

Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at the Council Chambers, Old Viewforth, Stirling, on Wednesday 21 June 2023.

Panel Members: Ms Ashleigh Dunn, Chair of the Hearing Panel
Mr Paul Walker
Ms Anne-Marie O'Hara

The Hearing arose in respect of a Report referred by Mr Ian Bruce, the Ethical Standards Commissioner (the ESC), further to complaint reference LA/S/3571, concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Danny Gibson (the Respondent).

The ESC was represented at the Hearing by Dr Kirsty Hood, KC. The Respondent was represented by Frances Randle, Solicitor, of Edwards Duthie Shamash.

THE REFERRAL

Following an investigation into a complaint received on 24 May 2021 about the conduct of the Respondent, the ESC referred a report to the Standards Commission for Scotland on 10 March 2023, in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000.

The ESC advised that he had identified and investigated the following issues of complaint:

Issue 1: Between 8 September 2018 and 15 October 2019, and specifically on 3 May 2019, in emails sent by the Respondent to the Complainer (Councillor Alasdair MacPherson) and to council officers relating to a planning issue, (a block of flats in Riverside, Stirling), the Respondent was "trying to force the hand of planning officials to take a view on the planning application and to take enforcement action against the developer".

Issue 2: On 22 October 2019 at a Licensing Board Meeting the Respondent acted in an inappropriate manner by displaying disrespectful, improper and aggressive behaviour towards legal representatives on the Board as well as towards applicants.

Issue 3: On 29 October 2019 at an Environment and Housing pre-agenda meeting, and at a subsequent meeting the same day, the Respondent acted in an improper manner towards the Council's Chief Operating Officer (and another officer) by belittling them and treating them with contempt.

Issue 4: In or around mid-late August 2020, in a private conversation with the Complainer regarding the Local Review Body, the Respondent referred to the Council's Monitoring Officer as a "boot".

The substance of the referral was that the Respondent had failed to comply with the provisions of the 2018 version of the Code, in place at the time of the events in question. The relevant provisions of the Code are outlined at Annex A.

Joint Statement of Facts

The Panel noted that a joint statement of facts had been agreed between the ESC and the Respondent's representative. This noted that it was not in dispute that the Respondent was acting, or could be perceived to be acting, as a councillor and, as such, the Councillors' Code applied to him during the events that were the subject of the complaint.

It was agreed, in respect of issue one, that the Respondent sent a number of emails to the Complainer and council officers, between 8 September 2018 and 15 October 2019, concerning planning application decisions relating to a block of flats being developed in the Riverside area of Stirling. It was also agreed that the

Respondent had not been involved in any of the decisions made on the planning applications relative to the site during the period in question.

It was accepted, in relation to issue two, that the Respondent had been present at the meeting on 22 October 2019 (which was a public meeting), as a member of the Licensing Board. It was further agreed that, following the meeting, both the Licensing Board's Clerk and Support Officer had sent the Council's Monitoring Officer emails on 7 and 20 November 2019, respectively, in which they had outlined concerns about the meeting. It was agreed that the three elected members who had given evidence to the ESC about the meeting had all been present at it.

In relation to issue three, it was agreed that the Respondent had been present at two private Council meetings on 29 October 2019 in his capacity as a member of the Council's Environment and Housing Committee. The purpose of the meetings was to review the agenda for a meeting of the Environment and Housing Committee. The Complainer, the Council's Chief Operating Officer and its Senior Manager – Environment & Place had also been present at both meetings.

Documentary Evidence

Issue 1: The Panel noted that the ESC advised, in his report, that the emails in question, between council officers, the Respondent and other councillors, concerned the development of a block of flats in the Riverside area of Stirling.

The Panel noted that the ESC had been provided with evidence to demonstrate that:

- On 29 October 2018, 29 January, 12 April and 25 April 2019, the Respondent sent council officers emails regarding his perceived issues with the usage of a road in connection with the development. In his email of 29 October 2018, the Respondent issued a series of questions regarding the usage of the road and asked that officers reinstate a fence as soon as possible. The Respondent also raised his concerns about advertising at the site. Following a response from a council officer on 2 November 2018, the Respondent sent a further email on 29 January 2019, in which he stated that the developers "need to be instructed" to immediately cease using two parking spaces at the site's marketing suite. The Respondent also asked that the area be fenced off. Having received no response to this email, the Respondent asked for an update on 12 April 2019. He was advised, on 18 April 2019, that the Council's "frustrations" had been raised with the developer, and that the developer had been advised the situation would be monitored and that all who use the site were "aware of their responsibilities". On 25 April 2019, the Respondent raised another parking issue, asking that the council officer "send a warden to ticket" the alleged offender.
- On 3 May 2019, the Respondent sent council officers an email advising that there was an ongoing problem with HGV usage at the development site. The Respondent stated he had sent a further four photographs covering various dates and times over the past few weeks regarding the alleged misuse of a public road by the developer of the site. The Respondent stated that these were evidence that showed the developer's "complete disregard for all warnings issued from numerous previously reported breaches". The Respondent stated, "I therefore now formally request that a stop notice be issued for this site as it is now quite clear that the only way to guarantee road, cyclist and pedestrian safety here is to ensure no work is going on at all". The Respondent further stated, "I also ask that the lease for the land next to the flats is terminated with immediate effect and they are made to clear from site."
- On 4 May 2019, the Complainer responded to the Respondent, copying in the council officers, stating that he shared the Respondent's concerns. The Complainer noted, however, that it was vital that any action taken was proportionate and lawful. The Complainer stated that he wanted to distance himself

from the request for officers to serve a stop notice, as he considered that could be construed as elected members lobbying for a particular outcome.

- On 8 May 2019, the Respondent sent the Complainer, senior council officers and a planning officer, an email about a specific application from the same developer, in which he stated, "please put a marker to refer this to panel". The Respondent advised that he did not consider the developer should be allowed to "add to the detrimental amenity impact of this development", by using huge letters on their signage "to turn the building into a huge permanent advertising board". The Respondent stated that it was "bad enough that officers let them away with the building height banner despite my unanswered questions about adverts on the fence".
- On 9 May 2019, the Chief Operating Officer sent the Complainer and Respondent an email, copying in other council officers, in which he advised that he had discussed the concerns raised with the developers. The Chief Operating Officer advised that he had received an assurance from the developers that they would address the situation. The Chief Operating Officer stated while council officers shared the Respondent's concerns raised over the issues of HGV loading and parking on a footway, it was not considered that these were appropriate grounds for a stop notice to be issued and, therefore, that taking such action would leave the Council open to legal challenge. The Chief Operating Officer advised that, instead, the matter should be addressed by the Council in its capacity as a road authority, or by the police in respect of any potential traffic offences. In relation to the Respondent's request for the lease to be terminated, the Chief Operating Officer advised that as the leased land was not required for any other purpose, allowing the developer use of it both minimised the impact of the work on the local area and provided the council with a nominal income.
- On 20 and 21 May 2019, the Respondent sent further emails (and relative photographs) to the Chief Operating Officer and the Complainer, copying in the other council officers, advising there were still problems in respect of the parking of construction vehicles on the approach to the site. The Respondent then sent officers further emails on 12 June and 13 June 2019 attaching more photographs and asking if they were "ever going to take action" to stop the unauthorised use of the road leading to the site.
- On 15 October 2019, the Respondent sent another photo by email, to the same recipients, of vehicles parked on double yellow lines on the footpath and the road. The Respondent referred to his June 2019 email asking whether council officers were ever going to take any action in respect of the issue. Having received a response indicating that the matter had been referred to a specific council team for a response, the Respondent replied the same day stating that he had "kept raising these issues to seek proactive actions from planning/planning enforcement to raise this in no uncertain terms with the developer that they must comply with their planning conditions and expectations".
- The Respondent was advised by a council officer by email of 16 October 2019 that planning conditions did not, and could not, deal with construction activity and / or associated vehicle movements and parking, but that the expectation was that responsible contractors would ensure that any construction was carried out in accordance with their wider responsibilities as a 'good neighbour developer'. The officer confirmed that the Chief Operating Officer had held a senior level meeting with the developers to remind them of these responsibilities.
- In an interview with the ESC, the Chief Operating Officer stated that while councillors have a duty to raise issues of concern, their involvement should end there as there were considerable legal implications surrounding stop notices. The Chief Operating Officer noted that he was aware that the Respondent was heavily involved in the communications around this site and that he had contacted the developers himself to raise his concerns, as well as contacting several Council Officers for enforcement action to be taken.

Issue 2: The Panel noted that the Respondent was present, as the Chair, at the Council's Licensing Board meeting on 22 October 2019. The Panel further noted that the ESC had not been provided with any video or audio recording of the meeting. The Panel noted, however, that the ESC had been provided with evidence to demonstrate that:

- In an email, sent to the Monitoring Officer on 7 November 2019, the Committee Clerk advised that she was summarising her concerns about the Respondent's behaviour and approach during the meeting, following a request to do so by the Monitoring Officer after she had reported them verbally. The Clerk stated that during consideration of the Port Street item (an application for a provisional premises licence), the Respondent had repeatedly raised an issue regarding advertising. The Clerk noted that the Respondent had expressed unhappiness about the issue (being the licence holder's response to criticism by the advertising regulator of an advert they had displayed) previously, at both a pre-agenda and a pre-meeting. The Clerk stated that the Respondent had raised the issue at the Licensing Board meeting despite her having made it clear at both previous meetings that any issues that were not before the Board for the purposes of the application (such as the advertising issue) should not be taken into account or considered.

In her email, the Clerk also expressed concerns about the Respondent's conduct in respect of another matter before the Licensing Board, being an application by Shell for a premises licence at a petrol station. The Clerk advised that she considered that she had a duty to guide the Licensing Board to ensure its decisions were made within the framework provided by the relevant legislation [being the Licensing (Scotland) Act 2005]. The Clerk advised that Licensing Board Members were generally unhappy about the licensing of petrol stations, but noted that this in itself was not a reason to refuse an application, and that any refusal had to be linked to one of the statutory licensing objectives. The Clerk further advised that after it had made a decision about whether the petrol station was an 'excluded' premise, the Board did not have any material before it to indicate that granting the application would be inconsistent with the statutory licensing objectives. The Clerk stated, however, that the Respondent dismissed her advice during the meeting as 'legal opinion', and had stated, on more than one occasion, that the Board would not be railroaded or bullied into making a decision. The Clerk advised that her intention had not been to press the Board and, instead, she had simply been trying to make it clear that an appeal would almost certainly be lodged, and would be successful, in the event that the Board refused the application without good reason. The Clerk noted that the Board had no material before it on which they could reasonably draw the conclusions the Respondent had proposed.

In addition, the Clerk advised that the Respondent had raised questions about the independence of a report commissioned by the applicant and refused to accept the applicant's solicitor's assurances in this regard. The Clerk noted that the applicant's solicitor had raised concerns about this and had implied that the Respondent, as Chair, had been biased against the application. The applicant's solicitor had stated that it appeared the Respondent wanted the Board to find a basis to refuse the application. The applicant's solicitor had questioned the appropriateness of the Board's conduct when considering the application and had indicated he felt that neither he and nor his client had been treated fairly. The Clerk advised that she had also been concerned about the Respondent's refusal to give the applicant's solicitor an opportunity to speak about the proposal, as she considered this gave an impression of unfairness. The Clerk stated that she had also been concerned about the Respondent's tone and his approach to the decision, which she considered was not based on the evidence before him. The Clerk noted that this may have given an appearance of improper conduct, which could have led to a successful Court appeal.

- A Support Officer who had been present at the meeting had echoed the Clerk's concerns in an email to the Monitoring Officer of 20 November 2019, stating that she "totally agreed" with the matters that had been raised. The Panel noted the Support Officer advised that the Respondent's "tone and approach at the meeting was unprofessional" and that on several occasions it appeared "there were prejudices already in his mind that clouded his judgement of what was presented before him at the meeting". The Support Officer stated that the Respondent had spoken inappropriately to the Clerk and the Shell applicant's solicitor on several occasions. The Panel further noted that the Support Officer had highlighted that several councillors on the Board had cautioned the Respondent during the meeting and, in her view, it was apparent they had done so as they were aware that the Respondent's conduct was inappropriate.
- Three members of the Board, being an elected member referred to in the ESC's report as Councillor A, former Councillor Maureen Bennison and Councillor Martin Earl had also raised concerns about the Respondent's behaviour in their response to the complaint. Councillor A stated that the Respondent's questioning of the Clerk's legal advice was "aggressive and very repetitive", and that it was an inappropriate way to address and treat a member of staff. Councillor A advised that after the meeting, they spoke with the Monitoring Officer and advised that unless someone spoke to the Respondent about his behaviour, they would resign from the Board. Councillor A further advised that they had spoken with other members of the Board who agreed the Respondent's conduct was unacceptable. Councillor A then resigned from the Board on 9 January 2020, but re-joined at the next full Council meeting following a meeting of Licensing Board members on 20 February 2020.
- Former Councillor Bennison advised the ESC that the Respondent's questioning of the Clerk has been persistent, that the Respondent had constantly "talked over" the Clerk and had dismissed her advice. Former Councillor Bennison stated that the Respondent's engagement with the Clerk had been "argumentative" and contended that he had behaved in a similarly aggressive way towards the Shell applicant's solicitor. Former Councillor Bennison advised that she considered that the Respondent's aggressive behaviour had brought the Board into disrepute. She believed that as a result of the Respondent's behaviour, the legal issues before the Board had not been resolved and as such, the Board did not have a clear view on the legislative framework. This led to her abstaining from a second vote on the Shell application.
- Councillor Martin Earl advised that he had concerns, at times, about the Respondent's persistent debating of points of process and his tone and level of voice. Councillor Earl stated that it was clear that the Clerk was becoming increasingly uncomfortable, but that he could not recall the specific dialogue between the Respondent and the Clerk or the exchange between the Respondent and the Shell applicant's solicitor. Councillor Earl advised that, following the Board meeting, members of the Board had instigated a special meeting to discuss the Respondent's conduct. Councillor Earl stated that the special meeting allowed Board members to express their concerns to the Respondent, with the clear expectation that he would change his approach. Councillor Earl advised that the special meeting was conducted in a frank but professional manner, and that his recollection was that the Respondent understood the concerns raised.
- Six Licensing Board members (including the Respondent) attended this special meeting, held on 20 February 2020, to discuss the Respondent's conduct. The Monitoring Officer and the Council's Team Leader of Governance were also in attendance. A contemporaneous file note of the meeting, taken by the Team Leader of Governance but not circulated to attendees, recorded various concerns were identified by members of the Board about the Respondent's conduct. The Panel noted that those concerns included the "inappropriate manner" in which the Respondent had spoken to officers and applicants, and that the behaviour of the Respondent was "in danger of bringing the Board into

disrepute". The Panel also noted that the minute stated that the Respondent had taken on board the concerns raised.

Issue 3: The Panel noted that the purpose of the meeting on 29 October 2019 was for members of the Environment and Housing Committee to review, in advance, the agenda for a forthcoming meeting. The Panel noted that it was normal for such pre-agenda meetings to be held and that the Complainer, Respondent, and other Committee members, had attended the meeting, along with a number of council officers, including the Chief Operating Officer and the Senior Manager – Environment & Place.

The Panel noted the Respondent reported he had attended a community council meeting the previous day, at which the future of a local community facility had been discussed. The Respondent reported he had advised those in attendance at the community council meeting that the lease on the facility would be extended.

The Panel further noted that, after the pre-agenda meeting, a private meeting had been held, at which several people, including the Complainer, had advised the Monitoring Officer after the meeting that the Respondent's conduct had made the pre-agenda meeting particularly difficult. The Panel noted that the ESC had been provided with the following evidence:

- The Complainer sent the Monitoring Officer an email on 29 October 2019, following the Environment and Housing pre-agenda meeting that day, in which he asked her to investigate the Respondent's behaviour. The Complainer advised that he had been "shocked" by the Respondent's "totally unacceptable" behaviour. The Complainer stated that the Respondent had "belittled and treated several senior officers with utter contempt, which was embarrassing and very uncomfortable to witness". The Complainer noted that "it was clearly apparent that several officers were upset at his behaviour and just did not want to be in the room".
- The Complainer also sent an email to the Respondent's political group on 3 November 2019 concerning the Respondent's behaviour. The Complainer stated that the Respondent's behaviour at the pre-agenda meeting was "the worst form of bullying [he] had ever witnessed". The Complainer stated that he felt officers in the room were "visibly upset and quite clearly were not only embarrassed, but just didn't want to be in the room, which is an appalling state of affairs".
- The Group Leader of the Complainer's political party provided the ESC with a statement in which he said the relationship between the Complainer and the Respondent had been "strained" since the Standards Commission held a Hearing in 2014, which was about the Complainer's behaviour. The Group Leader said that Councillor McPherson had stated on many occasions that he "was out to get Councillor Gibson" and that the matter was "personal". The Group Leader confirmed, however, that this did not distract from the "legitimate concerns" raised by the Complainer about the Respondent's "combative, unacceptable approach" towards council officers. The Group Leader stated there were also issues relating to the Respondent's behaviour on the Licensing Board. In respect of the Environment and Housing Committee, the Panel noted that the Group Leader advised that the Committee's Convener had raised concerns about the Respondent's disruptive attitude towards officers. The Group Leader advised that given the cumulative issues expressed about the Respondent's behaviour, it was agreed, following discussions with the Council's Chief Executive and the Monitoring Officer, that the Respondent would be approached with the evidence, with a view to providing additional support and training to address the concerns.
- The Senior Manager – Environment & Place advised the ESC in a statement that, while it was appropriate for elected members to challenge and scrutinise officers' work, he considered the Respondent's approach during the pre-agenda meeting to have been "excessive and overly robust" and

contended that it had created a “tense and uncomfortable” atmosphere. The Senior Manager – Environment & Place stated that, in the private session held afterwards, the Respondent’s challenge became “even more robust”, advising that the Respondent alleged he had been “hung out to dry” and landed in it by the Chief Operating Officer. The Senior Manager – Environment & Place stated that some of the behaviour the Respondent had displayed went “far beyond” the type of challenge to which council officers should be subjected. The Senior Manager – Environment & Place indicated that, despite him advising the Respondent, several times, that officers did not have the delegated authority to extend the lease on a community hall, he advised that the Respondent continued to press them to do so, telling them to “just get on with it and sign the lease”. The Senior Manager – Environment & Place stated that he considered the Respondent’s conduct to be unacceptable and that he had not seen an elected member behave in such a manner, and level such personal accusations, towards a senior officer at any previous point in his career.

- The Chief Operating Officer provided a statement in which he advised that the Respondent had accused him of having “landed him in it”, in front of other officers and elected members present. The Chief Operating Officer advised the ESC that he felt belittled as a result of the Respondent’s behaviour, and that the Respondent had undermined his professionalism. The Chief Operating Officer further advised that the Respondent’s behaviour had been disrespectful and felt like a personal challenge. The Chief Operating Officer indicated that he felt that the Respondent had been trying to blame him for a commitment the Respondent himself had chosen to make. The Chief Operating Officer attached an email exchange he had initiated with the Respondent during the evening of 30 October 2019, in which he clarified his position on the matters discussed and stated that, as a senior officer, he was open to and accepted “robust discussions and challenge” but that he felt the Respondent’s “challenge and criticism yesterday was unwarranted” and that he behaviour was causing officers to feel “belittled and undervalued”.
- The Monitoring Officer advised the ESC in a statement that several people had told her that the Respondent’s conduct at the pre-agenda meeting had made it particularly difficult. The Monitoring Officer stated she was surprised to see that the Chief Operating Officer had written to the Respondent in such clear and strong terms and that she had concluded, based on her experience of the Chief Operating Officer as a colleague, that he must have considered the situation to be extremely serious to have sent such an email.

Issue 4: The Panel noted that the remark in question was alleged by the Complainer to have been made during a private conversation in mid-to-late August 2020 between him and the Respondent.

The Panel further noted that the Chief Executive had advised the ESC that she recalled a conversation with the Complainer in August 2020, in which he alleged that the Respondent had made the remark in question. The Chief Executive confirmed that this allegation was subsequently passed to an external legal firm that had been instructed, in August 2020, to carry out an investigation into the behaviour of the Respondent.

The Panel noted that, in a statement made to the external legal firm, the Monitoring Officer had stated there were issues between her and the Respondent at the time the alleged remark was made. The Monitoring Officer contended that the Respondent “constantly disagreed with and challenged [her] actions and advice”, in a series of email exchanges in July and August 2020. The Monitoring Officer had further advised that the Respondent had queried her authority and had allegedly made statements questioning who she thought she was.

EVIDENCE PRESENTED AT THE HEARING

Witness Evidence on behalf of the ESC

The ESC's representative led evidence from four witnesses: the Complainer, Alasdair MacPherson; former Councillor Maureen Bennison; the Council's Monitoring Officer; and the Council's Chief Operating Officer.

The Complainer (Councillor MacPherson): The Complainer advised that he had been a SNP councillor, and part of the Council's coalition Administration of Labour and SNP councillors, at the time of the events in question.

In respect of issue one, the Complainer advised that the Respondent had been concerned about the ongoing works at the Riverside development. The Complainer confirmed that the Respondent had copied him into the emails he had sent to council officers. The Complainer explained that he had become concerned that the Respondent's conduct, in directing officers to take action to stop the work on the development, could be a breach of the Code. The Complainer advised, therefore, that while he had shared some of the Respondent's concerns about the impact of the ongoing works, he considered the Respondent was becoming inappropriately involved in operational matters when directing officers to issue a stop notice. The Complainer advised that he had, therefore, sent his email of 4 May 2019 warning that the Respondent could be in breach of the Code. The Complainer advised that he also raised his concerns about the Respondent's emails with his then party's group leader, the Monitoring Officer and Chief Executive.

The Complainer advised, in respect of issue three that he attended the pre-agenda meeting on 29 October 2019 in his then capacity as the Chair of the Environment and Housing Committee. The Complainer advised that such meetings were held to give committee members the opportunity to discuss the papers that officers were putting forward for consideration at the relevant Committee meeting, and that various officers from all the different functions covered by the Committee would also attend. The Complainer stated that, at both the pre-agenda meeting and at a following private meeting the same day, the Respondent had "belittled and harangued officers", by repeatedly contesting the rationale behind their decisions and speaking to them in an aggressive, sneering and dismissive manner. The Complainer alleged that the Respondent had not allowed officers to respond by speaking over them. The Complainer contended that, in particular, the Respondent had targeted the Senior Manager – Environment & Place, who was visibly "shaken" as a result. The Complainer advised that he had spoken to the Senior Manager – Environment & Place after the meeting as he was concerned about his welfare. The Complainer advised that the Senior Manager – Environment & Place had indicated he felt demoralised and upset. The Complainer stated that he had sent the Chief Executive an email that afternoon outlining his concerns in respect of the Respondent's behaviour, which he considered to be "unacceptable".

The Complainer confirmed, in respect of issue four, that during a private telephone conversation on or around 25 August 2020 about the restructuring of the Local Review Board, the Respondent referred to the Monitoring Officer as a "boot". The Complainer advised that he considered the reference to be "deeply misogynistic", derogatory and offensive, as he understood it to imply promiscuity. The Complainer advised that, as such, he had told the Respondent that it was an appalling way to speak about a senior officer. The Complainer stated that the Respondent had "sneered" in response.

The Complainer confirmed that there had been no witnesses to the exchange, but that he had told the Chief Executive and various others about it during the following week. The Complainer stated that he had also made a statement about it to the firm of solicitors who were undertaking the independent investigation. The Complainer advised that he had been put under pressure not to make a complaint about the Respondent due to their respective political parties being in coalition at the time. The Complainer denied any suggestion that he had made up the comment because he held a personal grudge against the Respondent.

Former Councillor Maureen Bennison: Former Councillor Bennison advised, in respect of issue two, that she had been a member of the Licensing Board and had attended its public meeting on 22 October 2019. Former Councillor Bennison advised that during the discussion on the application for an alcohol licence for a Shell petrol station, the debate between the Respondent, as Chair, and the applicant's solicitor had become "heated". Former Councillor Bennison stated that she felt the Respondent had been "shouty" and had been speaking over and "browbeating" the solicitor, as opposed to asking him questions. This resulted in the solicitor stating that the Respondent was looking for any excuse to turn down the application. Former Councillor Bennison advised that she understood the solicitor's concerns, as she considered the Respondent was being really argumentative, was speaking over the top of the solicitor and was not letting him speak. Former Councillor Bennison stated that the Respondent had asked the police who were present whether they wished to provide input in respect of the application, despite them having already advised that they had no comments to make. Former Councillor Bennison advised that she had felt mortified and considered the Respondent was bringing the Licensing Board into disrepute. Former Councillor Bennison advised that there had been two votes on different matters concerning the application. The Respondent had been the only one to vote that the petrol station was an excluded premise, in respect of the first vote. Former Councillor Bennison advised that he had also been the only one to vote against the granting of the application (being the second vote). Former Councillor Bennison advised while she had questions about the legislation she had abstained from the second vote as, by that point, she had just wanted the meeting to end.

Former Councillor Bennison advised that she was so concerned about the Respondent's behaviour at the meeting she had asked the Monitoring Officer to arrange a meeting of Licensing Board members so that all other members could raise the issue of the Respondent's conduct with him. Former Councillor Bennison advised that, at the meeting which was held 20 February 2020, Licensing Board members identified and raised concerns about various aspects of the Respondent's behaviour with him. Former Councillor Bennison advised that, at first, the Respondent did not seem too bothered, but by the end of the meeting he had agreed to change his behaviour to a certain extent. Former Councillor Bennison stated that, in giving evidence, she was not motivated by any bad feeling towards the Respondent. She considered the Respondent had good qualities, which is why she could not understand why he had been so aggressive and demanding. Former Councillor Bennison agreed that, as a member and as Chair of the Licensing Board, the Respondent's role was to scrutinise applications before him, but noted there was no reason why he could not do so in a respectful way.

The Monitoring Officer: The Monitoring Officer confirmed that she was the Council's Chief Officer for Governance and, by virtue of that position, the Council's Monitoring Officer. The Monitoring Officer confirmed she had been in post since April or May 2019.

The Monitoring Officer advised, in respect of issue one, that the Complainer had contacted her about the Respondent's emails in respect of the development and had stated he was concerned the Respondent was instructing officers to take particular actions. The Monitoring Officer advised that as she had agreed the Respondent was "quite clearly" instructing officers to take action to stop the development, she had contacted the Chief Operating Officer to discuss the matter.

In relation to issue two, the Monitoring Officer advised that one of the roles of the Clerk at a Licensing Board meeting was to give legal advice to what was a quasi-judicial board. The Monitoring Officer noted that a failure by the Board to act in accordance with relevant legislation could result in the Council being the subject of a successful legal challenge, with the associated cost and reputational implications.

The Monitoring Officer advised that following the Licensing Board meeting on 22 October 2019, a number of attendees had expressed concerns to her about the Respondent's behaviour, with officers having advised her that it had been a "terrible and difficult" meeting. The Monitoring Officer noted that elected members

from various parties had raised their concerns about the Respondent's treatment of the Clerk and the solicitor acting for one of the applicants.

The Monitoring Officer advised that the Clerk had told her she had felt she had been accused, by the Respondent, of railroading and bullying the board, when she had only been trying to ensure it made lawful decisions, based on relevant and material considerations. The Clerk had advised her that she considered the Respondent's conduct, in talking over her, had prevented other board members from hearing her advice clearly and coherently. The Monitoring Officer confirmed that she had, therefore, encouraged the Clerk, who was a member of her team, to put her concerns about the Respondent's behaviour at the meeting in writing to ensure they were recorded. The Monitoring Officer advised that the Clerk indicated she was content to do so on the basis that she was, at the time, about to finish her period of employment with the Council. The Monitoring Officer confirmed she had also asked a Support Officer present at the meeting to put her concerns in writing.

The Monitoring Officer confirmed that she had attended a meeting arranged by board members on 20 February 2020 at which concerns about the Respondent's conduct were discussed. The Monitoring Officer advised that while she had opened the meeting, it had been chaired by former Councillor Bennison. The Monitoring Officer noted that all councillors present at the meeting had spoken and raised issues with the Respondent about his behaviour. The Monitoring Officer advised that she considered the Respondent's initial reaction was one of flippancy, but that she considered he then appeared to have listened to and taken on board the other members' concerns.

In relation to issue three, the Monitoring Officer noted that, after the Environment and Housing pre-agenda meeting on 29 October 2019, a number of officers and Environment and Housing Committee members, including the Complainer and the Chief Operating Officer, had raised concerns with her about the Respondent's behaviour. The Monitoring Officer recalled that the Chief Operating Officer had advised that the meeting had been heated, and that he had felt the Respondent had been aggressive and had been raising his voice and gesticulating. The Chief Operating Officer had further advised that the Respondent had accused him of landing him in trouble and had pressed him to make a decision in respect of the community hall that he did not have delegated authority to take.

The Monitoring Officer further recalled that another council officer who had been responsible for producing a strategy plan had felt the Respondent had been dismissive of him, belittled, and made to feel uncomfortable, by questioning whether he needed a strategy just to get out of bed.

The Monitoring Officer advised that she had had been surprised by the Chief Operating Officer's email to the Respondent complaining that his conduct at the meeting was inappropriate. The Monitoring Officer explained this was because, in her opinion, the Chief Operating Officer was "mild-mannered" and, as such, it was entirely out of character for him to write in such terms to the Respondent. The Monitoring Officer advised that she had concluded that the meeting must have been awful if the Chief Operating Officer had felt obliged to send such an email.

In relation to issue four, the Monitoring Officer confirmed that she had not been involved in the conversation in question and advised that she had been told about it by the Chief Executive. The Monitoring Officer advised that July and August 2020 had been the most difficult two months of her professional life as she felt that the Respondent had been seeking to undermine her at every turn. The Monitoring Officer advised that the Respondent had questioned why she was arranging meetings and would routinely "go over her head" and would fail to address her directly. The Monitoring Officer indicated that, as such, she considered it was entirely possible that the Respondent had made the remark about her as alleged.

When questioned on what she thought the word ‘boot’ meant, the Monitoring Officer advised that she understood it to be insulting, sexist and derogatory and noted that she was distressed that such a comment about her was in circulation and in the public domain. The Monitoring Officer confirmed, however, that she had never received any complaints about the Respondent’s use, on any other occasion, of inappropriate language, insults or profanities.

The Monitoring Officer advised that the Council had considered whether a complaint to the ESC should be made, but had decided to seek to deal with the matters regarding the Respondent’s conduct internally instead. The Monitoring Officer advised that the Council instructed an external legal firm to carry out an investigation into the Respondent’s behaviour in August 2020.

The Chief Operating Officer: In respect of issue one, the Chief Operating Officer for Infrastructure and Environment advised that he had been one of the recipients of the emails sent by the Respondent between September 2018 and October 2019 about the development. The Chief Operating Officer advised that, specifically, the Respondent’s emails concerned issues relating to HGV loading, access to the site, and the potential termination of a lease he had granted, under his delegated powers, over the derelict adjoining land owned by the council (which was being used by the developer as a construction depot and yard). The Chief Operating Officer further advised that, as well as the emails in question, he had discussed the issues with the Respondent on a number of occasions.

The Chief Operating Officer advised that while he had the power to issue a stop notice in respect of the development, it was only competent to do so on planning grounds. The Chief Operating Officer confirmed that HGV access and use were not planning matters and any issues about such matter were not, therefore, competent grounds for the issuing of any stop notice. The Chief Operating Officer further confirmed, in any event, that any decision to issue a stop notice was one for council officers to take under their delegated powers and, therefore, was not a matter for a councillor to determine or instruct.

The Chief Operating Officer advised that he had explained to the Respondent by email of 9 May 2019 that a stop notice would not be issued and that the lease would not be terminated. The Chief Operating Officer advised that he had only become involved in the matter because the Respondent did not appear to be willing to accept the advice provided by other officers in his team. The Chief Operating Officer advised that he intervened to confirm that officers could not and would not take the actions the Respondent was seeking. The Chief Operating Officer advised that he had considered his email to be an end to matters, but that while the Respondent appeared to accept his advice about the stop notice, he had continued to raise issues.

The Chief Operating Officer agreed, when questioned by the Respondent’s representative, that the Respondent could be said to be a “stickler” for rules and legislation. The Chief Operating Officer further agreed that the Respondent would have known he was not able to instruct officers to carry out the actions in question, but noted that despite the word ‘request’ being used in the emails rather than ‘instruct’, it was clear his intent was that officers should take his instructions.

In respect of issue 3, the Chief Operating Officer advised that he had attended the pre-agenda meeting on 29 October 2019, noting that such meetings are commonplace and are attended by the councillors on the committee in question, heads of service, and team leaders. The Chief Operating Officer advised that the meeting in question had a large agenda, and that there could have been over a dozen people in attendance.

The Chief Operating Officer recalled that there had been a discussion regarding the lease of a community hall as a facility that had been identified as potentially being the subject of a future asset transfer. The Chief Operating Officer advised that a decision required to be made regarding the lease of the facility, and as such, it was raised at the pre-agenda meeting. The Chief Operating Officer advised that while it was competent for officers to identify options relating to the facility, they did not have delegated authority to make any final

decision regarding the extension of the lease, and that such a decision would have to be made at committee level. The Chief Operating Officer advised, nevertheless, that it became apparent at the pre-agenda meeting that the Respondent had advised attendees at a Community Council meeting the night before that the decision to extend the lease could and would be made by the Chief Operating Officer, under his delegated authority.

The Chief Operating Officer advised that the discussion regarding the facility quickly became “heated” and a “personal attack” by the Respondent on him. The Chief Operating Officer advised that it became apparent that the Respondent felt that the Chief Operating Officer had “landed him in it”. The Chief Operating Officer advised that he had been surprised that the Respondent had given such a commitment to the Community Council, given the extent of the delegated authority. The Chief Operating Officer stated that it was evident the Respondent was holding him personally responsible for not being able to meet that commitment and that he expected him to come up with a solution to resolve the matter. The Chief Operating Officer stated the Respondent refused to accept his assertion that he had never advised him that the future of the hall and the lease could or would be dealt with by officers under delegated authority.

The Chief Operating Officer advised that there was then a smaller session following the pre-agenda meeting, arranged to discuss how the decision regarding the facility would be made. The smaller session, which lasted 30 to 40 minutes, involved the Chief Operating Officer, the Senior Manager – Environment & Place, a further council officer and three councillors, including the Respondent and the Complainer. The Chief Operating Officer advised that, at the smaller session, the Respondent continued to be angry and to challenge him verbally. The Chief Operating Officer advised that, as he had been a council officer for over 30 years and in a senior post for the latter 15 years, he both was used to and expected robust challenge. The Chief Operating Officer stated, however, that he felt the Respondent’s conduct towards him on 29 October 2019 had extended far beyond what he was accustomed to, and what he considered acceptable, as the Respondent had been making accusations to the effect that the Chief Executive Officer had deliberately caused trouble for him. The Chief Operating Officer noted that the Respondent’s behaviour had been challenging towards all officers present, but that the most “personal attacks” had been directed towards him.

While the Chief Operating Officer confirmed that the Respondent had not used any abusive terms, he had questioned his professionalism and made him feel belittled in front of his colleagues, including more junior officers. When questioned whether the language used by the Respondent could be described as that which might be used between equals, the Chief Operating Officer noted that he and the Respondent were not equals and, instead, were attending the meetings in question in their respective capacities as a council officer and elected member, with the associated power imbalance. The Chief Operating Officer confirmed that councillors hold a position of power within local authorities, and advised that he considered that the Respondent was using this position of power, and his role as Deputy Leader of the Council, to put pressure on officers to take certain actions.

The Chief Operating Officer confirmed that after the smaller session, late in the evening of the same day, he sent a lengthy email to the Respondent outlining why he felt the challenge and criticism by councillors (the Respondent in particular) towards officers had been unwarranted. The Chief Operating Officer advised that he had also raised, in his email, the Respondent’s apparent dislike of strategies and delivery plans, noting that these were an essential part of effective governance, and that the Respondent’s negative comments on these were having an adverse impact upon officers.

The Chief Operating Officer advised that the Respondent replied to his email just over an hour later, in the early hours of the following morning. While the Chief Operating Officer noted that he felt he should not have sent the Respondent an email outwith office hours, he had felt compelled to do so while the matter remained unresolved. The Chief Operating Officer advised that, while he considered that the Respondent’s quick response demonstrated that he was trying to close down the matter, he accepted that the email exchange

and, in particular the Respondent's reference to how much he valued their working relationship, could be described as being somewhat conciliatory in nature.

When questioned upon how he felt after the meetings, the Chief Operating Officer accepted that it was important that councillors held officers to account and that this was an essential aspect of their strategic role. The Chief Operating Officer noted, however, that there was no reason why councillors could not do so in a respectful way and advised that, in this case, he did not consider that the Respondent had behaved respectfully towards him and other officers. The Chief Operating Officer advised that the long-term relationship between him and the Respondent had been affected, and that it took him a while to get over the impact of the Respondent's behaviour as it was so unusual and unacceptable.

Witness Evidence on behalf of the Respondent

The Respondent's representative led evidence from three witnesses, being the Respondent, and Councillors Martin Earl and Douglas Dodds.

The Respondent (Councillor Gibson): The Respondent confirmed that he had first been elected in May 2012 and that he understood that his role, as a ward councillor, was to work with other elected members to represent his constituents and the local community.

In respect of issue one, the Respondent advised that he was familiar with the Standards Commission's Advice Note for Councillors on Distinguishing between Operational and Strategic Matters, and understood the difference between the respective roles of officers and elected members. The Respondent noted that he had accepted the response from the Chief Operating Officer about why a stop notice could and would not be issued. The Respondent advised that while he had continued to provide officers with feedback about issues relating to the development, he had never again asked about a stop notice. The Respondent advised that he passed the site twice a day and was concerned that it was only time before there was an accident.

The Respondent confirmed that while the development was located in the area in which he lived, the impact it had on him personally had been very limited. The Respondent confirmed, therefore, that he had been raising concerns on behalf of his constituents and the local community, rather than in a personal capacity with a view to seeking an advantage for himself. The Respondent advised that he had seen on social media that the issues, which he then raised, were the subject of a great deal of local concern.

In relation to issue two, the Respondent advised that around the time of the meeting in question, being October 2019, he had been experiencing a number of personal issues, which had impacted upon him personally and on the work he was able to undertake. The Respondent noted that if he had any other job he would have taken a leave of absence. The Respondent indicated that he understood why his behaviour at the time could be described as being unusual and accepted that, with the benefit of hindsight, he should not have been at work at the time. The Respondent noted, however, that he took his responsibilities as a councillor very seriously.

The Respondent accepted that the Licensing Board was distinct from certain other committees within the council in that it had a quasi-judicial decision-making function and did not operate on party-political terms. When asked whether he was "dismissive" of legal opinions, the Respondent said that was not a fair representation of his position. The Respondent noted that he was obliged, as an elected member, to consider and take legal advice offered by officers seriously and that while he always took it into account, he was not always obliged to follow it as any final decision was a matter for a councillor's personal judgement.

The Respondent advised that legal advice given by Clerks in relation to any items before the Licensing Board meetings is usually contained in the applicable report. The Respondent advised, however, that in relation to the 22 October 2019 meeting, the Clerk had sent out further advice, on 18 October 2019, which he considered

went beyond or even conflicted with the advice in the report. The Respondent advised that he had, therefore, felt compelled to interrogate the advice at the meeting.

The Respondent contended that officers had put pressure on the Licensing Board to approve the Shell application, which had caused concern among board members. The Respondent nevertheless rejected the accusation that he had argued with the Clerk at the meeting, suggesting that arguing and questioning were “interchangeable”. The Respondent contended that, in asking questions, he had merely been discharging his scrutiny role.

The Respondent contended that while he had questioned and challenged the Shell applicant’s solicitor several times about the independence of a report it had commissioned, as part of the application, he had nevertheless treated him fairly. The Respondent rejected any suggestion that he had “badgered” the applicant’s solicitor and had not done anything “untoward”. The Respondent rejected any suggestion that he was looking for a basis to refuse and confirmed that if he had been convinced by the information before him, he would have approved the application. The Respondent advised he did not recollect having pressed the police to give a view. The Respondent confirmed that he understood that applicants are entitled to a fair hearing. The Respondent advised he did not know why the applicant’s solicitor felt compelled to refer to himself as a solicitor and officer of court.

The Respondent contended that the Licensing Board conducted its business properly at the meeting and that, while he had voted against on the two related votes, the decision taken at the meeting was to grant the application. When it was suggested to the Respondent that two other councillors had abstained because of his conduct, the Respondent noted that the fact he was able to challenge the information before him had perhaps created a doubt in their mind. The Respondent noted that it was a matter for the individuals concerned to decide how to manage any doubt they may have had.

In response to questions from the ESC’s representative, the Respondent accepted that he had been the only member of the Licensing Board to have voted that the premises were ‘excluded’ and against the granting of the application. The Respondent advised, however, that none of the other members were happy with the decision but had felt they had no choice.

The Respondent advised that it had been disappointing to receive the feedback provided at the 20 February 2020 meeting convened to discuss his conduct. The Respondent advised that he accepted the feedback, and took it seriously, admitting that the conduct of the Licensing Board meeting had not been “perfect”. The Respondent advised that he had not been provided with the file note of the meeting on 20 February 2020 meeting at the time and, therefore, while he accepted it recorded his conduct at Licensing Board meetings as being “aggressive and adversarial” he did not wish to comment on its contents. When questioned by the Panel as to why so many in attendance at the meeting on 22 October 2019 had raised concerns about his conduct, the Respondent suggested that information to that effect had been solicited by the Monitoring Officer.

The Respondent advised that he disagreed with the contention that he had taken irrelevant matters into account in considering the Port Street application. The Respondent advised that he considered the fact that the applicant had previously had an advert promoting alcohol, in its shop window, banned by the Advertising Standards Agency to be relevant to the consideration of the application. While he accepted that relevance has a specific legal meaning in the context of licensing legislation, the Respondent reiterated that he considered the advertising issue to be a relevant consideration.

In respect of issue three, the Respondent reiterated that his domestic situation remained the same at the time of the meetings in question. The Respondent advised that he had attended a local community council meeting the night before the Environment & Housing Committee pre-agenda meeting on 29 October 2019

at which the lease of the community hall, being a topic of local concern and controversy, had been discussed. The Respondent advised there had been some confusion as to whether council officers had delegated authority to take action in respect of the lease. The Respondent drew the Panels' attention to a record of an agenda-setting meeting in August 2019 that recorded the matter of the community hall was to be considered by the Finance & Economy Committee. The Respondent contended, therefore, that the matter should not have been included for discussion at the Environment & Housing Committee pre-agenda meeting.

When asked why he had alleged the Chief Operating Officer had "landed him in it" in relation to the community hall decision, the Respondent said it was because he had given an assurance to the community council, based on previous discussions, about what was to happen. It then transpired, at the pre-agenda meeting, that a different action was to be taken. The Respondent advised that, following the pre-agenda meeting, there was then a smaller private meeting involving a "handful" of people, at which there was a more "direct" exchange of views.

The Respondent advised that he felt that the email exchange between him and the Chief Operating Officer, later that evening, had resolved the issue. The Respondent noted that it had not been possible to resolve the issue at the meetings earlier that day, but that upon receipt of the Chief Operating Officer's email he was able to check the note of the previous agenda-setting meeting. The Respondent advised that doing so had enabled him to explain matters and reach an understanding with the Chief Operating Officer about what had transpired.

The Respondent rejected the contention that, at the meetings, he had pressed officers to use delegated authority to take certain actions and contended that, instead, he had merely been supporting their right to do so. When questioned on his use of the term "just get on with it" in respect of the community hall lease, the Respondent advised he had simply been trying to indicate he was happy for the officers to proceed and to do all they could, as opposed to suggesting they take action outwith the limits of their delegated authority.

The Respondent advised he was surprised and sorry to hear that the Chief Operating Officer had been upset by his conduct at the meetings on 29 October 2019 as he had a huge amount of respect for him, having worked with him for some 11 years.

In relation to issue four, the Respondent advised that he had no recollection of using the word 'boot' in any conversation with the Complainer. Indeed, the Respondent advised that he did not recall having a telephone conversation with the Complainer regarding the Local Review Body in August 2020. The Respondent advised that he would not, in fact, use the term 'boot' to describe anyone, even if he had been in conflict with them. He advised that the word "boot" was not the "type of phraseology" he would use, and was absolutely "adamant" that he had not used it. The Respondent advised that the first he had heard of the accusation was when he heard from the ESC in relation to the complaint, noting that at no point had the Complainer raised it with him. The Respondent contended that the complaint relative to Issue Four had been included in order to ensure that the other three issues of complaint were not time-barred.

The Respondent rejected the Monitoring Officer's suggestion that he was trying to undermine her, although he acknowledged that the period of July and August 2020 (being some ten weeks into the Covid-19 lockdown) was a difficult time, with all relationships coming under pressure.

The Respondent accepted that he was in a position of power over officers, particularly as a member of the ruling administration of the council.

Councillor Martin Earl: In respect of issue three, Councillor Earl, a Conservative councillor, advised that he had attended the meeting on 22 October 2019 in his capacity as a member of the Licensing Board.

Councillor Earl described the Respondent's style in Chairing Licensing board meetings as business-like, clear and forthright.

Councillor Earl advised that while he was aware that concerns had been raised about the Respondent's conduct, he could not remember the details, noting that such recollection would be "unrealistic", as almost four years had elapsed since the meeting. Councillor Earl advised, nonetheless, that he did not consider that the Respondent had failed to behave in a respectful manner at the meeting.

Councillor Earl further advised that he did not consider the Respondent to have behaved aggressively at the meeting, and that he did not consider the Respondent had been trying to force officers present to take a certain position or provide certain advice. Councillor Earl advised that while the Shell application had been a "difficult" determination, he did not consider it was because of the Respondent's conduct. Councillor Earl stated that he was "absolutely clear" that, although the Respondent may have been persistent and forthright, he had not engaged in any behaviour he would describe as bullying or coercive in nature, and had not engaged in any name-calling or abuse. Councillor Earl advised that while the Respondent had repeatedly asked questions and had been persistent in his interrogation of matters before the board, he had not been aggressive. Councillor Earl indicated that there had been a certain amount of frustration amongst Licensing board members about the clarity of legislation in terms of the granting of alcohol licenses for petrol stations. Councillor Earl advised that he considered it was this that caused the consideration of the item to be difficult, as opposed to the conduct of the Respondent.

Councillor Earl advised he did not agree with former Councillor Bennison's contention that the Licensing Board had been in disarray, or that the meeting was in danger of collapse. Councillor Earl advised he did not recollect speaking with former Councillor Bennison shortly after the meeting, and that he did not recall suggesting he was considering resigning from the Board. Councillor Earl confirmed, however, he had attended the meeting of Licensing Board Members on 20 February 2020, noting that it was "the right thing to do", in order to "clear the air". Councillor Earl advised that the meeting was convened as members had raised concerns about the Respondent's approach and tone. After reviewing the minute of the February 2020 meeting, Councillor Earl advised he had shared some of the concerns about the Respondent's conduct that had been recorded. Councillor Earl advised he came away from that meeting with the feeling that the Respondent had listened to other Board Members and, therefore, that matters had been raised and dealt with as appropriate. Councillor Earl further advised that no Board Members had felt the need to resign from the Board, that the Respondent had not been asked to step down as Chair, and that there had been no further cause for concern.

Councillor Douglas Dodds: In respect of issue three, Councillor Dodds, a Conservative councillor, advised that he had been the Vice Chair of the Licensing Board and had attend the meeting on 22 October 2019 in that capacity. Councillor Dodds advised that it was normal practice for Licensing board members to ask questions. Councillor Dodds advised that it was his recollection that while the Respondent many have raised his voice and "been stern" at the meeting, he did not consider he had been abusive. Councillor Dodds noted that while the Respondent's line of questioning was "severe", it was the role of councillors to challenge and to interrogate any legal advice provided to ensure it was sound.

Councillor Dodds advised that, while he may have "raised an eyebrow" at one or two of the questions posed by the Respondent at the meeting, he considered the Respondent was only examining matters in detail to ensure the business of the board was concluded in a fair manner. As such, he did not consider the Respondent had been disrespectful.

Councillor Dodds confirmed he had attended the meeting of Licensing Board Members on 20 February 2020, after a number of members had raised concerns about the Respondent's approach. Councillor Dodds agreed there had been a consensus that the Respondent may have "gone over the top" at the meeting on 22 October

2019 by asking too many questions on the same issue and not accepting the first or second answer provided. Councillor Dodds explained that was why the decision to speak to the Respondent at a meeting on 20 February 2020 had been made. Councillor Dodds advised he had been satisfied by the discussions and had left the meeting on 20 February 2020 feeling the matter had been resolved.

Submissions made by the ESC's Representative

Issue 1: The ESC's representative noted that the way in which the Respondent raised the concerns with council officers, both in terms of the volume and content of his emails, could be characterised as putting a certain amount of pressure on them to

- take enforcement action and issue a stop notice;
- terminate the lease on adjoining land; and
- decline an application regarding signage.

Issue 2: The ESC's representative noted that the Clerk and Committee Support Officer had provided nearly contemporaneous accounts to the Monitoring Officer with regard to the Respondent's conduct at the Licensing Board meeting on 22 October 2019. The ESC's representative argued that a coherent and consistent picture had emerged from the written accounts of the meeting and the witness evidence to indicate that the Respondent had been aggressive at the meeting, both in his tone and approach towards legal officers and the solicitor acting for the applicant in respect of the Shell licensing application. The ESC's representative noted that witnesses had advised that the Respondent had "shouted officers down", had "crossed a line" and had been inappropriately persistent in his questioning. As such, the ESC's representative contended there was clear evidence that the Respondent had behaved in a disrespectful manner towards officers and an applicant's solicitor.

The ESC's representative contended that there was clear evidence the Respondent's conduct at the meeting had caused several individuals present, including officers who had no vested interest in the application, to be concerned that the Respondent was not acting fairly towards, and could be seen to be biased against, the applicant's solicitor (and, by extension, the applicant). The ESC's representative again drew the Panel's attention to the evidence provided by witnesses to the effect that the Respondent had been argumentative and had crossed a line in his exchanges with the solicitor. The ESC's representative noted that the Respondent himself had stated in evidence that he considered arguing and questioning were interchangeable, and contended that this in itself was indicative of the inappropriateness of his approach.

In respect of the Shell application, the ESC's representative noted it was clear from the evidence that the applicant's solicitor had made a comment to the effect that it was evident the Respondent was going to persevere until he found a reason to reject the application. The ESC's representative noted, while the Licensing Board had ultimately reached a decision based on the legal advice provided, the minutes demonstrated that the Respondent was the only member to vote against the application.

The ESC's representative drew the Panel's attention to the evidence from former Councillor Bennison to the effect that she had felt compelled to abstain from the second vote in relation to the application as she had been so mortified by the Respondent's behaviour that she had just wanted the meeting to end. The ESC's representative further drew the Panel's attention to the note of the meeting of the Licensing Board members on 20 February 2020 and contended it was clear from this that the sole reason the meeting had been arranged was because of concerns about the Respondent's behaviour and that, as chair of a quasi-judicial or regulatory body, he was failing to ensure he was being fair, and being seen to be fair, when dealing with applicants.

The ESC's representative argued it was concerning that, in his evidence, the Respondent had failed to differentiate between, on the one hand, the fact that all council decisions could be open to legal challenge

and, on the other hand, any actions by councillors that could increase the risk of such a challenge being successful.

For the reasons outlined above, the ESC's representative contended that there was clear evidence that the Respondent had failed to comply with paragraphs 7.3 and 7.4 of the Code, and in particular the provisions that required councillors, when considering quasi-judicial and regulatory applications, must:

- not only act fairly but must also be seen as acting fairly;
- only take into account relevant and material considerations and should discount any irrelevant or immaterial considerations; and
- not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance of improper conduct, in order to reduce the risk of their, or their Council's, decisions being legally challenged.

The ESC's representative noted that both the Clerk and Support Officer had advised the ESC that the Respondent had expressed, in respect of the Port Street application, unhappiness about the licence holder and their response to an advertising regulator. The ESC's representative indicated these were not relevant or material considerations for the Licensing Board to consider when determining the application, and that the Respondent had been advised of this at the pre-agenda meeting. The ESC's representative noted that all members of the Board had agreed, nevertheless, to grant the application. The ESC's representative advised that, despite finding that the concerns about the advert and the licence holder's response to the advertising regulator did not appear to be a relevant or material consideration, the ESC did not consider that there was evidence to support a finding that the Respondent's conduct amounted to a breach of paragraphs 7.3 or 7.4 of the Code. The ESC's representative noted, nevertheless, that ultimately this was a decision for the Panel to make.

Issue 3: The ESC's representative noted that the Complainer, the Chief Operating Officer and the Senior Manager – Environment & Place had all given accounts of the pre-agenda and subsequent meetings on 29 October 2019, which were consistent with accounts they had given to the external firm of solicitors, who had conducted an independent investigation, for internal council purposes, in 2020. The ESC's representative noted that both how the Council may have resolved the matter and the Complainer's motivation in making a complaint to the ESC were, however, irrelevant to the question of whether the Respondent had breached the Code.

The ESC's representative noted it was not in dispute that, at the pre-agenda meeting, the Respondent had accused the Chief Operating Officer of landing him in trouble and had repeatedly questioned his position. The ESC's representative noted the Chief Operating Officer had felt belittled as a result and had considered that his professional competence and integrity were being challenged publicly in front of the various individuals present, which had included other more junior council employees. The ESC noted that the Standards Commission's Guidance and its Advice Note on bullying and harassment made it clear that the key was the impact of any behaviour, not the intent.

The ESC's representative noted it also did not appear to be in dispute that the Respondent had asked an officer present whether a plan to make a plan was needed. The ESC's representative noted that the Senior Manager – Environment & Place and other witnesses considered that, in doing so, the Respondent was mocking and belittling the suggestion that had been made by the officer. The ESC's representative argued it was also clear from witness evidence that the Respondent had strongly implied that the Chief Operating Officer had lied and that he had attempted repeatedly to pressure him into taking a certain action, despite the Chief Operating Officer noting that he did not have delegated authority to do so. The ESC's representative noted the Chief Operating Officer and other witnesses considered the Respondent had been dismissive of, and disrespectful towards, the Chief Operating Officer and, as a result, had challenged his conduct and capability in public.

While the ESC's representative accepted it was arguable the conduct which took place at the meetings on 29 October 2019 could be categorised as a one-off incident, she noted it was clear that there had been a significant imbalance in the relationship between the officers and the Respondent, as Vice Convener of the Committee and the (at the time) Deputy Leader of the Council. The ESC's representative contended, therefore, that the Respondent's conduct amounted, on the face of it, to both disrespect and bullying towards both officers.

The ESC's representative noted that one of the objectives of the Code is to maintain standards and ensure the conduct of public life at the local government level, including public debate, did not fall below a minimum level. A further aim is to protect the reputation and rights of others and to ensure that council officers can undertake their duties free from undue disturbance. The ESC's representative advised the ESC was of the view that the Respondent could have made his points in a respectful manner without publicly blaming officers for something, questioning their truthfulness, and undermining and making them feel belittled in front of others. The ESC's representative contended, therefore, that although the conduct concerned in the context of a meeting was on matters of public concern (and, therefore, the Respondent would attract enhanced protection in respect of his Article 10 rights), a formal finding of a breach of the Code was justified.

Issue 4: The ESC's representative advised that the Council's Chief Executive had told the ESC that she recalled the Complainer advising her in August 2020 that the Respondent had called the Monitoring Officer "a boot". The Council's Chief Executive advised that, as this allegation had been during the period in which an external legal firm was carrying out an investigation about the Respondent's behaviour, she had passed the allegation on to the investigating team.

The ESC's representative noted the evidence to the effect that the Respondent did not hold the Monitoring Officer in high regard and had made negative comments to others about her at the time.

The ESC's representative accepted that there had been no witnesses to the call and that the Respondent disputed having referred to the Monitoring Officer in the terms alleged. The ESC's representative advised however, that, in light of:

- the Complainer's evidence;
- the Chief Executive's evidence that the Complainer had advised her of the comment at the time it was alleged to have been made; and
- the evidence to suggest the Respondent was unhappy with the Monitoring Officer's approach to various matters at the time and that he did not hold her in high regard;

the ESC was satisfied that it is more likely than not that the Respondent referred to the Monitoring Officer as "a boot" during a conversation with the Complainer in August 2020.

The ESC's representative contended that it was evident that "a boot", was a derogatory term and was intended as such. The ESC's representative noted, therefore, that the use of such a term by the Respondent when referring to the Monitoring Officer, could be considered disrespectful and, on the face of it, a breach of paragraphs 3.3 and 3.5 of the Code.

Submissions made by the Respondent's Representative

Issue 1: The Respondent's representative explained that, in essence, at the Riverside site in Stirling the intention was to create an eight-floor block of flats to be used as student accommodation.

The Respondent's representative advised that the site developers were using public roads improperly for access for their lorries and other vehicles. The Respondent had been very concerned about the traffic management problems that had arisen as a result. The Respondent's representative confirmed the Respondent had, therefore, sent several emails to council officers outlining his concerns about the site on

behalf of his constituents. The Respondent's representative argued that, in doing so, the Respondent was acting as a ward councillor and local representative and had not been attempting to secure any preferential treatment for himself. The Respondent's representative contended that the Respondent had not directed officers to take any action and, instead, had merely asked them to address the issues he had raised.

The Respondent's representative noted the Council was involved in the development as the planning authority, roads authority and as the leaseholder on the land the developers were using as a construction depot and yard. The Respondent's representative argued, therefore, that the Respondent had not been inappropriately involved in operational matters, but rather had been undertaking his scrutiny role, albeit in a persistent and robust manner. The Respondent's representative noted the Respondent had accepted the decision made by officers in respect of the stop notice and their advice that the matter could only be dealt with as a traffic management issue. The Respondent's representative accepted the Respondent had expressed frustration by asking whether any action would ever be taken, but argued that he was only checking the concerns he had raised would be addressed.

The Respondent's representative reiterated that the Respondent had not been a decision-maker and his involvement had not affected the outcome of any planning applications relating to the site.

Issue 2: The Respondent's representative asked the Panel to note the testimonies of Councillors Earl and Dodds, to the effect that the Respondent had not been disrespectful towards anyone at the Licensing Board meeting on 22 October 2019. The Respondent's representative accepted that this contradicted the written evidence provided to the Monitoring Officer by the Clerk and the Support Officer. The Respondent's representative noted, however, that both officers were subordinates of the Monitoring Officer who had asked them to provide written comments in their recollection of the meeting. The Respondent's representative accepted, nevertheless, that there was evidence that the Monitoring Officer had only asked them to do so after they had raised concerns about the Respondent's conduct verbally with her after the meeting.

The Respondent's representative accepted that the Respondent had interrogated the legal advice provided by officers at the meeting, but contended he had only done so as he considered the advice provided before the meeting had been contradictory. The Respondent's representative argued that, in doing so, the Respondent was undertaking his role as Chair and was ensuring that the Licensing Board made proper decisions. While the Respondent's representative accepted the Respondent had been rigorous in his approach, she argued that he had not crossed the line into disrespect. The Respondent's representative noted there was no evidence or suggestions that the Respondent had been personally abusive towards anyone at the meeting.

The Respondent's representative further accepted that other Licensing Board members had raised concerns with the Respondent about his approach at the meeting on 20 February 2020. The Respondent's representative noted, however, that matters had been resolved at that meeting and he had remained a member of the Board until May 2022.

The Respondent's representative noted that, while the solicitor acting for Shell had considered the Respondent had been disrespectful towards him and had treated him unfairly, the application had nevertheless been approved by the Licensing Board. The Respondent's representative noted that the applicant's solicitor may well have felt the Respondent had been disrespectful towards him, but argued that any finding of a breach of the Code in this regard must still be subject to some form of objective consideration.

The Respondent's representative contended, in any event, that even if the Panel considered the Respondent's conduct at the meeting had, on the face of it, been disrespectful, a finding of a breach and application of a sanction would not be justified when his Article 10 rights were considered. This was because

it was evident that the Licensing Board had still been able to make decisions on the applications before it and, as such, had functioned effectively. The Respondent's representative drew the Panel's attention to Guidance produced by the (now defunct) Standards Board for England, noting that any provisions concerning the need to protect the mutual bond of understanding between councillors and council officers were not intended to stifle lively political debate.

The Respondent's representative argued that the Respondent was entitled to enhanced protection of his Article 10 rights, given the legal framework he was questioning was a matter of public debate. In this regard, the Respondent's representative drew the Panel's attention to the Court's decision in the case of *Heesom v Public Services Ombudsman for Wales*¹ where it was found that public servants are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. While the limits were not as wide as they were for elected politicians, the Court stated that the need to protect officers when imposing a restriction, in terms of Article 10(2), on freedom of expression must be weighed up against a politician's right to enhanced protection.

In respect of the Shell application, the Respondent's representative advised that the Respondent accepted that he questioned the legal advice and expressed frustrations (which he contended was widely shared amongst elected members across Scotland) about the legislation in place. The Respondent's representative argued that the legal framework around the licensing of petrol stations was unclear and, as such, it was not unreasonable in the circumstances for the Respondent to have scrutinised the application thoroughly to ensure that a proper decision was made by the Licensing Board.

The Respondent's representative reiterated that, while the solicitor acting in respect of the Shell application may have felt he was being treated unfairly and that the Respondent was always going to find a reason to reject the application, any finding of a breach of the Code in this regard must also be subject to some form of objective consideration.

The Respondent's representative argued that while the Respondent had voted against the application, it had nevertheless been approved after a vote, meaning that there had not been any danger that the Licensing Board was putting the Council at risk of a successful legal challenge.

The Respondent's representative advised, in respect of the Port Street application, that the Respondent had been unhappy about an advert displayed by the licence holder and a response they had made about this to the advertising regulator. The Respondent's representative contended that the Respondent had considered this a matter of public concern and, as such, had raised it at the Licensing Board meeting.

Issue 3: The Respondent's representative advised that the Respondent had zero tolerance in respect of bullying and, therefore, would never engage in such behaviour. The Respondent's representative denied that the Respondent's conduct towards the Chief Operating Officer or anyone else present at the Environment and Housing pre-agenda and subsequent smaller meetings on 29 October 2019 amounted to bullying or harassment. The Respondent's representative accepted there had been a disagreement between the Respondent and the Chief Operating Officer concerning what had previously been agreed in relation to the course of action to be taken in respect of the community hall. The Respondent's representative admitted that the Respondent may have been frustrated by the argument but contended that the subsequent exchange of emails between the Respondent and the Chief Operating Officer demonstrated the Respondent's position had been correct. The Respondent's representative further accepted the Respondent had accused the Chief Operating Officer of having caused difficulties for him but argued the words used demonstrated the Respondent considered he was talking to an equal. The Respondent's representative

¹ *Heesom v Public Services Ombudsman for Wales* [2014] EWHC 1504 (Admin)

noted the Respondent's belief that his argument was sound explained, although did not necessarily excuse, the extent to which his challenging of the officer had been relentless and robust.

The Respondent's representative noted that the Respondent had taken the time to reply to the Chief Operating Officer, after the meeting, to explain why he considered his position to be correct. The Respondent's representative advised that, as the Chief Operating Officer had appeared to accept this, the Respondent had considered the matter resolved.

The Respondent's representative noted there was no evidence or suggestion that the Respondent had subjected anyone present at the meeting to personal abuse or insults and argued, therefore that his conduct did not reach the threshold required for a finding of a breach of the bullying and harassment provisions in the Code. The Respondent's representative contended, in any event, that a finding of a breach and application of a sanction would not be justified when the Respondent's Article 10 rights were considered.

Issue 4: The Respondent's representative drew the Panel's attention to the Respondent's evidence and the fact that he had confirmed that he had no recollection whatsoever of using the term "a boot" and his assertion that it was not a term he would ever use, let alone when talking to the Complainer. The Respondent's representative also asked the Panel to note the Respondent's evidence that he had no recollection of having been reprimanded by the Complainer and that he would have recalled such an incident if it had happened.

The Respondent's representative noted that there were no contemporaneous written records of the Complainer having raised the matter with the Chief Executive or of her having then raised it with anyone else, including the Respondent. As there were no witnesses to the alleged exchange between the Respondent and the Complainer, it was simply a matter of credibility.

The Respondent's representative noted, in any event, that the Respondent did not agree with what the Complainer and Monitoring Officer understood the word "boot" to mean. The Respondent's representative accepted that the term was sexist and belittling in nature and advised that the Respondent would never have used or, or indeed have resorted to name calling. The Respondent's representative further noted that there was no other evidence to support the Complainer's and Monitoring Officer's contention that the Respondent had been angry with the Monitoring Officer at the time the alleged remark was made.

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 Gibson.
2. The Respondent had breached paragraphs 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 7.3 and 7.4 of the 2018 version of the Code in place at the time.

REASONS FOR DECISION

Application of Code

Issue 1: The Panel was satisfied the Respondent was emailing using his Council email account to send emails in regard to a Council related matter. As such, the Panel concluded the Respondent was acting as a councillor at the time of the alleged conduct.

Issues 2 and 3: The Panel noted the Respondent had attended the Licensing Board meeting on 22 October 2019 and the Environment and Housing pre-agenda meeting and subsequent smaller meeting on 29 October 2019 in his capacity as a councillor.

Issue 4: The Panel was satisfied the allegation was that the Respondent had made the alleged remark during a conversation, in office hours, with the Complainer (a fellow councillor) about council related matters. As such, the Panel concluded the Respondent was acting as a councillor at the time of the alleged conduct.

The Panel concluded, therefore, that the Code applied to the Respondent in respect of all four issues of complaint.

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

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.

- First, 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.
- Second, 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.
- Third, if so, the Hearing 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.

Issue 1: The Panel agreed that officers do not have to accept a direction from a councillor to take a particular action for there to have been a breach of:

- paragraph 3.4 of the Code, which stated that councillors should refrain from engaging in direct operational management of the Council's services; or
- the requirement under the Protocol for Relations between Councillors and Employees (paragraph 3.5 and Annex C of the Code), which stated that councillors and employees should work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position.

The Panel noted that was because the provisions in the Code concerned a councillor's actions and intent, as opposed to any subsequent action taken by others.

The Panel found that the Respondent had engaged in conversations with and had sent numerous emails to officers, between October 2018 and October 2019, regarding his concerns about the ongoing work at the development site. While the Panel accepted that the Respondent had a right to draw the concerns of his constituents to the attention of officers, it was satisfied that he had gone further than this by repeatedly suggesting officers take actions that he considered were required to address the issues he had raised. The Panel considered that, in doing so, it was evident the Respondent was becoming involved in operational matters, being: the fencing; parking at or near the site; the lease over the adjacent plot; traffic management; and how the Council was ensuring planning conditions were being met.

The Panel was satisfied, therefore, that the Respondent's conduct in respect of the first issue of complaint amounted to a breach of the requirements under paragraph 3.4 of the Code for councillors to refrain from becoming inappropriately involved in operational matters.

The Panel considered that while the Respondent had used the word 'request', it was evident from the tone and content of his correspondence that he expected officers to: take enforcement action and issue a stop notice; terminate the lease on adjoining land; and decline an application from the developers regarding signage. The Panel noted that, following the intervention from the Chief Operating Officer of 9 May 2019

responding to the Respondent's request for a stop notice, as outlined in his email of 3 May 2019, the Respondent sent a further four emails, on 20 May, 21 May, 12 June and 13 June 2019, asking what could be done and asking if the Council was going to take action at any point to stop the unauthorised use of the access road to the site.

The Panel noted that the Respondent, as an elected member, was in a position of power and influence over officers. The Panel was satisfied that the Respondent was attempting to take advantage of this position by trying to direct or pressure officers into taking the actions outlined above. The Panel concluded, therefore, that the Respondent had breached paragraph 2 of the Protocol for Relations between Councillors and Employees at Annex C and, as a result, paragraph 3.5 of the Code.

While the Panel was of the view that the Respondent had engaged inappropriately in operational matters by sending numerous emails in which he effectively demanded that council officers take particular actions, it found the emails, in general, to be polite in tone. The Panel further found that the Respondent had accepted the decision made by officers in respect of the stop notice and their advice that his concerns about the access to the site had to be dealt with as a traffic management issue, rather than a planning matter. The Panel concluded that the Respondent had not been disrespectful towards officers and, as such, his conduct in respect of the first issue did not amount to a contravention of paragraphs 3.3 of the Code.

The Panel accepted that it was clear from his evidence and emails that the Respondent was concerned, in particular, about the safety aspects of the development. While the Panel noted that the Respondent lived in the area and was affected by the ongoing works, it accepted that any impact on him personally was limited. The Panel further accepted the Respondent's contention that he was acting on behalf of constituents who were concerned about the site, rather than on his own behalf as a local resident. As such, the Panel concluded that the Respondent had not sought preferential treatment for himself and had not, therefore, contravened paragraph 3.21 of the Code.

The Panel further accepted that the Respondent had not been a decision-maker in respect of the planning matters relating to the development. The Panel concluded, therefore, that sections 6 and 7 of the Code did not apply in respect of issue 1.

Issue 2: The Panel accepted that the Respondent, as councillor and member of the Licensing Board had every right (and indeed, a duty) to question the officers present about their advice and to scrutinise applications and submissions made by applicants, to ensure that decisions made were lawful, evidence-based and robust. The Panel was satisfied, however, from both the documentary and witness evidence, that the Respondent's approach at the meeting and, in particular, his conduct towards the Clerk and the solicitor acting for Shell had been inappropriate.

In reaching this conclusion, the Panel noted that former Councillor Bennison had stated that she felt the Respondent had been "shouty" and argumentative, and that he had not allowed the solicitor to answer the questions put to him. The Panel had no reason to consider that former Councillor Bennison was anything other than a neutral witness, who had no reason to lie and, as such, determined that her evidence was credible and should be accepted in its entirety. The Panel considered that former Councillor Bennison's evidence confirmed the written accounts provided by the Clerk and Support Officer in respect of the Respondent's approach, demeanour and tone, which served to add credibility to her account of the meeting.

The Panel accepted that the note of the meeting of Licensing Board members on 20 February 2020 had not been circulated at the time. The Panel noted, however, that the Respondent had not disputed its accuracy. The Panel noted the file note recorded members had identified that the Respondent spoke in an inappropriate manner towards officers and applicants, that his behaviour was in danger of bringing the Licencing Board into disrepute, that there was a level of angst amongst officers at having to attend meetings

as a result of how they were spoken to by the Respondent, and that his questioning of them went beyond that of what was acceptable (particularly given that meetings were held in public). The file note further recorded that the Respondent's conduct could appear "aggressive and adversarial", and that members did not want "a repeat of recent behaviour" by the Respondent as they considered it reflected badly on the Licensing Board as a whole.

The Panel noted that Councillor Earl had confirmed that the Respondent had asked questions repeatedly and had been persistent in his interrogation of matters before the board. The Panel noted that Councillor Dodds had agreed there had been a consensus that the Respondent may have "gone over the top", at the meeting on 22 October 2019, by asking too many questions on the same issue and not accepting the first or second answer provided.

The Panel noted that while Councillors Earl and Dodds had been clear in their views that the Respondent had not been disrespectful at the meeting, they both accepted that they had attended the meeting of Licensing Board members on 20 February 2020, that been convened to discuss the concerns that members of the Licensing Board had about the Respondent's conduct and approach at meetings. The Panel noted that both Councillors Earl and Dodds had reviewed the note of the meeting on 20 February 2020 while giving evidence, and that neither had raised concerns about its accuracy. The Panel was of the view that it was unlikely that either councillor would have felt it necessary or appropriate to attend such a meeting had they considered the Respondent's conduct to have been wholly appropriate and acceptable.

The Panel accepted that the Respondent had the right to ask for clarification if he considered the advice provided by the Clerk in her email of 18 October 2019 was different to, or contradicted, that outlined in the report prepared by officers on the Shell application. The Panel noted, however, that the role of a Clerk in a quasi-judicial or regulatory setting, such as a Licensing Board meeting, was to ensure that decisions made were lawful. It was not, therefore, the case that her advice could, or should, be dismissed readily. The Panel was satisfied, from the written and verbal evidence, that the Respondent had gone beyond asking for clarity and, instead, had repeatedly challenged the Clerk about her advice and had dismissed it as an attempt to force members into making a particular decision.

The Panel was further satisfied that it was proper and, indeed, part of the Clerk's role to advise the Licensing Board of the risk of successful legal challenge if she thought this was likely in respect of any action or decision being proposed. The Panel noted the Respondent's position was that he was not always obliged to follow legal advice, as any final decision was a matter for a councillor's personal judgement. The Panel agreed, however, that this failed to recognise that the Clerk was responsible for ensuring that the Board complied with the requirement for it to base its decisions on relevant and material considerations only and that, accordingly, any legal advice provided in this regard should not be ignored or dismissed readily.

The Panel noted that the Respondent could have sought clarity on the Clerk's advice in private before the meeting if he had been concerned that it was inaccurate or that it contradicted advice provided previously. The Panel was of the view that, in repeatedly challenging or interrogating the Clerk about her advice in public, and in deploying a line of questioning that was described by Councillor Dodds as "severe", the Respondent was effectively questioning her competence and capability (whether inadvertently or otherwise). The Panel concluded, therefore, the Respondent had failed to treat the Clerk with courtesy and respect, and failed to refrain from raising matters relating to the conduct or capability of council employees in public. As such, the Panel determined that there had, on the face of it, been a breach of paragraphs 3.3 and 3.5 of the Code.

The Panel noted the Clerk had stated in her email to the Monitoring Officer of 7 November 2019 that the Respondent refused to accept the solicitor acting for the Shell applicant's response in respect of the independent report and had also raised concerns about his approach and tone when dealing with the solicitor. The Panel noted the Clerk's testimony, to the effect that the solicitor considered he had not been

allowed to speak about the application and had not been treated fairly, was supported by the Support Officer and former Councillor Bennison (as outlined above), and had resulted in the solicitor stating he felt the Respondent was looking for any excuse to turn down the application. In addition, the Panel noted one of the concerns put to the Respondent by other Licensing Board members, at the meeting on 20 February 2020, was the “inappropriate manner” in which he spoke to applicants as well as officers.

The Panel was satisfied, from the evidence provided, that the Respondent had been argumentative with the Shell applicant’s solicitor, had spoken to him in an inappropriate manner and had put the same or similar questions to him repeatedly, without giving him the opportunity to respond properly. The Panel considered this conduct, when viewed objectively, was disrespectful and discourteous. The Panel concluded, therefore, the Respondent had, on the face of it, breached paragraphs 3.2 and 3.7 of the Code.

In considering the Respondent’s approach to the Shell application, the Panel again noted concerns about fairness had been raised by the Clerk and the Support Officer. There was also evidence from both officers and Councillor Bennison that the applicant’s solicitor had expressed concerns to this effect at the meeting itself. The Panel noted, in particular, that the Clerk had been concerned about the Respondent’s “reasoning and approach to the decision, which could have led to an appeal”. The Panel also noted that the file note of the meeting of the Licensing Board members on 20 February 2020 indicated other members had concerns about the Respondent’s behaviour and reminded him of the need to be fair to applicants and to only consider relevant and material matters, even if it meant he was forced to make decisions with which he did not agree.

The Panel agreed with the ESC’s representative that there was clear evidence the Respondent’s conduct at the meeting had caused several individuals present to be concerned the Respondent was not acting fairly towards, and could be seen as being biased against, the applicant’s solicitor (and, by extension, the applicant). The Panel was satisfied therefore that, when considered objectively, there was evidence the Respondent had failed to ensure he was seen as acting fairly in respect of the Shell application and, as such, had breached paragraph 7.3 of the Code.

The Panel rejected the Respondent’s representative argument that while the Respondent had voted against the application, it had nevertheless been approved after a vote, meaning that there had not been any danger of the Licensing Board putting the Council at risk of a successful legal challenge. In doing so, the Panel noted that it was entirely possible that other members of the Licensing Board could have been persuaded by any arguments the Respondent made, particularly given his experience and his role as Chair. The Panel therefore concluded that, in failing to avoid any appearance of unfairness and improper conduct, in both the manner in which he had dealt with the applicant’s solicitor (and by extension the applicant), the Respondent had also failed to comply with paragraph 7.4 of the Code.

Turning to the Port Street application, the Panel noted it was not in dispute that the Respondent had raised the issue of the applicant’s response to the Advertising Standards Agency, despite having been advised by the Clerk on two occasions that this was not an issue that could be taken into account or considered by the Licensing Board. The Panel agreed, therefore, that there was evidence the Respondent raised the issue despite being aware it was not relevant or material to the Board’s consideration of the application before it on 22 October 2019. The Panel considered that as the Respondent had knowingly and openly raised and taken into account an irrelevant consideration, he had failed to avoid any occasion for suspicion and any appearance of improper conduct. As such, the Panel determined that the Respondent had also failed to comply with paragraphs 7.3 and 7.4 of the Code in respect of the Port Street application.

Issue 3: The Panel noted that the Chief Operating Officer’s and Complainer’s verbal accounts of the Respondent’s behaviour at the pre-agenda meeting on 29 October 2019 and the subsequent smaller meeting held the same day, provided at the Hearing, were supported by the written account of the Senior Manager – Environment & Place and the Chief Operating Officer’s earlier written account. The Panel further noted there

was evidence a number of other individuals present at the meetings had advised the Monitoring Officer of their concerns immediately afterwards, and the Complainer had sent the Chief Executive an email that afternoon stating he considered the Respondent's behaviour to be unacceptable. The Complainer also sent an email to the Respondent's political group on 3 November 2019 concerning the Respondent's behaviour. The Panel considered the fact that several individuals present at the meetings had reported the matter to senior council officers at the time tended to support the Complainer's version of events and also suggested that the Respondent's conduct had caused a great deal of concern and upset.

The Panel accepted the Respondent's position that he was experiencing difficulties in his private life at the time, that there had been some confusion as to whether council officers had delegated authority to take action in respect of the lease of the community hall, and that he did not consider the matter should have been included for discussion at the Environment & Housing Committee pre-agenda meeting. The Panel noted the Respondent accepted that he had alleged that the Chief Operating Officer had caused difficulties for him in respect of the assurance he had given at the community council meeting.

While the Panel accepted the exchange of emails between the Respondent and the Chief Operating Officer, later that evening appeared to resolve the issue regarding how any confusion in respect of the community hall item had arisen, it was disappointed to note that the Respondent had not seemed to recognise fully that his behaviour at the meetings had also had an impact on the officer and that this also should be addressed. The Panel noted that even if the Respondent's understanding of what had transpired before the meeting was correct, he should have recognised that it was the manner in which he challenged officers that had caused the upset and concern.

The Panel again accepted that, as part of their scrutiny role, councillors have every right to question and even challenge officers. The Panel noted that the Senior Manager – Environment & Place and the Chief Operating Officer had both acknowledged this but contended that the Respondent's conduct had extended far beyond what they considered acceptable and were accustomed to (in this regard, the Panel noted the Chief Operating Officer's extensive experience).

The Panel noted the Respondent's representative had argued the words used by the Respondent, when addressing the Chief Operating Officer, demonstrated the Respondent considered he was talking to an equal. The Panel considered, however, that this was not the case and that councillors have an inherent position of power and influence over officers.

In the absence of any dispute or evidence to the contrary, the Panel accepted the Chief Operating Officer's evidence that the Respondent had been dismissive of the Chief Operating Officer's position that he was unable to extend the lease over the community hall as he did not have delegated powers to do so, and that the Respondent had continued to press him to extend the lease. The Panel was satisfied the Respondent was attempting to take advantage of his position by trying to direct or pressure officers into taking actions to extend the lease. The Panel was further satisfied that the Respondent had become inappropriately involved in what he understood to be an operational matter. The Panel concluded, therefore, that the Respondent had breached paragraph 3.4 of the Code and paragraph 2 of the Protocol for Relations between Councillors and Employees at Annex C which, in turn, was a contravention of paragraph 3.5 of the Code.

The Panel was satisfied, on the balance of probabilities and from the evidence before it, that the Respondent had:

- repeatedly challenged officers at both meetings in an aggressive, excessive and dismissive manner;
- failed to give officers sufficient opportunity to respond;
- questioned the Chief Operating Officer's integrity and had accused him of causing difficulties for the Respondent;

- behaved in a disparaging way towards another officer by questioning whether he needed to make a strategy or plan just to make a plan;

and that this had caused officers to feel they were being attacked personally and were being belittled and harangued.

The Panel concluded that, as a result, the Respondent had, on the face of it, failed to behave respectfully towards officers at the meetings, in breach of paragraphs 3.3 and 3.7 of the Code.

The Panel noted that it was accepted that various officers and other councillors had been present at the pre-agenda meeting. The Panel was satisfied that, by repeatedly challenging certain officers and by questioning the Chief Operating Officer's integrity and accusing him of causing problems, the Respondent had raised matters relating to the conduct or capability of employees in public. As such, the Panel concluded that, on the face of it, the Respondent had also failed to follow the Protocol for Relations between Councillors and Employees at Annex C, in breach of paragraph 3.5 of the Code.

The Panel noted that bullying is inappropriate and unwelcome behaviour which is offensive and intimidating, and which makes an individual or group feel undermined, humiliated or insulted. The Panel further noted that bullying usually arises as a result of an individual misusing their power (usually derived from status or some other position of strength) and that while it tends to be a pattern of behaviour or course of conduct, it can also be a one-off serious incident that becomes objectionable or intimidating. The Panel agreed that it was the impact of any behaviour rather than the intent that was the key. In this case, the Panel noted that the Respondent's conduct had caused both the Senior Manager – Environment & Place and the Chief Operating Officer to feel demeaned, belittled and upset. The Panel noted that while the Senior Manager – Environment & Place had left the Council not long after the events in question, the Chief Operating Officer had advised that the long-term relationship between him and the Respondent had been affected as a result.

The Panel again noted that the Respondent was in a position of power over officers, who would have been obliged to remain professional and respectful at the meetings. The Panel was satisfied, in the circumstances, that the Respondent had bullied both the Senior Manager – Environment & Place and the Chief Operating Officer at the meetings and as a result had, on the face of it, also breached paragraph 3.6 of the Code.

Issue 4: The Panel noted that while the Complainer was adamant that the Respondent had referred to the Monitoring Officer as a 'boot', the Respondent was equally adamant he had not. The Panel found both parties to be credible, when giving this evidence. Therefore, in the absence of any witnesses to the alleged exchange, the Panel was required to consider whether there was any other evidence to support either party's version of events.

The Panel noted that the Chief Executive had advised the ESC that the Complainant had verbally reported the Respondent's alleged use of the term to her at the time, albeit the timing of this was unclear. The Panel considered the absence of a written record and lack of clarity on the date of the alleged call supported the Respondent's version of events.

The Panel noted there was evidence to indicate the Respondent did not enjoy a good relationship with the Monitoring Officer at the time the remark was allegedly made. The Panel further noted that there was evidence that the relationship between the Respondent and Complainer was strained.

The Panel also noted that it had found the Respondent had been directly disrespectful towards officers but, on the other hand, there was no evidence or suggestion that the Respondent had directed any personal insults towards officers, or evidence that used the term 'boot' or similar language.

The Panel noted that the Complainer stated in evidence that he was under pressure by his party not to make complaints about the Respondent. The Panel noted, however, that this had not prevented him from making complaints, at the time, about the Respondent to the ESC, the Council's Monitoring Officer and the Respondent's political group.

The Panel concluded that it was not satisfied that there was sufficient evidence to enable it to conclude, on the balance of probabilities, that the Respondent made the remark as alleged. The Panel determined, therefore, that issue four could not be upheld.

The Panel noted that the ESC had concluded that he was satisfied on balance that the remark had been made. The Panel noted that the ESC stated, in his report, that he was of the view that "in the context of the remarks, and the fact the public servants, and specifically the Monitoring Officer of the Council, would be subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed", he did not consider the alleged remark "to be so egregious or offensive as to justify a restriction on the Respondent's enhanced right to freedom of expression". The Panel wished to make it clear that, while it was not satisfied that the remark had been made, it disagreed with this view and considered that the use of such a derogatory and sexist term about a council officer would be egregious, offensive and would amount to a personal attack. The Panel was of the view that a restriction on a councillor's right to freedom of expression to protect council officers from such attacks would be entirely justified.

Stage 2: Whether any findings that the Code had been contravened would be a breach of the Respondent's right to freedom of expression under Article 10 of the ECHR

The Panel noted that enhanced protection of freedom of expression under Article 10 of the ECHR can apply to all levels of politics, including at a local government level. 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 concern.

The Court noted that any interference with the right of free speech, which impedes political debate, must be subjected to particularly close scrutiny but that simply indulging in offensive behaviour was not to be regarded as expressing a political opinion, which attracts the enhanced level of protection².

The Panel noted it had found, on the face of it, that the Respondent had been disrespectful towards the Clerk and the Shell Applicant's solicitor at the Licensing Board meeting on 22 October 2019 (issue two).

The Panel noted the Licensing Board meeting was one where quasi-judicial and regulatory decisions are made, as opposed to being a political forum. The Panel noted the Respondent's comments and questions about the Shell application were not made in a political context or a debate on questions of public interest, but instead were made in the course of determining an application for a licence. The Panel concluded, therefore, that the Respondent would not enjoy enhanced protection in respect of his Article 10 rights to any comments and questions posed specifically about the Shell application.

The Panel noted, nevertheless, that it appeared that some of the Respondent's remarks and questions concerned the licensing legislation and how it applied more generally. The Panel agreed that this was a matter of public concern and, as such, the Respondent would attract the enhanced protection in respect of his Article 10 rights, as a politician discussing matters of policy and public interest.

² *Livingstone v Adjudication Panel for England (2006) EWHC 2533*

The Panel noted it had found, on the face of it, that the Respondent had been disrespectful towards and had bullied officers at the Environment and Housing pre-agenda meeting, and a subsequent meeting on 29 October 2019 (issue three).

The Panel noted the Respondent's remarks had been made in the context of a discussion on potential items to be considered by the Environment and Housing Committee, including the future of the community hall. The Panel agreed such items were matters of public concern and, as such, the Respondent would attract the enhanced protection in respect of his Article 10 rights, as a politician discussing matters of policy and public interest.

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

The Panel noted, nevertheless, that the right to freedom of expression is not absolute. Article 10(2) allows restrictions, such as the imposition of a sanction for a breach of a regulatory code of conduct, to be imposed to protect the reputation and rights of others and to ensure that officers of Councils are free from undue perturbation so they can perform their duties. Restrictions aimed at protecting the mutual bond of trust and confidence between councillors and officers, to enable local government to function effectively, are also allowed. The Panel noted there must be relevant and sufficient reasons for any restriction and that it must be proportionate to the legitimate aim being pursued.

The Panel noted it was required to undertake a balancing exercise, weighing the right to freedom of expression enjoyed by the Respondent (and particularly the enhanced right to which they were entitled in this case in respect of any remarks and questions on matters of public concern), against any restriction imposed by the application of the Code and the imposition of any sanction.

The Panel noted the Courts have held that the less egregious the conduct in question, the harder it would be for a Panel, when undertaking its balancing exercise, to justifiably conclude that a restriction on an individual's right to freedom of expression is required³.

The Panel further noted that public servants, such as council officers, are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. The limits are not as wide, however, as they are for elected politicians⁴.

The Panel noted that the ESC advised in his report that he did "not consider the Respondent's conduct on this occasion, in questioning the applicants and their representatives on a matter of public interest, would justify a restriction to the Respondent's Article 10 rights". The Panel considered, however, that the Respondent could have questioned the legal advice given and queried the legislation either in private before, or during the Licensing Board meeting on 22 October 2019, without resorting to repeatedly challenging the Clerk, being dismissive towards her and without questioning her competence and capability in public. The Panel rejected the Respondent's view that arguing and questioning were "interchangeable" and noted it had found the Respondent had effectively accused the Clerk of trying to force Licensing Board members into making a specific decision on the Shell application, when she had only been undertaking her role in trying to ensure the decision was lawful and that it did not put the Council at unnecessary risk of successful legal challenge. The Panel considered, therefore, that the Respondent's conduct towards the Clerk was entirely egregious.

The Panel noted it had found that the Respondent had been argumentative with the Shell applicant's solicitor, had spoken to him in an inappropriate manner and had put the same or similar questions to him

³ *Calver, R (On the Application Of) v The Adjudication Panel for Wales (Rev 2) [2012] EWHC 1172 (Admin)*

⁴ *Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)*

repeatedly, without giving him the opportunity to respond properly. The Panel considered there was no reason why the Respondent could not have sought clarity on any information in the application that he required to make a decision, without being argumentative or disrespectful to the applicant's solicitor. The Panel determined, therefore, that the Respondent's conduct towards him had been wholly unnecessary and entirely inappropriate.

The Panel noted it had found the Respondent had behaved in an aggressive, disparaging and dismissive manner towards officers at the meetings on 29 October 2019, and had belittled them and questioned their conduct and capability in public. The Panel accepted the Respondent may have felt he had legitimate concerns about some of the matters being discussed. The Panel agreed, however, there was no reason why he could not have raised his concerns in a respectful manner, without resorting to personal attacks or bullying. The Panel was of the view that the Respondent's conduct towards the officers in question had again been entirely egregious.

The Panel was satisfied that a restriction on the Respondent's right to freedom of expression was relevant, sufficient and proportionate in respect of both issues two and three and was required to:

- protect the reputation and rights of the officers in question and to ensure that they were free from undue perturbation in order to perform their duties;
- protect the mutual bond of trust and confidence between councillors and officers, to enable the Council to function effectively; and
- to protect the reputation of the applicant's solicitor and the right of the applicant to be given a fair hearing.

The Panel concluded, therefore, that it was satisfied that the findings of breach, and the subsequent application of a sanction, would not contravene Article 10.

Evidence in Mitigation

The Respondent's representative advised that, at the time of the meetings that were the subject of issues two and three, the Respondent's wife had suffered an accident which required surgery and a period of bed-bound convalescence. The Respondent's representative advised that this had placed the Respondent under a significant amount of pressure as he was caring for his wife and two young children, while still attending to his council duties. The Respondent's representative highlighted the Respondent's acknowledgement that it may have been better for him to have taken a period of absence from work during this period; she confirmed that he had not done so and instead had tried to meet the demands of his role as councillor to the best of his abilities. The Respondent's representative advised it was likely the Respondent's difficult circumstances would have had a detrimental effect on his patience and his ability to remain calm in stressful council meetings. The Panel heard, in private, that the Respondent had been experiencing further difficulties in his private and personal life at the time of the incidents in question.

With regards to issue one, the Respondent's representative contended:

- that there was no evidence that the emails in question had a negative impact on others;
- there was no obvious benefit to the Respondent in raising the concerns, despite the development being situated in his ward; and
- that there was no malicious intent behind the emails.

The Respondent's representative noted, in respect of issues two and three that:

- given the evidence suggested the Licensing Board meeting had been "particularly difficult", the incident was of an isolated nature;
- the Respondent acted in good faith at the time of the meetings and there was no malicious intent behind any comments he had made;
- the Respondent did not benefit, or intend to benefit, from his conduct during the meetings;

- the Respondent had taken on board the concerns raised about his behaviour and had undertaken to reflect on his behaviour and conduct himself appropriately in the future; and
- there had been no repetition of such conduct since the meetings in question.

The Respondent's representative advised that the Respondent had made sincere efforts to resolve the issue with the Chief Operating Officer and expressed sincere regret and apology for any distress caused. The Respondent's representative explained that the Respondent had engaged willingly with the Council over concerns raised during the investigation carried out by an external legal firm, and that he met with the Monitoring Officer and senior members of his party group and had agreed to take positive steps to address the concerns raised.

The Respondent's representative referred to a letter issued by the Respondent to the Council's Chief Executive, within which he proffered an apology and assured the Chief Executive of his intent to work positively and constructively in a spirit of partnership.

The Respondent's representative also provided the Panel with written character references from 14 different sources, which she noted were received from not only fellow Labour politicians but also from political opponents.

The Respondent's representative advised that the Respondent, prior to his election, was known locally as an active campaigner on local issues, and that since his election he has continued to support his local community with initiatives aimed at improving his constituents' quality of life.

The Respondent's representative noted that no previous findings of a breach of the Code had been made against the Respondent, and reiterated that no concerns had been raised in respect of his conduct since the events that were the subject of the issues before the Panel.

SANCTION

The decision of the Hearing Panel was to suspend, for a period of five months with effect from the date of this decision, the Respondent, Councillor Gibson, 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.

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

Reasons for Sanction

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, here: <https://www.standardscommissionscotland.org.uk/cases/hearing-rules>. The Panel began by assessing the nature and seriousness of the breaches of the Code.

The Panel was concerned the Respondent had subjected numerous council officers to behaviour far beyond what might be considered normal or even acceptable. The Panel was also concerned the Respondent, as an elected politician and therefore someone in a position of power, had effectively questioned the capability of senior officers. The Panel noted this questioning took place in public, when the officers in question were merely discharging their duties as council employees, and, indeed, in the case of the Licensing Board clerk, were trying to provide advice aimed at protecting the Council from the risk of a successful legal challenge.

In particular, the Panel was concerned the Respondent had made accusations about the integrity and conduct of the Chief Operating Officer, and had belittled him and other officers, in front of their peers and more junior colleagues. It considered that, in doing so, the Respondent's conduct had fallen well below a minimum level of acceptability. The Panel noted that disrespect, bullying and harassment towards officers is serious, in that it has the potential to disrupt effective working relations and can be a threat to both the reputation of the council and the role of an elected member, as well as potentially impacting upon the delivery of council services. The Panel was of the view that council officers should be able to work in an environment where they are not subjected to contempt, unwarranted attacks and belittling behaviour. The Panel considered the Respondent's conduct in this regard was completely unwarranted.

The Panel was further concerned the Respondent had been disrespectful towards the solicitor acting for an applicant and therefore, by proxy, the applicant. The Panel noted that by doing so, and, in respect of the Port Street application, by taking into account immaterial and irrelevant matters, the Respondent failed to avoid the appearance of bias or unfairness. The Panel agreed that a failure to avoid such an appearance in the quasi-judicial setting of a licensing board could bring its work, its decisions and the Council itself into disrepute and, again, could open it up to the risk of a successful legal challenge.

The Respondent's inappropriate involvement in operational matters gave the Panel further cause for concern. The Panel noted that, in his evidence, the Respondent advised he was very familiar with the Standards Commission's Advice Note for Councillors on Distinguishing Between their Strategic Role and any Operational Work. The Panel was disappointed, therefore, that the Respondent had engaged inappropriately in operational matters and made repeatedly pressured council officers to take certain actions, including some which the officers did not have the authority to do. The Panel noted that officers were required to take time to respond to the Respondent, which could have had detrimental effect on how they performed other duties.

Having considered the nature and seriousness of the breach, the Panel considered the aggravating and mitigating factors as set out in the Policy on the Application of Sanctions, beginning with those in mitigation. The Panel noted that mitigating factors are those which may lessen the severity or culpability of the breach.

In terms of mitigation, the Panel accepted that the Respondent had been experiencing personal and private issues in his home life at the time of the events in question.

The Panel noted that the conduct complained of had occurred over a relatively short period of time, and that there was no evidence or suggestion of any personal gain or benefit to the Respondent.

The Panel also accepted the submissions and character references asserting that the Respondent was a good and engaged local councillor, and that he worked hard for and always tried to act in the best interests of his constituents and the wider public. The Panel noted the range of positions the Respondent held within, and outwith, the Council, and further the numerous letters of support submitted on his behalf.

The Panel acknowledged the Respondent had participated fully in the respective investigative and adjudicatory processes of the ESC and the Standards Commission. The Panel also acknowledged the regret expressed by the Respondent, both at the Hearing and subsequently in the press.

The Panel then proceeded to consider the aggravating factors; being ones that may increase the severity or culpability of the breach.

The Panel noted the Respondent asserted he was trying to raise the valid concerns of his community in his actions. The Panel further noted, however, that the Respondent had agreed, as part of his acceptance of office as a councillor, that he would abide by the terms of the Code, which clearly included the requirement

to behave with courtesy and respect towards council officers and members of the public. The Panel noted that this requirement applies regardless of the nature of the concerns being raised by a councillor.

The Panel acknowledged that councillors have a vital scrutiny role. The Panel noted, however, that such a role should not be abused and used to direct or instruct officers to effect specific operational decisions. The Panel further noted that councillors should be able to scrutinise, ask questions of and challenge officers without resorting to personal attacks and behaviour which leaves officers feeling belittled, attacked or bullied.

The Panel was concerned the Respondent had not demonstrated any insight into the effect of his conduct on others, especially the adverse effect on the bond between elected members and councillors. A similar lack of insight was demonstrated in relation to the potential for such adverse behaviour to bring the role of a councillor or the Council itself into disrepute. Further, the Panel suggested the Respondent had also failed to show any understanding that his behaviour could have resulted in council decisions being open to successful legal challenge and the risks inherent in such challenge to public confidence in the council's decision-making processes.

Having considered and weighed up all the mitigating and aggravating factors, and in particular, noting the conduct in question had occurred over a relatively short period of time, the Panel concluded that in the circumstances of the case a disqualification was neither warranted nor justifiable, particularly when the Respondent's Article 10 rights were considered.

The Panel concluded, however, that in light of its finding that the Respondent's conduct was serious and giving due consideration to the impact it had on others, the appropriate sanction should be a reasonably lengthy suspension. Having taken into account the mitigatory factors outlined above, the Panel concluded that a five month suspension was warranted and justifiable in the specific circumstances of the case.

The Panel urged councillors to be aware of the inherent influence their role brings and to note that, as elected politicians, they are in a position of power over council officers. The Panel noted that it is particularly difficult for officers to give evidence in respect of complaints about an elected member, given they will be required to continue to work alongside the individual in question and other elected members.

The Panel emphasised that the requirement for councillors to behave in a respectful and courteous manner towards council officers is a fundamental requirement of the Code, as it ensures public confidence in the role of an elected member and the council itself is not undermined. The Panel further emphasised, in the strongest terms, that bullying and harassment has no place within councils and that not only should elected members refrain from engaging in any such behaviour, but they should recognise the impact such behaviour can have on any individual experiencing it, as well as the Council itself, in terms of morale and operational effectiveness.

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: 5 July 2023



**Ms Ashleigh Dunn
Chair of the Hearing Panel**

Annex A: Relevant Provisions of the 2018 Version of the Councillors' Code of Conduct

Relationship with Council Employees (including those employed by contractors providing services to the Council)

3.2 You must respect your colleagues and members of the public and treat them with courtesy at all times when acting as a councillor.

3.3 You must respect all Council employees and the role they play, and treat them with courtesy at all times. It is expected that employees will show the same consideration in return.

3.4 Whilst both you and Council employees are servants of the public, you have separate responsibilities: you are responsible to the electorate but the employee is responsible to the Council as his or her employer. You must also respect the different roles that you and an employee play. Your role is to determine policy and to participate in decisions on matters placed before you, not to engage in direct operational management of the Council's services as the latter is the responsibility of the Council's employees. It is also the responsibility of the Chief Executive and senior employees to help ensure that the policies of the Council are implemented.

3.5 You must follow the Protocol for Relations between Councillors and Employees attached at Annex C. A breach of the Protocol will be considered as a breach of this Code.

Protocol at Annex C:

Paragraph 2 Councillors and employees should work in an atmosphere of mutual trust and respect, with neither party seeking to take unfair advantage of their position.

Paragraph 20 councillors should not raise matters relating to the conduct or capability of employees in public. Employees must accord to councillors the respect and courtesy due to them in their various roles.

Bullying and Harassment

3.6 Bullying or harassment is completely unacceptable and will be considered to be a breach of this Code.

Conduct at Meetings

3.7 You must respect the Chair, your colleagues, Council employees and any members of the public present during meetings of the Council, its Committees or Sub-Committees or of any Public Bodies where you have been appointed by, and represent the Council. You must comply with rulings from the chair in the conduct of the business of these meetings.

Fairness and Impartiality

7.3 In such cases, it is your duty to ensure that decisions are properly taken and that parties involved in the process are dealt with fairly. Where you have a responsibility for making a formal decision, you must not only act fairly but also be seen as acting fairly. Furthermore, you must not prejudge, or demonstrate bias in respect of, or be seen to be prejudging or demonstrating bias in respect of, any such decision before the appropriate Council meeting. In making any decision, you should only take into account relevant and material considerations and you should discount any irrelevant or immaterial considerations.

7.4 To reduce the risk of your, or your Council's, decisions being legally challenged, you must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance of improper conduct.