

North Lanarkshire Council Report

Council

Does this report require to be approved? Yes No

Ref Date 09/12/2024

Standards Commission Proceedings – Councillor David Crichton

From A Aitken, Chief Officer (Legal and Democratic)

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Executive Summary

The purpose of this report is to advise of the outcome of proceedings before the Standards Commission for Scotland in relation to a complaint that Councillor Crichton had been guilty of breaching the Councillors' Code of Conduct.

Recommendations

It is recommended that Council considers the written Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held in Airdrie on 23 October 2024, and note the sanction imposed.

The Plan for North Lanarkshire

Priority All priorities
Ambition statement All ambition statements
Programme of Work All Programmes of Work

1. Background

- 1.1 Following a complaint made by the Council's Chief Executive to the Ethical Standards Commissioner in respect of the conduct of Councillor David Crichton, a report was submitted by the Commissioner to the Standards Commission. Following consideration of that report, the Commission decided to convene a Hearing before a Panel to consider the matter.
- 1.2 The Panel noted that the complaint concerned the conduct of Councillor Crichton in publishing a Facebook post on 22 September 2023 about the Council's decision to review facilities. Councillor Crichton had stated in that post that the "review was initiated by the Chief Executive of North Lanarkshire Council, Mr Des Murray" and the Council Leader, and that "the timing and process" also appeared unusual given upcoming elections. He also stated that he hoped that the "real purpose" of the review was "not to portray a greater crisis in an effort to gain votes for both the Labour and Conservative Groups".

- 1.3 The Panel found that Councillor Crichton had published the post despite being aware that the decision to undertake the review had been made by elected members at the Council meeting on 23 February 2023. The Chief Executive had not, therefore, been responsible for initiating the review and, instead, was simply responsible for implementing the decision to undertake one.
- 1.4 The Panel noted that the post had been prepared in advance by Councillor Crichton's political group and that he had also added further wording to it. As such, it was evident that the post had not been drafted in haste, without considering the wording and its likely inference. The Panel was satisfied that the mention of the Chief Executive in the post was deliberate and was intended to link him to the review in order to publicly criticise his alleged conduct. By doing so, Councillor Crichton had effectively accused the Chief Executive both of going beyond his remit and of not being politically neutral. As council officers are obliged to remain politically neutral, the Panel was of the view that such public questioning of the Chief Executive's impartiality, and therefore his integrity, could have had a significant, detrimental impact on his reputation as an individual. Given the Chief Executive's position as its senior officer, it could have also been damaging to the reputation of the Council itself. The Panel considered that the deliberate inclusion of the Chief Executive in the criticism of the review decision was wholly unfair and inappropriate and would have been distressing for the Chief Executive. It noted that the post had been removed after five days, albeit only after the Council's Monitoring Officer had raised concerns about it with Councillor Crichton.
- 1.5 The Panel found, therefore, that Councillor Crichton's conduct amounted, on the face of it, to a breach of:
- paragraph 3.1 of the Code (which requires councillors to treat others with courtesy and respect); and
 - paragraphs 3.8 and 3.10 (which require councillors to refrain from criticising the conduct of individual officers in public and to work with them in an atmosphere of mutual trust and respect).
- 1.6 Having found that Councillor Crichton had breached these paragraphs of the Code, the Panel then proceeded to consider his right to freedom of expression under Article 10 of the European Convention on Human Rights. The Panel noted that this right is not absolute and that restrictions can be imposed for a number of reasons, including to protect the rights and reputations of others, to maintain the mutual bond of trust and confidence between councillors and officers and to protect officers from offensive attacks that could potentially undermine the public's confidence in the Council.
- 1.7 The Panel concluded that Councillor Crichton's accusation was entirely gratuitous, egregious and offensive. It was satisfied that a restriction on his right to freedom of expression was relevant, sufficient and proportionate to protect the reputation and rights of the Chief Executive, and to prevent public confidence in local government and the Council from being undermined.
- 1.8 In determining the sanction to be imposed, the Panel noted that the requirement for councillors to behave with courtesy and respect towards council officers and to refrain from criticising them in public are key requirements of the Code. This is because they protect the mutual bond of trust and confidence between councillors and officers, which allows local government to function effectively.
- 1.9 The Panel was concerned that Councillor Crichton had not shown any insight into the potential impact of the post, particularly on the Chief Executive, and noted that he had not proffered any apology.

2. Report

- 2.1 A Hearing was held on 23 October 2024 by the Standards Commission for Scotland in relation to a complaint against Councillor Crichton. The Ethical Standards Commissioner had investigated the complaint and concluded that Councillor Crichton had contravened the Councillors' Code of Conduct. However, it was the Commissioners position that a restriction on Councillor Crichton's right to freedom of expression in terms of Article 10 of the European Convention of Human Rights could not be justified. The Hearing decided that Councillor Crichton had contravened the Code and that a restriction on his freedom of expression was justified.
- 2.2 The decision of the Commission Panel was that the appropriate sanction, in the circumstances was to suspend fully Councillor Crichton for a period of one month, with effect from 4 November 2024, in terms of section 19(1)(c) of the Ethical Standards in Public Life etc. (Scotland) Act 2000. The findings of the Commission contained in the Decision of the Hearing Panel are set out in Appendix 1. The Commission's Suspension Guidance is annexed as Appendix 2.
- 2.3 Section 18 of the Act requires that the Standards Commission, following a hearing, must provide a copy of its findings to the Council and that the Council must consider those findings within three months of receiving them, or within such longer period as the Commission may specify. Further, the duty imposed on the Council to consider the findings is to be discharged only by the Council itself and not by a Committee, Sub-Committee or officer. This report and the attached decision from the Standards Commission are submitted to the Council in accordance with the requirements of that Act.

3. Measures of success

- 3.1 All Elected Members were provided with information and advice from the Monitoring Officer as part of the new Members' Induction Programme 2022 on their obligations and duties to adhere to the Councillors' Code of Conduct. Adhering to the advice and information provided and, where any lack of clarity exists, seeking further advice from the Monitoring Officer, would mitigate against any actions required to be taken by the Standards Commission for Scotland due to a breach, or perceived breach, of the Code of Conduct.

4. Supporting documentation

Appendix 1 - Decision of the Hearing Panel of the Standards Commission for Scotland held on 23 October 2024.

Appendix 2 – Standards Commission for Scotland Suspension Guidance



Archie Aitken
Monitoring Officer & Chief Officer (Legal and Democratic)

5. Impacts

5.1 Public Sector Equality Duty and Fairer Scotland Duty Does the report contain information that has an impact as a result of the Public Sector Equality Duty and/or Fairer Scotland Duty? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes, please provide a brief summary of the impact? If Yes, has an assessment been carried out and published on the council's website? https://www.northlanarkshire.gov.uk/your-community/equalities/equality-and-fairer-scotland-duty-impact-assessments Yes <input type="checkbox"/> No <input type="checkbox"/>
5.2 Financial impact Does the report contain any financial impacts? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes, have all relevant financial impacts been discussed and agreed with Finance? Yes <input type="checkbox"/> No <input type="checkbox"/> If Yes, please provide a brief summary of the impact?
5.3 HR policy impact Does the report contain any HR policy or procedure impacts? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes, have all relevant HR impacts been discussed and agreed with People Resources? Yes <input type="checkbox"/> No <input type="checkbox"/> If Yes, please provide a brief summary of the impact?
5.4 Legal impact Does the report contain any legal impacts (such as general legal matters, statutory considerations (including employment law considerations), or new legislation)? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes, have all relevant legal impacts been discussed and agreed with Legal and Democratic? Yes <input type="checkbox"/> No <input type="checkbox"/> If Yes, please provide a brief summary of the impact?
5.5 Data protection impact Does the report / project / practice contain or involve the processing of personal data? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes, is the processing of this personal data likely to result in a high risk to the data subject? Yes <input type="checkbox"/> No <input type="checkbox"/> If Yes, has a Data Protection Impact Assessment (DPIA) been carried out and e-mailed to dataprotection@northlan.gov.uk Yes <input type="checkbox"/> No <input type="checkbox"/>
5.6 Technology / Digital impact Does the report contain information that has an impact on either technology, digital transformation, service redesign / business change processes, data management, or connectivity / broadband / Wi-Fi? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes, please provide a brief summary of the impact?

Where the impact identifies a requirement for significant technology change, has an assessment been carried out (or is scheduled to be carried out) by the Enterprise Architecture Governance Group (EAGG)?

Yes No

5.7 Environmental / Carbon impact

Does the report / project / practice contain information that has an impact on any environmental or carbon matters?

Yes No

If Yes, please provide a brief summary of the impact?

5.8 Communications impact

Does the report contain any information that has an impact on the council's communications activities?

Yes No

If Yes, please provide a brief summary of the impact?

5.9 Risk impact

Is there a risk impact?

Yes No

If Yes, please provide a brief summary of the key risks and potential impacts, highlighting where the risk(s) are assessed and recorded (e.g. Corporate or Service or Project Risk Registers), and how they are managed?

5.10 Armed Forces Covenant Duty

Does the report require to take due regard of the Armed Forces Covenant Duty (i.e. does it relate to healthcare, housing, or education services for in-Service or ex-Service personnel, or their families, or widow(er)s)?

Yes No

If Yes, please provide a brief summary of the provision which has been made to ensure there has been appropriate consideration of the particular needs of the Armed Forces community to make sure that they do not face disadvantage compared to other citizens in the provision of public services.

5.11 Children's rights and wellbeing impact

Does the report contain any information regarding any council activity, service delivery, policy, or plan that has an impact on children and young people up to the age of 18, or on a specific group of these?

Yes No

If Yes, please provide a brief summary of the impact and the provision that has been made to ensure there has been appropriate consideration of the relevant Articles from the United Nations Convention on the Rights of the Child (UNCRC).

If Yes, has a Children's Rights and Wellbeing Impact Assessment (CRWIA) been carried out?

Yes No

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at the Sir John Wilson Town Hall, Airdrie, on Wednesday 23 October 2024.

Panel Members: Ms Suzanne Vestri, Chair of the Hearing Panel
Dr Lezley Stewart
Ms Ashleigh Dunn

The Hearing arose in respect of a Report referred by Mr Ian Bruce, the Ethical Standards Commissioner (the ESC), further to complaint reference LA/NL/3979, concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor David Crichton (the Respondent).

REFERRAL

Following an investigation into a complaint received on 6 October 2023 about the conduct of the Respondent, the ESC referred a report to the Standards Commission on 30 July 2024, in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act).

The ESC advised that he had considered whether the Respondent had failed to comply with the Code, and, in particular, whether he had contravened paragraphs 3.1, 3.8, 3.10 and 25 of Annex A of the Code, which were as follows:

Respect and Courtesy

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

3.8: 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: Protocol for Relations between Councillors and Employees

Public comment

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 on 5 May 2022 and signed a declaration of acceptance of office the following day, undertaking to meet the requirements of the Code.
- On 22 September 2023, the Respondent published to his Facebook account the post that is the subject of the complaint.
- The Respondent acknowledged he was acting in his capacity as a councillor when making the post.
- The Council's Monitoring Officer sent the Respondent an email about the post on 27 September 2023. The Respondent removed the post following receipt of the email and after taking legal advice.

Introductory Remarks by the ESC

The ESC advised that the Respondent had been elected as a councillor on 5 May 2022 and signed a declaration of office, confirming he would comply with the Code, the following day. The Respondent joined the

Progressive Change North Lanarkshire (PCNL) Group in May 2023, having previously been a member of the Scottish National Party.

The ESC explained that the Respondent's Facebook post of 22 September 2023 concerned potential cuts to North Lanarkshire Council's services. In it, the Respondent referred to a paper that listed the facilities that could be affected. The ESC advised that the Complainer, the Council's Chief Executive, considered the post contained serious and factually incorrect allegations against him. The Complainer considered these allegations had been made deliberately, with the intention of misrepresenting the correct position for political purposes.

The ESC advised that the Respondent published the post on a Facebook account entitled 'David Crichton Councillor Ward 17 Motherwell West'. The ESC noted that the Respondent accepted he had published the post in his capacity as a councillor. As such, there was no dispute that the Code applied to his conduct.

Witness Evidence on behalf of the Respondent

The Respondent confirmed that there was no dispute that he had published the post, as alleged and outlined in the ESC's report.

The Respondent led evidence from Councillors Gerry Brennan and Greg Lennon.

Councillor Gerry Brennan: Councillor Brennan advised that the Facebook post had not been drafted by the Respondent and, instead, the majority of its contents had been constructed by the PCNL Group for use by its members as they saw fit. Councillor Brennan noted that it appeared the Respondent had personalised the post by adding some additional content at the beginning and end. Councillor Brennan explained that the purpose of the post had been to highlight the potential closure of the facilities and to give the perspective of the PCNL Group in respect of what was a highly contentious political matter and issue of great public interest. Councillor Brennan advised he considered it was clear, from the mention of other political groups in the post, that it was directed at them and intended as political comment or narrative, rather than as criticism of the Complainer.

Councillor Brennan advised that, at a special meeting of the Council, on 23 February 2023, the Council Leader stated that the Administration would protect staff jobs and would not close any culture or leisure facilities. The Leader nevertheless proceeded to state that, in light of financial challenges, he was instructing the Complainer to conduct a full review of all facilities, which would then be considered by a council committee.

Councillor Brennan stated that he considered the content of the post to be accurate. This was because even though the Leader had stated no facilities would be closed, officers had recommended, as a result of the review, that some should be shut. Councillor Brennan contended the democratic decision to enact the review had then been overturned, outwith the committee structure, for political purposes.

Councillor Brennan confirmed that he had attended the Council meeting on 23 February 2023 when the Complainer was instructed to undertake the review. Councillor Brennan further confirmed it was normal practice for the Leader of the Council or a convener of one of its committees to give instructions to the Chief Executive in such a manner. Councillor Brennan advised that he did not consider the post contained any inaccuracies as it only mentioned the Complainer as "instigating the review as instructed".

In response to cross-examination by the ESC, Councillor Brennan confirmed that the post was intended to be critical of other political groups. Councillor Brennan noted that only one reference had been made to the Complainer, in respect of the instruction given to him by the Leader. When asked why the post had not simply referred to the Leader, or Administration, as being those who made the decision to initiate the review, Councillor Brennan advised it had "just so happened" that the Complainer had been mentioned. When asked why the Complainer had not only been mentioned, but referred to by name explicitly, Councillor Brennan

stated it was because, as the Council's most senior officer, the Complainer had a public profile and was well-known.

Councillor Greg Lennon: Councillor Lennon also advised that the post had been authored by the PCNL Group. Councillor Lennon confirmed that he had also published the majority of the contents of the Respondent's post, albeit he had altered a few of the descriptive words it contained. Councillor Lennon stated that the purpose of the post was to highlight the risk of the facilities being closed (which was a matter that was the subject of a great deal of public interest). Councillor Lennon explained that the post was also intended to highlight that the scope of the review had changed, given the Council Leader had stated, at the Council meeting on 23 February 2023, that no facilities would be affected.

Councillor Lennon advised he did not consider the post contained any content that linked the Complainer to any political decision. Councillor Lennon noted all other party groups were mentioned in the post and, as such, contended it was evident its content was intended as political critique.

Councillor Lennon confirmed that the Complainer had been instructed to undertake the review and advised, therefore, that he did not consider the post contained any inaccurate information.

In response to cross-examination, Councillor Lennon explained that the Complainer had only been named in the post because he had been instructed to carry out the review. When it was put to him that the post did not say 'instructed' and, instead, stated the Complainer had "initiated" the review, Councillor Lennon contended that was "just semantics", as the words were essentially interchangeable and had the same meaning.

Submissions made by the ESC

The ESC advised that the Council's Revenue Budget for the years 2023/2024 to 2025/2026, and the setting of council tax for 2023/2024, were considered at a special meeting of the Council on 23 February 2023. The ESC noted it was evident, from the minutes of the meeting, that the Council faced funding gaps both for the current and future years unless action was taken. The ESC explained that a webcast of the meeting recorded that the Council Leader stated, during the discussions on the matters, that the Administration would protect staff jobs and would not close any culture or leisure facilities. The Leader nevertheless stated that "in light of the financial challenges ahead, the Chief Executive will be instructed to arrange for a full detailed review of all facilities for consideration by a future Policy and Strategy Committee".

The ESC advised that the Respondent explained to his office, during the investigation, that he considered the working relationship between councillors from the PCNL Group and council officers had "significantly deteriorated" after councillors from his group had been the only ones to raise questions, at a council meeting on 17 August 2023, about the award of a council contract.

The ESC explained, by way of background, that the results of the review the Complainer had been instructed to conduct at the meeting on 23 February 2023 were shared with councillors at a Financial Planning Advisory Group meeting on 29 August 2023. The ESC advised that the Leader (from the Labour minority Administration) was subsequently critical of the SNP Government in a press article of 13 September 2023, and was quoted as saying cuts it had "inflicted" were resulting in the closure of facilities or cuts to the services councils could provide. The ESC noted that the initial outcome of the review was published on the Council's website on 19 September 2023. Although the article that appeared on the website made it clear that no final decisions would be made until the Council's Policy and Strategy Committee had considered the results of the review, the accompanying narrative made it clear that the closure or re-purposing of facilities was recommended. The ESC advised the review was considered by the Council's Policy and Strategy Committee on 28 September 2023, when it was decided that some of the recommendations would be enacted.

The ESC advised that, in his Facebook post of 22 September 2023, the Respondent referred to the proposed cuts to services and to previous comments he had made about the Leader on the matter. The Respondent provided a link to the report, which had been published on 19 September 2023, and noted that it contained a list of potentially affected sites. The Respondent proceeded to state:

“This review was initiated by the Chief Executive of NLC, Mr Des Murray and [the Council leader] and has the support of the Conservative Group.

The timing and process for this review may also appear unusual, especially given the upcoming By Election and General Election.

I would sincerely hope that part of the review’s real purpose is not to portray a greater crisis in an effort to gain support for both the Labour and Conservative Groups. Time will tell us...

With the SNP Group having already withdrawn themselves from preliminary discussions on these potential cuts, I worry about the representation NOT being made by that group at this time.”

The Respondent proceeded to explain, in the post, that the Leader had announced in the press, on 3 October 2023, that the leisure facilities would not be closed, as previously proposed.

In response to a question from the Panel about why he had considered these paragraphs separately in his report, the ESC accepted that it was possible any members of the public viewing the post would instead read and consider it as a whole.

The ESC advised that the Complainer considered the statement that he (along with the Leader) had “initiated” the review to be factually inaccurate, as his only involvement had been to carry out the instructions given to him by councillors at the Council meeting on 23 February 2023. The Complainer considered the statement implied he had a hand in the decision to undertake the review and, as a consequence, had failed to maintain political neutrality. The Complainer further contended that he considered the statement to be an intentional misrepresentation by the Respondent for his own political purposes.

The ESC explained that the Respondent’s position was that the post was critical of his political opponents, in respect of a matter of considerable interest to his constituents and, as such, did not constitute a personal attack on the Complainer.

The ESC advised he considered the statement in the post to the effect that the review had been initiated by the Complainer and the Leader was “not necessarily objectively disrespectful or discourteous”. The ESC explained this was because the post did not contain any personal comments about the Complainer, beyond linking him to the initiation of the review of the facilities that he had been directed to arrange. The ESC noted the Respondent believed the post to be “factually correct” as while he accepted the Leader instructed the Complainer, as the Council’s Chief Executive, to instigate the review, the Complainer was ultimately responsible for overseeing and actioning decisions. The ESC argued that “it is also the case that the term initiate can be interpreted both as causing something to begin”, and “as beginning something, which the Complainer was clearly instructed to do”. The ESC noted the Respondent’s position was that his concerns about the timing of the review related solely to the Council Leader’s political party. The ESC advised, nevertheless, that he did not consider this was “necessarily clear”.

The ESC noted that the Complainer, in his role as the Council’s most senior officer, had a widely understood obligation to maintain political neutrality. The ESC contended, therefore, that any suggestion that the Complainer was not politically neutral, in terms of influencing a vote, or that he had timed or conducted the review in a dishonest way, or with the intention of gaining votes for specific political groups, must be considered disrespectful. The ESC advised that he considered the Respondent’s statement could be interpreted as accusing the Complainer, implicitly, of not conducting his duties in a transparent or honest manner, or otherwise of acting in a manner intended to conceal a political motivation. As such, the ESC advised that, regardless of the Respondent’s intention, he considered his conduct amounted, on the face of it, to a breach of paragraph 3.1 of the Code.

The ESC noted that the post was published on an open Facebook account (being a public forum), which was widely accessible to members of the public. The ESC accepted the Respondent's account had very few followers and noted it did not appear the post had been viewed widely. The ESC stated, nonetheless, that it was evident the post had been in the public domain for a period of time and could be shared readily. The ESC advised, therefore, that he had concluded the Respondent had also, on the face of it, breached paragraphs 3.8 and 3.10 of the Code, which concern the relationship between elected members and council officers and require councillors to refrain from undermining any individual officer and from raising concerns about their performance, conduct or capability in public.

The Panel asked whether, regardless of any different definitions of the word 'initiate', the ESC accepted that an ordinary reading and reasonable interpretation of the post was that the Complainer was involved in the decision to undertake the review (rather than that he had merely begun the review as instructed by the Leader and other councillors), given:

- the Respondent had not made any distinction between the Complainer and the Leader, when mentioning them in tandem, and when stating they had initiated the review;
- the Respondent had referred, in the same sentence, to the Complainer and Leader as having the support of the Conservative Group; and
- it was evident neither the Leader nor Conservative Group would be involved in undertaking the review.

In response, the ESC advised that while he considered that the statement was open to more than one interpretation, he had concluded it was inaccurate, as it was "more likely" to be understood as meaning the Complainer was involved in the decision to undertake the review.

The Panel asked the ESC why he did not consider the statement in the post about the Complainer initiating the review to be a personal comment, given the Complainer was specifically named and given the ESC's further conclusion that the post was critical of his conduct. The ESC advised this was because he did not consider it was clear the criticisms in the post, about the timing and process of the review, concerned the Complainer. The ESC reiterated, nevertheless, that he was of the view that the inference in the post that the Complainer had a role in instigating the review and, as such, had failed to maintain political neutrality, was disrespectful.

When asked by the Panel whether he considered the Respondent's comments in the post amounted to a direct attack on the Complainer, the ESC indicated he was of two minds as to whether, on one hand, the intention was to undermine the Complainer or, on the other hand, whether it was meant to be directed only at the Respondent's political opponents and to be critical of them.

The ESC advised that, having concluded the Respondent had, on the face of it, breached the Code's provisions, he had proceeded to consider the Respondent's right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) and, in particular, whether a restriction on this right could be justified to protect the rights and reputations of others and to ensure the effective operation of the Council.

The ESC noted that the Respondent's post concerned the potential closure or re-purposing of council facilities and advised it had been published in the context of a strongly contested upcoming by-election in a nearby area. As such, he had concluded the Respondent was commenting on an issue of significant public interest and would attract enhanced protection in respect of his Article 10 rights.

The ESC noted that for a restriction on an individual's Article 10 rights to be considered necessary, there have to be relevant and sufficient reasons to justify the interference. Any restriction must also be proportionate.

The ESC noted that in the case of *Heesom*¹, the Court found that while civil servants are open to criticism, including public criticism; they are involved in assisting with and implementing policies, not (like politicians) making them. The Court noted that “*As well as in their own private interests in terms of honour, dignity and reputation [...], 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 administration. Therefore, in the public interest, it is a legitimate aim of the State to protect public servants from unwarranted comments that have, or may have, that adverse effect on good administration*”. The Court stated, nevertheless, that acceptable limits of criticism are wider for non-elected public servants acting in an official capacity than for private individuals, as a result of their being in public service. The limits were not, however, as wide as they were for elected politicians.

The ESC acknowledged that the Respondent’s post had the potential to undermine the Complainer and adversely affect his reputation, even though it related to a matter of significant public interest. The ESC noted that the Court in the case of *Busuioc*² had found that there were limits to the right to freedom of expression where an individual’s reputation was at stake. In that case, the Court found that the applicant had a duty to act in good faith and to verify any information about another individual before publishing it.

The ESC also drew the Panel’s attention to the case of *Lombardo*³, which concerned the conduct of three councillors who had been openly critical of the local Council’s Administration over an alleged failure to consult on a road project and to consider public opinion on the matter. The ESC noted in that case the Court found that any distinction between statements of fact and value judgements was of less significance than in a case where the impugned statement is made in the course of a lively political debate at local level, where elected officials should enjoy a wide freedom to criticise the actions of a local authority, even where the statements made may lack a clear basis in fact. The Court noted that the fear of sanction may have a “chilling effect” on the exercise of freedom of expression.

The ESC advised that the Respondent attributed the complaint to a breakdown in relations between the PCNL Group and council officers. The ESC advised that he did not intend to comment on that matter, as the purpose of the Hearing was to consider the Respondent’s conduct in respect of the post rather than his relationship with officers.

The ESC advised he did not consider a restriction of the Respondent’s right to freedom of expression to be necessary “relative to the scale of the conduct”. The ESC advised this was because he considered it to be “less bad or shocking than in cases [as outlined in his report] where the Standards Commission has found a restriction to be justified”, and not gratuitous. In explaining why he was of the view the conduct was not gratuitous or particularly bad or shocking, the ESC argued that the statement that the Complainer had “initiated” the review was “capable of more than one interpretation”, in that the word could be used both to describe making something begin and to begin a task.

The ESC stated that he did not consider the Respondent’s remark that he “*would sincerely hope that part of the review’s real purpose is not to portray a greater crisis in an effort to gain votes for both the Labour and Conservative Groups*” constituted an accusation, “although one may be construed as implicit within it”. The ESC contended, in any event, that the target of this comment appeared to be the Respondent’s political opponents, not the Complainer.

The ESC acknowledged that no public figure, such as a council Chief Executive, would wish to have their integrity called into question, but argued the post did not contain any overtly personal comments about the Complainer. The ESC noted, in any event, that the Respondent was commenting on a matter of significant

¹ *Heesom v Public Service Ombudsman for Wales* (2014) EWHC 1504 (Admin)

² *Busuioc v Moldova* no. 61513/00, 21 December 2004

³ *Lombardo v Malta* (2009) 48 EHRR 23

local interest at a time when intense campaigning for a by-election in a neighbouring council was underway. The ESC further noted the review recommended that some facilities be closed or re-purposed. The ESC highlighted that these recommendations were made by council officers and the Complainer would have overall responsibility for them in his capacity as the most senior Council officer. The ESC advised, in that context and in the circumstances of the case, his view was the Respondent's position was defensible and that a restriction on his enhanced right to freedom of expression under Article 10 could not be justified.

In response to questions from the Panel, the ESC advised that he accepted a council Chief Executive would be responsible for implementing decisions made by councillors even if the Chief Executive disagreed with, or did not like, the decision in question.

The ESC was asked whether he had considered the Respondent had deliberately intended to be misleading by stating that the Complainer had "initiated" the review, when:

- he had only been instructed to undertake it;
- the Respondent had stated that his Group's relationship with officers had broken down at the time it was published; and
- it was accepted the post had been drafted by the Group.

In response, the ESC advised that he did not think so, albeit he could understand why the Complainer had reached that conclusion.

The ESC accepted that a comment did not need to be personally offensive to amount to a personal attack or be found to be disrespectful or discourteous.

When asked whether he considered the Respondent's statement that "*the review was initiated by the Chief executive of NLC, Mr Des Murray and [name of Council Leader]*" implied that the Complainer and the Leader were colluding or conspiring in respect of the decision to undertake the review, the ESC accepted that it could be interpreted in such a way.

In response to a question from the Panel about what possible reason there could be for the mention of the Complainer (as a neutral council officer) in respect of the decision to undertake the review (if the post was only intended to be only political comment and an attack on the Respondent's political opponents), the ESC accepted the post could have been worded more clearly. The ESC argued, however, that it was likely the post would have been worded differently if the Respondent's intention had been to use the post to attack the Complainer overtly.

The Panel asked whether the ESC considered the Respondent's allegations (about the timing and purpose of the review being used to gain votes for two other named parties), immediately following his statement that the Complainer had, along with the Leader, initiated the review, amounted to an implicit accusation that the Complainer had failed to maintain political neutrality. In response, the ESC advised he did not necessarily consider this to be the case and reiterated that he considered the content of the post to be "open to more than one interpretation".

The ESC accepted that calling a council officer's political neutrality into question also inherently called into question their integrity and, therefore, would be a serious accusation. The ESC advised however, that he did not consider there was any such overt accusation in the post, albeit he accepted the content could be interpreted as making such a suggestion.

The ESC accepted that the Respondent could have posted criticisms of the decision to undertake the review, the recommendations within it, and how it was being used by his political opponents, without making any mention of the Complainer. The Panel asked whether he considered, given this and his conclusion that the post could be taken to infer the Complainer had failed to remain politically neutral, the reference to the Complainer (and, in particular, the decision to specifically identify him by name as well as his job title) could

be considered gratuitous. The ESC advised he did not consider that to be the case as he was of the view that the other “factual” elements of the post were accurate.

The Panel noted that the ESC had stated in his report that he did not consider the Respondent’s conduct to be sufficiently serious as to amount to bullying, “even on a borderline basis”. The ESC was asked whether he still considered that to be the case, given:

- the Complainer was named in the post;
- the post was planned in advance and published in conjunction with the Respondent’s political group as part of a concerted action; and
- the post was published on a public forum where (unlike other councillors) the Complainer had no right of reply.

The ESC advised that, in objectively assessing the Respondent’s conduct, he had considered the following factors:

- that the Respondent immediately removed the post on receipt of the email from the Monitoring Officer dated 27 September 2023;
- there was no evidence of further posts by the Respondent about the Complainer on the Respondent’s Facebook account; and
- while it was possible for a one-off incident to be classified as bullying and / or harassment, he did not consider that the Respondent’s conduct was sufficiently serious that it could reasonably be classified as such.

In response to a question from the Panel, the ESC accepted, in terms of whether any restriction on the Respondent’s right to freedom of expression could be made, factors that were relevant to the context of this case could include that:

- any inference the Complainer had been involved in the decision to undertake the review was deliberate given it was accepted the Respondent’s group had drafted the majority of the post (in the context of an admitted breakdown in its relationship with council officers) and given the Respondent had edited its contents before publishing.
- The comments in the post were not made spontaneously or in response to something the Complainer had asserted (in other words, the Complainer had not opened himself up to criticism).
- The comments were made on social media (being a public setting) and in circumstances where the Complainer had no means or right of reply.
- The Complainer remained in his role meaning that the requirement to maintain public confidence in the Council, and effective working relationships between its elected members and officers, remained of relevance.

The ESC advised, nevertheless, that he still considered it was reasonable to view the post as being intended as an attack on the Respondent’s political opponents, not the Complainer. As such, he remained of the view that a restriction on the Respondent’s enhanced right to freedom of expression could not be justified.

Submissions made by the Respondent

The Respondent advised that he considered the complaint to be an unwarranted attack on his character and that the matter could have been resolved at a local level without a complaint being made to the ESC. The Respondent stated that he considered the post had been subject to a “selective interpretation” and that the whole complaint process had caused him unnecessary personal stress and made him question his role as a councillor.

The Respondent indicated that he understood and respected that council officers, particularly those at a senior level, have a difficult and important role. The Respondent advised that while he sometimes disagreed with officers, he was never disrespectful towards them. In support of this contention, the Respondent drew the Panel’s attention to various emails he had exchanged with officers, which were polite and friendly in

tone. The Respondent advised that he genuinely respected the Complainer and all other officers at the Council.

The Respondent advised that he endorsed fully the ESC's conclusions and arguments in respect of the allegation that he had bullied the Complainer and in relation to the application of Article 10 (albeit he did not accept, in any way, the conclusion that he had, on the face of it, breached the Code).

The Respondent further indicated that he accepted adherence to the Code was essential in terms of public perception and to maintain the public's confidence in the role of a councillor and the Council itself. The Respondent advised, therefore, that he would never contravene the Code deliberately and was confident he had not done so in this case. The Respondent argued that interpreting the provisions in the Code necessarily involved a subjective assessment and noted he was only person who could know what his motivation in publishing the post had been. The Respondent argued the phrases used in the post were nuanced and open to different interpretations and suggested, in order to decide whether there had been a breach of the Code, the Panel should consider the submissions outlined below.

The Respondent refuted any interpretation that suggested the content of the post linked the Complainer directly to any political commentary and confirmed that had never been his intention. The Respondent contended that it was obvious the intended targets of the criticism in his post were the other political groups in the Council. The Respondent argued that, as all the other groups had been mentioned in the post, any interpretation that he was accusing the Complainer of failing to maintain political neutrality would therefore have to be understood as linking the Complainer to each and every one of the other groups.

The Respondent contended that the post did not contain any gratuitous comments, personal criticism of the Complainer or any content that called into question his integrity or conduct. The Respondent noted that there was no evidence of any criticism of the Council itself or of its officers. The Respondent argued that there was also no evidence that his post had any impact on council business or on its reputation.

The Respondent advised that the webcast of the Council meeting on 23 February 2023 demonstrated clearly the accuracy of his post in that it was evident, from this, that the Leader gave the Complainer an instruction to initiate the review, in accordance with normal practice. The Respondent agreed with the ESC that the word 'initiate' could be interpreted in different ways and argued, therefore, that it should be considered in the context of the whole post.

The Respondent advised that the context of the post was that its contents were clearly political in nature and concerned a matter of great public interest and concern. The Respondent noted that he had referred, at the start of the post, to his previous comments on the review of the Council's facilities and the impact of any proposed cuts. While he had mentioned the review may have been used to gain votes for the Labour and Conservative Groups, he had also criticised the SNP Group. The Respondent contended this demonstrated that the post had a clear political basis and could not be taken as questioning the conduct of the Complainer to any extent.

The Respondent advised, in any event, that it was apparent the post had no impact on the reputation of either the Complainer or the Council. The Respondent confirmed that he had very few followers on Facebook and noted there was no evidence his post had been shared. The Respondent advised that, having spoken to a solicitor, he had removed the post immediately following receipt of the email from the Council's Monitoring Officer raising concerns about its content. The Respondent advised that no mention was made of the Complainer in any press articles on the review that appeared after the post was published.

The Respondent explained that he considered there was clear evidence that the Administration had reversed its position some two days before a neighbouring council by-election, for political advantage, and it was

obvious, when the post was read as a whole, that he had been seeking merely to draw attention to, and critique, its actions and motivations as opposed to the conduct of the Complainer.

The Respondent advised that the majority of the post's content had been drafted by his political group, in his absence, and that he had simply added some paragraphs to the beginning and end before publishing. The Respondent accepted, nevertheless, that this did not absolve him of responsibility for its content.

While the Respondent acknowledged the Complainer had felt moved to make the complaint, he reiterated he had not intended to criticise his conduct. The Respondent urged the Panel to consider the whole content of the post and the context in which it was made.

In response to questions from the Panel, the Respondent confirmed that he accepted that a council Chief Executive would be responsible for implementing decisions made by the Administration, even if councillors from other parties disagreed with, or did not like, the decision in question. The Respondent further confirmed that, in this case, the decision to undertake the review was made by councillors and that the Complainer was given a direct instruction to implement this decision.

The Panel asked the Respondent if he thought that when considered objectively most, if not all, individuals viewing his post would reasonably understand, from its content, that the decision to undertake the review was made by the Complainer in tandem with the Council Leader, with support from the Conservative Group and, therefore, it was misleading. The Respondent confirmed he did not consider that to be the case as he did not consider there was anything in the post that suggested the Complainer was responsible for the decision or had taken part in the decision-making process.

When asked by the Panel about why the Complainer had been named in the post if, as alleged, it was intended purely as political comment and as a critique of opposing political groups, the Respondent confirmed that he had not been present when it was drafted. The Respondent advised the draft had been made available to all members of the PCNL Group and that, after copying and pasting it into the post, he had simply added some comments at the beginning and end. The Respondent confirmed that he had not thought about the Code when reviewing and publishing the post as he did not consider the contents could ever be considered a breach of any of its provisions. The Respondent acknowledged, nevertheless, that he had used the first person in the post and, as such, it would be perceived as having been written by him personally.

In response to a question about whether it could be inferred that the intention was to tie the Complainer to the decision to undertake the review, given the breakdown in the relationship between them, the Respondent advised that, from his perspective, the relationship was fine and noted that he was still in contact with council officers on a daily basis. The Respondent advised that it was only because of the PCNL Group, having raised concerns about the award of a contract, that the Complainer had imposed a decision under which the Group was only allowed to approach one specific officer.

The Respondent advised that he accepted that council officers are obliged to serve the whole council and must remain politically neutral. The Respondent acknowledged, therefore, that any suggestion the Complainer, as Chief Executive, had failed to maintain political neutrality would be very serious. The Respondent nevertheless disputed there was anything in his post that implied this had been the case.

The Panel noted that there was a clear distinction between, on the one hand, making a decision and, on the other hand, acting under an instruction to implement the decision. Given no distinction had been made in the post, between:

- who made the decision and who was responsible for its implementation; and
- the role of the Complainer and Leader (who had both been described as initiating it),

the Panel asked whether it would be reasonable for anyone reading the content to understand, as the Respondent contended, that the Complainer had only been instructed to carry out the review.

The Panel further asked whether it would be reasonable for anyone reading the post to have understood the paragraphs that followed, which:

- referred repeatedly to “this review”; and
- inferred strongly the decision to undertake it at that time had been planned in an effort to gain votes for the Labour and Conservative Groups at two (then) forthcoming elections, to be criticism aimed, at least in part, at the Complainer.

The Respondent advised, in response, he did consider this to be a reasonable interpretation. The Respondent stated that he did not consider the post gave any impression that the Complainer was somehow in ‘cahoots’ with the Leader, the Administration and / or Conservative Group.

When asked whether he had considered how the content of the post could or would be perceived, the Respondent advised he had viewed it as being informative and that he considered it was evident he was trying to be critical of his political opponents’ actions and decisions. The Respondent reiterated that he had not drafted the part of the post that was the subject of the complaint, although he took responsibility for it as he had used the first person and published it on a Facebook account in his name.

In response to a question, the Respondent accepted the Complainer had no public right of reply to the post, albeit he questioned the Complainer’s motivation in making the complaint to the ESC (as opposed to attempting to resolve the matter informally). The Respondent further accepted that while the post may not have been shared, anyone could have taken a screenshot and that this meant it was not possible to permanently delete its content.

When asked about why the Complainer was identified in the post by name, as well by his title, the Respondent indicated there had been no particular reason for this. The Respondent pointed out that, as the Council’s Chief Executive, the Complainer engaged with the media and, as such, had a public profile and was well-known.

The Respondent accepted that he could have criticised the decision to undertake the review, the review itself and his political opponents without mentioning or naming the Complainer. The Respondent reiterated, however, that he did not consider the post was critical of the Complainer and did not consider it could be perceived reasonably as such.

DECISION

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

- The Councillors’ Code of Conduct applied to the Respondent, Councillor Crichton.
- The Respondent had breached paragraphs 3.1, 3.8 and 3.10 of the Code.

Reasons for Decision

1. The Panel noted the Respondent had published the post on a Facebook account named ‘David Crichton Councillor Ward 17 Motherwell West’ and that its content related to potential cuts to council services following a review. The Panel was satisfied, therefore, that the Respondent could objectively be considered to be acting as a councillor at the time of the events in question and the Code therefore applied to his 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 this case, in particular, to protect the rights and reputation of others).

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

3. The Panel found, and noted it was not in dispute, that the Respondent stated in the post that the *"review was initiated by the Chief Executive of North Lanarkshire Council, Mr Des Murray and [the Council Leader]"*, and that *"the timing and process"* also appeared unusual, given an upcoming by-election and General Election. The Respondent further stated that he hoped that the *"real purpose"* of the review was *"not to portray a greater crisis in an effort to gain votes for both the Labour and Conservative Groups"*.
4. The Panel noted that the Respondent's position was that the post was accurate, in that the Council Leader had instructed the Complainer to instigate a review of council facilities. The Panel further noted that the Respondent's position was that any criticisms regarding the timing and process for the review were aimed at rival political groups, rather than the Complainer, as Chief Executive (or any other council officer), and that this was evident from his reference, in the post, to his earlier social media comments.
5. The Panel noted that council Chief Executives are responsible for the efficient and effective operation of the local authority and for implementing council decisions. The Panel noted it was not in dispute that the decision to undertake the review was made by elected members at a Council meeting of 23 February 2023. The Panel was satisfied, therefore, that the review had not been initiated by the Complainer.
6. The Panel did not accept that the post either stated, or could reasonably be construed as conveying, that the Complainer had been directed to initiate the review as instructed. This was because while it was stated that the Complainer had initiated the review, no mention or reference was made to any instruction given to him to do so. Instead, reference was made, in the same part of the sentence, to the Council Leader and, later in the same sentence, to the decision to initiate the review as having the support of the Conservative Group.
7. The Panel noted that although the Leader was involved in the decision to carry out the review and that this decision had been supported by the Conservative Group, it was evident that neither would have been involved in its implementation. The Panel considered it was clear, therefore, that even if it was accepted, as suggested by the ESC, the term 'initiate' could be understood to mean to begin the work on the review, such an interpretation was not reasonable in the context of how the word had been used in this case. This was because it was apparent that no attempt had been made to separate out or distinguish, on the one hand, the role of the Leader in making the decision and providing the instruction (with the support of the Conservative Group) and, on the other hand, the Complainer, as Chief Executive, in ensuring it was actioned. The Panel agreed there would be no reason whatsoever to name the Complainer first (as the Respondent had done), if the intention had been to relate only that the decision to carry out the review had been made by the Leader or the Administration, with the agreement of the Conservative Group, and that the Complainer had been instructed to implement this.
8. The Panel did not agree that the test for whether a comment could amount to a breach of the Code should necessarily entail considering all possible interpretations of a word (especially when not considered in the full context in which it had been used). Instead, the full context should be taken into account, so that a view on the ordinary meaning, and the likely understanding from the point of view of those reading or hearing it in the particular circumstances in which it was made, could be reached. The Panel was further

of the view that the full context in which a comment was made should be considered when determining the likely motivation or intent of the individual making the comment.

9. The Panel was of the view that when considered objectively most, if not all, individuals reading the Respondent's post would conclude reasonably that it was stating clearly, or attempting to convey, that the Complainer had made the decision to initiate the review in tandem with the Council Leader.
10. The Panel further disagreed with the ESC that it was only 'possible' that any members of the public viewing the post would read and consider the comments in the post as a whole. On the contrary, the Panel considered it was improbable anyone reading the post would separate out the statement that it had been initiated by the Complainer and Council Leader, with the support of the Conservative Group, from the criticism of the purpose and timing of the review that immediately followed. This was regardless of whether they also understood it to be critical of other parties and political in nature.
11. The Panel noted that the Respondent contended he was only inferring, in the post, that the timing and purpose of the review was deliberate and intended to gain votes for Labour and Conservative parties in two upcoming elections. The Panel noted, however, that this suggestion followed on immediately from the statement that the Complainer had initiated the review. The Panel considered the reference to "this review", in that context, tied the accusation clearly to the preceding statement. In the circumstances, the Panel considered it was likely the majority of individuals viewing the post would conclude reasonably that the Respondent was implying those he had named as initiating and supporting the review (which included the Complainer) had done so deliberately to help the two other political parties in forthcoming elections.
12. The Panel accepted that, as a politician, the Respondent was entitled (and, indeed, likely would have been expected) to criticise both the decision by fellow councillors to undertake a review he opposed and the timing of it, and to speculate on how it might be used by his political opponents. The Panel considered, however, that he could have done so easily and effectively, without making any mention of the Complainer. The Panel noted that the post had been prepared in advance by the Respondent's political group. As such, it was evident that the post had not been drafted in haste, without any consideration having been given to the wording and its likely inference.
13. The Panel disagreed with the ESC that the deterioration in the relationship was irrelevant to the question of whether the Code had been breached. This was because, as noted above, the Panel considered it provided context in terms of the Respondent's potential motivation.
14. The Panel noted the Respondent's position was that his post was directed at his political opponents and intended as political comment or narrative, rather than as any criticism whatsoever of the Complainer. The Panel noted, however, that the Respondent had been present at the Council meeting on 23 February 2023 and that he accepted the decision to conclude the review had been made by elected members; not the Complainer. The Panel noted the Respondent opposed the recommendations made in the review. While the Panel noted the Respondent disputed that his relationship with the Complainer had broken down in the month before the post was published, it noted evidence to the contrary had been led, in that the Respondent had advised the ESC's Investigating Officer that his group's working relationship with council officers had "deteriorated significantly" after its members had questioned, during the previous month, the award of a contract. The Panel was satisfied it was apparent, therefore, that even if there were no personal difficulties between the Respondent and Complainer, there were problems in the relationship between the Respondent's political group and council officers at the time the post was published.
15. On the balance of probabilities, the Panel was satisfied, in light of:
 - the deterioration in the relationship between the Respondent's group and council officers (of which the Complainer was the most senior);

- the fact that the drafting of the parts of the post in question had been undertaken by the Respondent's group, rather than by any individual in haste;
 - the Respondent's admission that he had the opportunity to edit the post before publishing it (and indeed had done so);
 - the decision to list the Complainer first and to identify him by name as well as title, despite the Respondent's knowledge that the decision to undertake the review had been made by councillors; and
 - the failure to separate out the Complainer's role in the matter from that of the Leader, that the mention of the Complainer in the post was deliberate and intended to link him both to the political decision to undertake the review and the timing of it, in order to criticise, publicly, his alleged conduct.
16. The Panel considered that, in stating that the Complainer had initiated the review and, by inferring he had done so for political purposes, the Respondent effectively accused him of going beyond his remit and of failing to maintain political neutrality. As council officers are obliged to remain politically neutral, the Panel was of the view that such public questioning of the Complainer's impartiality and therefore his integrity, could have been highly damaging to his reputation as an individual. Given the Complainer's position as its senior officer, the Panel agreed it could have also been damaging to the reputation of the Council itself.
17. The Panel noted the Respondent was also critical, in the post, of the SNP Group's alleged decision to withdraw from preliminary discussions about potential cuts. The Panel noted the Respondent's argument that this meant any suggestion he was accusing the Complainer of failing to maintain political neutrality would have to be understood as linking him to all of the other political groups. The Panel did not accept this contention, however, as it was evident from the context in which it was made (being a comment on whether it would now make any representations), that the criticism of the SNP Group concerned its decision to withdraw from the discussions only, rather than any involvement it had in respect of the decision to undertake the review or its timing.
18. The Panel concluded, therefore, that in tying the Complainer to his criticisms and in implying he had not been politically neutral, the Respondent had, on the face of it, contravened:
- paragraph 3.1 of the Code (which requires councillors to treat others with courtesy and respect); and
 - paragraphs 3.8 and 3.10 (which require councillors to refrain from undermining or criticising the conduct of individual officers in public and to work with them in an atmosphere of mutual trust and respect).
19. The Panel noted that bullying is inappropriate and unwelcome behaviour which is offensive and intimidating, and which makes an individual feel undermined, humiliated or insulted. The Panel further noted that bullying usually arises as a result of an individual misusing their power and, while it tends to be a pattern of behaviour or course of conduct, it can also be a one-off incident.
20. In this case, the Panel noted that:
- the post had been drafted by the Respondent's political group acting collectively, rather than by the Respondent alone;
 - it had found that the Respondent published the post deliberately, despite knowing it contained incorrect information and despite it giving the impression that the Complainer had failed to maintain political neutrality (being a serious allegation); and
 - the Respondent named the Complainer and published the post in a public forum despite knowing the Complainer would have no right of reply.
21. The Panel nevertheless acknowledged that the Complainer was an experienced public servant and the Council's most senior officer, while the Respondent was a relatively new councillor representing a smaller

and relatively newly-formed political group. As such, it was arguable the inherent position of power enjoyed by councillors over officers was less evident and of less significance in this case. The Panel further noted that the Respondent removed the post after five days (albeit only after the Council's Monitoring Officer raised concerns about it and the Respondent had received legal advice).

22. In the circumstances, the Panel concluded that while it had been serious, inappropriate and deliberate, the Respondent's conduct in the circumstances fell short of the threshold required for it to amount to bullying in terms of the Code. The Panel concluded, therefore, that the Respondent had not breached paragraph 3.3.

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

23. 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 concern⁴. In this case, the Panel noted the Respondent's post concerned a review of council services and the political impact of this, both of which were matters of considerable public interest and concern. In the circumstances the Panel agreed with the ESC 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

24. 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 mutual bond of trust and confidence between councillors and officers that enables local government to function effectively;
- ensuring council officers enjoy public confidence in conditions free of undue perturbation to allow them to be successful in performing their tasks;
- ensuring public confidence in local government is not undermined and that a council is not brought into disrepute;
- acting as a deterrent against future adverse behaviour; and
- protecting the rights and reputations of others.

25. The Panel accepted, however, the Courts have found that 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 the application of the Code and the imposition of any sanction entailed. 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.
- Freedom of expression is especially important for elected representatives, and there is little scope under Article 10(2) for restrictions on political speech or on debates on matters of public interest.
- The less egregious the conduct in question, the harder it is for a Panel, when undertaking its balancing exercise, to justifiably conclude that a restriction on an individual's right to freedom of expression is required⁵.

⁴ Thorgeirson v Iceland (1992) 14 EHRR 843

⁵ R (Calver) v Adjudication Panel for Wales (2012) EWHC 1172 (Admin)

- In a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated⁶.
- Civil servants are open to criticism, including public criticism; but they are involved in assisting with and implementing policies, not (like politicians) making them. 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 their public body⁷.
- 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 civil servants do not⁸.
- Where critical comment is made of a civil servant, the requirement to protect that civil servant must be weighed against the open discussion of matters of public concern and, if the relevant comment was made by a politician in political expression, the enhanced protection given to the politician's right to freedom of expression⁹.

26. The Panel noted that the ESC referred to the case of *Busuioic*¹⁰ during his submissions and, in particular, to the Court's finding that "there are limits to the right to freedom of expression where an individual's reputation is at stake and the applicant had a duty to act in good faith and to verify any information before publishing it". In this case, the Panel noted it had found the Respondent stated in the post that the Complainer and Leader had initiated the review. The Panel noted it had found this to be incorrect, in that the Complainer had neither initiated the review nor taken part in the decision to undertake one. Instead, the Complainer was only instructed by councillors to carry out the review. While the Panel accepted the Respondent had not drafted the part of the post that mentioned the Complainer, it nevertheless noted that he had taken the time to edit it before publishing. The Panel noted that the Respondent had been present at the Council meeting on 23 February 2023 where the decision to initiate the review and instruct the Complainer to instigate it had been made. The Panel was satisfied, therefore, that the Respondent knew the information contained in the post was incorrect. The Panel therefore considered that the Respondent had failed in his duty to verify the incorrect information contained in the post before publishing it, despite having had the opportunity to do so. The Panel further noted that it had found the naming of the Complainer in the post to have been a deliberate attempt to link him, unfairly, to the decision to undertake the review and the criticisms that followed. The Panel was not satisfied, therefore, that the Respondent had acted in good faith.

27. The Panel noted that the ESC had also referred to the case of *Lombardo*¹¹. The Panel noted that the Court in the *Lombardo* case held that "where a statement amounts to a value judgement, the proportionality of an interference may depend on whether there exists a sufficient factual basis for that statement, since even a value judgement without any factual basis to support it may be excessive". In this case (unlike some previous cases mentioned by the ESC in his report and alluded to in his submissions), the Panel did not consider the Respondent's statement that the "review was initiated by the Chief Executive of North Lanarkshire Council, Mr Des Murray and [the Council Leader]" to be a value judgement or opinion. This was because the Panel considered the statement to be clearly verifiable, noting it had been accepted by the Respondent that the Complainer had been instructed only to carry out the review and had not been involved in the decision to initiate it. The Panel further noted that the Respondent himself contended that

⁶ Heesom (ibid)

⁷ Heesom (ibid)

⁸ Heesom (ibid)

⁹ Heesom (ibid)

¹⁰ Busuioic (ibid)

¹¹ Lombardo (ibid)

the statement the Complainer had initiated the review was “factually correct” and that neither he, nor the ESC, had suggested it was only an opinion. The Panel noted that the Courts have held that factual statements made in good faith with a reasonable factual basis, or that are substantially true to a reasonable standard of proof, will be tolerated. As noted above, the Panel found that the Complainer was not involved in the decision to undertake the review. It further found the Respondent deliberately stated the Complainer had initiated this with the Leader, despite knowing this was not the case. The Panel therefore did not consider the Respondent’s statement to be made in good faith or to be substantially true to a reasonable standard of proof.

28. The Panel noted that the ESC also referred to comments made by the Court in *Lombardo* regarding the potential “chilling effect” sanctions may have on the exercise of freedom of expression. The Panel noted that in *Lombardo*, 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 engage in robust political debate. The Panel accepted, therefore, that the Respondent was fully entitled to scrutinise how the review had been conducted and to criticise the conduct of his political rivals in respect of both the decision to initiate it and to allegedly use it for political advantage.
29. The Panel noted it had found, however, that the Complainer had been named, unnecessarily and deliberately, by the Respondent in the post. The Panel did not consider that a finding of a breach of the Code for such unnecessary and deliberate naming of the Complainer and implied criticisms of his conduct could be said to have a chilling effect on the ability of the Respondent to criticise his political opponents. This was because the Panel noted that there had been nothing to prevent the Respondent from raising his concerns about the pending review, its timing, or the conduct of his political rivals, without stating, deliberately and incorrectly, that the Complainer had initiated the review and without suggesting he had done so to serve some vested, political interest and / or would conduct it in a manner intended to have such an effect.
30. The Panel noted the wide degree of tolerance the Courts have held should be shown towards political speech. The Panel acknowledged that, had it not mentioned the Complainer, the Respondent’s post would have been wholly unremarkable and not even close to the threshold of tolerance. The Panel did not consider, therefore, that a restriction on the Respondent’s right to freedom of expression arising from a finding that he was disrespectful towards the Complainer (by subjecting him to an unwarranted public attack) would have any chilling effect whatsoever on the Respondent’s (or any other elected member’s) right or ability to make political points or criticise political opponents.
31. The Panel considered that the accusation that the Complainer had somehow instigated or been involved in the decision to undertake the review, and the clear inference this was done for political reasons, had the potential to have a significant impact on his reputation, given the requirement for council officers to remain politically neutral. The Panel noted that such an accusation could have a damaging impact on how the Complainer was perceived publicly. The Panel further noted it could have affected negatively the Complainer’s relationship with other councillors and, given he is the Council’s most senior officer, the working relations between all officers and elected members.
32. The Panel noted the ESC referred to the Court’s finding in the *Heesom*¹² case that the acceptable limits of criticism are wider for civil servants acting in an official capacity than for private individuals (albeit the limits are not as wide as they are for elected politicians). In this case, however, the Panel noted that the Respondent was fully aware that the decision to initiate the review was a political one and was not taken by the Complainer. Therefore, any political criticisms levelled at him in respect of that decision, and how

¹² Heesom (ibid)

it was made, were unfounded, unfair and exceeded even the wider bounds that he could be expected to accept in his non-political role as head of paid service.

33. The Panel noted that the context in which the Respondent's post had been made also required to be considered. As previously noted, it was accepted the wording of the part of the post in question was agreed by members of the Respondent's Group. The Panel accepted, therefore, that the Respondent had the opportunity to review the proposed post before publishing it and his comments could not, therefore, be categorised as spontaneous and made in the heat of the moment in response to something alleged by the Complainer or anyone else.
34. The Panel further agreed that there was no evidence that, in implementing the review, the Complainer had done anything other than to carry out a decision made by elected members, as required by his role. The Panel did not therefore consider that the Complainer could have been said to have acted in a way that somehow, even in small part, justified the insinuation that he had acted outwith his remit or failed to remain politically neutral.
35. Taking all the foregoing into account, the Panel concluded the Respondent's accusation was entirely gratuitous and egregious, wholly inappropriate and potentially very damaging to the Complainer's reputation. The Panel was therefore satisfied that a restriction on the Respondent's right to freedom of expression was relevant, sufficient and proportionate in order to meet the aims outline at the beginning of Stage 3, and in particular to:
- 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;
 - prevent public confidence in local government and the Council from being undermined; and
 - protect the reputation and rights of the Complainer.
36. The Panel was satisfied, therefore, that the findings of breach, and the subsequent application of a sanction, would not contravene Article 10.

Submission in respect of Mitigation and Sanction

The Panel noted the Complainer had submitted an impact statement. The Panel advised the Respondent that it would take into account the fact that the statement was not taken under oath and could not be tested, given the Complainer had not been asked to give evidence at the Hearing.

The Panel noted that the Complainer advised, in his impact statement, that:

- The impact on his health and well-being caused by the conduct in question had been significant on both a personal and professional level and caused him a great amount of stress.
- He felt the post contained comments that were wholly inaccurate and damaging and lacked any basis or justification. The Complainer advised he considered the comments had been made purely for political reasons and led to him feeling as though he had been targeted personally and attacked in his role as Chief Executive.
- He considered his integrity, honesty, character and independence as the head of paid service had all been questioned and, given the review was highly contentious and led to strong feelings, created a risk to his personal safety.
- He felt he had no choice other than to lodge a complaint with the ESC.
- He considered that the Respondent's conduct brought the Council into disrepute.

The Respondent advised that he considered the Panel had ignored the facts before it and disputed the finding that he had breached the Code.

The Respondent noted that he would always be willing to meet with officers and reassure them if they felt they had been prejudiced by him. The Respondent questioned why no attempt had been made to resolve the issue internally and informally. The Respondent further questioned whether the Complainer's comment in respect of the risk to his personal safety was exaggerated.

SANCTION

The decision of the Hearing Panel was to suspend, for a period of one month with effect from 4 November 2024, the Respondent, Councillor Crichton, from all meetings of the Council and of any committee or sub-committee thereof and of any other body on which he is a representative or nominee of the Council. The suspension will end at midnight on 3 December 2024.

This sanction is 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 the provisions that state councillors must behave with courtesy and respect towards others (including council officers), and to refrain from undermining officers or criticising them in public, are key requirements of the Code. The Panel noted that a failure to adhere to those requirements can lower the standards of public debate and erode public confidence in councillors and the local authorities they represent. The Panel further noted that the provisions protect the mutual bond of trust and confidence between councillors and officers, which allows local government to function effectively. In this case, the Panel noted the Respondent had agreed, as part of his acceptance of office as a councillor, that he would adhere to the terms of the Code.
4. The Panel noted it had found that the Respondent had published the post deliberately, despite knowing that it contained incorrect information, and despite its contents inferring clearly that the Complainer had failed to maintain political neutrality. The Panel considered that such a public accusation about the Complainer, as the Council's senior officer, could have been highly damaging to both to his reputation and that of the local authority, given the accepted and widely-known obligation on officers to be politically neutral and to serve the Council as a whole. The Panel was therefore of the view that the breach of the Code was serious in nature.
5. The Panel noted, nevertheless, the Respondent's Facebook account was only followed by a relatively small number of individuals and that the post had been removed after a few days (albeit only after the Council's Monitoring Officer had raised concerns about its contents), meaning the breach was limited in duration. The Panel further noted it had not been presented with any evidence to show that the accusation the Complainer had initiated the review or failed to maintain political neutrality had been repeated in the media.

6. The Panel then considered the aggravating and mitigating factors as set out in the Policy on the Application of Sanctions, beginning with those in mitigation. The Panel noted that mitigating factors are those that may lessen the severity or culpability of the breach.
7. In mitigation, the Panel accepted the Respondent had not drafted the part of the post that mentioned the Complainer by name (albeit it was evident he had edited the post before publishing and, therefore, had the opportunity to check for accuracy and amend the content accordingly). The Panel noted that the Respondent had co-operated fully with the investigative and Hearing processes. The Panel further noted there had not been any previous findings of a contravention of the Code by the Respondent.
8. The Panel then proceeded to consider whether there were any aggravating factors; being ones that may increase the severity or culpability of the breach.
9. The Panel acknowledged that the Respondent had every right to scrutinise the decision taken by his fellow councillors to instigate the review, and to query how his political opponents may seek to profit from its timing and outcome. The Panel considered, however, that the deliberate inclusion of the Complainer in this criticism and scrutiny, despite the knowledge that the decision to undertake the review had been made by councillors, was wholly unfair and inappropriate, and amounted to a personal attack. The Panel accepted that such an unjustified public inference that he had failed to maintain political neutrality would have been distressing for the Complainer (for the reasons previously outlined), particularly given he had no right of public reply or control over who and how many individuals viewed the post, and given it could never be permanently deleted (as anyone could have retained a screenshot of its content).
10. The Panel further noted that there was no suggestion the Respondent simply failed to consider the wording and content drafted by his Group before publishing the post. On the contrary, the Respondent had advised he had amended the post by adding extra paragraphs at the beginning and end. The Panel was concerned that the Respondent had not demonstrated any insight into how the post could have been perceived and its potential impact on the Complainer, even when this had been put to him at the Hearing. The Panel also noted that the Respondent had not proffered any apology, nor demonstrated any remorse for his actions. It further noted that the Respondent only removed the post after the Council's Monitoring Officer raised concerns about its content and after the Respondent sought independent legal advice.
11. The Panel was of the view that a censure, being the minimum sanction available to the Panel, was not appropriate in light of the seriousness of the conduct, its deliberate nature and the impact it had on the Complainer. The Panel also noted the effect the Respondent's conduct could have had on the relationship between council officers and elected members and on the reputation of the Council as a whole. As such, the Panel agreed that a censure would not achieve the aims, as outlined in the Policy on the Application of Sanctions, of:
 - preserving the ethical standards framework;
 - promoting adherence to the Councillors' Code of Conduct;
 - maintaining and improving the public's confidence that councillors will comply with the Code and will be held accountable if they fail to do so; and
 - achieving credible deterrence.
12. Having considered the nature and seriousness of the breach, as well as any aggravating and mitigating factors identified, the Panel concluded the imposition of a short suspension was the appropriate sanction in the circumstances. The Panel considered this was the minimum necessary sanction to achieve the aims outlined above and, in particular, to protect the right of the Complainer, as a council officer, to perform his duties without being subject to unwarranted personal attacks and to discourage others councillors from engaging in similar conduct.

13. The Panel noted that it may have imposed a longer suspension had it found the Respondent had drafted the part of the post that mentioned the Complainer. The Panel also noted that the Respondent's conduct had been limited in duration given the relatively prompt removal of the post. In the circumstances, the Panel did not consider a disqualification or more lengthy suspension was warranted or justified.
14. The Panel was also satisfied that the necessary interference (being the short suspension) outweighed the adverse impact on the Respondent's right to freedom of expression.
15. Having considered all of the matters outlined above, the Panel concluded, on balance, that the appropriate sanction, in the circumstances, was to suspend fully the Respondent, for a period of one month, with effect from 4 November.

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: 30 October 2024



**Suzanne Vestri
Chair of the Hearing Panel**



INTEGRITY IN PUBLIC LIFE

SUSPENSION GUIDANCE

1. Introduction

- 1.1 Section 19 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act) outlines the options available to the Standards Commission, following the finding of a breach of their respective Codes of Conduct by a councillor or member of a devolved public body, at a Hearing it has conducted.
- 1.2 Section 19 obliges the Standards Commission to impose a sanction upon the finding of a breach. The options available to the Standards Commission under Section 19(1) are to censure, suspend or disqualify the councillor or member. Section 19(1) is reproduced below.

19 Action on finding of contravention

(1) Where the members of the Commission conducting a hearing find that a councillor has contravened the councillors' code or a member of a devolved public body the members' code, they shall impose one of the following sanctions—

(a) censuring, but otherwise taking no action against, the councillor or member;

(b) suspending, for a period not exceeding one year, the councillor's or member's entitlement to attend one or more but not all of the following—

(i) all meetings of the council or body;

(ii) all meetings of one or more committees or sub-committees of the council or body;

(iii) all meetings of any other body on which the councillor or member is a representative or nominee of the council or body;

(c) suspending, for a period not exceeding one year, the councillor's or member's entitlement to attend meetings of the council or body and of any committee or sub-committee thereof and of any other body on which the councillor or member is a representative or nominee of the council or body;

(d) in the case of a councillor, disqualifying the councillor for a period not exceeding five years, from being, or from being nominated for election as, or from being elected, a councillor;

(e) in the case of a member of a devolved public body, removing the member from membership of the body and disqualifying the member, for a period not exceeding five years, from membership of the body.

- 1.3 Section 21 of the 2000 Act provides the Standards Commission with the power to impose an interim suspension on a councillor or member of a devolved public body on receipt of an interim report from the Ethical Standards Commissioner (ESC) on an ongoing investigation.

- 1.4 Section 19(8) provides that the Standards Commission should, after undertaking a consultation, issue guidance to councils on the extent to which a councillor should engage in activities (other than those mentioned in subsection 1(c)) which are, or could be perceived to be, the activities of a councillor during a period of suspension.
- 1.5 The purpose of this document is to provide such guidance. It is only intended to cover the activities of a councillor where a period of full suspension has been imposed (either on the finding of a breach under Section 19(1)(c), or as an interim measure under Section 21), as opposed to a partial suspension under Section 19(1)(b).

2. Aims

- 2.1 The overriding aim of this guidance is to provide clarity in respect of the impact / effect of a suspension. The purpose of imposing any restrictions on the activities of a councillor during a period of suspension is to:
- discourage or prevent them from any future failure to comply with the Councillors' Code of Conduct;
 - to deter similar conduct by other elected members;
 - protect other individuals who may be impacted adversely by the councillor's conduct;
 - to prevent the Council from being brought into disrepute; and
 - to help ensure that public confidence in councils and councillors is maintained.
- 2.2 The Standards Commission recognises that councillors have been elected democratically to undertake certain tasks and that their ability to help and serve constituents should only be restricted where such a restriction is justified in the specific circumstances of the case.
- 2.3 This guidance is not intended to be exhaustive as it is not possible to cover every activity or duty a councillor may be expected to undertake in their role.

3. Guidance

- 3.1 **Activities:** Councillors who have been suspended by the Standards Commission under Section 19(1)(c) or Section 21 cannot, during the period of suspension, engage in any of the following:
- council decision-making;
 - developing and reviewing policy;
 - regulatory, quasi-judicial and statutory duties;
 - formal scrutiny of service performance;
 - member / officer working groups;
 - attending meetings of any other body on which the councillor is a representative or nominee of the Council;
 - meetings with council officers (other than those an objective individual with knowledge of a councillor's role would consider to be reasonably required to undertake the duties listed under paragraphs 3.3 and 3.4 below); and
 - partnership work with outside bodies.
- 3.2 Councillors who have been suspended by the Standards Commission under Section 19(1)(c) or Section 21 are not, during the period of suspension, to undertake any ceremonial duties or attend any external events or functions where they are representing the Council.

- 3.3 Councillors who have been suspended by the Standards Commission under Section 19(1)(c) or Section 21 are not, during the period of suspension, entitled to send a substitute along to meetings (including committee meetings).
- 3.4 Councillors who have been suspended by the Standards Commission under Section 19(1)(c) or Section 21 should still be entitled, during the period of suspension, to attend and participate in:
- local bodies such as Community Councils, Local Area Forums and voluntary organisations (except meetings of any other body on which the councillor is a representative or nominee of the Council);
 - political group meetings, campaigns and events; and
 - training events;
- unless the Hearing Panel of the Standards Commission has confirmed in its written decision that the councillor should not do so.
- 3.5 Councillors who have been suspended by the Standards Commission under Section 19(1)(c) and Section 21 are entitled, during the period of suspension, to hold constituent surgeries and to:
- seek information on a constituent's behalf in respect of a case;
 - advise Council officers of a constituent's views;
 - help a constituent make their views known to the relevant Council officer;
 - give a constituent advice on the correct procedure to follow and who to contact; and
 - raise concerns a constituent may have about a Council service / decision,
- unless the Hearing Panel of the Standards Commission has confirmed that they should not do so in its written decision.
- 3.6 A Hearing Panel of the Standards Commission, in imposing a suspension under Section 19(1)(c) or Section 21, may restrict the councillor's entitlement to contact officers or hold constituent surgeries and / or assist constituents. This may be in circumstances where it has concerns (based on the complaint, the ESC's interim or final report and / or its findings at a Hearing), that the councillor either poses a threat to officers or constituents, could bring the council or the role of a councillor into disrepute or disrupt the effective operation of the Council. In making such a determination, a Panel will consider the principles of fairness, public interest and proportionality. The following list provides some examples of circumstances where it might do so:
- where the Hearing Panel has found that the councillor was repeatedly or seriously disrespectful to officers or third parties;
 - where the Hearing Panel has found that the councillor participated in, or condoned, any acts of harassment, discrimination, victimisation, bullying or other threatening behaviour; and / or
 - where the Hearing Panel has found that the councillor deliberately abused confidential, privileged or sensitive information for personal gain or for the gain of a close personal associate.
- 3.7 Nothing in this Guidance precludes a councillor who has been suspended by the Standards Commission under Section 19(1)(c) or Section 21 from contacting the council, council officers or using council services in their capacity as a member of the public, and in the same way as any other member of the public would be entitled.
- 3.8 **Access to Information:** Councillors who have been suspended by the Standards Commission under Section 19(1)(c) or Section 21 are entitled, during the period of suspension, to receive papers and correspondence from officers that they would normally expect to receive, had they not been suspended.

4. Assistance

Any councillor or officer requiring assistance in interpreting and applying this guidance should contact the Standards Commission: enquiries@standardscommission.org.uk.

