

North Lanarkshire Council Report

Council

Does this report require to be approved? Yes No

Ref Date 14/03/25

Standards Commission Proceedings – Councillor Greg Lennon

From Archie 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 Greg Lennon had been guilty of breaching the Councillors' Code of Conduct.

Recommendations

It is recommended that Council considers the attached Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held in Airdrie on 10 December 2024, and notes 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 Greg Lennon, 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 included concerns about the conduct of Councillor Lennon in publishing a Facebook post and sending an email to a constituent on 22 September 2023 about the Council's decision to review facilities. Councillor Lennon 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 for the review were "suspect", given upcoming

elections, before remarking that “one might question whether the review’s real purpose” was “to create a crisis and overturn it to gain votes for both the Labour and Conservative groups.”

- 1.3 The Panel found that Councillor Lennon 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. The Panel was satisfied that Councillor Lennon had published the post and sent the email despite knowing that the assertion he made in them, about the Chief Executive having initiated the review, to be incorrect and misleading. The Panel further found the naming of the Chief Executive in the email and post to have been a deliberate attempt to link him, unfairly, to the decision to undertake the review, and 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 Chief Executive, particularly given he had no right of public reply or control over who and how many individuals viewed the September 2023 post and email, and given neither could be permanently deleted (as the email could have been forwarded to anyone and any individual viewing the post could have retained a screenshot of its contents). The Panel also noted that, while Councillor Lennon had removed the Chief Executive’s name from the September 2023 post after the Council’s Monitoring Officer raised concerns about it with him, he had retained the Chief Executive’s job title. The Panel was satisfied, therefore, that he had deliberately chosen to do so, despite knowing the content of the post to be false and misleading, and had not demonstrated any awareness of the potential impact of providing the public with misleading information.
- 1.4 The Panel noted that the post had been prepared in advance by Councillor Lennon’s political group. 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 Lennon 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 been highly damaging to 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.
- 1.5 The complaint also included concerns about a Facebook post published by Councillor Lennon on 17 February 2024 in which he stated that one of his Group’s budget proposals was a cut to “the council and labours PR machine.” The Panel noted Councillor Lennon’s position was that any criticism of the February 2024 post was unjust and being used as a weapon to suppress legitimate scrutiny and criticism. He considered there was “an observable pattern where press and social media outputs from the North Lanarkshire Council Corporate Communications Team predominately highlight the achievements of those within the Administration”, whereas it had failed to “approach” a member of his Group to cover a sporting accomplishment achieved by the individual in question. The Panel did not consider the fact that Councillor Lennon had not authored the part of the post

in question to be of significance, given it was his choice to copy and paste, and to therefore include, the wording in his post. The Panel considered that he would have had the opportunity to review and revise his post before publishing it, and that he had accepted he had done so by adding additional text. It was the Panel's position that the linking of the Council's and the Labour Party's communications clearly inferred, in a public forum, that instead of being politically neutral and working to publicise decisions made by the Council, Council officers (and particularly those in the Communications Team) were colluding with the Labour Party to promote its messaging. Their view was that, given Councillor Lennon had the opportunity to review and edit the post before publishing it, his actions in including the comment were deliberate and were disrespectful and discourteous towards Council officers. The Panel did not consider that Councillor Lennon's statements were made in good faith, had a reasonable responsible evidential basis or were substantially true to a reasonable standard of proof.

1.6 The Panel found, therefore, that Councillor Lennon'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).

1.7 Having found that Councillor Lennon 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.

1.8 The Panel did not consider that a restriction on Councillor Lennon's right to freedom of expression arising from a finding that he was disrespectful towards the Chief Executive (by subjecting him to an unwarranted public attack) or other Council officers (by publicly questioning their neutrality) would have any impact on his (or any other elected member's) right or ability to make political points, criticise political opponents, or question the allocation of Council funds.

1.9 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.

1.10 The Panel was concerned that Councillor Lennon had not shown any insight into his conduct, and its potential impact, and noted that he had not proffered any apology nor demonstrated any remorse for his actions. It noted that he had submitted a statement entitled "Mitigation Impact", in which he outlined concerns about the conduct of the Chief Executive and another Council officer, and the Chief Executive's motivation in making the complaint. He further cited concerns about the alleged action of the Standards Commission and advised he had endured significant stress as a result. The panel did not consider any of the points made by Councillor Lennon in his "Mitigation Impact" statement to be relevant.

2. Report

- 2.1 A Hearing was held on 10 December 2024 by the Standards Commission for Scotland in relation to a complaint against Councillor Lennon. The Ethical Standards Commissioner had investigated the complaint and concluded that Councillor Lennon had contravened the Councillors' Code of Conduct. It was the Commissioners position that a restriction on Councillor Lennon's right to freedom of expression in terms of Article 10 of the European Convention of Human Rights could be justified.
- 2.2 The decision of the Commission Panel was that the appropriate sanction, in the circumstances, was to suspend fully Councillor Lennon for a period of two months, with effect from 18 December 2024, in terms of section 19(1)(c) of the Ethical Standards in Public Life etc. (Scotland) Act 2000. The Panel was of the view that censure, being the minimum sanction available, was not appropriate in light of the seriousness of the conduct, its deliberate nature and the impact it had on the Chief Executive, and the potential impact on other Council officers. The Panel also noted the effect Councillor Lennon's conduct could have had on the relationship between Council officers and elected members and on the reputation of the Council. The Panel considered that suspension was the minimum necessary sanction to protect the reputation of the Chief Executive and other Council officers and their right to perform their duties without being subject to disrespectful behaviour and unwarranted personal attacks. The Panel was of the view it was also necessary to discourage other councillors from engaging in similar conduct. 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 Councillor Lennon sought to appeal to the Sheriff Principal against the Standards Commission's decision that he had breached the Councillors' Code of Conduct and to impose the two month suspension. His appeal was dismissed by the Sheriff Principal due to his failure to submit his appeal within the statutory time limit.
- 2.4 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 section of the Act. It should be noted that an extension to the three month period was granted to enable the report to be considered at a scheduled meeting of the Council rather than at a Special Council meeting.


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 10 December 2024.

Appendix 2 – Standards Commission for Scotland Suspension Guidance



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

5. Impacts

<p>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?</p> <p>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"/></p>
<p>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?</p>
<p>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?</p>
<p>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?</p>

<p>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"/></p>
<p>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 <input type="checkbox"/> No <input type="checkbox"/></p>
<p>5.7 Environmental / Carbon impact Does the report / project / practice contain information that has an impact on any environmental or carbon matters? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes, please provide a brief summary of the impact?</p>
<p>5.8 Communications impact Does the report contain any information that has an impact on the council's communications activities? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes, please provide a brief summary of the impact?</p>
<p>5.9 Risk impact Is there a risk impact? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 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?</p>
<p>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 <input type="checkbox"/> No <input checked="" type="checkbox"/> 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.</p>
<p>5.11 Children's rights and wellbeing impact</p>

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 Gartlea Community Centre, Airdrie, on Tuesday 10 December 2024.

Panel Members: Ms Helen Donaldson, Chair of the Hearing Panel
Mrs Morag Ferguson
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/3978, concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Greg Lennon (the Respondent). The ESC represented himself at the Hearing.

REFERRAL

Following an investigation into a complaint initially received on 6 October 2023 about the conduct of the Respondent, the ESC referred a report to the Standards Commission on 25 September 2024, in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000.

On receipt of the referral report, the Standards Commission noted that the ESC had identified three issues of complaint. The ESC advised that he had found the allegation in respect of issue two would not amount to a breach of the Code. The Standards Commission considered that it was highly unlikely that further information would arise at a Hearing that would allow a Hearing Panel to determine whether the Respondent had breached the Code in respect of the matter. In the circumstances, the Standards Commission concluded that it was neither proportionate, nor in the public interest, for it to consider issue two at a Hearing. As such, the Standards Commission determined to take no action on the referral in relation to issue two.

The two remaining issues of complaint, considered at the Hearing, concerned an alleged contravention, by the Respondent, of paragraphs 3.1, 3.3, 3.8, 3.10 (with reference to paragraph 25 of Annex A), and 3.25 of the Code, which are as follows:

Respect and Courtesy

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

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

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.*

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

Annex A: 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.

Preliminary Matters

The Hearing Panel noted that the Respondent had advised the Standards Commission that he did not intend to attend the Hearing. The Panel was satisfied that the Respondent had been given proper notice of the Hearing, in accordance with Section 20 of the 2000 Act and, as such, was content to proceed in his absence.

EVIDENCE PRESENTED AT THE HEARING

Submissions made by the ESC

The ESC advised that the Respondent was first elected as a councillor on 4 May 2017, before being re-elected on 5 May 2022. The ESC confirmed the Respondent signed a declaration of acceptance of office on 6 May 2022, in which he undertook to meet the requirements of the Councillors' Code of Conduct. The ESC noted that, having previously been a member of the SNP Group, the Respondent joined the Progressive Change North Lanarkshire Group in May 2023. The ESC advised that the Respondent was the Group Leader.

The ESC advised that the Respondent acknowledged that he was acting in his capacity as a Councillor at the relevant time in respect of the matters being considered by the Panel. As such, there was no dispute that the Code applied.

September 2023 post and email: The ESC advised that the first matter to be considered by the Panel concerned an email the Respondent sent, on 22 September 2023, from his Council email account to a constituent, and a Facebook post he published on his 'Cllr Greg Lennon' Facebook account the same day. The ESC advised that the Respondent acknowledged he had sent the email and published the post, as alleged.

By way of background, the ESC advised the Respondent explained, during the investigation, that the Council's Budget was considered at a special meeting of the Council on 23 February 2023. At the meeting, the Council Leader stated that the Administration would protect staff jobs and that there would be no compulsory redundancies. The Leader then stated, "we will not close any culture or leisure facilities but 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 noted the Respondent explained that, at a Financial Planning Advisory Group meeting on 2 May 2023, the Complainer provided an update on the review, which suggested some facilities might close. The Respondent advised that his Group received a report, on 15 August 2023, concerning a prospective Council contract for an enterprise project. The Respondent explained that his Group then raised concerns about the contract and procurement process and that doing so had marked the "beginning of deteriorating relations" with the Complainer.

The ESC advised the Respondent explained that, at a meeting on 29 August 2023, the Complainer had presented a confidential report to his Group, which suggested the potential closure of facilities. While the Respondent had not attended the meeting, he was of the view that there had been a failure to provide adequate responses to questions raised by his Group. The Respondent's view was that his Group's working relationship with council officers had deteriorated significantly since then.

The ESC noted the Respondent advised that, following the publication of a press article in September 2023, in which the Council Leader warned that some council facilities were at risk of closure, the Respondent received several enquiries from concerned constituents. The Respondent advised that it was in this context he had sent the September 2023 email to a constituent and published the Facebook post the same day.

The ESC advised that the content of the September 2023 email and post broadly overlapped. The Respondent stated in both that the review of facilities "*was initiated by the Chief Executive of NLC, Mr. Des Murray, and [the Council Leader] and has the support of the Conservative Group*". The Respondent then stated "*the timing and process for this review are suspect, especially given the upcoming By Election and General Election. One might question whether the review's real purpose is to create a crisis and overturn it to gain votes for both*

the Labour and Conservative groups". The ESC advised that the Respondent referred, in both the post and email, to prospective cuts to services and closure of leisure facilities. The Respondent stated that he and his Group would do *"everything in our power to oppose"* any proposal to potentially make cuts to services or to close facilities as they viewed it *"as an irresponsible act of political mischief by the NLC Labour Administration"*. The ESC noted the Respondent was critical of the Council and the SNP, Labour and Conservative Groups in both the email and post.

The ESC advised that the Council's Monitoring Officer contacted the Respondent by email on 27 September 2023 to raise concerns about the content of the email and post. Following receipt, the Respondent amended the post on his Facebook account by removing the Complainer's name but retaining his job title. The ESC noted the Respondent had advised he had done so *"as a gesture of cooperation with any subsequent formal procedures that followed"*.

The ESC noted it was the reference to him having initiated the review that had caused the Complainer concern. The Complainer's position was that this was a serious, factually inaccurate allegation. The Complainer considered the Respondent had intentionally misrepresented the facts in order to be publicly critical of him.

The ESC advised that, by contrast, the Respondent's position was that the post and email were attacks on his political opponents and concerned the potential cuts to services and leisure facilities, being matters of concern to his constituents.

January 2024 emails: The ESC advised that, following the publication of a press article about the prospective award of the enterprise project contract, the Respondent exchanged emails with the Complainer on 28, 29 and 30 January 2024. The ESC noted that the full exchange was included in the productions before the Panel.

The ESC advised the email exchange was initiated by the Respondent and referred to the press article, which had reported that *"whistleblowers"* had raised concerns with Audit Scotland about the falsification of key performance indicator records in respect of the contract. The ESC noted that, in his initial email, the Respondent asked a series of questions, including when the Complainer had been *"personally informed"* of the concerns, what measures he had implemented since becoming aware of the situation, whether the procurement project team was informed of the concerns and, if not *"why were they kept in the dark"*. The Respondent stated that, *"despite facing countless obstacles in accessing information previously"*, he trusted that his questions would be *"answered without delay"*.

The ESC advised that, in response, the Complainer noted that internal auditors were currently reviewing the allegations made and, therefore, it was not appropriate for him to comment until their findings were reported. The Complainer nevertheless proceeded to advise the Respondent about when he had become aware of the allegations, and when and what action he had taken in respect of them.

The Respondent replied and again asked when the Council's senior management team had been apprised of the issue with the key performance indicators. The Respondent proceeded to ask further detailed questions. The ESC noted that, in his reply, the Complainer reiterated his response in respect of when he had become aware of the issue. In response, the Respondent advised that he was disappointed with the Complainer's reply but would not communicate further directly with him. The Respondent stated that, instead, his Group would *"pursue alternative avenues in an effort to alleviate our concerns on this matter"*.

The ESC advised that the Complainer's position was that, when considered in conjunction with the September 2023 post and email, the January 2024 emails constituted a course of conduct of bullying designed to negatively impact his reputation. The Respondent's position, however, was that he was asking legitimate questions and raising genuine concerns in his January emails, on behalf of his constituents, about the perceived significant risks arising from the award of the contract.

February 2024 post: The ESC advised it was not in dispute that, on 17 February 2024, the Respondent published a post on his 'Cllr Greg Lennon' Facebook account. In this, the Respondent advised that he had supported his Group's budget motion at a Council meeting on 15 February 2024. The Respondent stated his Group's budget would "*cut the council and labour's PR machine*". The Respondent further stated his Group's budget would mean "*no compulsory redundancies for NL staff*", but advised it included "*a chief executive budget and officer review*".

The ESC advised that the Complainer considered the remark about the "*council and Labour's PR machine*" amounted to public criticism of the Council's Strategic Communications & Engagement Service and council officers.

Application of the Code: The ESC noted that he had found, as outlined in his referral report, that criticism of the Complainer could be inferred from the Respondent's September 2023 email and post. This was because the Respondent had stated, in both, that the Complainer initiated the review of services, along with the Council Leader and, by implication, the Complainer had failed to maintain political impartiality, as required.

The ESC noted that, at the time he had submitted the report, the Standards Commission's Hearing on a similar case, LA/NL/3979, had not been held. The ESC advised that while he understood Hearing Panels could reach different decisions and that each case turns on its own facts and circumstances, he was nevertheless of the view that the conduct in LA/NL/3979 was sufficiently similar as to form a clear precedent for the Panel in this case, in respect the September 2023 email and post. This was because the Respondent, in the case of LA/NL/3979, had published a similar Facebook post stating that the Complainer had initiated the review along with the Council Leader.

The ESC noted that the Panel in LA/NL/3979 had found that, when considered objectively most, if not all, individuals reading the post of the Respondent, in that case, 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. The Panel had also considered it was improbable that 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.

The ESC advised that the Panel, in that case, had noted 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 had noted, however, that this suggestion followed on immediately from the statement that the Complainer had initiated the review. The Panel had considered the reference to the review, in that context, tied the accusation clearly to the preceding statement. In the circumstances, the Panel had 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.

The ESC noted that, in light of this conclusion, and given the Standards Commission's statutory role as the adjudicatory body and organisation responsible for issuing Guidance on the application of the Code, he felt obliged to revise his conclusion in the current case. The ESC advised he now concluded the Respondent's reference in the September 2023 post and email, to the Complainer having initiated the review, amounted to a deliberate and overt attack on him. The ESC noted this was particularly in the context of the admitted breakdown in the relationship between the Respondent's Group, and the Complainer and other senior council officers.

The ESC further noted that, in his post, the Respondent in this case had used slightly different words in the post and email to those used by the Respondent in LA/NL/3979. The ESC noted, in particular, the Respondent in this case had used the term “*suspect*” to characterise the timing of the review. The ESC argued that this was a more pejorative term than one employed by the Respondent in LA/NL/3979. The ESC advised, therefore, that while he had concluded in his report in this case that the Respondent had breached the Code, he was now of the view that the contravention was of a more serious nature than he had initially considered.

The ESC advised, therefore, that he considered the Respondent had breached of paragraph 3.1 of the Code, which requires councillors to behave respectfully towards others, including council officers.

In response to questions from the Panel, the ESC advised he accepted the role of the Complainer, as Chief Executive, was to implement decisions made by councillors. The ESC advised he was satisfied, in this case that the Complainer was instructed by councillors to carry out the review and, such, the Respondent’s statement that he had initiated it (along with the Council Leader) was misleading and incorrect. The ESC further advised he accepted it would be reasonable for anyone reading the post and email to have understood the paragraphs that followed (which criticised the review and, in particular, its “*suspect*” timing), to understand 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. The ESC agreed, therefore, it would be reasonable to understand that the criticism of the decision to undertake the review was aimed, at least in part, at the Complainer.

The Panel asked whether the final sentence in the Respondent’s email to the effect that the review was an “irresponsible act of political mischief” by the Labour Administration could be taken as making it clear the Respondent was essentially only criticising his political opponents and not the Complainer. In response, the ESC advised he considered the email, as a whole, was critical of the Complainer.

In response to a question about whether the Respondent drafted the text for the email and post, the ESC advised that he understood the content had been drafted collectively by the Respondent’s Group, for each individual member to tailor and use as they saw fit. The ESC advised he was unsure as to whether the Respondent had been involved in the drafting (albeit he understood he was the Group Leader).

In response to questions from the Panel, the ESC confirmed he accepted the statement that the Complainer had initiated the review, and criticisms of it that followed, amounted to an accusation that the Complainer had failed to maintain political neutrality. The ESC acknowledged such an accusation was serious, given it called into question the Complainer’s integrity and ability to undertake his role. The ESC further accepted that it was reasonable to conclude the statement was personal in nature, given the Respondent identified the Complainer by name.

The Panel asked the ESC whether given:

- his acceptance the Respondent’s statement that the Complainer had initiated the review was misleading; and
- the fact that there did not appear to be any dispute that the Respondent was present at the Council meeting on 23 February 2023 when councillors made the decision, and the Complainer was instructed to carry out the review;

he considered the Respondent must have known the contents of his September 2023 email and post were misleading. In response, the ESC advised that any view he had on this would simply be “conjecture” on his part.

Turning to the January 2024 emails, the ESC advised he did not consider their content contained language that could be considered objectively as being disrespectful or discourteous. The ESC noted the Respondent

advised he was asking questions in the first email on behalf of his constituents. The ESC argued it was part of a councillor's role to make such enquiries. The ESC contended that the exchange represented a councillor asking "perfectly pertinent questions" of the Council's most senior officer about an issue of significant public interest and concern, following allegations of whistleblowing that appeared in the media. The ESC accepted that the Respondent had proceeded to repeat his questions in the subsequent email but advised he "did not consider this to be inappropriate".

The ESC advised that the Complainer's position was that the Respondent's questions implied that he [the Complainer] either knew, or should have known, about the reported issues with key performance indicators. The Complainer's position was that he had clearly stated in his initial reply that he had not become aware of these until recently and that the matter was being reviewed by internal auditors.

The ESC advised he accepted that part of the Respondent's motivation for the email exchange was the breakdown in relations between him and the Complainer. The ESC stated, nevertheless, that given the content of the 'whistleblowing' article which had appeared in the media and the amount of public money involved the Respondent had legitimate grounds for raising concerns and was entitled to do so, as part of his scrutiny role as an elected member.

The ESC acknowledged that it was evident, from the fact that he had repeated his questions, that the Respondent had not accepted all the Complainer's responses at face value. The ESC noted that the Complainer had found the January 2024 email exchange to be vexatious. The ESC advised, however, that he considered this perception needs to be balanced with the Respondent's view that not all his questions had been addressed during the course of the exchange. The ESC advised that, while he would characterise the Respondent's emails as "pointed", he was not persuaded their content, either separately or collectively, could be objectively considered disrespectful or discourteous, in terms of the Code.

The ESC advised that the Complainer considered the reference made by the Respondent in his 2024 post to cutting the "the council and labour's PR machine" to be an attack on officers within the Council's Strategic Communications and Engagement Service.

The ESC advised, however, that he was also not persuaded that considering the January 2024 emails together with the September 2023 email and post, and the February 2024 post "was appropriate". The ESC explained this was because while the context could indicate a course of conduct, councillors could not be precluded, by the ethical standards framework, from fulfilling their legitimate scrutiny role, particularly on important issues "simply because senior officers find that scrutiny vexatious".

The ESC accepted, in response to questions from the Panel, that the tone and nature of the January 2024 emails (including persistent and repetitive questioning) could make them disrespectful, even if language employed in them was appropriate. The ESC noted, however, that as the January 2024 email exchange was brief, and the Respondent had only asked the same questions twice. As such, the ESC did not consider the Respondent's conduct to have been sufficiently persistent as to amount to disrespect or discourtesy. The ESC advised he empathised with the Complainer and could understand why he found the implication that he knew, or should have known, about the issues upsetting. The ESC advised, nonetheless, that he considered the Respondent's questions were legitimate given the content of the media article and amount of public money involved in the contract.

The ESC advised that he considered the September 2023 email and post to be public statements. This was because the email was copied to other councillors and the post was made on Facebook, being an online public forum. When asked, however, whether the fact that the email was sent to a member of the public (who owed no duty of confidentiality and could have shared it with anyone) in itself could make it public in

nature, the ESC accepted this and noted that it had also been sent to councillors in the Respondent's ward who were not members of his political group.

The ESC advised, for the reasons outlined above, he had concluded the Respondent was publicly disrespectful of the Complainer in both the September 2023 email and post, by alleging the Complainer had initiated, along with the Council Leader, a review of council services and facilities for politically motivated reasons. **The ESC advised he had concluded, therefore, the Respondent had breached paragraphs 3.8, 3.10 and Annex A of the Code.**

The ESC noted that the Respondent had copied other councillors from his political group into the January 2024 emails and advised that some of the content had then appeared in the media.

The ESC advised, however, that he did not consider the content of the emails amounted to public criticism of the Complainer or an attempt to undermine him. The ESC explained this was because while he accepted:

- the Respondent's questions (and failure to accept the answer provided) implied the Complainer either knew, or should have been aware, of the issues with the key performance indicators; and
- the questions were asked in the context of a breakdown in their relationship,

he considered that, based on the allegations by the whistleblower that appeared in media article, the Respondent had legitimate grounds for concern. The ESC contended that, as such, he was entitled to engage in robust scrutiny and to ask the Complainer the questions contained in the emails.

The ESC advised that the February 2024 post was published after the Council's budget meeting. The ESC noted that the Respondent outlined the aims of his Group's budget in the post. This included a commitment that there would be *"no compulsory redundancies"* for council staff and to undertake *"a chief executive budget and officer review"*.

The ESC advised that, in considering whether a breach of the Code had occurred, he had taken cognisance of a decision made by the Standards Commission in respect of case LA/AC/3600. In that case, when considering whether a Respondent had publicly criticised the conduct, performance or capability of an identifiable officer or group of officers, the Panel stated that it *"considered that, in order for council employees to be objectively considered as identifiable, ordinary members of the public in the local area would need to be able to readily understand who they were"*.

The ESC advised that, in this case, he did not consider any officers were readily identifiable from the February 2024 post. The ESC explained that was because the Respondent had not named either the Council department in question or any individual officers.

The ESC further advised that he did not consider members of the public would conclude reasonably that the February 2024 post undermined officers, given the Respondent had stated in it that his Group's budget would ensure there were no compulsory redundancies for council staff. The ESC advised that he considered it was more likely that members of the public would view the post as a political statement about the Council's funding priorities. The ESC advised that, as such, he did not consider the Respondent had breached the Code in respect of the February 2024 post.

In response to a question from the Panel about whether the Respondent's linking the Council's communications to those of the Labour party, amounted to a suggestion that officers had failed to maintain political neutrality, the ESC advised he did not consider members of the public would view it in that way. The Panel asked whether members of the public would understand the reference to the Council's "PR machine" to mean its communications department or team. In response, the ESC advised that he considered members of the public would be unlikely to identify the name of the specific team responsible for communications, let

alone any specific council officers it employed. The ESC accepted, nevertheless, that the Complainer, as the Chief Executive, would be identifiable as the officer in overall charge of council communications.

In response to a further question from the Panel, the ESC acknowledged that it was possible to undermine or criticise officers while at the same time suggesting they should not be subject to any compulsory redundancy process. The ESC further acknowledged that the linking of the Council's and the Labour Party's communications could be perceived as calling council officers' political neutrality into question. The ESC noted, however, that it was not unusual for officers to release communications on behalf of a council leader.

The ESC advised that the Complainer was of the view that, when considered together, the Respondent's conduct towards him amounted to bullying and harassment. The ESC advised that, when considering the application of the Code in this regard, he had noted that:

- the September 2023 email was sent in response to an enquiry from a constituent and was sent to that constituent and two ward councillors who had been sent the same enquiry;
- the Respondent then published the content of September 2023 email in the post on his Facebook account the same day;
- following receipt of the email from the Monitoring Officer of 27 September 2023, the Respondent then removed the Complainer's name from the September 2023 post. He nevertheless retained the reference to the Council's Chief Executive having initiated the review;
- the Complainer is the Council's Chief Executive Officer, and the Respondent is the leader of a relatively small and new group within the Council, meaning that there was no significant power imbalance between them (which, by comparison would be present in cases where councillors were interacting with junior council officers);
- the Complainer had the opportunity to defend himself in the January 2024 emails; and
- the January 2024 emails did not contain any derogatory personal attacks.

The ESC noted that while a one-off incident could amount to bullying or as harassment, he did not consider the repetition of the September 2023 email, in the post of the same day, could be viewed as an aggravating factor, given it was, effectively, the same content shared twice.

The ESC advised he was cognizant of the Panel's decision in case LA/NL/3979. In that case, the Panel had noted that:

- the post containing the content about the Complainer having initiated the review had been drafted by the Respondent's political group acting collectively, rather than by that 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 in that forum.

The ESC noted that, in that case, the Panel had acknowledged nevertheless 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 small and relatively newly formed political group. As such, the Panel had found it was arguable the inherent position of power enjoyed by councillors over officers was less evident and of less significance. The Panel had further noted that the Respondent, in that case, had 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). In the circumstances, the Panel had concluded that while it had been serious, inappropriate and deliberate, the Respondent's conduct, in the specific circumstances of that case, fell short of the threshold required for it to amount to bullying in terms of the Code.

The ESC noted that a difference between that case, and the current one before the Panel, was that, in this case, the Respondent had been a councillor for longer and was also a group leader. The ESC advised that, notwithstanding these factors, he was not persuaded that the inherent position of power enjoyed by councillors over officers was more evident and of more significance in this case. The ESC further advised that he was not persuaded Complainer had no right of reply, given the press will frequently ask a Council for comment on matters of public concern and given the Chief Executive's approval will often be sought before one is provided.

The ESC advised, therefore, that he had concluded the Respondent's conduct could not be considered objectively as amounting to the bullying or harassment of the Complainer.

The Panel noted that the ESC had indicated, in his report, that the fact that the Complainer had not been copied into the September 2023 email, or tagged in the post of the same day, was a factor he took into account when concluding the Respondent's conduct did not amount to bullying and harassment. The ESC accepted, in response to a question about this, that taking an action behind someone's back could be said to be a feature of bullying or harassment.

The Panel asked the ESC whether the difference in the subject matters of the September 2023 email and post, and the January 2024 emails, was a compelling factor in the consideration of whether, taken together, they amounted to bullying or harassment of the Complainer, given both were directed towards him. In response, the ESC noted that, while he could understand why the Complainer felt he was being targeted, he considered it was entirely appropriate for the Respondent to have approached him regarding the concerns raised in the media about the council contract. This was because the Complainer, as its most senior officer, would have overall responsibility for the contract process.

When asked by the Panel, the ESC accepted that factors, other than status and experience, (such as an individual's demeanour or personality), could create an imbalance in the power dynamic between individuals. The ESC noted, nevertheless, that while a Complainer's perception was important, it was nevertheless incumbent on him, and the Standards Commission's Hearing Panels, to determine objectively, in each individual case where it was alleged, whether the conduct in question met the threshold as to amount to bullying.

The Panel asked the ESC whether the Complainer could really be said to have had a right of reply. In doing so, the Panel noted that Council officers generally would not have a right of reply to social media and, in any event, had not been copied into the Respondent's email of September 2023. The Panel noted that while the Complainer may have been afforded a right of reply through the media, this would only be in circumstances where a journalist had picked up on a story and asked for a response. The ESC advised he accepted this, albeit he still did not consider the Respondent's conduct met the threshold as to amount to bullying or harassment.

When asked whether the Respondent's reference, in the February 2024 post, to the Chief Executive's budget being cut, and an officer review being undertaken, could be perceived as an extension of conduct targeting the Complainer, the ESC accepted he could understand why the Complainer may have perceived it as such. The ESC noted, however, that it was legitimate and not unusual for politicians to call for expenditure to be reviewed to determine if value for money was being achieved.

The ESC advised that he had found the Respondent had used council resources imprudently in breach of paragraph 3.25 of the Code, given he had used his council email account to send the September 2023 email that contained criticisms of other political groups and, therefore, had been sent at least in part for party-political advantage. The ESC accepted, nevertheless, that councillors are entitled to use council resources to make political points, so he understood the Panel might reach an alternative view, and that a decision on this would be helpful in terms of his consideration of future cases of a similar nature.

Article 10: Having concluded that, on the face of it, the Respondent had breached paragraphs 3.1, 3.8, 3.10 and 3.25 of the Code, the ESC advised he had proceeded to consider the Respondent's right to freedom of expression under Article 10 of the European Convention on Human Rights. The ESC noted that while the Respondent enjoyed a right under Article 10 to hold and impart opinions without interference from public authorities, this right was qualified. The ESC noted a restriction on the Respondent's Article 10 rights could be justified if deemed necessary to protect the rights and reputations of others, and to ensure the effective operation of the Council.

The ESC noted it was not in dispute that the Respondent was acting as a councillor when publishing both Facebook posts and sending the emails in question. The ESC further noted that the Respondent's September 2023 post and email concerned the potential closure or repurposing of council facilities and the January 2024 emails concerned a significant council contract. The ESC advised he had concluded, therefore, that the Respondent was commenting on issues of significant public interest and concern and, as such, would attract enhanced protection in respect of his Article 10 rights.

The ESC noted that he had argued, at the Standards Commission Hearing on LA/NL/3979, that a restriction on the Article 10 rights of the Respondent in the case could not be justified. The ESC noted that the previous case concerned the same comment, as made by the Respondent in this case (in the September 2023 email and post), to the effect that the Complainer had initiated the review of the Council's facilities. The ESC acknowledged, however, that the Panel in the previous case had disagreed and found a restriction could be justified. The ESC advised that given:

- the similarities between the complaint that was the subject of the previous Hearing, and the issue of complaint in this case (concerning the September 2023 email and post); and
- the fact that it was the Standards Commission's role to adjudicate and make the final decision on cases referred to it, and to issue guidance on how the Code is to be interpreted,

he felt obliged to treat the Panel's findings on Article 10 in the previous case as a precedent. As such, the ESC advised that he would not be adhering to the conclusions in his report, in this case, to the effect that a restriction on the Respondent's Article 10 rights could not be justified.

The ESC noted that, for restriction on an individual's Article 10 rights to be considered necessary, there had to be relevant and sufficient reasons to justify it and, further, that any restriction must be both proportionate and necessary in a democratic society. The ESC advised that, with reference to the previous decision in LA/NL/3979, his view was that a restriction was only justified in this case in relation to the September 2023 post and email.

In explaining his view in this regard, the ESC highlighted, in particular, the following aspects of the Panel's reasoning for the decision in the LA/NL/3979 case:

- That the Panel was not satisfied the Respondent's statement in that case had been made in good faith or to be substantially true to a reasonable standard of proof.
- That the Panel did not consider that a finding of a breach of the Code for such unnecessary and deliberate naming of the Complainer, and the implied criticisms of his conduct, could be said to have a chilling effect on the ability of the Respondent to criticise his political opponents.
- 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 it was made, were unfounded, unfair and exceeded even the wider bounds the Complainer could be expected to accept in his non-political role as Head of Paid Service.
- That the context in which the Respondent's post had been made also required to be considered. The panel noted it had been accepted that the wording of the part of the post in question had been agreed by members of the Respondent's Group. The Panel accepted, therefore, that the Respondent would have had the opportunity to review the proposed post before publishing it and his comments could not,

therefore, be categorised as spontaneous or made in the heat of the moment in response to something alleged by the Complainer or anyone else.

- 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 consider, therefore, 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.
- The Panel had concluded the Respondent's accusation was entirely gratuitous and egregious, wholly inappropriate and potentially very damaging to the Complainer's reputation.
- That, in light of the matter outlined in the bullet points above, the Panel was satisfied that a restriction on the Respondent's right to freedom of expression was relevant, sufficient and proportionate.

The ESC reiterated that he did not consider the January 2024 emails represented a breach of the Code's provisions, either when considered by themselves or as part of a course of conduct. The ESC noted this was because he considered the Respondent was entitled to raise concerns about the contract as doing so would form part of an elected member's members legitimate scrutiny role.

The ESC noted that the Code, and Ethical Standards Framework, were in place to ensure that public debate at a local government level did not fall below a minimum standard. Further aims included protecting the reputation and rights of others, and ensuring that local government could function effectively by ensuring Council officers could undertake their role free from any undue disturbance.

The ESC observed that a restriction on the Respondent's Article 10 rights could be justified if the January 2024 emails had served to undermine or adversely affect the reputation of the Complainer or the Council itself. The ESC noted, however, that in the case of *Heesom*¹ the Court had found "*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 ESC noted that the Court had also remarked that "*where critical comment is made of a civil servant, such that the public interest in protecting him as well as his private interests are in play, the requirement to protect that civil servant must be weighed against the interest of 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 his right of freedom of expression.*"

The ESC also drew the Panel's attention to the Court's decision in the case of *Lombardo*² and, in particular, to its finding that "*the distinction between statements of fact and value judgements is of less significance... where the impugned statement is made in the course of a lively political debate at local level and where elected officials and journalists 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 ESC noted that the Court, in that case, had highlighted the chilling effect that a sanction may have in discouraging any future statements critical of council policies.

The ESC argued that the Respondent, as an elected member, should be able to scrutinise and "even criticise a local authority and its chief officer, even if the offending statements lacked a basis in fact". The ESC indicated that he considered the case law went further and suggested the case of *Gomes*³, "that a perceived personal attack cannot be gratuitous if the author supports them with an objective explanation".

The ESC noted the Respondent's contention that his intent, in sending the January 2024 emails, was to seek further clarity. The ESC argued that precluding a councillor from asking legitimate questions about a

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

² *Lombardo v Malta* (2009) 48 EHRR 23

³ *Lopes Gomes da Silva v Portugal* (2020) 28 EHRR 101

significant contract, in circumstances where concerns had been raised in the media, should not be categorised as sufficiently egregious, bad or shocking as to warrant a restriction on that individual's Article 10 rights. As such, the ESC contended, that even if the Panel was to find the Respondent had, on the face of it, breached the Code in respect of the January 2024 emails, a restriction on his Article 10 rights could not be justified.

The ESC did not make any submissions on the application of Article 10 in respect of the February 2024 post.

DECISION

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

1. The Councillors' Code of Conduct applied to the Respondent, Councillor Lennon.
2. The Respondent had breached paragraphs 3.1, 3.8 and 3.10 of the Code.
3. A restriction on the Respondent's right to freedom of expression that such a finding would entail could be justified.

Reasons for Decision

1. The Panel noted that the September 2023 and February 2024 posts had been published on the Respondent's 'councillor' Facebook page, and that the September 2023 email and January 2024 emails had been sent from his council email account. The Panel further noted that the posts and emails all concerned matters relating to the Council. The Panel was satisfied, therefore, that the Code applied to his conduct at the time of the events in question.
2. In reaching its decision as to whether there had been a breach of the Code, the Panel took the following three-stage approach, as outlined in the Standards Commission's Advice Note on the Application of Article 10 of the ECHR:
 - Firstly, it would consider whether the facts found led it to conclude, on the balance of probabilities, that the Respondent had failed to comply with the Code.
 - Secondly, if so, it would then consider whether such a finding in itself was, on the face of it, a breach of the Respondent's right to freedom of expression under Article 10.
 - Thirdly, if so, the Panel would proceed to consider whether the restriction involved by the finding was justified by Article 10(2), which allows restrictions that are necessary in a democratic society (and, in particular, in this case, for protecting the rights and reputations of others).

Stage 1: Whether the Respondent's conduct amounted, on the face of it, to a breach of the Code The Facebook post and email to a constituent of 22 September 2023:

3. The Panel found, and noted it was not in dispute, that the Respondent stated in both the post and email that the *"review was initiated by the Chief Executive of NLC, Mr Des Murray and [the Council Leader]"*, and had the support of the Conservative Group. The Respondent then stated the timing and process for this review were *"suspect"*, given an upcoming by-election and General Election, before remarking that *"one might question whether the review's real purpose" was "to create a crisis and overturn it to gain votes for both the Labour and Conservative groups"*.
4. The Panel noted the Respondent's position, as intimated to the ESC during his investigation, was that the post and email were accurate, in that the Council Leader had instructed the Complainer to instigate a review of council facilities. The Panel further noted the Respondent's position was that he sent the email in response to an enquiry from a constituent, and that he intended it to provide *"accurate historical context"*, regarding the Council Leader's instruction to the Complainer to undertake the review. The Respondent argued that not only were both the post and email factually accurate, but were also necessary for transparency, as the Council Leader's instruction had been documented in the webcast of the Council meeting held on 23 February 2023. The Panel noted the Respondent advised the

2023 post was intended to reassure constituents that he would oppose any adverse proposals resulting from the review.

5. The Panel noted that the Respondent's position, as relayed to the ESC, was that both the Complainer and Council Leader were public figures with high profile roles and, therefore, sharing information about their decisions and actions ensured accountability and transparency and, as such, was in the public interest. The Respondent's position was that he had shared information about the review to keep his constituents informed, in accordance with his duties as an elected member. The Respondent denied any suggestion that he had deliberately misrepresented the position and noted that he had taken immediate action to amend the post (and remove the Complainer's name), after the Monitoring Officer had raised concerns. The Respondent advised he had used the word "suspect" to highlight his concerns over the timing and process of the review, especially in the context of an upcoming by-election, but clarified that his remarks were directed towards the Labour Administration and its leadership rather than the Complainer. The Respondent contended that any suggestion the remarks were aimed at the Complainer was *"a clear distortion of the facts, as he is neither a politician nor affiliated with any political party"*.
6. The Panel noted that council Chief Executives are responsible for the efficient and effective operation of local authorities 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.
7. The Panel noted there was no dispute that the Respondent was aware the decision to undertake the review had been made by councillors at the Council meeting on 23 February 2023, rather than by the Complainer. There was also no dispute that the Complainer had only been instructed to undertake the review.
8. The Panel did not accept that either the September 2023 post or email stated, or could reasonably be construed as conveying, that the Complainer had been directed to initiate the review as instructed. This was because while the Respondent stated that the Complainer had initiated the review, he made no mention or reference to any instruction given to the Complainer to do so. Instead, reference was made, in the same part of the sentence that appeared in both the post and email to the Council Leader. Reference was also made, later in the same sentence in both, to the decision to initiate the review as having the support of the Conservative Group.
9. The Panel agreed 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 that 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 both the post and email. 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.
10. The Panel agreed that, when assessing whether a comment could amount to a breach of the Code, the full context in which it was employed 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 also be considered when determining the likely motivation or intent behind it.

11. The Panel noted the Respondent stated, at the end of the September 2023 email, that he and his Group would do everything in their power to oppose any adverse proposal arising from the review as they saw it “as an irresponsible act of political mischief by the NLC Labour Administration”. The Panel accepted that the inclusion of this statement supported the Respondent’s argument that the criticisms in the post and email were aimed at his political rivals, rather than the Complainer. The Panel noted, nevertheless, that it had found the Respondent’s reference to the Complainer to be deliberate. It further noted that while the Respondent removed the Complainer’s name from the sentence in question in the post after concerns about it were raised, he chose to retain the Complainer’s title.
12. The Panel was of the view that when considered objectively most, if not all, individuals reading the Respondent’s post and email would conclude reasonably that they were stating clearly, or attempting to convey, that the Complainer had made the decision to initiate the review in tandem with the Council Leader and with the support of the Conservative Group.
13. The Panel was further of the view that any members of the public viewing the post or email would read, and consider, their contents as a whole. As such, the Panel considered it was improbable anyone reading either the post or email would separate out the statement that the review 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 it that immediately followed. This was regardless of whether they also understood the post and email to be critical of other parties and political in nature. As such, the Panel did not accept the Respondent’s position that the email and post could only be taken as being directed towards, and critical of, the Labour Administration and its leadership (as opposed to the Complainer).
14. The Panel noted the Respondent’s position was it was evident that his remarks about the timing and purpose of the review being deliberate and intended to gain votes for Labour and Conservative parties in two upcoming elections, were directed towards political opponents, not the Complainer. The Panel noted though that, in both the email and post, 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 or reading the email 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.
15. 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 further accepted that the Respondent was entitled to keep his constituents informed of, and to hold the Administration to account for, the decision to undertake the review. The Panel considered, however, that he could have done so easily and effectively, without making any mention of the Complainer or, at the very least, without tying the Complainer to the decision to undertake it. The Panel noted that the wording had been prepared in advance by the Respondent’s political group. As such, it was evident that both the email and post had not been drafted in haste, without any consideration having been given to their content and any likely inferences arising from their wording.
16. The Panel agreed that the deterioration in the relationship between the Respondent’s Group and the Complainer was relevant 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.

17. The Panel noted the Respondent's position was that criticism in the post and email were directed at his political opponents and intended as political comment or narrative, rather than as any criticism of the Complainer. The Panel noted, however, that the Respondent accepted he was aware the decision to conclude the review had been made by elected members, not the Complainer. The Panel noted the Respondent was unhappy about the timing and purpose of the review and opposed the recommendations arising from it. The Panel also noted that evidence, in the form of an email exchange, had been provided by the Respondent to support his position that his, and his group's relationship with both the Council's Monitoring Officer and the Complainer had "*significantly deteriorated*" at the time. The Panel was satisfied it was apparent, therefore, that there were problems in the relationship between both the Respondent and his political group, and the Complainer, at the time the email was sent and the post was published.
18. On the balance of probabilities, the Panel was satisfied, in light of:
 - the deterioration in the relationship between the Respondent, his Group and senior council officers (including the Complainer);
 - the fact that the drafting of the parts of the email and post in question had been undertaken by the Respondent's group, rather than by any individual in haste;
 - the fact that, as a result the Respondent had opportunities to edit the email before sending it, and to amend the post before publishing it;
 - 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 Council Leader, that the reference to the Complainer having initiated the review, in both the post and email, was deliberate, and intended to link him both to the political decision to undertake it and to the timing of this, in order to criticise, publicly, his alleged conduct. The Panel was satisfied that this conclusion was further supported by the Respondent's decision to deliberately retain the Complainer's job title in the relevant sentence in the post, even after concerns about the wording had been raised with him.
19. 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.
20. 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).
21. **The emails to the Complainer of 28, 29 and 30 January 2024:** The Panel noted the Respondent's position was that any criticism of his January 2024 emails to the Complainer was unjust and being used as a weapon to suppress legitimate scrutiny and criticism.

22. The Panel agreed with the ESC that the emails did not contain any objectively disrespectful or discourteous language. The Panel agreed with the ESC that the tone of the emails was pointed in nature and considered the way the questions were worded and repeated in the second email strongly implied that the Respondent did not believe the Complainer's initial response. The Panel nevertheless agreed with the ESC that the Respondent was fully entitled to raise concerns about the public allegations that had been made, given how serious they were and given they concerned a council contract involving large sums of public money. The Panel noted that, having received the same response to the questions in his second email, the Respondent had indicated that while he was disappointed, he would not communicate further with the Complainer on the matter. The Panel understood why the Complainer may have felt aggrieved that the Respondent was, effectively questioning his integrity by seemingly not accepting the answers he had provided, at face value, as being accurate or truthful. The Panel noted, however, that there was no obligation on the Respondent to accept the answers provided. In the circumstances, the Panel did not consider, on balance, that the Respondent's conduct, in posing the questions and sending the emails would meet the threshold as to amount to a breach of the respect and courtesy provisions in the Code.
23. The Panel noted that the Respondent himself appeared to accept, in sending the emails, his intention was not only to scrutinise, but was also to criticise. While, as noted above, the Panel considered the tone of the emails to be pointed and somewhat accusatory in nature, it was not satisfied that the implication arising from the Respondent's conduct in repeating the questions could be said to amount to criticism of the Complainer's performance, conduct or capability. In any event, while the Panel noted the emails were copied to all members of the Respondent's political group, it was not satisfied this meant they were public in nature. The Panel concluded, therefore, that the Respondent had not breached the Code in respect of the January 2024 emails.
24. **The Facebook post published by the Respondent on 17 February 2024:** The Panel noted that, in this post, the Respondent stated that one of his Group's budget proposals was a cut to *"the council and labours PR machine"*.
25. The Panel noted the Respondent's position (as advised to the ESC) was, again, that any criticism of the February 2024 post was unjust and being used as a weapon to suppress legitimate scrutiny and criticism. The Panel noted the Respondent had advised that he did not author the section of the post in question and, instead, had copied and pasted it from one published on his Group's Facebook page. The Respondent further advised that, regardless of this, he considered there was *"an observable pattern where press and social media outputs from the North Lanarkshire Council Corporate Communications Team predominantly highlight the achievements of those within the Administration"*.
26. The Panel did not consider the fact that the Respondent had not authored the part of the post in question to be of significance, given it was his choice to copy and paste, and to therefore include, the wording. The Panel agreed the Respondent would have had the opportunity to review and revise his version of the post before publishing it and, further, that he accepted he had done so by adding additional text. The Panel noted, in any event, that the Respondent had not attempted to distance himself from the wording used. Instead, he seemed to be implying, in the quote above, that it may be accurate.
27. The Panel agreed that the Respondent had a right to criticise communications issued by political opponents and to scrutinise the service being provided by a council department or team. The Panel agreed, however, that the linking of the Council's, and the Labour Party's, communications clearly inferred, in a public forum, that instead of being politically neutral and working to publicise decisions made by the council, council officers (and particularly those in the Communications Team) were colluding with the Labour Party to promote its messaging. The Panel accepted the ESC's point that it was

not unusual for officers to release communications on behalf of a council leader. The Panel further accepted that the Communications Team may have highlighted achievements of individuals in the Administration. The Panel agreed, however, that neither the release of a communication on behalf of a council leader, nor the highlighting of achievements of certain elected members, equated to an assertion that the Council's Communications Team formed part of, or colluded with, the Labour Party's public relations "*machine*".

28. The Panel considered that, as a relatively experienced councillor and politician, the Respondent would have been fully aware that council officers must remain politically neutral and cannot collude with a particular political party or group. Given this, the admitted breakdown in the relationship between the Respondent's Group and council officers, and the fact that the Respondent had the opportunity to review and edit the post before publishing it, the Panel considered his actions in including the comment were deliberate.
29. The Panel considered the Respondent's actions in publishing the comment in the post was disrespectful and discourteous towards council officers and amounted, on the face of it, to a breach of paragraph 3.1 of the Code.
30. The Panel noted, nevertheless, that no specific officer or officers were identifiable from the comment. The Panel did not consider, therefore, that the Respondent's conduct in respect of the post of February 2024 to amount to a breach of the provision in the Code that requires councillors to refrain from criticising the conduct of individual officers in public.
31. **Potential cumulative course of conduct:** The Panel noted that the Respondent had called for a "chief executive budget and officer review", in his February 2024 post. The Panel understood why the Complainer may have considered this, along with the somewhat persistent and accusatory nature, and pointed tone of the Respondent's January 2024 emails to him, also to be demonstrative of a course of conduct towards him. The Panel did not consider, however, that it could make a finding to this effect. That was because the Panel had concluded the January 2024 emails were not inherently disrespectful towards the Complainer. In addition, the Panel noted that councillors would be entitled to suggest a review of individual aspects of the budget and even a cut to officer roles, provided that, in doing so, they did not publicly criticise the conduct, performance or capability of any individual and identifiable officer or group of officers.
32. **Potential breach of the bullying provision in the Code:** The Panel noted that bullying is inappropriate and unwelcome behaviour that is offensive and intimidating, and 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. In this case, the Panel found that:
 - The Respondent published the post and sent the email in September 2023 deliberately, knowing they contained incorrect information and gave the impression that the Complainer had failed to maintain political neutrality (being a serious allegation).
 - The Respondent named the Complainer in the email to a constituent (which he also copied to other individuals), and published the post on a public social media account, despite knowing the Complainer had no right of reply in either forum.
 - There was evidence the Respondent's Group's relationship with the Complainer had broken down in the previous month.
33. The Panel did not accept the ESC's argument that a mitigatory factor was that the September 2023 post and email essentially amounted to the same incident as they contained the same content. This was because it was entirely evident the email and post were directed at, and intended for, different

audiences. The Panel also did not accept the ESC's argument that the Complainer would have had a right of reply. The Panel noted, in this regard, that council officers would not have a right of reply to social media posts, the Respondent did not copy the Complainer into the email, and there was no evidence or suggestion that a journalist had picked up on the matter and asked the Complainer for a response.

34. The Panel noted that while the Respondent removed the Complainer's name from the September 2023 post after the Monitoring Officer raised concerns, he had chosen to retain the reference to the Complainer's job title. The Panel was satisfied, from this, that the Respondent's decision to name the Complainer in the post and email was deliberate and was intended to link him to the review, in order to publicly criticise his alleged conduct.
35. The Panel acknowledged, nevertheless, that the Complainer was experienced and the Council's most senior officer and, even though the Respondent was a relatively experienced councillor and the leader of a political group (albeit one that was small in size), the inherent position of power enjoyed by councillors over officers was less pronounced in this case. The Panel further noted it had found the duration of the disrespectful conduct targeted directly towards the Complainer to be limited to the one post and email. In the circumstances, the Panel concluded, on balance, that while the Respondent's conduct was serious, inappropriate and deliberate, it did not meet the threshold to amount to bullying in terms of the Code.
36. The Panel noted the ESC had concluded, in his report, that the Respondent had breached paragraph 3.25 of the Code by using his council email account to send the email of September 2023. This was because the email contained criticisms of other political groups and, as such, could be regarded as an attempt to seek party-political advantage. Given the wording of the paragraph, the Panel could understand the ESC's conclusion in this regard. The Panel nevertheless considered that such an interpretation of the paragraph in question was not compatible with the reality of local government. This was because such an interpretation could mean, effectively, the provision could be engaged every time a councillor used a microphone (being a council resource) in the Chamber to make a throwaway political point (given that doing so could be perceived, or even categorised, as imprudent, or as party-political activity). The Panel agreed the purpose of the relevant provisions in the paragraph was to prevent councillors from using council resources for campaigning activity (such as using council equipment to print campaign leaflets), or without thinking about the implications or consequences (such as using facilities wastefully). The Panel did not therefore find a breach of paragraph 3.25.
37. **Overall conclusion in respect of Stage 1:** The Panel noted it had found, overall, that the Respondent's conduct, in respect of the Facebook posts of 22 September 2023 and 17 February 2024, and the email to a constituent of 22 September 2023, 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). The Panel noted it had further found that the Respondent's conduct, in respect of the Facebook post and email of 22 September 2023 amounted, on the face of it, to a breach of paragraphs 3.8 and 3.10 of the Code (which require councillors to refrain from criticising the conduct of individual officers in public).

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

38. 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 that both posts, and the email sent by the Respondent, related to matters of public interest and concern; namely a review of council

⁴ Thorgeirson v Iceland (1992) 14 EHRR 843

services and the Council's budget. In the circumstances, therefore, the Panel considered that the Respondent would attract the enhanced protection of freedom of expression afforded to politicians, including local politicians, under Article 10.

Stage 3: Whether any restriction on the Respondent's right to freedom of expression involved by a finding of a contravention of the Code would be justified by Article 10(2) of the ECHR

39. 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.

40. The Panel accepted, however, that the Courts have found any restriction on freedom of expression must 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.
- 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

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

⁶ Heesom (ibid)

⁷ Heesom (ibid)

⁸ Heesom (ibid)

was made by a politician in political expression, the enhanced protection given to the politician's right to freedom of expression⁹.

41. The Panel noted that the Respondent had stated, in written representations provided in advance of the Hearing and included in the productions, that the protection provided under Article 10 "*should be applied in accordance with the professional recommendation from the Ethical Standards Commissioner's report*", being that a restriction on his right to freedom of expression under Article 10 could not be justified. The Panel noted, however, that at the Hearing the ESC departed from the position as outlined in his report. The Panel nevertheless agreed, that given the Respondent's adoption of them, it was important to consider and address the arguments made in the ESC's report in respect of Article 10.
42. The Panel noted that, in his report, the ESC referred to the case of *Busuoiu*¹⁰ 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".
43. In this case, in respect of the September 2023 post and email, the Panel noted it had found the Respondent stated 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. 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 published the post and sent the email despite knowing the assertion he made in them, about the Complainer having initiated the review, to be incorrect and misleading. The Panel further noted that it had found the naming of the Complainer in the post and email to have been a deliberate attempt to link him, unfairly, to the decision to undertake the review and the criticisms that followed.
44. In respect of the February 2024 post, the Panel noted it had found that the Respondent's reference to "*the council and labours PR machine*" inferred clearly, and publicly, that council officers were colluding with a political party to promote its messaging. The Panel had found that the Respondent had published the comment deliberately, in the knowledge that council officers must remain politically neutral and cannot collude with a particular political party or group.
45. The Panel was not satisfied, therefore, that the Respondent had acted in good faith in issuing the September 2023 email, and in publishing the September 2023 and February 2024 posts.
46. The Panel noted that in his report, 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*". The Panel further noted that the Respondent sought to rely on a concession made by the Standards Commission in respect of an appeal against one of its decisions by an Aberdeen City councillor where it accepted a statement made by that councillor was a value judgement.
47. In this case, however, the Panel did not consider the Respondent's statement in the September 2023 email and post that the "*review was initiated by the Chief Executive of NLC, Mr Des Murray and [the*

⁹ Heesom (ibid)

¹⁰ *Busuoiu v Moldova* no. 61513/00, 21 December 2004

¹¹ *Lombardo* (ibid)

Council Leader]” to be a value judgement or opinion. Instead, the Panel found it to be a statement of fact. This was because the Panel considered the statement to be clearly verifiable, in 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 noted that this was not in dispute and, further, was clearly evident from the recorded webcast of the Council meeting on 23 February 2023 at which the decision was made by councillors and the instruction to the Complainer was given. The Panel noted that the Respondent himself stated, in his representations on the ESC’s report, that the information contained in the September 2023 post and email was “*rooted in factual occurrences*”. The Respondent also refuted the Complainer’s claim that the 2023 post was “*factually incorrect*”, instead contending it was “*grounded in factual evidence*”.

48. The Panel noted that the Courts have held that factual statements made in good faith with a reasonable evidential 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. The Panel noted it had further found the Respondent deliberately stated the Complainer had initiated this with the Leader, despite the fact that he knew this not to be the case. As such, the Panel did not consider the Respondent’s statements were made in good faith, had a reasonable evidential basis or were substantially true to a reasonable standard of proof.
49. The Panel noted, in respect of the February 2024 post, that it had found the Respondent had inferred, deliberately, that there was collusion between council officers and the Labour Party. The Panel noted that the only justification or ‘evidence’ the Respondent had identified for making such an accusation was that the Council’s “*Corporate Communications Team predominantly highlighted the achievements of those within the Administration*”, whereas it had failed to “*approach*” a member of his Group to cover about a sporting accomplishment achieved by the individual in question. The Panel considered that even if there was any truth to this assertion, in no way would predominantly highlighting achievements of elected members from one group equate to, or be evidence of, the Council’s communications team being one and the same as that of the Labour Party (or, by inference, being in collusion with them in a blatant disregard for the requirement for council officers to be politically neutral). The Panel noted that it could just be the case that there were more members of the Administration and, therefore, more achievements on their part to highlight; or that they had requested information about their accomplishments be disseminated, whereas the Respondent’s colleague may not have done so. The Panel therefore did not consider there was a sufficient factual basis for the Respondent’s comment or that it been made in good faith.
50. The Panel noted that the Respondent, in his representations, had expressed concern that he was being “*impeded in scrutinising the work of the council*”, and that the contents of the September 2023 email and post were shared to provide “*transparency*”. The Panel further noted, with reference to the February 2024 post, that the Respondent stated that it was entirely within the remit of elected members to question whether the “*substantial funding*” allocated to the council’s Strategic Communications and Engagement Service was “*the best possible use of public funds*”. The Panel accepted that councillors have a key scrutiny role and are both entitled, and indeed 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. The Panel further accepted that the Respondent was fully entitled to scrutinise and make comment on the allocation of council funds across different council departments. The Panel noted no finding it had made would prevent the Respondent from doing so.
51. The Panel noted it had found, though, that the Complainer had been named, unnecessarily and deliberately, by the Respondent in the September 2023 email and 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 affect 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. Similarly, in respect of the February 2024 post, the Panel did not consider that there was anything that would have prevented the Respondent, in any way, from commenting on, or even criticising, the allocation of council funds without suggesting deliberately, and without some or any factual basis, that officers in a particular department were colluding with another political party and had, therefore, failed in their due to maintain politically neutrality.

52. The Panel noted the Courts have held that a wide degree of tolerance should be shown towards political speech. The Panel acknowledged that, if the September 2023 email and post had not mentioned the Complainer, and if the February 2024 post had not inappropriately and clearly inferred collusion between a council department and political party, the Respondent's communications would have been unremarkable and not 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) or other council officers (by publicly questioning their neutrality) would have any impact whatsoever (let alone the chilling effect highlighted by the Court in *Lombardo*) on the Respondent's (or any other elected member's) right or ability to make political points, criticise political opponents, or question the allocation of council funds.
53. The Panel noted that as it had not found, at Stage 1, a breach of the Code in relation to the January 2024 emails, it was not obliged to consider the application of Article 10 in respect of them. Nonetheless, the Panel wished to note it disagreed with the ESC's interpretation of the *Lombardo* case as permitting any, and all, public criticism of a local authority's chief officer, even in the absence of such criticism having some basis in fact. The Panel noted that, in *Lombardo*, the Court was considering whether the restriction of the applicants' (three councillors and a journalist) Article 10 rights in relation to comments made about a local council failing to consult the public and ignoring public opinion was justifiable. The Court held that "*elected officials and journalists 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 Panel considered it important to draw a distinction between interpreting the decision in *Lombardo* as a potential justification for public criticism of, on the one hand, an *officer* of a council, and, on the other, of actions taken by elected members of a council, as a whole, in rejecting a motion put forward at a council meeting. The Panel did not consider that *Lombardo* acted as justification for the first scenario.
54. The Panel further disagreed with ESC that the case law, and in particular the case of *Gomes*, suggested that any "*perceived personal attack cannot be gratuitous if the author supports them with objective explanation*". The Panel noted that while the Court in the *Gomes* case did not find the impugned statement to have been a gratuitous personal attack, it made it clear that this was in the specific circumstances in which it was made (as is always the case in Article 10 jurisprudence), and noted, in any event, it could be considered polemical. The Panel agreed that a perceived personal attack could be entirely gratuitous even if it could be, or was, supported by an objective explanation. As an example, the Panel noted that it would be entirely gratuitous for a councillor to call a political opponent 'fat', out of the blue and as an aside, during a public debate on a wholly unrelated matter in the chamber, even if the individual the comment was directed towards was overweight.

Evidence in respect of Mitigation and Sanction

The Panel noted that the Respondent had submitted, as part of the written documents included in the productions, a statement entitled 'Mitigation Impact'.

In this, the Respondent outlined concerns about the conduct of the Complainer and another Council officer and the Complainer's motivation in making the complaint. The Respondent further cited concerns about the alleged action of the Standards Commission and advised he had endured significant stress as a result.

The Panel further noted the Complainer had submitted an impact statement. In accordance with the Hearing Rules, the Panel was mindful of, and took into account, the fact that this statement had not been 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 and email 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.

SANCTION

The decision of the Hearing Panel was to suspend, for a period of two months with effect from 18 December 2024, the Respondent, Councillor Lennon, from all meetings of the council and of any committee or sub-committee thereof and of any other body on which the councillor is a representative or nominee of the council or body.

This sanction was made under section 19(1)(c) terms of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

Reasons for Sanction

1. In determining the appropriate sanction, the Panel considered:
 - firstly, whether the interference (i.e. the proposed sanction) was the minimum necessary, or whether less restrictive means could be employed; and
 - 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 require councillors must behave with courtesy and respect towards others (including council officers), and to refrain from undermining or criticising them in public, are key requirements of the Code. The Panel noted that a failure to adhere to those provisions 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 and sent the email in September 2023 deliberately, despite knowing that they contained incorrect information, and despite their 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, 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.
5. The Panel further noted that it had found the Respondent had been discourteous to other council officers by publicly inferring that, instead of being politically neutral and working to implement decisions made by the Administration, they were colluding with a specific political party to promote its messaging. The Panel again noted that such an accusation could erode public confidence in the Council and undermine the mutual bond of trust and confidence between councillors and officers, which allows it to function effectively. The Panel was of the view, therefore, that the breaches of the Code it had found were serious in nature.
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. The Panel did not consider any of the points the Respondent had made in his "Mitigation Impact" statement to be relevant. This was because a breach of the Code was precisely that, regardless of a Complainer's motivation in making the complaint. The Panel noted the Respondent's accusation that the Complainer had been involved in initiating the review to serve some vested, political interest was unfounded and unconnected to the matters that appeared to have led to the breakdown in the relationship between the Complainer and the Respondent's political group. Similarly, the Respondent had no involvement with the Standards Commission at the time of the events in question. As such, it could not be said that any stress suffered as a result of his dealings with it, were a mitigatory factor in terms of the conduct that was found to be a breach of the Code.
8. The Panel accepted nevertheless, in mitigation, that the Respondent had co-operated fully with the investigative process. The Panel further noted there had not been any previous findings of a contravention of the Code by the Respondent. The Panel also noted that the Respondent had not named any specific officers in the post of 17 February 2024 and had removed the Complainer's name from the post of 22 September 2023 after a few days (albeit only after the Council's Monitoring Officer had raised concerns about it with him), meaning the extent of the breach was somewhat limited.
9. The Panel then proceeded to consider whether there were any aggravating factors; being ones that may increase the severity or culpability of the breach.
10. 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 September 2023 post and email, and given neither could never be permanently deleted (as the email

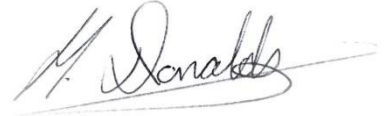
could have been forwarded to anyone and any individual viewing the post could have retained a screenshot of its content).

11. The Panel further noted that while the Respondent had removed the Complainer's name from the September 2023 post after the Council's Monitoring Officer raised concerns about it with him, he had retained the Complainer's job title. The Panel was satisfied, therefore, that he had deliberately chosen to do so, despite knowing the content of the post to be false and misleading. The Panel was concerned that the Respondent had not demonstrated any insight into how the September 2023 post and email could have been perceived and its potential impact on the Complainer or how the February 2024 post may have affected other council officers. The Respondent had further not demonstrated any awareness of the potential impact of providing the public with misleading information. The Panel was further concerned that the Respondent had not proffered any apology, nor demonstrated any remorse for his actions.
12. 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, and the potential impact on other council officers. 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.
13. 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 relatively 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 reputation of the Complainer and other council officers and their right to perform their duties without being subject to disrespectful behaviour and unwarranted personal attacks. The Panel was of the view it was also necessary to discourage other councillors from engaging in similar conduct.
14. The Panel noted that it may have imposed a longer suspension had it found the other aspects of the complaint to have met the threshold for amounting to a breach of the Code. The Panel also noted that the Respondent's conduct had been limited in duration given there was no evidence that his allegation that the Complainer had initiated the review, or inference that council officers were colluding in their communications with the Labour Party, had been repeated in the media. In the circumstances, the Panel did not consider a disqualification or more lengthy suspension was warranted or justified.
15. 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.
16. 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 two months, with effect from 18 December 2024.

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: 17 December 2024



**Helen Donaldson
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.

