

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at Angus House, Forfar on 30 September 2026.

Panel Members: Dr Lezley Stewart, Chair of the Hearing Panel
Ms Suzanne Vestri
Ms Helen Donaldson

The Hearing arose in respect of a report referred by Mr Ian Bruce, the Ethical Standards Commissioner (the ESC), further to complaint reference LA/An/4457, concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillors David Cheape, Iain Gall and Tommy Stewart (the Respondents).

REFERRAL

Following an investigation into a complaint received on 24 October 2025 about the conduct of the Respondents, the ESC referred a report to the Standards Commission on 7 July 2026, in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000.

The ESC advised that he had considered whether the Respondents had failed to comply with the Code, and, in particular, whether they had contravened paragraphs 7.1, 7.4 and 7.5, the relevant parts of which are as follows:

7.1: I need to be especially vigilant when I am making a decision on a quasi judicial or regulatory application. For these applications, I need to ensure there is a proper and fair hearing of the application and I must avoid any impression of bias in the whole decision-making process.

Quasi-Judicial and Regulatory Matters

7.4: In dealing with these applications, I WILL:

*a) throughout my involvement with the entire application process act fairly and be seen to act fairly;
d) tell those who may be seeking to influence me out with the proper decision-making process that I will not formulate an opinion on any particular application until all information is available to all decision-makers and has been duly considered at the relevant meeting;*

7.5: In dealing with such applications, I WILL NOT:

*a) pre-judge or demonstrate bias or be seen to pre-judge or demonstrate bias;
b) indicate or imply support for or opposition to an application nor indicate my voting intention prior to the appropriate meeting where the application will be considered;
f) formulate my conclusions on an application until all available information is to hand and has been duly considered by me at the meeting where the application will be considered.
g) express any indicative or provisional views in the course of my involvement in any aspect of the application.*

Preliminary Matters

The Hearing Panel noted that the ESC had concluded that the Respondents had not breached the Code. The Panel noted the Standards Commission had nevertheless decided it was both proportionate and in the public interest to hold a Hearing. This was because the Standards Commission considered that holding a Hearing (and the associated publicity) could promote the provisions of the Codes of Conduct and the ethical standards framework. It further considered that the alleged breach was not insignificant or of a technical, minor nature.

EVIDENCE PRESENTED AT THE HEARING

The Panel noted that the complaint concerned emails the Respondents exchanged in advance of a Development Management Review Committee meeting on 22 August 2024, at which a review in respect of a planning application, which concerned a crematorium building and related works, was to be considered.

Joint Statement of Facts

The Panel noted that a joint statement of facts had been agreed between the ESC and Councillor Cheape. This recorded that it was not in dispute that Councillor Cheape was the Convener of the Development Management Review Committee. The joint statement further recorded that, on 21 August 2024, Councillor Cheape sent individual emails to each of the other members of the Committee, stating: "Ahead of tomorrow, between you and I, based on everything you've now read etc, can you advise if you are inclining towards upholding the appeal or rejecting it". The joint statement also noted that, in a further email response to a reply from Councillor Gall, Councillor Cheape stated "frankly I agree entirely".

The Panel noted that a joint statement of facts had been agreed between the ESC and Councillor Gall. This recorded that it was not in dispute that Councillor Gall was a member of the Development Management Review Committee. It further recorded that, in response to the email he received from Councillor Cheape, Councillor Gall stated, in an email the same day, "I will be asking to uphold the appeal". Councillor Gall then commented on the National Planning Framework 4 (NPF4) (being Scotland's long-term national spatial strategy and statutory development plan) in respect of the review.

The Panel noted that a joint statement of facts had been agreed between the ESC and Councillor Stewart. This recorded that it was not in dispute that Councillor Stewart was a member of the Development Management Review Committee. It further recorded that Councillor Stewart stated, in an email of 21 August 2024, "yeah I'm in favour of it", in response to the email he received from Councillor Cheape.

Introductory remarks by the ESC

The ESC noted all three Respondents accepted they were acting as councillors when making the comments that were the subject of the Hearing and, as such, that the Code applied to their conduct.

Witness Evidence on behalf of the ESC

The ESC led evidence from the Council's Acting Director of Legal and Democratic (also the Monitoring Officer), Alison Watson.

The Monitoring Officer advised that, approximately 10 months after the Development Management Review Committee meeting on 22 August 2024, another councillor made her aware of the exchange of emails that were the subject of the complaint. The Monitoring Officer advised that when Councillor Cheape then shared the emails with her, she decided to undertake an investigation and contacted all members of the committee. The Monitoring Officer advised that she also contacted a senior advocate to ask for an opinion on whether the emails would have any impact in terms of the Council's decision on the review. The Monitoring Officer advised that the advocate's view was that it was quite common for councillors to engage in email exchanges before meetings and, in this case, the Council could be satisfied that there was no coercion or attempt to influence other councillors in terms of how they should vote on the review. As such, the Advocate's view was that the emails did not have any impact.

The Monitoring Officer advised that committee members had already been provided with all information concerning the review (which consisted of approximately 3,900 pages of documentation), and this had been provided to them in advance of a meeting of the Committee held in June 2024. The Monitoring Officer explained that the only thing that happened after that meeting was the Committee undertook a site visit in July 2024.

The Monitoring Officer advised that, as part of her investigation, she reviewed the recording of the meeting on 22 August 2024. The Monitoring Officer noted this recorded that Councillor Cheape provided a summary description of the site visit and an independent planning adviser then made a short presentation. The Monitoring Officer explained that, when asked to do so by Councillor Cheape, all committee members confirmed they had sufficient information to make the decision and proceeded to do so.

The Monitoring Officer explained that, as part of her investigation, she also sought advice from the Standards Commission's Executive Director who had noted that while the matter could be argued either way, the use of the word 'inclining' in the initial question suggested that there had not been pre-judgment. The Executive Director had further noted that the Monitoring Officer was not responsible for determining whether the Code had been breached and was not obliged to refer the matter to the ESC (as anyone could do so). The Executive Director had suggested, however, that the Monitoring Officer might wish to remind all councillors of the Code's provisions in respect of quasi-judicial and regulatory decision-making.

The Monitoring Officer advised that, having obtained this advice from the Standards Commission, and in light of all the other material available including the advocate's views, she had concluded that while it had not been advisable for committee members to have exchanged emails on the review in advance of the meeting, she did not need to take any further action.

The Monitoring Officer noted that the decision on the planning review was the subject of an unsuccessful challenge to the Court of Session but confirmed the emails were not the subject of any of the grounds of appeal.

Councillor Cheape asked the Monitoring Officer, in cross-examination, whether she remembered that he had obtained a letter from another local authority confirming that it was normal practice for them to hold pre-agenda meetings to discuss matters before Development Management Review Committee meetings and that it was common, at these, for councillors to discuss any views they had up to that point. In response, the Monitoring Officer advised she recalled seeing the letter but did not know enough about practices elsewhere to comment on this.

In response to a question from the Panel about whether Councillor Cheape asked for advice before sending his email on 21 August 2024, the Monitoring Officer confirmed he had not sought assistance from her, but noted she was not the Monitoring Officer at the time and she did not know if he had approached her predecessor.

When asked about the advice she had sought from the senior advocate, the Monitoring Officer confirmed this concerned the appeal to the Court of Session and did not concern whether the Respondents had breached the Code or not.

The Panel asked whether it would have been reasonable for the committee members to believe they had all relevant and material information concerning the review by the time the emails were exchanged on 21 August 2024. In response, the Monitoring Officer advised she considered that was the case, as planning officers simply introduced the matter at the meeting and did not provide further information. The Monitoring Officer accepted that there was a possibility that a committee member could have asked at the meeting for more information, or expressed a view that might have led another member to change their mind. The Monitoring Officer noted, however, that the committee members were obliged to consider the review regarding the application based on the factual material already provided and, as such, would not have expected anything new to arise at the meeting.

The Monitoring Officer further advised that she considered Councillor Cheape's use of the word 'inclining' to be important because she felt that this left open the possibility that any member who responded could still change their view and were not expressing, unequivocally, how they were going to vote on the matter. The Monitoring Officer further advised that she considered the use of 'inclining' demonstrated there was no attempt to influence the decision or to coerce Members into voting a certain way.

The Panel asked the Monitoring Officer whether, as part of her investigation, she had asked other committee members why they had not responded to Councillor Cheape's email of 21 August 2024. In response, the

Monitoring Officer confirmed she had spoken to the other two committee members. One had said they had not considered it right to respond to Councillor Cheape's email, while the other member merely stated they had not responded.

In response to a further question from the ESC, the Monitoring Officer confirmed that following her investigation, she had reached the view that the Code had not been breached

Submissions made by the ESC

Councillor Cheape: The ESC noted that Councillor Cheape explained, during the investigation, that as Convener, he sent his emails on 21 August 2024 individually to the other committee members in order to establish whether he might need to exercise a casting vote in respect of the review. The ESC advised, in terms of paragraph 7.1 of the Code, that he had not found any evidence to indicate that Councillor Cheape failed to ensure that there was a proper and fair hearing of the review or that he had failed to avoid any impression of bias.

The ESC further advised that he had not found any evidence that Councillor Cheape sought to influence the other committee members in terms of how they should discuss or vote in respect of the review. The ESC noted that he had sent his emails of 21 August 2024 to each member separately. The ESC argued that had Councillor Cheape intended to influence other committee members, he would have sent one email to all members and would have expressed his own view or voting intention. The ESC explained that Councillor Cheape sent all committee members emails on 31 July 2024 and 5 August 2024 in which he outlined the proper process to be followed and made it clear it was up to each member to reach their own view. The ESC further noted that in his emails of 21 August 2024 Councillor Cheape sought, from the other committee members, an inclination as to how they might vote as opposed to any definitive commitment. The ESC argued that this meant, in effect, Councillor Cheape was asking each committee member whether, having read all the relevant material, they had reached a preliminary view. The ESC advised he had concluded, therefore, Councillor Cheape did not fail to act fairly (or fail to avoid any reasonable perception he had done so) and did not attempt to influence the decision-making of other committee members. The ESC advised he had concluded, therefore, that Councillor Cheape had not breached paragraph 7.4 of the Code.

Turning to paragraph 7.5 of the Code, the ESC advised, in his view, Councillor Cheape neither pre-judged the review nor demonstrated bias in his consideration of it. The ESC submitted the Code does not explicitly prohibit councillors from asking other councillors how they are *inclining* towards voting on a quasi-judicial or regulatory matter. The ESC acknowledged, nevertheless, that it would be preferable for no such discussions to take place, given the risk they can result in a pre-judgement or a reasonable perception of the matter having been determined in advance of the meeting at which it was due to be considered. The ESC advised he considered Councillor Cheape's stated reason for contacting the other committee members (being to establish whether, as Convener, he would have held the casting vote had there been a tie) to be valid. The ESC recognised the volume of documentation associated with the review.

The ESC advised he accepted Councillor Cheape's explanation that his comment about agreeing entirely (which was made in his second email to Councillor Gall), concerned the opinion expressed by Councillor Gall on the NPF4 policy, rather than Councillor Gall's view or voting intention in respect of the review. This was because Councillor Cheape's second email was sent in response to Councillor Gall's comments about the policy, and there was no evidence or suggestion he agreed with any other response received (from Councillor Stewart) in respect of voting intentions on the review. As such, the ESC advised he had concluded that Councillor Cheape did not express his voting intention before the meeting and, as such, did not breach paragraph 7.5 of the Code.

Councillor Gall: The ESC advised that, during the investigation, Councillor Gall highlighted the history of the case and the volume of material involved. Councillor Gall also distinguished the process for considering the

review from that used in respect of other applications, where council officers presented information to committee members. The ESC further advised that Councillor Gall confirmed he had not closed his mind on the review and could have changed his view if any new information had been presented at the meeting on 22 August 2024.

The ESC advised he did not consider Councillor Gall failed to ensure a proper and fair hearing of the review. The ESC explained this was because he considered Councillor Gall was simply answering the question posed in respect of how he was inclined to vote on the basis of the information already in his possession. The ESC advised he had found no evidence to suggest Councillor Gall attempted to influence any of the other committee members. The ESC advised he had concluded, therefore, that Councillor Gall had not breached paragraphs 7.1 or 7.4 of the Code.

The ESC accepted that Councillor Gall's response "I will be asking to uphold the appeal" could be construed, technically, as pre-determination. The ESC argued, however that this demonstrated only that Councillor Gall had formulated a preliminary view, which he was entitled to do. The ESC advised that, given the volume of documentation already provided to, and considered by, committee members, he accepted they would not have been able to participate actively in considering the review at the meeting the next day if they had not already formed a preliminary view. The ESC suggested that it was not this type of pre-determination that the Code was seeking to preclude. The ESC acknowledged it would have been preferable if the councillors had not emailed each other about how they were inclined to vote, but advised he did not consider there was evidence that Councillor Gall's comment demonstrated he had a closed mind in respect of the review before the meeting at which it was due to be considered.

The ESC noted the email exchange between Councillor Cheape and Councillor Gall occurred in private and there was no evidence Councillor Gall expressed his view on the review publicly before the meeting. The ESC argued that Councillor Gall's indication of how he was inclined to vote, on the basis of the evidence provided, did not represent a breach of paragraph 7.5 of the Code.

Councillor Stewart: The ESC advised that, during the investigation, Councillor Stewart had confirmed he considered he had received sufficient information to make a decision on the review, by the time he responded on 21 August 2024 to Councillor Cheape's email of the same day. The ESC further advised that Councillor Stewart had confirmed that if new information been made available at the meeting the following day, he would have been open to changing his mind (albeit he had noted that no such information was presented). The ESC advised that he did not consider Councillor Stewart's conduct to be materially different to that of Councillor Gall. As such, and for the reasons provided in respect of Councillor Gall, he did not consider that Councillor Stewart had breached paragraphs 7.1, 7.4 and 7.5 of the Code.

The Panel asked the ESC whether there was a difference between merely holding a preliminary view and expressing a voting intention. The ESC noted that the Standards Commission's Guidance made it clear that councillors were entitled to form preliminary views but suggested it was less clear whether they were entitled to share such a view with anyone else. The ESC acknowledged that in expressing their voting intentions, Councillors Gall and Stewart could be considered to have breached the Code in a "technical" sense. The ESC nevertheless suggested the broader circumstances of the case should be considered, including that the emails were sent at a very late stage of the proceedings (just before the meeting) and, further, that they were exchanged in private.

The Panel further asked whether, in seeking preliminary views from members of the committee, Councillor Cheape, could have opened himself up to being influenced. The ESC advised he did not think so, as he had found Councillor Cheape asked his question about how members were inclining in respect of the review in a neutral way. The ESC advised that he considered the evidence suggested Councillor Cheape had been diligent

in his efforts to ensure a correct process was followed. The ESC advised he considered that Councillor Cheape's conduct in sending the emails on 21 August 2024 was well-intentioned.

Submissions made by Councillor Cheape

Councillor Cheape advised that he used the word 'inclining' in the emails he sent to committee members on 21 August 2024 as he was only seeking their preliminary view on how they might vote on the review at the meeting the following day, as opposed to any firm commitment. Councillor Cheape stressed that he had not demonstrated any bias whatsoever in his emails; nor had he tried to influence how any members should vote.

Councillor Cheape noted that, by the time he sent his emails, committee members had already been provided with, and digested, a huge amount of material on the planning application and review. Councillor Cheape noted the Committee's decision on the review reflected this.

Councillor Cheape reiterated that he had sent his emails the evening before the meeting, at a time when all members would have read the paperwork and, inevitably, would have formed a preliminary view. Councillor Cheape explained that, as the committee comprised of five members, he was conscious that, as convener, he might be required to exercise a casting vote. Councillor Cheape explained the sole reason he sent the email was to try to establish if it was likely that would be the case, so he could ensure he was properly prepared for such an eventuality. Councillor Cheape reiterated that he had no intention whatsoever of trying to influence how other committee members might vote.

Councillor Cheape advised he considered his reply to Councillor Gall's response email may have been misconstrued by the Complainer. Councillor Cheape confirmed that when he advised he agreed completely, he was referring to Councillor Gall's opinion on the NPF4 and it not providing guidance that specifically addressed crematoria. Councillor Cheape rejected, entirely, any suggestion he had been referring to Councillor Gall's voting intention.

Councillor Cheape confirmed the Monitoring Officer's account of what happened at the meeting on 22 August 2024 was correct and advised he considered he had carried out his duties as the Committee Convener in accordance with due process and the Code. Councillor Cheape stated that he had sought to ensure there was a fair hearing of the matter and he had not demonstrated any bias or disclosed his voting before the meeting. As such, he did not consider he had breached the Code.

When asked by the Panel whether he could have prepared properly for the meeting without asking other committee members whether they were inclining towards upholding or rejecting the review, Councillor Cheape confirmed he accepted he could have done so. Councillor Cheape explained, however, that he was just seeking an indication of how other members felt, so that he could focus the discussions at the meeting and ensure the Committee provided sufficient reasons for any decision it made.

Councillor Cheape confirmed that he sent his email of 21 August 2024 in good faith. He confirmed that he had not intended to cause any difficulties for other committee members in terms of their adherence to the Code.

Submissions made by Councillor Gall

Councillor Gall explained, by way of context, that the original planning application, which was the subject of the review, was lodged in late 2020 and refused in January 2022. A differently constituted Committee then considered an application for review, before the Court of Session allowed an appeal in March 2024 against the decision it had made. Councillor Gall advised that, as a result, the new Development Management Review Committee was formed in April 2024. Councillor Gall explained that the Development Management Review

Committee then considered the review in June 2024 before undertaking a site visit in July 2024. Councillor Gall explained that, throughout this time, the application did not change in any material way.

Councillor Gall noted, therefore, that the history of the application was unusual and meant a vast amount of material had been given to the Committee to read in advance of the meeting on 22 August 2024. Councillor Gall explained that members of the Development Management Review Committee must present their own views, with reference to the National Planning Framework, and must be able to justify fully their decisions. Councillor Gall explained he was aware that Councillor Cheape, as its Convener, would be asking members of the committee, at the meeting on 22 August 2024, whether they had sufficient information to determine the review and, if so, what their decisions were. As such, he had been working through the material and policy in advance of the meeting, when he received the email from Councillor Cheape.

Councillor Gall advised that, while he had formed an initial view on the matter, he would have been open to changing this if new and material information been presented at the meeting. Councillor Gall explained, however, that given the amount of material already provided and considered by committee members, this was extremely unlikely.

The Panel noted that while Councillor Gall had been asked by Councillor Cheape how he was “inclining”, his response was that he would be “asking to uphold the appeal”, which appeared to be a definitive statement in respect of how he was going to vote. In response, Councillor Gall reiterated that it was the second time the Committee was to consider the matter and, therefore, all the information was already available to him.

In response to a question from the Panel, Councillor Gall advised he had not specifically considered the Code, including the provisions that states that councillors must refrain from expressing any view on any quasi-judicial or regulatory application before the appropriate meeting where the application will be considered, before responding to Councillor Cheape’s email. Councillor Gall advised he had considered not responding but decided that not doing so would be impolite. Councillor Gall explained that given:

- the history of the review;
- the fact a site visit had been carried out;
- the amount of material already provided to committee members; and
- the fact the meeting was being held the following day,

he had not considered there was any issue with Councillor Cheape’s email or any reason not to respond.

Submissions made by Councillor Stewart

Councillor Stewart reiterated the history of the review and confirmed that he had received and considered all the information provided in respect of it in advance of the Development Management Review Committee on 22 August 2024.

Councillor Stewart advised he had felt obliged to respond to the email from Councillor Cheape given the Committee was due to consider the review the following day. Councillor Cheape explained that the process the Committee was to follow, in respect of its consideration of the review, was very different from a usual planning meeting as, instead of council officers leading on the presentation of information, members of the committee were expected to explain their decision and reasoning in relation to the review. Councillor Stewart confirmed that, by the time he responded to Councillor Cheape, he was not expecting to be provided with any further or new information at the meeting. This was because approximately 4,000 pages about the review had already been supplied to committee members. Councillor Stewart confirmed, that while it was highly unlikely any further or new information would have been provided after he sent his response, he would have nevertheless been open to considering anything new and to changing his view at the meeting the following day.

When asked by the Panel whether he wished to make any comments regarding the Code's requirements not to express a voting intention in advance of any meeting at which a quasi-judicial or regulatory matter was to be considered, Councillor Stewart observed that if the communication had been in any other form, such as a telephone call, it was unlikely that a complaint would have been made. Councillor Stewart advised he had not considered specifically the terms of the Code before responding to Councillor Cheape's email. Councillor Stewart noted it was likely he would still have responded, out of politeness, even if he had done so (albeit he may have chosen different wording).

DECISION – COUNCILLOR CHEAPE

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 Cheape.
2. The Respondent had not breached the Code.

Reasons for Decision

1. The Panel noted there was no dispute that Councillor Cheape was acting in his capacity as Convener of the Development Management Review Committee when he sent individual emails to each of the other committee members on 21 August 2024 asking whether they were inclining towards upholding or rejecting the review. The Panel was satisfied, therefore, that the Code applied to his conduct at the time of the events in question.
2. The Panel noted that Councillor Cheape's position was that he was only trying to find out how other Committee Members were leaning, in order to establish whether he might need to exercise his casting vote as Convener. The Panel agreed that Councillor Cheape's use of the word 'inclining' tended to suggest he was not asking the other members for a definitive view. It nevertheless considered it was arguable that, in asking them how they were inclining in respect of the decision, Councillor Cheape encouraged other committee members to express a view before the meeting and, in doing so, put them in a position whereby any response they provided could be perceived objectively as them pre-judging the review.
3. The Panel did not accept the ESC's argument that had Councillor Cheape intended to influence other committee members, he would have just sent one email to all members, rather than individual ones. The Panel considered it was arguable it would be just as easy (if not easier) to influence another member in a private exchange. The Panel further did not accept the suggestion that it was, in any way, necessary for Councillor Cheape to have contacted the other members to establish whether he would be required to exercise a casting vote. This was because the Panel considered that, as a member of the committee, Councillor Cheape would have been required, at the meeting, to consider all the information and evidence and reach a view on the merits of the review, regardless of whether or not his vote would be determinative.
4. The Panel agreed, nevertheless, that while the decision to send the emails was inadvisable, Councillor Cheape did not express his own view on the matter or state how he intended to vote. The Panel accepted there was no evidence or suggestion that Councillor Cheape attempted, in his emails, to influence any other committee member in terms of how they should vote at the meeting the following day. The Panel further accepted that in asking other committee members how they were inclining, Councillor Cheape did not pre-judge the review. The Panel was satisfied that there was nothing in Councillor Cheape's emails that could be perceived, reasonably, as him doing so. The Panel was satisfied, therefore, that Councillor Cheape did not fail to avoid any perception that he had pre-judged the review.
5. Having reviewed the context, the Panel accepted the statement Councillor Cheape made in his second email to Councillor Gall, to the effect that he agreed entirely, concerned Councillor Gall's comment about

the NPF4, rather than how he intended to vote on the review. The Panel was satisfied, therefore, that this comment did not amount to an expression of how Councillor Cheape intended to vote and was not indicative of any pre-judgement on his part.

6. The Panel did not consider that Councillor Cheape's conduct, in seeking an indication of how committee members would vote, would have (or indeed did) prevent a full discussion and vote on the review at the meeting. As such, the Panel did not consider Councillor Cheape's conduct prevented a fair hearing of the matter at the meeting on 22 August 2024.
7. For the reasons outlined above, the Panel concluded that Councillor Cheape had not breached the Code.

DECISION – COUNCILLOR GALL

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 Gall.
2. The Respondent had breached paragraphs 7.5 of the Code.
3. The Respondent had not breached paragraphs 7.1 and 7.4 of the Code.

Reasons for Decision

1. The Panel noted there was no dispute that Councillor Gall was acting in his capacity as a member of the Development Management Review Committee when he sent his two response emails to Councillor Cheape on 21 August 2024 in respect of the review. The Panel was satisfied, therefore, that the Code applied to his conduct at the time of the events in question.
2. The Panel noted that Councillor Gall responded to the question about how he was inclining in respect of upholding the review or rejecting by stating he would be "asking to uphold the appeal".
3. The Panel accepted that a great deal of information and documents had already been supplied to, and considered by, committee members by the time of the email exchange between Councillor Cheape and Councillor Gall on 21 August 2024 and, accordingly, it was very unlikely any further documents or evidence would be provided at the meeting the following day. The Panel agreed, however, that the purpose of holding meetings is for all committee members to discuss openly any application to be determined. The Panel noted that members of committee would be obliged to listen to each other and, therefore, there was a possibility that opinions and reasons expressed by other members could have led them to change any preliminary view they may have reached before the meeting. The Panel further noted that the Code does not distinguish between applications where a great deal of information has been supplied to committee members in advance of their determination of a quasi-judicial or regulatory application, and ones where only a limited amount had been provided.
4. The Panel nevertheless accepted Councillor Gall's position that he had not pre-judged the application. In reaching this decision, the Panel agreed that the wording of his response appeared, on its face, to be definitive. The Panel accepted, however, that this was a response to a question as to how he was 'inclining'. The Panel was satisfied that in stating he would be asking to uphold the review, Councillor Gall made a clear and unequivocal statement about his voting intention. The Panel nevertheless accepted, as credible, his position that he had not pre-judged the matter and would have been willing to take account of any further relevant and material information at the meeting, had any been presented. The Panel agreed, therefore, that Councillor Gall had not breached paragraph 7.4 of the Code.

5. The Panel was also satisfied that it had no evidence before it to suggest that Councillor Gall's conduct prevented a fair hearing of the matter at the meeting on 22 August 2024. As such, it agreed he had not breached paragraph 7.1 of the Code.
6. The Panel did not consider the fact that the expression of a voting intention occurred during a private email exchange, rather than in public to be relevant. This was because, as demonstrated in this case, such an exchange can become public. The Panel noted, in any event, that the Code does not distinguish between the expression of a voting intention in public or private. The Panel further noted the Code does not make any provision for how soon before the meeting any expression of a voting intention can or cannot be made.
7. The Panel considered that there was a difference between forming a preliminary view on an application and expressing a voting intention. The Panel noted that paragraph 7.5(b) clearly stated that councillors should not indicate their voting intention prior to the appropriate meeting where the application will be considered. In this case, it was satisfied that Councillor Gall had expressed clearly and unequivocally his voting intention before the meeting. As such, the Panel concluded that Councillor Gall breached paragraph 7.5 of the Code.

DECISION – COUNCILLOR STEWART

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 Stewart.
2. The Respondent had breached paragraphs 7.5 of the Code.
3. The Respondent had not breached paragraphs 7.1 and 7.4 of the Code.

Reasons for Decision

1. The Panel noted there was no dispute that Councillor Stewart was acting in his capacity as a member of the Development Management Review Committee when he sent his response email to Councillor Cheape on 21 August 2024 in respect of the review. The Panel was satisfied, therefore, that the Code applied to his conduct at the time of the events in question.
2. The Panel noted that Councillor Stewart responded to the question about how he was inclining in respect of upholding the review or rejecting it by stating "yeah I'm in favour of it".
3. The Panel again accepted that a great deal of information and documents had already been supplied to, and considered by, committee members by the time of the email exchange between Councillor Cheape and Councillor Stewart on 21 August 2024 and, accordingly, it was very unlikely any further documents or evidence would be provided at the meeting the following day. The Panel agreed, however, that the purpose of holding meetings is for all committee members to discuss openly any application to be determined. The Panel noted that members of the committee would be obliged to listen to each other and, therefore, there was a possibility that opinions and reasons expressed by other members could have led them to change any preliminary view they may have reached before the meeting. The Panel further noted that the Code does not distinguish between applications where a great deal of information has been supplied to committee members in advance of their determination of a quasi-judicial or regulatory application, and ones where only a limited amount had been provided.
4. The Panel nevertheless accepted Councillor Stewart's position that he had not pre-judged the application. In reaching this decision, the Panel agreed that the wording of his response appeared, on its face, to be definitive. The Panel accepted, however, that this was a response to a question as to how he was 'inclining'. The Panel was satisfied that in stating he was in favour of the review, Councillor Stewart made

a clear and unequivocal statement about his voting intention. The Panel nevertheless accepted, as credible, his position that he had not pre-judged the matter and would have been willing to take account of any further relevant and material information at the meeting, had any been presented. The Panel agreed, therefore, that Councillor Stewart had not breached paragraph 7.4 of the Code.

5. The Panel was also satisfied that it had no evidence before it to suggest that Councillor Stewart's conduct prevented a fair hearing of the matter at the meeting on 22 August 2024. As such, it agreed he had not breached paragraph 7.1 of the Code.
6. As noted under the reasoning in respect of the decision on Councillor Gall above, the Panel did not consider the fact that the expression of a voting intention occurred during a private email exchange, rather than in public to be relevant. This was because, as demonstrated in this case, such an exchange can become public. The Panel noted, in any event, that the Code does not distinguish between the expression of a voting intention in public or private. The Panel further noted the Code does not make any provision for how soon before the meeting any expression of a voting intention can or cannot be made.
7. The Panel considered there was a difference between forming a preliminary view on an application and expressing a voting intention. The Panel noted that paragraph 7.5(b) clearly stated that councillors should not indicate their voting intention prior to the appropriate meeting where the application will be considered. In this case, it was satisfied that Councillor Stewart had expressed clearly and unambiguously his voting intention before the meeting. As such, the Panel concluded that Councillor Stewart breached paragraph 7.5 of the Code.

SANCTION – COUNCILLORS GALL AND STEWART

The decision of the Hearing Panel was to censure both Councillor Gall and Councillor Stewart. These sanctions were made under the terms of section 19(1)(a) of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

Reasons for Sanctions

1. In making its decision on the sanctions to be applied, the Panel had regard to the Standards Commission's Policy on the Application of Sanctions. A copy of the policy can be found on the Standards Commission's website, here: <https://www.standardscommissionscotland.org.uk/cases/hearing-rules>
2. The Panel began by assessing the nature and seriousness of the breaches of the Code. The Panel agreed that the requirement for councillors to refrain from expressing their indicative or provisional view or voting intention on any quasi-judicial or regulatory matter, before the meeting where the matter is to be determined, are key requirements of the Code. The Panel noted that a failure to do so can have an adverse effect on the public's confidence in any decision made and in how a council makes such decisions. This is because the public have a right to be confident that decisions on such matters will only be made after all relevant and material evidence, submissions, advice and views are discussed and considered at the relevant meeting.
3. The Panel noted it had found that both Councillor Gall and Councillor Stewart had expressed clearly and unequivocally their voting intentions before the Development Management Review Committee meeting on 22 August 2024 and, therefore, had breached of the Code. While the Panel noted that a failure to comply with the Code's provisions in respect of how quasi-judicial and regulatory matters are to be made can lead to Council decisions being challenged, with associated cost and reputational implications, it accepted it had no such impact in this case. The Panel was further satisfied that both Councillor Gall and Councillor Stewart had only expressed their voting intentions the day before the meeting, when it appeared evident that it was highly unlikely that any further information or evidence in respect of the review would be forthcoming. As such, the Panel did not consider the breaches of the Code to be particularly serious in nature.

4. 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.
5. The Panel acknowledged that both Councillors Gall and Stewart had only expressed their voting intentions as a result of having been invited by the Committee Convener, Councillor Cheape, to say whether they were inclining towards accepting or rejecting the review. The Panel accepted both councillors had responded out of courtesy, and that the emails were exchanged the afternoon before the meeting, in circumstances where the Committee had already been provided with a considerable volume of information and it was unlikely any further information would be forthcoming. The Panel accepted as credible, the position of both councillors, that they had not closed their minds and would have been open to changing their views at the meeting, had any significant new information been presented. The Panel was satisfied, therefore, that their respective breaches of the Code were entirely inadvertent. The Panel was further satisfied, from their submissions and the evidence presented, that both Councillors Gall and Stewart had sought to act with integrity and in good faith throughout the decision-making process.
6. The Panel then proceeded to consider whether there were any aggravating factors; being ones that may increase the severity or culpability of the breach. It noted, in this regard, that both councillors had a personal responsibility to understand and comply with the provisions in the Code and, in this case, had failed to do so (albeit inadvertently).
7. The Panel noted, nevertheless, that the findings of a breach of the Code in respect of both councillors was confined to their short and individual email exchanges with Councillor Cheape, and as such, were very limited in duration. The Panel further noted that both Councillors Gall and Stewart had co-operated fully with the investigative and Hearing processes. There was also no evidence of any previous contraventions of the Code by either councillor.
8. Having considered the nature and seriousness of the breach, as well as the mitigating and aggravating factors identified, the Panel concluded that a censure was the appropriate sanction in the circumstances.

RIGHT OF APPEAL

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

Date: 12 October 2026