Panel accepted the email chain the Respondent disclosed concerned combustible waste, and the impact and risk of fire on the local community, which were matters of public interest. It further noted that it had accepted that what the Respondent was trying to express in disclosing the email chain was whether he, as an elected member, had taken any action in respect of these matters. The Panel agreed that the question of whether an elected member is taking action to address concerns raised by constituents is also a matter of public interest and concern. In the circumstances, 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

15. 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:
 - preventing the disclosure of information received in confidence;
 - 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.
16. 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 Respondent against any restriction imposed by the application of the Code and the imposition of any sanction.
17. The Panel agreed that it was perfectly legitimate for council officers to expect that their internal emails with councillors would be kept confidential as such exchanges allow for the free and frank exchange of views and information. Similarly, the Panel agreed officers (particularly junior ones), and any third parties have a right to expect their names and email addresses will not be disclosed, without consent, simply because they had been involved or mentioned in internal correspondence. The Panel agreed there was a relevant need to preserve confidentiality as doing so both allowed officers to perform their duties free from undue perturbation and protected the mutual bond of trust and confidence between councillors and officers that enables local government to function effectively.
18. The Panel agreed with the ESC's representative that there was nothing to prevent the Respondent from:
 - raising publicly any concerns he had about the risk of fire and how waste was being managed (including being critical of any perceived lack of action on the part of the Council as an entity); and
 - explaining publicly the actions he had taken, as a local representative, in respect of the matter (including that he had raised issues with council officers about these matters before the fire occurred), without disclosing the email chain in full without consent. Indeed, the Panel noted that the Respondent could have posted a statement on social media or commented in the Facebook page in question. It noted, alternatively, that the Respondent could have advised the Facebook contributor that he had contacted council officers about the matter and could have even provided the dates on which he had done so. The Panel agreed that if the Respondent wished to supply evidence to prove this, he could have simply supplied his own emails, with any names and address of others redacted.

¹ Thorgeirson v Iceland (1992) 14 EHRR 843

19. As such, the Hearing Panel determined that the imposition of a restriction in the circumstances was relevant, sufficient, and proportionate. The Hearing Panel concluded, therefore, that it was satisfied that a finding of a breach of paragraphs 3.21, 3.23, 3.24 and 3.25, and subsequent application of a sanction, would not contravene Article 10.

SANCTION

The decision of the Hearing Panel was to censure the Respondent, Councillor Adams.

The sanction was made under the terms of section 19(1)(a) 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 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 requirements to maintain confidentiality, and to use council resources prudently for the purpose of carrying out council duties in accordance with all its relevant policies, are key requirements of the Code. The Panel noted that a failure to adhere to the Code's provisions in this regard can adversely affect the reputation of a council and can also impede the free exchange of information between officers and councillors that enables a council to function effectively. The Panel considered, therefore, that the breach of the Code was serious in nature.
4. The Panel proceeded to consider 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.
5. The Panel noted, in mitigation, that the conduct in question was relatively limited in duration, in that it did not have any evidence before it to suggest the disclosure of confidential information to a third party was anything other than a one-off occurrence. The Panel noted that the Respondent now accepted he should not have forwarded the email chain in question. The Panel further noted that the Respondent had co-operated fully with the investigative and Hearing processes. In addition, there were no previous findings of a contravention of the Code by the Respondent.
6. The Panel noted that the Respondent had agreed, as part of his acceptance of office as a councillor, that he would "undertake to comply with the requirements" of the Code. The Panel agreed that it was the Respondent's personal responsibility to ensure that he was both aware of and understood these provisions and the Council's policies. It did not accept that ignorance was, in any way, a mitigatory factor. This was particularly given it was accepted that training on the Code and policies had been offered (in a variety of formats) and that reminders were provided about the Council's 'Policy Governing the Use of

Communication Systems' every time officers and councillors logged into their council email accounts on council issued laptops and computers.

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. As noted above, the Panel agreed that it was the Respondent's personal responsibility to ensure he was both aware of, and understood, both the need to maintain confidentiality and to adhere to the Council's Policy Governing the Use of Communication Systems. While the Panel acknowledged that councillors are provided with a great deal of information when they are initially elected, which can be overwhelming, it noted the Respondent had been in post for over four years. The Panel was concerned that the Respondent had not taken steps to ensure he was familiar with the Code and the Council's policies in the intervening period and, further, that he had shown only limited insight into the importance of complying with these and the potential consequences of not doing so. The Panel was further concerned that the Respondent had admitted to regularly forwarding council emails to his personal account (albeit it accepted that the complaint before it concerned only one occasion where he had done so).
9. The Panel again acknowledged that the Respondent had every right to raise publicly any concerns he had about the risk of fire and how waste was being managed and the actions he had taken on the matter as a councillor. The Panel agreed there was no need for him to have disclosed the email chain in order to do so.
10. The Panel nevertheless accepted, as truthful, the Respondent's contention he disclosed the emails solely to demonstrate, contrary to what was being suggested publicly, that he had taken action on the matter and had not intended to undermine individual officers or expose them to public criticism.
11. In the circumstances and having considered the nature and seriousness of the breach, as well as any aggravating and mitigating factors identified, the Panel concluded that a censure, being its public and severe disapproval of the Respondent's conduct, was the appropriate sanction in the circumstances.
12. The Panel urged the Respondent to seek further training on the Code and the Council's policies to ensure he was wholly familiar with their requirements and his obligations in respect of these.

RIGHT OF APPEAL

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

Date: 7 September 2026

**Malcolm Bell
Chair of the Hearing Panel**