

**Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at the Council Chambers, Fife House, North Street, Glenrothes on Tuesday, 11 July 2023.**

**Panel Members:** Ms Anne-Marie O’Hara, Chair of the Hearing Panel  
Mrs Helen Donaldson  
Ms Suzanne Vestri

The Hearing arose in respect of a report referred by Mr Ian Bruce, the Ethical Standards Commissioner (the ESC), further to complaint reference LA/Fi/3614, concerning an alleged contravention of the Councillors’ Code of Conduct (the Code) by former Councillor Linda Holt (the Respondent).

**THE REFERRAL**

Following an investigation into complaints received from four complainers on 27 August, 6 and 27 September, and 4 October 2021 about the conduct of the Respondent, the ESC referred a report to the Standards Commission for Scotland on 28 April 2023, in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act).

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

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

**Issue 1:** The Respondent failed to treat council officers with respect in emails of 15 June 2021, by calling into doubt the efficacy of their efforts to engage in a meaningful community consultation.

**Issue 2:** At public meetings of St Monans and Abercrombie Community Council on 21 June 2021 (held online) and 16 August 2021 (held in person), the Respondent attributed untrue statements and false accusations towards the Community Council Secretary (the Secretary) in relation to misrepresenting a resident (Mr A).

**Issue 3:** At the community council meeting on 16 August 2021 the Respondent behaved disrespectfully by:

- a) speaking to the Secretary in a disrespectful and aggressive manner;
- b) raising her voice and speaking in an angry fashion to various members of the public, and treated them with contempt; and
- c) ignoring attempts by the Acting Chair to silence her.

**Issue 4:** At the Community Council meeting on 16 August 2021, the Respondent disclosed the contents of a private email between ward councillors, the Secretary and council officers.

**Issue 5:** On 20 September 2021 the Respondent published an “Open Letter to St Monans” on her constituency Facebook page, which contained several misleading and inaccurate statements about the Secretary, and the Respondent used provocative language to malign him. The Respondent also misleadingly summarised the private email exchange between the Secretary and the Council on her Facebook page.

On receipt of the referral report, the Standards Commission noted that the ESC had found that the information in the email was not of a confidential nature and had concluded, therefore, that the Code had not been breached in respect of Issue 4. The Standards Commission considered it had no evidence before it that would lead it to depart from this conclusion. As the Standards Commission was not satisfied that there was evidence, on the face of it, of a breach of the Code, it determined that it was neither proportionate, nor

in the public interest, for it to consider Issue 4 at a Hearing. The Standards Commission determined, therefore, to take no action on the referral in relation to Issue 4.

## **THE HEARING**

### **Preliminary Matters**

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

No other preliminary matters were identified.

### **Documentary Evidence**

In respect of the emails that are the subject of Issue 1, the Panel noted that the ESC advised, in his report, that on 15 June 2021:

- The Secretary sent an email to members of the community council in response to the Respondent's suggestion that Mr A be invited to a meeting with council officers regarding the cutting of an area of grassland known as 'the Mair'. The Secretary questioned whether Mr A should be invited as he was "not a member of the community council, nor any other community group". The Secretary stated that Mr A "does not speak for the community in any official capacity. In fact, other than stirring up local residents through his Facebook account, he has no right to be there". The Secretary suggested that it would be more appropriate to invite the Chair of the local residents' association and / or another member of the community council. The Secretary concluded his email by asking other community councillors for their views.
- The Respondent sent an email (email 1) to the Council's Service Manager, copying in the Chair of the community council, and other council officers and councillors. The Respondent said she thought it was a mistake to exclude Mr A from the meeting. The Respondent stated that "previous consultations by the service were flawed and unsuccessful in that they self-evidently did not reach significant sections of the community who use the green spaces in question". The Respondent further stated that "part of the failure is down to the service – the first consultation was poorly constructed and executed". The Respondent stated that "it seems crazy now to ration contact with the community", and that "it'll do no good – and possibly more harm in terms of stoking more antipathy and criticism, and therefore making more work for officers – to deliberately exclude community voices now".
- The Service Manager responded and advised he did not agree with the Respondent's statement that the consultation was 'flawed and unsuccessful'. The Service Manager suggested taking some of the heat out of the ongoing conversation, and advised that he could see no benefit in extending the list of those invited to the meeting, given everyone already knew the community's views and given any decisions about what to do with the grassland would be taken by councillors and council officers.
- The Respondent then replied to the Service Manager (email 2) advising she disagreed strongly with his "desire to limit this discussion". The Respondent stated: "I find it frankly shocking that you do not recognise how flawed the consultation process has been", and "you do not take the heat out of a situation which has arisen because of flawed and unsuccessful consultation by refusing to engage with the very people who should have been consulted. On the contrary – there is no better way of enflaming the situation." The Respondent further stated that as an elected member, she had "no hesitation in repeating these things publicly". The Respondent contended that the Service Manager's attitude "makes a mockery of Fife Council wishing to work with communities, and will damage the standing of Fife Council in St Monans."

The Panel noted that, on 13 June 2021, Mr A had published a post on Facebook calling for “action on the Mair”. In his post, Mr A contended that the Council’s re-wilding policy was hazardous and that it was “causing severe anger”. Mr A called for local people to come along the next day with lawnmowers, strimmers and rakes so that they could cut the grass back, regardless of the Council’s views or policy.

In respect of the community council meeting held online on 21 June 2021, the Panel noted that the ESC advised, in his report, that:

- The minutes of the meeting record that Mr A had stated that “the Secretary had prevented him from attending” the meeting about the grassland, and that the Respondent had stated that the Secretary “was being disingenuous and that he had implied the resident [Mr A] was a rabble rouser and trouble-maker in the email exchanges”, which she did not consider to be fair.
- Complainer 2, a member of the community council, stated that Mr A noted that he had been ‘tipped off’ that the Secretary had blocked him from attending the meeting with council officers. Complainer 2 further advised that when the Secretary responded saying he had not done so, the Respondent falsely accused the Secretary of “misleading” Mr A about his involvement with council officers. Complainer 2 stated that the Respondent had added that the Secretary had defamed Mr A by describing him as a “trouble-maker” and “rabble rouser” in his email of 15 June 2021.
- Witness C, a member of the community council, stated that Mr A had asked the Secretary why he had prevented him [Mr A] from attending the proposed meeting. Witness C said it was almost as though the Respondent had been waiting for that point “to pounce on” the Secretary, and contended that to describe the Respondent’s tone as “very aggressive was an understatement”, particularly given that, in his email of 15 June 2021, the Secretary had only indicated that he did not consider Mr A should be invited to the proposed meeting. Witness C recalled that the Respondent stated that the Secretary had referred to Mr A as a “rabble rouser” and a “trouble-maker”.
- Witness D, who was observing the meeting, advised that she only moved to the area before the Covid-19 lockdown and was not, therefore, aware of any previous relationships between those involved. Witness D explained that she sent the Chair and Secretary an anonymous letter after the meeting as she was so shocked about how it had been conducted. Witness D advised in her letter that she had been disturbed to hear one of the Fife Councillors in attendance verbally attacking and publicly criticising the Secretary. Witness D advised that she was concerned about the way in which the Respondent had behaved as she found it “very unprofessional”, and it had made her feel uncomfortable. Witness D stated that after Mr A had raised the matter of the Secretary’s email, the Respondent had started shouting about what the Secretary had said and accused him of calling Mr A a ‘rabble rouser’. Witness D contended that the Respondent had shouted over the Secretary and had not let him reply. Witness D stated that the Respondent had continued to shout even when other members of the community council had tried to intervene.
- The Acting Chair of the Community Council recalled there had been several unpleasant exchanges between the Respondent and the Secretary at the meeting, in relation to the Secretary’s email of 15 June 2021. The Acting Chair indicated that both the Respondent and Mr A were upset as they considered that the Secretary had insinuated to Fife Council that Mr A was unsuitable as a village representative and should not attend the proposed meeting. The Acting Chair said that the Respondent used a more “graphic description” when referring to how the Secretary had described Mr A in his email. The Acting Chair confirmed that, following the June meeting, she received the anonymous letter complaining about how the Secretary had been treated.
- In a Facebook post of 20 September 2021, the Respondent referred to her contribution at the June meeting. The Respondent contended that she had been “careful to say - as the minutes suggest” that

“the impression the Secretary’s email to Fife Council was that [Mr A] was a rabble-rouser [sic] which had led to managers to refuse him a meeting”.

In respect of the community council meeting held in person on 16 August 2021, the Panel noted that the ESC advised, in his report, that:

- The Secretary (Complainer 1) recalled that the Respondent did not retract the “misleading statement” she made at the June meeting. Instead, the Respondent had stated that she wished to clarify that she believed the Secretary had “misrepresented” Mr A in his email of 15 June 2021. The Secretary advised that the Respondent had again suggested that he had tried to deny attempting to exclude Mr A from the meeting or of giving the impression that Mr A stirred up trouble. The Secretary noted that the minutes of the August meeting supported his version of events, albeit these were yet to be formally approved.
- Complainer 2 advised that the Respondent had “doubled down” on her conduct at the June meeting by continuing to assert that the Secretary had misrepresented Mr A. Complainer 2 advised that, in response, the Secretary had attempted to read aloud his email of 15 June 2021 to show that , he had not blocked Mr A’s attendance at the proposed meeting and had not used the words “trouble-maker,” or “rabble rouser,” to describe Mr A. Complainer 2 advised, however, the Respondent interrupted the Secretary and stated that he had had long enough to respond. Complainer 2 said that the Respondent became “more animated and combative” and had raised her voice towards the Secretary and other members of the public in attendance. Complainer 2 contended that, “once it was noted by another member of the public that she was raising her voice, the Respondent angrily replied that she has hearing loss, implying her hearing loss entitled her to raise her voice in anger at meeting”. Complainer 2 noted, however, that the Respondent had been able to speak with an appropriate tone and volume at other meetings. Complainer 2 advised that he was of the view that the Respondent’s conduct was unprofessional, petty and vitriolic and that she had behaved in a bullying manner towards the Secretary. Complainer 2 noted that the Respondent had multiple opportunities to raise her concerns directly with the Secretary, as the correspondence and the minutes had been circulated in advance of the meeting. Complainer 2 noted that the Respondent had chosen instead to use a public arena to continue to make misleading accusations and that she had dismissed the Secretary’s comment that a more constructive approach would have been to raise the issue in private beforehand.
- Complainer 3, a member of the community council, stated that the Respondent was extremely aggressive to some members of the audience and that she had defended the fact that she had been shouting by saying she was deaf. Complainer 3 advised that was an affliction that only seemed to affect the Respondent when her views were challenged. Complainer 3 recalled that the Respondent had been “vitriolic in her attack” on the Secretary.
- Complainer 4, a member of the community council, accepted that the Respondent may have had a legitimate grievance. Complainer 4 advised, however, that she had been very disturbed about the aggressive manner in which the Respondent had spoken to the Secretary and considered that she had shown him little respect. Complainer 4 felt the meeting on 16 August 2021 had got “out of hand” and was “embarrassing”. Complainer 4 stated that the Respondent had ignored attempts by the Acting Chair to silence her and while the Acting Chair could potentially have been more forceful, she had asked the Respondent to stop speaking more than once, before she had felt compelled to stand up to interrupt. Complainer 4 confirmed that the Respondent stopped speaking when the Acting Chair had eventually stood up in order to attract attention.
- The Acting Chair advised that there had been nearly 40 people in the audience, and that the venue’s acoustics made it difficult to hear everything that was being said. The Acting Chair stated that everyone present had been respectful until the Respondent questioned the Secretary about his email. The Acting

Chair noted that at one point the Respondent had apologised for talking loudly and explained it was because she could not hear and was therefore unaware of how loud she sounded. The Acting Chair advised that she considered that much of what transpired, and the Respondent's behaviour, was due to her hearing difficulties. The Acting Chair recalled that towards the end, when the Respondent's partner tried to add his comments, the audience was "almost out of control" and she had to stop the whole meeting and say that she would not permit the issue to be raised in public again. The Acting Chair advised that she regretted not closing down the topic immediately.

The Acting Chair stated, nevertheless, that she did not consider the Respondent had been disrespectful to anyone. The Acting Chair advised that the Respondent had made her points in a passionate manner, as she did about any cause she felt strongly about. In this case, the Acting Chair felt that the Respondent was trying her best to stand up for Mr A. The Acting Chair confirmed that the draft minutes of the August meeting were not agreed, as there were concerns that they were not sufficiently objective.

- Witness B, who was observing the meeting, recalled the Respondent as being "really really aggressive", towards the Secretary, "screaming him down" and "going for him". Witness B said that members of the public were challenging the Respondent, and were also asking the Acting Chair to take control of the meeting. Witness B recalled that when challenged, the Respondent said that she was not being aggressive, but that she was shouting because she was deaf. Witness B advised that they considered the Respondent's behaviour was shocking and unbelievable, and that they would not expect such conduct from anyone, let alone an elected member. Witness B stated that they thought the Respondent's "bullying tactics were disgraceful, talking over anyone who was trying to give their opinion" and, in particular, the Secretary, who was trying to point out that the Respondent had completely misunderstood something, "which she then blew out of all proportion".
- Witness C stated that the Respondent had accused the Secretary of preventing Mr A from attending the meeting about the grassland. Witness C stated the Respondent's tone was aggressive, and that she had shouted at, and talked over, the Secretary, and that it had felt like an attack. Witness C recalled members of the public saying to the Acting Chair that the meeting was not the time or place for such a discussion. Witness C explained that the Respondent would not admit she was in the wrong and that the discussion on the matter went on for far too long. Witness C advised that the Acting Chair had finally stood up and put a stop to it. Witness C said that the Respondent tried to defend her tone by saying she was deaf and had to shout. Witness C noted, however that there was a difference between talking loudly and aggressively shouting, and that she considered the Respondent was shouting "aggressively".
- Witness D advised that a member of the public had been forced to intervene during the interaction between the Respondent and the Secretary, and described the situation as "embarrassing". Witness D recalled that the Respondent stated she was shouting because she was deaf. Witness D noted, however, that the Respondent had not shouted at other points in the meeting and contended that there was a marked difference between when she had been speaking and shouting. Witness D considered that the Respondent had a loud voice anyway, but that she had raised this during the interaction with the Secretary. Witness D described the Respondent's contribution as a "rant". Witness D stated that the Respondent had spoken over the Secretary and been aggressive, and advised that she found her conduct to be "highly unprofessional".

Witness D provided a copy of the letter she had sent to the Community Council's Vice Chair following the meeting on 16 August 2021, in which she said she was writing to express concern that another community council meeting had descended into chaos after the Respondent had "once again verbally attacked... the Secretary". Witness D stated that she considered the Respondent had "behaved totally unacceptably" by "shouting at the Secretary and then shouting over him when he was attempting to reply".

- Witness E, who was observing the meeting, stated that it was clear from how the Respondent had behaved and spoken to the Secretary at the meeting that she did not have much respect for him. Witness E noted that this was different to how the Respondent had spoken to others at the meeting. Witness E explained that they felt the Respondent had been dismissive, and that her tone towards the Secretary had been disrespectful.
- The draft minutes recorded that the Respondent raised concerns about the Secretary's conduct and, in particular, that he had misrepresented his email of 15 June 2021 at the meeting on 21 June 2021. The draft minutes further record that the Respondent had again suggested the Secretary had tried to deny that he had attempted to exclude Mr A from the meeting with Fife Council "by giving the impression that [Mr A] stirred up trouble". The draft minutes recorded that the Secretary had noted that the words the Respondent had attributed to him, about Mr A, at the meeting of 21 June, were not in fact ones he had used or implied in his email of 15 June 2021. The minutes record that, to prove this, the Secretary had then read aloud his email. The Panel noted that it was unclear whether the draft minutes were approved by the community council.

Turning to the Facebook post that was the subject of Issue 5, the Panel noted that the ESC advised, in his report, that:

- On 20 September 2021, the Respondent published an email (of the same date) to community council members on her Facebook page as an "open letter" and stated she was doing so in order to put her position in writing.
- The Respondent stated in her post that while the reasons given by the Secretary for his email of 15 June 2021 may be largely factually true, the clear implication from it was that Mr A had no standing or backing in the village. The Respondent stated that it had been untrue for the Secretary to say that Mr A did not belong to any community group and the Secretary's contention that Mr A was "merely someone who stirs people up in a disreputable forum" had been designed to present him in such an "unfavourable light", that council officers would exclude him from the proposed meeting. The Respondent stated that the Secretary could "deny as much as he likes that this was his intention", but that he could not deny that he sought to have Mr A excluded from the meeting. The Respondent advised that the Secretary had misled Mr A when he denied that he had sought to exclude Mr A's entry to the proposed meeting. The Respondent contended that the Secretary's email gave the impression that Mr A was a "rabble-rouser" and contended that this had resulted in council officers refusing to meet with him.
- The Respondent further stated in her post she considered it was her professional duty to uphold the truth and support her constituent. The Respondent contended that she had a duty to represent her constituents, rather than the community council or Fife Council. The Respondent further contended that it was her professional duty "to hold community councils accountable just as much as it is to hold Fife Council accountable". The Respondent advised that she considered that both the Secretary and community council owed Mr A an apology for the Secretary's behaviour, both in trying to exclude Mr A from the meeting with council officers by disparaging him, and in then seeking to mislead Mr A.
- The Respondent copied most of the content of the Secretary's email of 15 June 2021 into her post, albeit she omitted the last paragraph in which the Secretary had invited other community councillors to give their views about who should be invited to the proposed meeting.

### **Submissions made by the Respondent**

The Panel noted that the Respondent had advised the ESC that she considered the complaints to be vexatious and part of a sustained campaign against her. The Respondent contended that this stemmed from the fact that she had confronted the Secretary publicly "for lying about trying to exclude" Mr A from the proposed

meeting with council officers because she had consequently refused to apologise for or retract her statement. The Respondent argued that “in not colluding with” the Secretary “in his public lie”, she had been “upholding the standards of honesty and integrity expected of elected officials”. The Respondent accepted that the community council meeting on 16 August 2021 had been unruly, but advised that the reason she had spoken with a loud voice was because she was partially deaf.

## **EVIDENCE PRESENTED AT THE HEARING**

### **Submissions made by the ESC**

By way of background, the ESC advised that the Respondent had first been elected in 2017, but had not been re-elected in 2022, meaning she was no longer a councillor. The ESC advised that the Council had confirmed that the Respondent had been an *ex officio* member of St Monans Community Council (meaning she was a member as a result of her status as a ward councillor), at the time of the events that were the subject of the complaints under consideration.

The ESC explained that the Council’s decision to include the grassland in question in a council rewilding scheme had been controversial, with some members of the local community wanting it to be cut back. The ESC noted that one resident, Mr A, had either cut it back or organised for it to be cut back the previous year. The ESC advised that when the Respondent had suggested to council officers that a meeting be arranged to discuss what was to be done with the grassland, the Secretary had suggested, in his email of 15 June 2021, that it might not be necessary to invite Mr A, and that this had led to friction and heated exchanges involving the Respondent and Secretary at the two community council meetings on 21 June and 16 August 2021.

**Issue 1:** The ESC noted that, in her emails of 15 June 2021 to the Council’s Service Manager about the proposed meeting, the Respondent had been critical of the previous consultation process and the Council’s efforts to engage with the local community about the grassland.

The ESC advised that the Service Manager’s position was that while he had been frustrated by the tone and language used by the Respondent in the emails, he had considered her criticisms were about the service, rather than him as an individual. As such, the Service Manager had not considered the Respondent’s comments to be personal or disrespectful. The ESC noted, nevertheless, that the Service Manager had felt compelled to escalate the matter to a more senior colleague.

The ESC noted that it would not be unusual for a councillor to disagree with an approach taken by a council officer or a council service. The ESC advised that he considered it was likely that the Respondent had not intended to be disrespectful in her emails and indicated that her comments simply reflected how passionately she felt about the matter. The ESC noted, nonetheless, that the Respondent had been critical of the Service Manager’s attitude in an email that she had copied to various other individuals, including community council members, other councillors and council officers. The ESC contended, therefore, that the Respondent had, on the face of it, failed to treat the Service Manager with courtesy and respect as required by paragraphs 3.3, 3.5 and Annex C of the Code.

The ESC noted that the Service Manager had described his communications with the Respondent as a “private email exchange”. The ESC accepted, however, that as the Respondent had copied in various parties, including individuals who were not officers or elected members of Fife Council, it was arguable that her criticisms of the Service Manager had been made in public.

The ESC argued, in any event, that the Respondent would attract the enhanced protection afforded to politicians to the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) when discussing a matter of public concern; namely the Council’s approach to community engagement about the grassland. The ESC argued that as the Respondent’s criticisms had not been overtly

personal or abusive, they were not so shocking or egregious as to justify any restriction on her enhanced right to freedom of expression. The ESC suggested, therefore, that a formal finding of a breach of the Code should not be made in respect of issue 1.

**Issue 2:** The ESC noted that the community council meeting on 21 June 2021 had been held some eight days after the Respondent had been copied into (and had received) the Secretary's email of 15 June 2021. The ESC contended, therefore, that despite having had an opportunity to raise any concerns about it with the Secretary or council officers in private beforehand, the Respondent chose to do so publicly at the meeting on 21 June and again at the meeting on 16 August 2021.

The ESC advised that it was evident from the various witness testimonies, the minutes of the meetings and her subsequent Facebook post that the Respondent had accused the Secretary, at both meetings, of having tried to exclude Mr A from the proposed meeting with council officers about the grassland and had attributed statements to the effect that Mr A was a 'trouble-maker' or 'rabble rouser'.

The ESC noted that the Secretary contended the Respondent's accusations were untrue and that she had known them to be false, given he had not used any such words to describe Mr A in his email of 15 June 2021, and had not prevented him from attending the proposed meeting. The ESC noted that the Secretary further contended that the Respondent had accused him of dissembling, when he had tried to deny her accusation at the meeting on 21 June 2021.

The ESC noted that he had been unable to establish exactly the words the Respondent used at the meetings since no recordings had been made. The ESC advised that while the majority of witnesses recalled the Respondent having used the words 'rabble rouser' and 'trouble-maker' to describe how the Secretary had referred to Mr A in his email of 15 June 2021. The ESC noted, however, that the Respondent's position was that she had qualified her accusation by saying that the Secretary's email had 'given the impression' that Mr A was a rabble rouser. The ESC noted that the minutes of the June meeting, which had been drafted by the Secretary, supported this version of events.

The ESC advised that he had therefore concluded, on the balance of probabilities, that the Respondent had contended that the Secretary's email had 'given the impression' that Mr A stirred up trouble and was a rabble rouser; rather than her having stated that the Secretary had referred to Mr A as a trouble-maker or a rabble rouser.

The ESC argued that the Secretary's reference, in his email, to Mr A having 'stirred up' local residents through his Facebook account and of him having "no right to be there", could be reasonably interpreted as him having given the impression that Mr A was a rabble rouser and trouble-maker, and of him not wanting Mr A to be present at the proposed meeting. The ESC noted he could understand why the Secretary objected to the Respondent's interpretation of his email. The ESC advised, however, that he did not consider the Respondent's reporting of the content of the Secretary's email to be so unreasonable as to be disrespectful, particularly given she had qualified her interpretation by referring to the impression she considered it had made.

The ESC accepted that it may have been inflammatory and inappropriate for the Respondent to have repeatedly raised the matter at meetings in circumstances where, by her own admission, she was aware the community was already divided. The ESC noted, however, that the manner in which the Respondent had voiced her concerns was the subject of issue 3.

**Issue 3a:** The ESC advised that all witnesses accepted that the community council meeting on 16 August 2021 had been very unruly and that a large number of members of the public had been in attendance.



The ESC noted that the Acting Chair had advised that she did not consider the Respondent had behaved in a disrespectful manner at the August meeting, although she had acknowledged the Respondent had become very passionate and that it had been evident she felt strongly about the matter. The ESC noted, however, that the majority of witnesses interviewed had contended that the Respondent had again raised the issue of the Secretary's email and had behaved in an angry, aggressive and inappropriate manner towards him, both in manner and tone. The ESC advised that a number of witnesses also contended that the Respondent had raised her voice and been dismissive of the Secretary and that she had talked over him. The ESC noted that this included Witness D who, as someone who was new to the area, appeared to be entirely independent of any existing faction. The ESC noted that Witness D had felt compelled to write to the Chair with her concerns after the meeting.

The ESC acknowledged that the Respondent may have found it hard to hear what was being said especially if, as noted by the Acting Chair, the venue's layout and acoustics had caused difficulties. The ESC noted, however, that a number of witnesses had advised that the Respondent appeared to be able to hear and contribute at a normal level at other points during the meeting.

The ESC accepted that the Respondent may have felt passionately about the issue and may not have intended to be disrespectful. The ESC noted, however, that the majority of witnesses had confirmed it was the Respondent who had again raised the matter and that, when doing so, she had behaved in an aggressive and inappropriate manner towards the Secretary. The ESC therefore concluded, that, on the balance of probabilities, the Respondent had, on the face of it, been disrespectful towards the Secretary (being a member of the public), in breach of paragraph 3.2 of the Code.

The ESC again contended that the Respondent would attract the enhanced protection afforded to politicians under Article 10 of the ECHR as the issue being discussed, being how the community council addressed the matter of who should attend a meeting with council officers about local grassland, was a matter of public concern. The ESC advised that he had not identified any personal verbal abuse or hate speech directed by the Respondent towards the Secretary, and noted that just left the manner and tone in which she had addressed him. The ESC advised that he was of the view that, in the circumstances, the tone of the Respondent, while aggressive, would not amount to relevant and sufficient reason to justify any interference with her enhanced right to freedom of expression. The ESC suggested, therefore, that a formal finding of a breach of the Code should not be made in respect of issue 3a.

The ESC contended that while the Respondent's comments had been directed towards the Secretary, there was no suggestion that they had been personally offensive or threatening. The ESC noted that the Secretary had not indicated, in his complaint, that he felt bullied, harassed, intimidated or frightened as a result of the Respondent's conduct at the meeting. The ESC advised that he had concluded, therefore, that it was not sufficiently serious as to amount to bullying or harassment, in breach of paragraph 3.6 of the Code.

**Issue 3b:** The ESC noted Complainers 2 and 3 stated that the Respondent had raised her voice, been aggressive and behaved inappropriately towards members of the public in attendance at the meeting. The ESC noted that this was supported by Witness B, who contended that the Respondent had talked over anyone who had tried to voice an opinion on the matter. The ESC acknowledged, however, that all the witnesses seemed to agree that when the issue of the Secretary's email was raised, the meeting had become chaotic, unruly and out of control, and that there was evidence that members of the public in attendance had also raised their voices.

The ESC advised that, having taken into account all of the evidence, including the acoustics and layout in the venue; the size of the audience; and the likelihood that members of the audience had also raised their voices, he was of the view that while it was probable the Respondent raised her voice at the meeting on 16 August 2021, it was likely that she had done so in order to be heard. The ESC advised that he did not consider there

was sufficient evidence to determine, on the balance of probabilities, that the Respondent had addressed other members of the public present in an angry manner or that she had treated them with contempt. The ESC advised that he had concluded, therefore, that issue 3b could not be upheld.

**Issue 3c:** The ESC noted that Complainer 4 had stated that the Respondent had ignored attempts by the Acting Chair to silence her and had been forced to ask her to stop speaking on more than one occasion. Witness E also recalled the Respondent speaking over the Acting Chair. The ESC again noted, however, that while a number of witnesses described the meeting as having been chaotic, noisy and disruptive; no one else had referred to the Respondent having ignored the Acting Chair. The ESC noted that the Acting Chair had indicated as a result of a personal issue, she had not felt up to chairing on the day and, further, that she considered much of what transpired had been due to the Respondent's hearing difficulties. The ESC advised that given this, he had been unable to conclude the Respondent had deliberately spoken over the Acting Chair or ignored attempts by the Acting Chair to silence her. The ESC concluded therefore, that he did not consider it had been established, on the balance of probabilities, that the Respondent had been disrespectful towards the Acting Chair. The ESC advised that, as such, he did not consider issue 3c could be upheld.

**Issue 5:** The ESC noted that the Respondent had stated in her accompanying narrative that she was posting her email to community council members on Facebook "in the interests of openness, transparency and accountability". The ESC noted that the Respondent had not, however, included information about the Secretary's position that he had referred, in his email of 15 June 2021, to Mr A having stirred up local residents through his own Facebook post and by the fact that he had taken matters into his own hands, the previous year, by arranging for the grassland area to be cut. The ESC further noted that the Respondent copied into her post all but the last paragraph of the Secretary's email, which was the part where he had invited other community councillors to give their views on who should attend the proposed meeting. The ESC advised he had concluded that the Respondent had omitted the paragraph deliberately, to make it appear as though the Secretary had blocked Mr A's attendance, as she had alleged, when in fact he had sought the views of other community councillors on his view that Mr A should not be invited.

The ESC advised that he had concluded, therefore, that the Respondent had intentionally provided, in her post, an inaccurate representation of the Secretary's position in his email of 15 June 2021. The ESC advised he considered the wording and language used by the Respondent to be provocative, particularly given that while the email had been addressed to the St Monans Community, it was a public post that could be viewed by anyone and given that the Secretary had no public right of reply. The ESC contended that the effect of the post had generated some personal comments about the Secretary by other Facebook users. As such, the ESC considered the Respondent's conduct in publishing the post was disrespectful and amounted, on the face of it, to a breach of paragraph 3.2 of the Code.

The ESC advised that while he had found that the Respondent's post contained inaccurate statements and some provocative language that appeared to exaggerate and misrepresent what the Secretary had said in his email of 15 June 2021, she had not directed any personal abuse or hate speech towards him. The ESC advised that he had concluded, therefore, that the Respondent's conduct was not so egregious as to justify any interference with her enhanced right to freedom of expression. The ESC noted that, in reaching this conclusion, he had also noted that the Respondent had been expressing a value judgement about the Secretary's conduct. The ESC contended, therefore, that a formal finding of a breach of the Code could not be made in respect of Issue 5.

In response to questions from the Panel, the ESC confirmed that the Respondent attended meetings of the community council in an *ex officio* capacity and, as such, was there as a representative of Fife Council. The ESC further confirmed that it was not the role of a councillor to hold a community council to account.

## **Witness Evidence**

The Panel heard from the Community Council Secretary.

The Community Council Secretary advised that he and the Chair had been copied into correspondence between ward councillors and council officers about the potential meeting regarding the future of the grassland. The Secretary advised that he had queried, in his email of 15 June 2021, whether Mr A should be invited to the meeting as although Mr A had taken it upon himself to cut the grassland back in the previous year, he did not represent the local community in any official capacity. The Secretary confirmed that the proposed meeting with council officers did not go ahead.

The Secretary advised that the reference he had made, in his email, to Mr A having stirred up local residents through his Facebook account, had been based on the post Mr A had published on Facebook on 13 June 2021, in which Mr A had called for members of the public to take action to clear the grassland.

The Secretary advised that he had not considered that his email gave the impression that he was describing Mr A as a trouble-maker or ‘rabble rouser’. The Secretary advised that with hindsight, and in the knowledge of how toxic the issue would become, he would have taken more care when drafting his email. The Secretary noted, however, that it had never been his intention for his email to be publicised widely.

The Secretary advised that the community council meeting held online on 21 June 2021 had proceeded as normal until Mr A asked to speak and then proceeded to accuse the Secretary of defaming him and of blocking him from attending the proposed meeting with council officers. The Secretary advised that he had been taken by surprise by this intervention both because he did not consider it to be an accurate reflection of his email and also because he had been unaware that his email had been seen by anyone other than the council officers and elected members to whom it had been directed and copied.

The Secretary advised that before he could defend himself, the Respondent had immediately “jumped in” and had accused him of being both “disingenuous” and of trying to block Mr A’s attendance at the proposed meeting. The Secretary indicated that he felt like the Respondent and Mr A had agreed, in advance, to take him by surprise by raising the issue, and that the manner in which they had done so felt like an ambush. The Secretary accepted, however, that the Respondent had qualified her accusations that he had called Mr A a trouble-maker and a ‘rabble rouser’, by saying that was the impression given by his email.

The Secretary stated that the Respondent had not afforded him the opportunity to explain or defend himself and that he had left the meeting feeling upset and disappointed. The Secretary advised that he considered the Respondent had been deeply discourteous by raising the issue in public, without warning, in the manner she had.

The Secretary explained that the community council meeting on 16 August 2021 was the first one held in person after the Covid-19 pandemic and, as social distancing guidelines were still in place, the community council sat at one long table. The Secretary advised that the Respondent’s partner and another family member came in with her and took up seats in the public gallery directly opposite him and the Acting Chair. The Secretary advised that when the community council was asked to approve the draft minutes of the previous meeting, on 21 June 2021, the Respondent had read out a pre-prepared statement, in which she again accused him of having blocked Mr A from attending the proposed meeting about the grassland and of implying that Mr A was a ‘rabble rouser’ and a trouble-maker. The Secretary noted that the Respondent had not raised the matter with him after the June meeting on, so it appeared she had been waiting for another opportunity to do so in public.

## **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, former Councillor Holt.
2. The Respondent had breached paragraphs 3.2 of the 2018 version of the Code, being the version in place at the time of the events in question.

## **REASONS FOR DECISION**

### **Application of Code**

Issue 1: The Panel was satisfied, and noted it was not in dispute, the Respondent was emailing using her Council email account to send emails to, amongst others, a council officer concerning 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 was satisfied, and noted it was not in dispute, that the Respondent attended the Community meetings on 16 June and 21 August 2021 in her capacity as a councillor.

Issue 5: The Panel noted that the Respondent had signed off her correspondence to community council members, of 20 September 2021, as a councillor. The Panel further noted that the Respondent then published the correspondence on her Facebook page where she was also, at the time, identifiable as a councillor.

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

### **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 noted that the Service Manager had advised the ESC that while he had felt frustrated about the tone and language employed by the Respondent in her emails, he had concluded that she had been expressing disapproval about the service and the way the previous consultation had been conducted, rather than directing any personal criticism towards him. The Service Manager indicated, therefore, that he had not felt the Respondent had been disrespectful towards him.

The Panel agreed that the Respondent was entitled to raise issues about decisions made by officers and to scrutinise the way a service was provided. The Panel found, however, that the Respondent had been directly critical of the Service Manager's attitude in her second email, which she had copied to other councillors, council officers and members of the community council. The Panel further found that, in effect, the Respondent had accused the Service Manager of enflaming the situation and of damaging the Council's reputation. The Panel was of the view, that in doing so, the Respondent had failed to treat the Service Manager with courtesy and respect and had failed to work with him in an atmosphere of mutual trust and respect. As such, the Panel concluded that, on the face of it, the Respondent had breached paragraph 3.3

and paragraph 2 of the Protocol for Relations between Councillors and Council Officers at Annex C (and therefore paragraph 3.5) of the Code.

The Panel noted that there was a suggestion that the Respondent's criticisms of the Service Manager's conduct had been made in a private email exchange. The Panel noted, however, that the Standards Commission's Guidance on the Code recognises that the concept of a public statement is wide and can cover a variety of scenarios. The Panel recognised that this could include the published minutes of a meeting, a comment on social media, being overheard in a public area, and even a private meeting where other, more junior, council officers were present. The Panel noted that the Respondent had copied various other individuals, including members of the community council (being individuals who did not work for, and were not elected members of, Fife Council). The Panel concluded, therefore, that the Respondent's criticisms of the Service Manager's conduct had been made publicly. The Panel determined, as such, that the Respondent had also, on the face of it, contravened paragraph 20 of Annex C of the Code, which prohibited councillors from criticising the conduct, performance or capability of an identifiable officer in public.

**Issue 2:** The Panel noted that as no recording of the meeting on 21 June 2021 had been made, it was unable to determine, conclusively, the exact words used by the Respondent when describing how the Secretary had referred to Mr A in his email of 15 June 2021. The Panel noted that the majority of witnesses interviewed by the ESC recalled the Respondent having used the words 'rabble rouser' and 'trouble-maker', when conveying how the Secretary had described Mr A in his email. The Panel accepted, however, there seemed to be discrepancies between the witness accounts as to whether the Respondent had qualified this by saying that the Secretary had given such an impression, or whether she had asserted they were the words he had used to describe Mr A. The Panel noted, however, that the minutes, as drafted by the Secretary and the Secretary's own evidence, supported the Respondent's contention that she had simply stated that the Secretary had given such an impression.

The Panel questioned whether it was helpful or indeed appropriate for the Respondent to have commented on the conduct of the Secretary (being a member of the public) in public, particularly given she had previously noted in her email to the Service Manager of 15 June 2021 that the issue of the grasslands was contentious. The Panel noted that the Respondent could have raised any concerns with the Secretary at an earlier stage, and in private.

The Panel nevertheless concluded, on balance, that it was more likely than not that the Respondent had qualified her assertions by stating that the Secretary's email had given the impression that Mr A stirred up trouble and was a 'rabble rouser'. The Panel agreed with the ESC that the Secretary's references, in his email, to Mr A having stirred up local residents, and his objection to Mr A being invited to the proposed meeting, could be interpreted objectively as giving the impression that the Secretary considered Mr A was something of a mischief-maker or agitator. The Panel considered that Respondent's use of the terms 'rabble rouser' and 'trouble-maker' to describe what the Secretary had said was somewhat dramatic. The Panel nonetheless was of the view, in the circumstances, that outlining a reasonable, if somewhat exaggerated interpretation of the Secretary's description of Mr A's conduct, could not be said to be objectively disrespectful. The Panel concluded, therefore, the Respondent had not breached paragraph 3.2 of the Code.

**Issue 3a:** The Panel noted the accounts of various witnesses who had been present at the community council meeting on 16 August 2021 and the consistency of their descriptions of the Respondent's behaviour towards the Secretary. In particular, the Panel noted that the Respondent's conduct had been described as aggressive, combative and inappropriate. The Panel observed that both Complainers 2 and 3 had described the Respondent's behaviour as vitriolic. The Panel further noted that various witnesses had described the Respondent as having talked or shouted over the Secretary, and of her failing to afford him an opportunity to respond.

The Panel noted, however, that the Acting Chair had contended that much of what transpired could be attributed to issues with the layout and acoustics in the venue and the Respondent's hearing difficulties. The Panel considered, however, that there was a difference between having to speak loudly in order to be heard in a noisy environment, or to counter any hearing difficulties, and the raising of a voice in an aggressive manner. The Panel noted that the latter interpretation had been advanced by all other witnesses interviewed by the ESC, including one member of the public who was moved to submit a formal written complaint about the Respondent's conduct towards the Secretary to the Acting Chair after the meeting. The Panel accepted the evidence of witnesses to the effect that the meeting had been disrupted entirely as a result of the Respondent's conduct, with the Chair having to stand and demand an end to the discussion on the matter.

The Panel was of the view that the fact that the Respondent then published a lengthy Facebook post about the matter, in which she repeated her accusations about the Secretary's email, indicated that she remained upset or angry about the issue. The Panel considered this suggested that it was likely she had felt the same at the meeting on 16 August 2021 and had behaved accordingly.

The Panel acknowledged that the Respondent clearly felt strongly about her perception of how the Secretary had referred to Mr A in his email of 15 June 2021. The Panel again noted that the Respondent could have raised any concerns with the Secretary in this regard at an earlier stage and in private. The Panel noted that the matter had already been discussed at the meeting on 21 June 2021. While the Panel accepted that the Respondent may have been dissatisfied with the explanation provided by the Secretary, it considered that it had been wholly inappropriate, disproportionate and discourteous for her to have raised the matter, yet again, at the public meeting on 16 August 2021, particularly in the knowledge that the discussions about the issue at the meeting on 21 June 2021 had caused upset and discord.

The Panel concluded that the Respondent had shouted at the Secretary, being a member of the public, and behaved in an aggressive, disparaging and dismissive manner towards him at the meeting on 16 August 2021. As such, the Panel found that the Respondent had failed to treat the Secretary with courtesy and respect, as required by the Code. The Panel concluded that, as a result, the Respondent had, on the face of it, breached paragraph 3.2 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 while it had found that the Respondent's comments were directed towards the Secretary, they had concerned her understanding and interpretation of his alleged conduct towards Mr A, rather than being personal or abusive towards him as an individual. The Panel noted that there was no evidence or suggestion that the Respondent had made any derogatory or offensive comments, or that she had engaged in threatening behaviour. The Panel further noted that the Secretary had not indicated that he had felt bullied, harassed, intimidated or frightened. In the circumstances, the Panel agreed with the ESC that the Respondent's conduct towards the Secretary did not amount to bullying or harassment.

**Issue 3b:** The Panel noted that three witnesses had advised the ESC that the Respondent had behaved in an inappropriate manner towards members of the public in attendance at the meeting. The Panel noted that both Complainers 2 and 3 stated that the Respondent had raised her voice and had been aggressive, while Witness B contended that she had talked over anyone who had tried to contribute to the discussion.

The Panel noted, however, that it seemed to be accepted by various witnesses, one of whom was the Acting Chair, that the meeting had been severely disrupted, with various attendees, including the Respondent, having raised their voices. The Panel noted that several witnesses indicated that the meeting had been chaotic and noisy, with the Acting Chair having advised that she considered the layout and acoustics of the venue had made it difficult to hear.

The Panel agreed that the Respondent may well have raised her voice and talked over members of the public in attendance. Given the evidence before it to the effect that the meeting was noisy and that the Respondent, due to both the acoustics of the hall and her hearing difficulties, may not have been able to hear all other contributions, the Panel was unable to conclude, on the balance of probabilities, that the Respondent had deliberately ignored others present or had addressed them in a rude or aggressive manner. The Panel agreed, therefore, that it had not been established that the Respondent had been disrespectful to other members of the public present at the meeting. The Panel concluded, therefore, that issue 3b had not been established and should not be upheld.

**Issue 3c:** The Panel noted that both Complainer 4 and Witness E had contended that the Respondent ignored attempts made by the Acting Chair to prevent her from speaking, which had included specifically asking her to stop on more than one occasion. The Panel noted that Witness E had stated that the Respondent had spoken over the Acting Chair. The Panel again noted, however, that while other witnesses had indicated that the Respondent had been disruptive, and that the meeting had been chaotic and noisy, none had contended that Respondent had ignored the Acting Chair.

The Panel noted that the Acting Chair had confirmed that she had been forced both to end the discussion about the Secretary's alleged conduct towards Mr A and to state that she would not allow the subject to be raised in public again. The Panel noted, however, that the Acting Chair had indicated that her chairing of the meeting had not been as robust as might normally be expected, and had suggested that the layout and acoustics of the room meant it may have been difficult for everyone present to hear her. The Panel further noted that the Acting Chair had advised the ESC that she did not consider the Respondent to have acted disrespectfully. In the circumstances, the Panel was unable to conclude, on the balance of probabilities, that the Respondent deliberately ignored attempts by the Acting Chair to silence her. The Panel determined, therefore, that issue 3c had not been established and should not be upheld.

**Issue 5:** The Panel noted that the Respondent, in her Facebook post, had advised that she was making the post in order to be transparent and accountable. The Panel further noted, however, that the content of the post was not a fully accurate representation of what the Secretary had said in his email of 15 June 2021, and agreed with the ESC that certain aspects of the phrasing and language used in the post could be considered provocative. The Panel agreed with the ESC's assertion that the Respondent had omitted a paragraph deliberately, to make it appear as though the Secretary had blocked Mr A's attendance when that was not, in fact, the case.

The Panel noted that while the Respondent had addressed her post to the community, it was 'public' (in terms of its visibility on Facebook), meaning it could have been viewed by anyone. The Panel noted that it had generated some personal comments about the Secretary and was satisfied that the Respondent would, or should, have known that this was a likely outcome.

The Panel noted that the Respondent, as an elected politician, would have had a following on Facebook, and as such, an audience. The Panel contrasted this position with that of the Secretary, a member of the public carrying out an unpaid and voluntary role, who had no public right of reply to the Respondent's assertions and accusations.

The Panel concluded, therefore, that the Respondent's conduct in posting such inaccurate information, in public and in the circumstances, amounted on the face of it to a breach of the respect and courtesy provision at paragraph 3.2 of the Code.

**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 Panel noted that the Courts have also held 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 protection<sup>1</sup>.

The Panel noted it had found, on the face of it, that in her email of 15 June 2021, the Respondent had been disrespectful towards the Service Manager and had criticised his conduct in public (issue 1). The Panel noted that of the Respondent's remarks related to how the Council engaged with the local community in respect of the land in question. The Panel agreed that this was a matter of public concern and, as such, the Respondent would attract the enhanced protection in respect of her Article 10 rights, as a politician discussing a matters of public interest.

The Panel noted it had found, on the face of it, that the Respondent had been disrespectful towards the Secretary at the community council meeting on 16 August 2021 and in her Facebook post of 20 September 2021 (issues 3a and 5).

The Panel noted the Respondent's contributions at the meeting and comments in the Facebook post concerned the Secretary's email of 15 June 2021 and who should be invited to attend a proposed meeting with council officers to discuss the local community views on what should happen to the grassland. The Panel agreed, again, that this was a matter of public concern and, as such, the Respondent would attract the enhanced protection in respect of her Article 10 rights, as a politician discussing a matter of 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 council officers 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.

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<sup>1</sup> *Livingstone v Adjudication Panel for England (2006) EWHC 2533*



The Panel noted the Courts, in interpreting Article 10, 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 required<sup>2</sup>.

The Panel further noted that the Courts have determined 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 politicians<sup>3</sup>.

The Panel noted, with regards to the emails sent to the Service Manager, a council officer, that the Respondent may have felt she had legitimate concerns about the Council's approach to engaging with the community. The Panel agreed that there was no reason why the Respondent could not have raised her concerns in a respectful manner, without resorting to being disrespectful and criticising the officer's attitude and conduct in a public forum. The Panel noted, nevertheless, that the Respondent had not been aggressive or abusive and had not used any profanities or personal slurs. As such, the Panel was unable to conclude that a restriction on the Respondent's enhanced right to freedom of expression, in respect of the emails, could be justified in the circumstances.

The Panel noted, in respect of the Respondent's Facebook post, that it had found the language used by the Respondent to be provocative and that her conduct in publishing the post was disrespectful. The Panel further noted that the post was public, and appeared to have generated some personal comments from others about the Secretary. The Panel nevertheless accepted that the post itself did not contain any gratuitous personal comments, abuse, hate speech or profane language directed towards the Secretary. The Panel further accepted that while the Respondent could reasonably have foreseen that her post would encourage other Facebook users to make negative comments about the Secretary's conduct, she could not be held responsible for any personal attacks or threats others made towards him.

While the Panel noted it had found that the Respondent's post contained a degree of exaggeration and misrepresentation, it acknowledged that she was attempting to clarify her position on what had become a contentious local issue. The Panel agreed with the ESC that the Respondent was expressing a value judgement about her interpretation of the Secretary's email of 15 June 2021 and conduct thereafter. The Panel noted that the Courts have held that comments made in a political context or about a matter of public concern, which amount to value judgements, are tolerated even if untrue, as long as they have some or any factual basis. Even a statement of fact will be tolerated if what was expressed was said in good faith and there is some reasonable (even if incorrect) factual basis for saying it<sup>4</sup>. In the circumstances, the Panel did not, therefore, consider that a restriction on the Respondent's right to freedom of expression, in relation to the Facebook post, was justified in the circumstances.

The Panel accepted that there was a difference of opinion between the Respondent and the Secretary on how the Secretary's email of 15 June 2021 should be interpreted. The Panel noted it had found, however, that the Respondent had behaved in an aggressive, disparaging and dismissive manner towards the Secretary at the meeting on 16 August 2021, and had not afforded him the opportunity to respond properly when the matter was discussed. The Panel further noted that it had found that the meeting had been disrupted entirely as a result, with the Chair having to stand up and demand an end to the discussion on the matter.

The Panel considered there was no reason why the Respondent could not have sought clarity on what the Respondent meant in his email or raised concerns with him about it, either in private or public, without being argumentative, discourteous and disrespectful, and without causing undue disruption. The Panel

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

<sup>3</sup> *Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)*

<sup>4</sup> *Lombardo v Malta (2009) 48 EHRR 23*

determined, therefore, that the Respondent's conduct towards the Secretary at the meeting on 16 August 2021 had been wholly unnecessary and entirely inappropriate. The Panel was of the view that the Respondent's conduct towards the Secretary had been entirely egregious, and sufficiently offensive and gratuitous as to justify a restriction on her right to freedom of expression.

The Panel, therefore, was satisfied that a restriction on the Respondent's right to freedom of expression was relevant, sufficient and proportionate and was required to:

- Protect the reputation and rights of a member of the public;
- Help ensure confidence in elected members and the council itself;
- Ensure that the conduct of public life at the local government level, including public debate, does not fall below a minimum level of acceptable standard.

The Panel concluded, therefore, that it was satisfied that the finding of a breach of the Code in relation to the Respondent's conduct towards the Secretary at the meeting on 16 August 2021 and the subsequent application of a sanction, would not contravene Article 10.

## **SANCTION**

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

The sanction was made under section 19(1)(a) 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 breach of the Code.

The Panel was concerned the Respondent had behaved in an inappropriate and disruptive manner towards the Secretary of the community council, being a member of the public carrying out an unremunerated and voluntary role. The Panel noted that the community council meeting on 16 August 2021 had been disrupted entirely as a result of the Respondent's conduct. The Panel noted that such behaviour towards members of the public is serious, given that it has the potential to erode public confidence in the council and its elected members. The Panel noted that it also could prevent a community council from functioning and discharging its duties effectively.

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's intention had been to defend a constituent. The Panel noted that it had determined that a formal finding of breach of the Code could be made in respect of the one meeting only (meaning the conduct that was the subject of the breach finding had occurred over a short period of time, with limited impact). The Panel further noted that there was no evidence or suggestion of any personal gain or benefit to the Respondent.

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

The Panel noted that the Respondent had agreed, as part of her acceptance of office as a councillor, that she would abide by the terms of the Code, which clearly included the requirement to behave with courtesy and respect towards members of the public. The Panel noted that this requirement applies regardless of the nature of any concerns she may have had and may have wished to raise.

The Panel acknowledged that councillors have a vital scrutiny role. The Panel noted, however, that such a role can be discharged effectively and robustly, in a manner that is compliant with the respect and courtesy provisions of the Code.

The Panel was concerned to note that the Respondent had brought up the issue of what the Secretary had said in his email of 15 June 2021 again at the meeting on 16 August 2021, in the knowledge that the discussion about the matter at the meeting on 21 Jun 2021 had caused concern and upset. The Panel was concerned the Respondent had not demonstrated any insight into her behaviour and noted that she had described the complaints made against her as “vexatious” and a “witch-hunt”. The Panel was disappointed to note that the Respondent had not appeared to give any consideration to the question of whether raising the issue yet again, at the meeting on 16 August 2021, was disproportionate and would be likely to lead to further upset and / or the business of the community council being disrupted. In addition, the Panel noted that the Respondent had decided not to engage with the Standards Commission’s adjudicatory function.

Having considered and weighed up all the mitigating and aggravating factors, and in particular, that 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 noted, however, that the Respondent was no longer a councillor and, as such, the option to suspend her was not available. The Panel therefore censured the Respondent. In doing so, the Panel noted that a censure is a formal recording of its severe and public disapproval of the Respondent’s conduct.

The Panel emphasised that the requirement for councillors to behave in a respectful and courteous manner towards members of the public 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 was clear that a failure by politicians to adhere to the minimum standard of conduct expected when in public serves only to reduce the standard of public debate.

## **RIGHT OF APPEAL**

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

**Date:** 17 July 2023



**Anne-Marie O’Hara  
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.