

## **Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held online, on Tuesday, 4 February 2025.**

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

The Hearing arose in respect of a report referred by Mr Ian Bruce, the Ethical Standards Commissioner (the ESC), further to complaint reference LA/AC/3986, concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Kairin van Sweeden (the Respondent).

The ESC was represented at the Hearing by Angela Glen, Senior Investigating Officer. The Respondent represented herself at the Hearing.

### **REFERRAL**

Following an investigation into a self-referral made on 12 October 2023 and a complaint received on 16 October 2023 about the conduct of the Respondent, the ESC referred a report to the Standards Commission on 31 October 2024, in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000.

The substance of the referral was that the Respondent had failed to comply with the provisions of the Code and, in particular, that she had contravened paragraphs 3.1, 3.2 and 3.3, which were as follows:

#### *Respect and Courtesy*

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

*3.2: I will not discriminate unlawfully on the basis of race, age, sex, sexual orientation, gender reassignment, disability, religion or belief, marital status or pregnancy/maternity; I will advance equality of opportunity and seek to foster good relations between different people.*

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

### **EVIDENCE PRESENTED AT THE HEARING**

#### **Joint Statement of Facts**

The Panel noted that a joint statement of facts had been agreed between the ESC and the Respondent. This recorded that it was not in dispute that:

- the Respondent attended a full Council meeting on 11 October 2023 in her capacity as a councillor; and
- during the meeting the Respondent and the Complainer, Councillor Tissera, had the exchange as set out in the ESC's Report.

The transcript in the ESC's report records that, during a discussion on an agenda item on 'Anti-poverty and Inequality Committee – Citizen Assemblies', the Respondent stated:

*"I'd like to move on to Cllr Tissera's point about austerity. I realise as a new Scot that maybe Cllr Tissera doesn't know about the mitigations that we have to ..that the SNP government have had to put in over the years that they have been in power, for example, the bedroom tax, maybe you are not aware of the bedroom tax.. but that started a long time ago, so please do not tell us that we are causing austerity. We are not causing austerity."*

When other councillors present objected to the term “new Scot”, the Respondent stated:

*“I’d just like to apologise to Cllr Tissera unreservedly if anything I say to you has caused you any personal offence in any way. I hope that you can accept my apology.”*

In response, the Complainer said:

*“I just want to respond to Cllr Van Sweeden. What you have made me feel today is that I am an outsider, that I don’t...that you assume that I don’t know the history of this country because I am not from here. And it is ironic that you’re saying that while you’re debating on a citizens’ assembly where you want to represent people that is going to be selected randomly, people like myself as well. So, I am absolutely hurt by the words that you’ve said. I am a British citizen, I am not a second-class citizen, I am a citizen of this country, and I would like you and anyone in this Chamber to respect people and treat them equally, and do not speak like that to anybody to offend them again.”*

### **Evidence from the Respondent**

**In response to questions from the Hearing Panel**, the Respondent confirmed that on, 11 October 2023, she was present in the Council Chamber and that the record of the events, as provided for in the transcript, was accurate. The Respondent advised that in making her remarks, she was responding to the Complainer’s assertion that the Scottish Government was responsible for austerity, by suggesting that, as a ‘new Scot’, she might not know about mitigations that the Scottish Government had taken against austerity. The Respondent advised that her use of the term ‘new Scot’, in that context, was meant to soften her criticism of the Complainer, and had not been intended as an insult.

The Respondent advised she understood the term ‘new Scot’ to be “positive”, and an “umbrella term”, designed to welcome new Scots to Scotland and to make them feel at home in the country. When asked to explain why she considered the term to be positive, the Respondent advised that it was a term she frequently used, and that she knew many people who liked to be referred to as ‘new Scots’. She advised that in her social and political circle, it was not a negative term. The Respondent confirmed that she had not read her remarks from a prepared statement.

When questioned on her knowledge of the Complainer’s background, the Respondent advised that she knew the Complainer was currently undertaking a PhD, and that they had previously conversed at a meeting of a Health and Social Care Integration Joint Board.

The Respondent advised that she had been surprised by the Complainer’s reaction to the comment. The Respondent advised that she had offered a verbal apology because she realised from the reaction that perhaps not everyone viewed the term ‘new Scot’ as positively as she did. When questioned on why she had described her language as ‘clumsy’, the Respondent advised that she had done so because she felt that instead of softening her criticism of the Complainer, as intended, the words used meant she had come across as patronising. The Respondent contended that her apology had been sincere, as she understood there had been a problem, realised she needed to apologise and did so at the first opportunity. The Respondent advised that her apology was for any personal offence caused, and not for the political point she was making. The Respondent advised that she had not thought about retracting her comment, as it had been a “stressful moment”. The Respondent confirmed she had issued a written apology later the same evening. When asked why her verbal and written apologies differed (in respect of the former apologising “if” she had caused any personal offence and the latter being for “the offence... caused”), the Respondent explained that after having some time to think, she realised she needed to make her apology clearer.

When questioned about her tone in making the comment, the Respondent explained that she had been emotional as she was speaking on a topic she felt passionately about. The Respondent advised that she had not at all intended to be sarcastic.

**In response to questions from the ESC's representative,** the Respondent accepted that the term 'new Scot' was open to interpretation, explaining that was the learning she had taken from the investigation and adjudication processes. The Respondent explained she had been siloed in her thinking, in that she thought everyone considered it a positive term given her experience of its usage. When questioned on why, if she did not know much about the Complainer, she had referred to her as a 'new Scot', the Respondent explained that she knew the Complainer was a 'new Scot', and that she had wanted to "soften" the argument by suggesting that perhaps as she has not been in Scotland as long as others, she might be less aware of the policies in question. The Respondent admitted, though, that it was entirely possible the Complainer could be equally or more aware of the policies than anyone else present at the meeting.

The Respondent replied "absolutely not" when asked whether she had based her comment on the Complainer's potential knowledge of the policies, on her physical appearance. The Respondent denied making an assumption the Complainer would not know about the policies, instead contending that she had made an assertion that she *might* not, because she was a 'new Scot'. The Respondent disputed that the implication of this was that, if the Complainer had not been a 'new Scot', she would have been aware of the policies. The Respondent noted, in this regard, that the Complainer may or may not have known about them, regardless of whether she was a 'new Scot'.

The Respondent accepted that her comment had been hurtful to the Complainer as it made her feel like an outsider and second class or inferior. The Respondent further accepted that the Complainer was not the only person to take offence on the day, and that there had been immediate uproar in the Chamber after the comment, which had led to an adjournment. The Respondent accepted that during the adjournment, the Council's Monitoring Officer had spoken with her and advised her to be mindful. The Respondent advised, however, that she did not recall being asked to retract her statement.

The Respondent accepted that the then First Minister, and former leader of the SNP, had stated he had found the comment to be unacceptable. The Respondent confirmed she had since stepped down from the SNP and was currently sitting as an independent councillor.

#### **Submissions made by the ESC's Representative**

The ESC's representative advised that the Respondent had been first elected in May 2022 and had signed a Declaration of Acceptance of Office confirming she would adhere to the Code.

The ESC's representative advised that there was no dispute in respect of the factual background of the case or the transcript of the meeting in question. The ESC's representative further advised that there was no dispute that the Respondent had attended the meeting as a councillor and, as such, that the Code applied to her conduct.

The ESC's representative acknowledged that the term 'new Scot' was used in both Scottish Government and Aberdeen City Council published literature. The ESC's representative explained that, in that context, it is used as a term used to describe those of any nationality who have immigrated or moved to Scotland, and that it also refers to asylum seekers and supporting "the integration of refugees, people seeking asylum and other forced migrants within Scotland's communities". The ESC's representative further advised that it could also be an "umbrella term", used to describe people from anywhere outwith Scotland who, for whatever reason, are newly living in Scotland and contended that it is meant to be an inclusive concept that emphasises citizenship and nationality are a matter of choice, not a matter of "birth, blood or land". The ESC's representative further advised that the term had been included in the title of a book, authored by a well-known politician, on the arrival and settlement of the Asian community in Scotland, which had a particular focus on supporting mutual understanding and respect between disparate communities. The ESC's representative advised, therefore, that the Commissioner accepted the term 'new Scot' was not, in and of itself, inherently racist or pejorative.

The ESC's representative advised, however, that the context in which the term 'new Scot' had been used by the Respondent was important. The ESC's representative noted that the Respondent had suggested that, as someone not born in Scotland, the Complainer may not know about the bedroom tax (the name given to a UK welfare policy that affects tenants living in council or social housing, first introduced in 2012). The ESC's representative suggested that it was not credible that the Complainer would not know about the bedroom tax, as she had been a councillor since 2022 and had lived and studied in Scotland for some 13 to 14 years. The ESC's representative contended that, in essence, the Respondent had suggested the Complainer was "likely to be ignorant" because she had not lived in Scotland her whole life. The ESC's representative further contended that it was understandable that the Respondent's suggestion in that regard, made publicly in a full Council meeting, could be perceived by the Complainer as disrespectful.

The ESC's representative referred to a letter of support provided for the Respondent from a Glasgow City Councillor, in which he had stated that, while he was clear from knowing the Respondent it was not her intention to deliberately cause offence or to belittle the Complainer, he understood, nevertheless, that the context in which the phrase was used (being an incorrect assumption that the Complainer might not necessarily be knowledgeable about past Scottish Government policy), "*could be considered a microaggression*". The Glasgow City Councillor advised, therefore, that he understood the offence taken.

The ESC's representative reiterated that the then First Minister had described the Respondent's comment as "unacceptable". The ESC's representative noted that the Respondent, when she had been asked during the investigation for her response to the then First Minister's view, had stated that it was not clear to her what the unacceptable language being referred to was, given the use of the term 'New Scot' in both Scottish Government and Aberdeen City Council literature. The ESC's representative suggested that the then First Minister and leader of the Respondent's political party would have been best placed, as the head of the Scottish Government at the time, to determine the context in which the term should be considered unacceptable.

The ESC's representative acknowledged the Respondent had qualified her remarks about the Complainer's potential knowledge by using the word "maybe" but contended that there was nevertheless a clear implication that her status as an immigrant meant the Complainer was ignorant about issues pertinent to the debate in the Chamber. The ESC's representative noted that the then First Minister, the Glasgow City councillor who had provided a letter of support for the Respondent, and councillors present in the Chamber during the debate had all perceived the remarks in that way.

The ESC's representative noted that the Respondent stated she was responding to a statement the Complainer made on the causes and impacts of austerity during a political debate. The ESC's representative confirmed that the Code does not prevent councillors from engaging in robust political debate, provided they do so in a respectful manner. The ESC's representative contended that the Respondent could have replied to the arguments that had been advanced by the Complainer without referring to her status as an immigrant and, by extension, her protected characteristics. The ESC's representative argued that this would include making reference, even if indirectly, to the Complainer's immigration status, duration or reason of stay in Scotland, ethnicity, place of birth or skin colour, all of which were personal characteristics the ESC's representative contended to be commonly associated with the term 'new Scot'.

The ESC's representative noted the Standards Commission's Guidance on the Code states that while councillors are entitled to express their views and disagree with others, they must do so respectfully and should try to focus on the issue itself, rather than making any personal comments about an individual. The ESC's representative noted further noted the Guidance states that councillors should always be mindful of how others could reasonably perceive conduct and that even if it is not an individual's intention to be disrespectful or discourteous, their behaviour could be interpreted as such.

The ESC's representative highlighted that the Respondent had described her own comment as "clumsy". The ESC's representative contended that the Respondent's use of the term 'new Scot', in the context of the exchange, "heavily implied" that the Complainer may not be aware of certain policies due to not being a UK national, "with the further implication that her ignorance was due to her immigration status, duration or reason of stay in Scotland, ethnicity, place of birth or skin colour". The ESC's representative argued that this was objectively disrespectful and, as such, amounted to a breach of paragraph 3.1 of the Code.

Turning to paragraph 3.2 of the Code, the ESC's representative explained that, while the Complainer felt she had been discriminated against and was not treated equally due to being referred to as a 'new Scot', the Respondent was of the view that the term referred to someone not born in Scotland, regardless of nationality or skin colour.

The ESC's representative noted that examples of potential breaches of paragraph 3.2 of the Code outlined in the Standards Commission's Guidance included acting in a manner that promoted negative stereotypes, was highly offensive and inappropriate, or that was intended to insult or demean.

The ESC's representative acknowledged that the Respondent may not have intended to be disrespectful or racist, but contended that her comment clearly implied that the Complainer was less knowledgeable than her peers, due to her immigration status, duration or reason of stay in Scotland, ethnicity, place of birth or skin colour. The ESC's representative argued that it was clear the Respondent's intention was to undermine the Complainer's knowledge and any political points she may make based on that knowledge and, therefore, in the context in which it had been used, it was not reasonable to suggest it had been intended as a positive term.

The ESC's representative argued, as such, that it was more plausible that the Respondent "had treated the Complainer less favourably as a result of a protected characteristic, being her race". The ESC's representative argued that in doing so, the Respondent had promoted negative stereotypes, sought to draw a distinction between the Complainer and her peers and, therefore, had failed to foster good relations between different people. The ESC's representative acknowledged that the Respondent had not denied the Complainer an opportunity to express her views or respond, but argued that she had been singled out as not being aware of UK or Scottish Government policies and actions "as a result of her race". As such, the ESC's representative also concluded that the Respondent had, on the face of it, breached paragraph 3.2 of the Code.

Having contended that, on the face of it, the Respondent had breached paragraphs 3.1 and 3.2 of the Code, the ESC's representative proceeded to consider the application of Article 10 of the European Convention on Human Rights (ECHR) (being the right to freedom of expression). The ESC's representative noted that the Respondent's conduct occurred in a political context and in respect of a debate on questions of public interest, namely during a discussion on citizens' assemblies at a council meeting. As such, the ESC's representative accepted that the Respondent benefited from the enhanced protection afforded to politicians in such contexts.

The ESC's representative advised that a restriction on the Respondent's enhanced right to freedom of expression could be considered necessary in a democratic society if there existed relevant and sufficient reasons to justify an interference, bearing in mind that any interference must be proportionate. The ESC's representative explained that the ESC's office, and the Standards Commission, existed in part to maintain standards, which included ensuring that public debate at a local government level does not fall below a minimum standard. The ESC's representative noted that further aims included the protection of the reputation and rights of others against offensive or abusive remarks, including those of a discriminatory or racist nature. The ESC's representative contended that a proportionate interference would align with those aims.

The ESC's representative explained that, while it was accepted that politicians, such as the Complainer, are entitled to protection from offensive attacks on their reputation, the level of criticism which might properly be directed at politicians is wider than that deemed acceptable for direction to members of the public or council officers. The ESC's representative further explained that the Courts had found that there is little scope for restricting freedom of expression when there is a matter of public interest under consideration, and that, in a political context, language which might be offensive, or even aggressive, can be tolerated.

The ESC's representative contended that the "strong implication" of the Respondent's remark was that the Complainer was ignorant of UK policies due to characteristics associated with, and presumed of, 'new Scots'. The ESC's representative argued that the Respondent's remark "could further be seen as an indirect call for intolerance", and that the manner in which it was made could lead to harmful consequences, including an invitation for others to legitimise the view that 'new Scots' are ignorant.

The ESC's representative acknowledged, nevertheless, that the conclusion would be different if the Respondent had referred to the Complainer's status as a newly elected councillor, or the purported ignorance of her political party, as the basis for why she might be less familiar with historic policies.

The ESC's representative argued, however, that by "promoting a racial stereotype and by directly associating the Complainer's ethnic minority background with her ignorance of politics in Scotland", the Respondent's behaviour was discriminatory and amounted to a gratuitous personal attack on the Complainer.

The ESC's representative highlighted that comments made in a political context which amount to value judgements, are tolerated even if untrue, as long as they have a sufficient factual basis. The ESC's representative acknowledged that applying the term 'new Scot' to the Complainer was factual, as she was not born in Scotland and grew up elsewhere. The ESC's representative argued, however, that there was no factual basis for the Respondent to have equated the Complainer's "ethnic minority background" and status as a 'new Scot' with ignorance of certain historical policies.

The ESC's representative referred again to the then First Minister having publicly rebuked the Respondent for her comment, and contended that the incident had generated some of the most intense media attention about ethical conduct that her office had seen in recent years. The ESC's representative highlighted that the media attention had been UK-wide and contended that the Respondent "had been subject to widespread condemnation". The ESC's representative contended that the media "and by extension the public" "had found the incident to be bad and shocking". The ESC's representative argued, therefore, that the Respondent's conduct, had the capacity to undermine the public's faith in the ability of their elected members to "participate appropriately in debate".

The ESC's representative argued that a restriction on the Respondent's enhanced right to freedom of expression was relevant, sufficient and proportionate to protect the rights and reputation of the Complainer, and others, from discrimination. The ESC's representative further argued that such a restriction would help ensure a minimum standard of public debate and prevent public confidence in local government, the Council and the role of a councillor from being undermined.

**In response to questions from the Panel**, the ESC's representative explained that she considered the term 'new Scot' to have "complex" connotations because it was open to many different perspectives and interpretations. The ESC's representative considered that interpretations change over time, noting that previously 'new Scot' had been associated with immigrants, but latterly that it was associated with refugees and asylum seekers. The ESC's representative acknowledged that the term could be inclusive and empowering, but argued this was dependent on the specific context in which it was used. As an example, the ESC's representative noted that the term 'oriental' was not, in itself, racist as it was often used in supermarkets to describe produce. The ESC's representative contended, however, that using the term to describe an individual or to suggest they had not understood something because of their ethnicity would be

racist. The ESC's representative contended the Respondent's use of the term was problematic in this case because of her presumption that the Complainer's status as a 'new Scot', meant she "was ignorant". The ESC's representative suggested the Respondent would not have used the term had the Complainer's appearance been different "as it would have not been sensible for the Respondent to do so". The ESC's representative contended that as there was no link between the term and the matter being discussed, the only reason for the Respondent to have used it was to undermine the Complainer's credibility.

The Panel asked the ESC's representative to explain exactly how she had concluded the term 'new Scot' concerned the Complainer's race. The ESC's representative confirmed this was a presumption and explained it was made on the basis that "the term would not have been used" if the Complainer had a different appearance and, for example, has been "white and male". The ESC's representative reiterated her contention that the Respondent's remark suggested that the Complainer "was ignorant because of her appearance and particularly the colour of her skin".

The Panel noted the ESC had stated, in his report, that it would have been "nonsensical" for the Respondent to have used the term 'new Scot' if her exchange had been with a Scots-born "or white individual". The Panel asked the ESC's representative to explain the reasoning behind this assumption and statement. The ESC's representative contended that it was because the ESC considered "there was a link between the term 'new Scot' and skin colour", and that, but for the Complainer's appearance, the use of the term by the Respondent would not have been so immediate. The ESC's representative suggested it was evident that the Respondent had made her remark "in the moment" and contended this, and the Respondent's admitted lack of knowledge about the Complainer, demonstrated the Respondent's "immediate instinct in using the term had been the Complainer's appearance".

The Panel questioned whether it was just as plausible that the Respondent had assumed the Complainer was unaware of the policy in question due to her not having grown up in Scotland (as opposed to this being based on her minority ethnic background). In response, the ESC's representative accepted that would be one possible way of interpreting the comment. She argued, nonetheless, that the term had been used because of the Respondent's immediate reaction to the Complainer's appearance and skin colour. When asked to explain what evidence, specifically, this conclusion was based upon, the ESC's representative explained it was the Complainer's reaction to the comment. The ESC's representative contended that if the Complainer had not been a person of colour, "then it was plausible" that the term 'new Scot' would not have been used as a way of undermining her credibility.

When asked to explain why the Respondent's tone had been considered 'sarcastic', the ESC's representative advised that this contention was based on the Respondent's emphasis on the words "as a new Scot", and her body language at the time. The ESC's representative accepted that sarcasm and robust exchanges were not unusual, and indeed within what was expected in the cut and thrust of political debate. The ESC's representative contended, however, that this did not mean it was acceptable for politicians to treat others discourteously, disrespectfully or in a discriminatory fashion.

When asked to explain why it was considered problematic, to suggest that someone may not know about a particular matter due to not having lived in Scotland their whole life, the ESC's representative accepted that it might not be, but argued this depended on the circumstances in which such a suggestion was made. The ESC's representative acknowledged that it would be reasonable to assume that someone who had just arrived in Scotland and who was learning English might not know about a particular matter. The ESC's representative contended, however, that given the Complainer's education, experience and status as an elected member, it was not reasonable or plausible to assume she would not know about policies that were in place. The ESC's representative explained that racism was based on assumptions and stereotypes and contended that, in this case, the stereotype was that as a 'new Scot', the Complainer was more ignorant than her peers.

When asked to explain why the Respondent's remarks could be seen as an "indirect call for intolerance", the ESC's representative contended this was because they perpetuated a stereotype based on a presumption, that 'new Scots' did not know about Scotland or particular policies.

The ESC's representative was asked whether the Respondent's alleged implication of ignorance of some policies on the part of the Complainer could be seen as a value judgement (or expression of an opinion), rather than a statement of fact. The ESC's representative accepted it could, but contended, either way, it was still not appropriate.

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

The Respondent accepted that her reference to the Complainer as a 'new Scot' had clearly caused offence. The Respondent confirmed this had not been her intention and that she apologised unreservedly for doing so.

The Respondent contended that her intention, in making the comment, had been to couch positively a criticism of points made by the Complainer. The Respondent nevertheless accepted that her attempt to do so had been clumsy and resulted in her patronising a colleague, for which she was sorry.

The Respondent argued that the term 'new Scot' was positive and that the only qualification for being a 'new Scot' was to make a home in Scotland, having been born elsewhere. The Respondent contended that her use of the term was not based on anyone's appearance or on any stereotype, racial or otherwise.

The Respondent strongly refuted the ESC's representative's contention that her comment had been a personal comment based on the Complainer's appearance or ethnic minority background. The Respondent reiterated that the term 'new Scot' referred to anyone born outside of Scotland, which could include many people, such as English and Polish people. The Respondent stated that her husband is a Dutch 'new Scot'.

The Respondent rejected the ESC's representative contention that she had equated being a 'new Scot' with being ignorant. Instead, the Respondent noted that she had stated that the Complainer "maybe" did not know about a particular policy.

**In response to questions from the Panel**, the Respondent advised that the Complainer's appearance did not have any impact on what she had said at the meeting in question. The Respondent accepted that she could have achieved the point she was seeking to make by highlighting the differences in ideology and politics between her and the Complainer, rather than any difference in their backgrounds. The Respondent advised, though, that she now understood that others might perceive her highlighting an individual's newness as highlighting their differences. The Respondent nevertheless rejected the contention that her comment could be reasonably considered racist, and contended that it was not racist to call someone a 'new Scot', for the reasons she had previously advanced.

When asked what had caused the Respondent to use the term 'new Scot' if she did not know much about the Complainer's background, the Respondent advised that it was because she knew the Complainer had moved to Scotland from Sri Lanka.

The Respondent argued that the term 'new Scot' applied to the immigrant community as a whole (to which she herself belonged as she had not always lived in Scotland). The Respondent advised it was not a new term, given the book, referenced by the ESC's representative, had been published in 1992. The Respondent advised that the term 'new Scot' had been used previously to reassure those who had recently moved to Scotland that Scottish culture was tolerant and that they would be accepted into the community. The Respondent advised that she agreed with this sentiment, knew how important immigrants were to the country and believed that there was no such thing as a second-class citizen. The Respondent reiterated that she considered 'new Scot' to be an umbrella term, but accepted that her thinking on this front had been compartmentalised,

as demonstrated by the reaction in the Council Chamber. The Respondent explained that she had learned a lot from considering the alternative understanding of the term. The Respondent advised that she truly welcomed diversity and accepted it led to different views being considered, which could only seek to increase the robustness of the debate on the Council policies and proposed actions.

## **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 van Sweeden.
2. The Respondent had not breached paragraphs 3.1, 3.2 and 3.3 of the Code.

## **Reasons for Decision**

1. The Panel noted that it was not in dispute that the Respondent attended, and participated in, the Council meeting on 11 October 2023, in her capacity as a councillor. The Panel was satisfied, therefore, that the Code applied to her conduct at the time of the events in question.
2. In reaching its decision as to whether there had been a breach of the Code, the Panel took the following three-stage approach, as outlined in the Standards Commission's Advice Note on the Application of Article 10 of the ECHR:
  - Firstly, it would consider whether the facts found led it to conclude, on the balance of probabilities, that the Respondent had failed to comply with the Code.
  - Secondly, if so, it would then consider whether such a finding in itself was, on the face of it, a breach of the Respondent's right to freedom of expression under Article 10.
  - Thirdly, if so, the Panel would proceed to consider whether the restriction involved by the finding was justified by Article 10(2), which allows restrictions that are necessary in a democratic society (and, in particular, in this case, for protecting the rights and reputation of others).

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

3. The Panel recognised the sensitivities of this case and the strong feelings expressed by those involved. The Panel emphasised that racism and discrimination are abhorrent, have no place in politics and should not be tolerated.
4. The Panel noted that it was not in dispute that, during a council meeting on 11 October 2023, in response to a comment made by the Complainer (another elected member), the Respondent stated:
 

*"I'd like to move on to talk about Councillor Tissera's point about austerity. I realise as a new Scot that Councillor Tissera maybe doesn't know about the mitigations" that "the SNP government have had to put in over the years that they have been in power. For example, the bedroom tax. Maybe you are not aware of the bedroom tax, but that started a long time ago".*

The Respondent concluded her remarks by stating that other councillors should not say that her political party was responsible for austerity.
5. The Panel noted that the Complainer considered the reference to her being a 'new Scot' to be disrespectful and racist. The Complainer further considered the Respondent targeted her, not anybody else present, despite there being "white non-Scots" at the meeting.
6. In reaching its decision, the Panel in no way wished to diminish the Complainer, or anyone else's, lived experience. The Panel noted that it had read carefully the Complainer's responses and submissions, as set out in the ESC's report, and found her description of how the Respondent's comment had made her feel to be both valid and credible.
7. The Panel noted the Respondent accepted her remark was clumsily worded. The Panel was satisfied, however, from her evidence, that the Respondent did not *intend* it to be offensive, disrespectful or

discriminatory. In support of this, the Panel noted the Respondent was responding to a point made by the Complainer, on a subject the Respondent felt passionate about, rather than choosing to target her out of the blue. The Panel further noted the Respondent had been shocked and surprised by the reaction in the Chamber, and had apologised publicly at the meeting, immediately after concerns about her use of the term 'new Scot' were raised. The Panel accepted the Respondent contention that her understanding and previous usage of the term had been positive and, as such, considered her shock and surprise likely stemmed from this.

8. The Panel noted that the ESC had considered the Respondent's tone in making the comment in question to have been sarcastic, based on her emphasis on the term 'new Scot' and her body language at the time of her remarks. The Panel did not necessarily agree that the Respondent's tone could be classified as such, either by reference to her diction or body language. In any event, the Panel did not consider it was unusual for councillors, as elected politicians, to use irony or sarcasm to question an opposition colleague's awareness or understanding of an issue, during a debate, to try to score a political point. Indeed, the Panel was of the view that questioning or criticising a political opponent's awareness of a matter, regardless of whether the person posing the question or delivering the criticism has any knowledge of their rival's awareness, was a common feature and component of a democratic debate. The Panel acknowledged that doing so was often intended to undermine an opponent or even insult them. The Panel agreed, nevertheless, that making a comment with such an intention would not, in itself, meet the threshold for being considered discourteous or disrespectful in terms of the Code.
9. The Panel acknowledged, that by referring to the Complainer as a 'new Scot', the Respondent had sought to distinguish her from someone who had been born in Scotland or who had lived in the country for a long time. The Panel noted, however, that the comment was made in the context of questioning the Complainer's awareness or otherwise of a past policy, during a political debate. The Panel was of the view that distinguishing someone on the basis of the length of time they had been in a country and their potential, resulting lack of knowledge about a matter, in such a context, was not in itself problematic. As an example, the Panel noted it was not unusual for politicians to accuse political opponents from other parts of Scotland or the UK of not understanding local issues on the basis that they had been 'parachuted in' by their party to stand for election in the area.
10. The Panel did not accept the ESC's suggestion that the clear implication of the Respondent's remark was that the Complainer was, in general, 'ignorant' or less knowledgeable than her peers. In rejecting this suggestion, the Panel noted the Respondent had used the word "maybe" twice. The Panel instead considered the Respondent had implied only that the Complainer *might* not be aware, as a result of potentially not living in the country at the time, of the specific matter she [the Respondent] was referencing (being the policies introduced by the SNP Government with the apparent intention of mitigating against austerity measures such as the introduction of the bedroom tax). The Panel did not consider that a suggestion someone *might* not know about a specific matter equated to any comment on their ignorance or knowledge in a general sense that objectively could be considered disrespectful.
11. For the foregoing reasons, therefore, the Panel did not consider that the Respondent's conduct reached the threshold for amounting to disrespect or discourtesy in terms of paragraph 3.1 of the Code.
12. The Panel noted that evidence had been led to show that the term 'new Scot' was one used in both Scottish Government and Aberdeen City Council publications, with a delivery plan for the 2024-26 "New Scots Refugee Integration Strategy" being published in July 2024 (having been initially launched by the Government in 2013 and updated in 2024). The Panel noted from the ESC's report that the Government's stated intention in introducing the New Scots strategy is to welcome, support and integrate people into communities. The Panel considered this demonstrated that, in and of itself, the term was not necessarily or even commonly understood or perceived as derogatory or discriminatory. The Panel nevertheless accepted it could have such connotations and, indeed, that a number of those present at the meeting on

11 October 2023, and those who had later commented on the incident to the media, had understood it as such. As such, the Panel agreed it was important for it to consider whether anyone who heard the Respondent's remark, with knowledge of the circumstances in which it had been used (during a heated political debate) and to whom it had been directed, would reasonably understand it to be offensive or discriminatory, regardless of her motivation in making it.

13. In making this assessment, the Panel noted, for the reasons outlined below, it did not accept the ESC's position that the use of 'new Scot' would be readily or reasonably understood to be a reference to the Complainer's race, ethnicity or skin colour, or his conclusion that it amounted, or could be taken to amount, to a public assertion that the Complainer was generally ignorant due to any protected characteristic. This was because the Panel considered it was entirely plausible that a white individual who had moved to Scotland from, for example, somewhere in Europe, or even another part of the UK, could be referred to as a 'new Scot', given they were new to Scotland. Indeed, the Panel noted that the "New Scots Refugee Integration Strategy" did not define 'New Scots' based on race, ethnicity or skin colour.
14. The Panel rejected entirely the notion that the extensive media coverage of the incident was somehow evidence the media, far less the public, had found the incident to be "bad and shocking". The Panel considered extensive media coverage demonstrated only that accusations of discriminatory conduct in politics was a matter of public concern.
15. The Panel noted that the argument advanced by the ESC's representative, and as contained in the ESC's investigation report, contending that the Respondent's conduct amounted to a breach of paragraph 3.2 of the Code, appeared to rest on a number of presumptions, namely:
  - A. that the Respondent's use of the term 'new Scot' was based on the appearance of the Complainer;
  - B. that if the Complainer had a different appearance, or, specifically, had been "white and male", the term would not have been used;
  - C. that the Respondent, by using the term 'new Scot' to reference the Complainer's status as an immigrant (being someone who was not born in Scotland) was also, impliedly and by extension, referencing her race, ethnicity or skin colour;
  - D. that the Respondent, in questioning whether the Complainer might have been unaware of a particular policy, was making a more sweeping statement about the Complainer's general knowledge and capability that suggested she was in some way "ignorant".
16. For the sake of completeness and in order to address the question of whether the Respondent had breached either paragraph 3.2 or 3.3 of the Code, the Panel considered it important to address each of these presumptions in turn.
17. **A and B:** First of all, the Panel considered whether, on balance, it could conclude that the Respondent's use of the term 'new Scot' was based on the appearance of the Complainer and, also whether, if the Complainer had a different appearance, the term would have been used.
18. The Panel noted that the Respondent, in her evidence at the Hearing, had rejected categorically the contention that her use of the term was based on the Complainer's appearance. The Panel accepted the Respondent's evidence in that regard. The Panel also accepted, as genuine, the Respondent's contention that her view was that the only qualification for being a 'new Scot' was someone who wished to make a home in Scotland, having been born elsewhere.
19. The Panel noted the ESC's representative's contention that given the Respondent had made her remark "in the moment", and her admission she did not know much about the Complainer, her immediate instinct in making it must have been due to the Complainer's appearance. The Panel was concerned that given the reliance placed on this argument at the Hearing, it did not appear from the ESC's report that the Respondent had been asked about this during the investigation. The Panel considered it might have been

reasonable, had the Complainer been completely new and unknown to the Respondent, to conclude that the Respondent's use of the term 'new Scot' was likely based on the Complainer's appearance. The Panel noted, though, that the Respondent had confirmed she had known the Complainer had moved to Scotland from Sri Lanka.

20. For those reasons, the Panel did not consider it to be more likely than not that the Respondent had employed the term 'new Scot' based on the appearance of the Complainer, rather than the knowledge that she had moved to the country from elsewhere. The Panel further did not accept the term would not have been used if the Complainer was male, or had a different appearance or skin colour.
21. **C:** The Panel then considered whether it could conclude, on balance, that by using the term 'new Scot' to refer to the Complainer's status as an immigrant, the Respondent was also, impliedly and by extension, referencing her race, ethnicity and / or skin colour. The Panel noted the definition of the term 'new Scot', in the Scottish Government's literature was not based on race, ethnicity or skin colour. The Panel further noted that the Respondent's understanding (being that the term was not based on any of these factors) aligned with this literature. The Panel noted that the ESC's representative had not provided any reasons or evidence to support the contention or assumption that a reference to an individual's immigration status was automatically also a reference to their race, ethnicity or skin colour.
22. For the reasons outlined above, the Panel was unable to conclude that the Respondent, in using the term 'new Scot', could be considered reasonably or plausibly to have been impliedly and by extension referencing the Complainer's race, ethnicity and skin colour.
23. **D:** The Panel lastly considered whether it could conclude, on balance, that the Respondent, in questioning whether the Complainer might have been unaware of a particular policy, was making a more sweeping statement about the Complainer's general knowledge and capability that suggested she was in some way "ignorant". In reaching a decision on this, the Panel noted that the Respondent, in making her remarks, had stated that "*maybe* [the Complainer] doesn't know about the mitigations..." and "*maybe* you are not aware of the bedroom tax..." [emphasis added]. The Panel considered it was evident from the Respondent's use of the terms "*maybe*", "*unaware*" and "*not aware*" that she was only expressing an opinion or value judgement about the Complainer's potential knowledge of the matter, rather than making any categorical assertion that she did not know about the policies in question. The Panel rejected the ESC's representative's contention that the Respondent's remarks could be interpreted as her suggesting that the Complainer was 'ignorant', or that she was casting wider aspersions on the Complainer's general knowledge. The Panel was concerned, given the definition of 'ignorant' (as someone lacking knowledge or awareness in general, or being uneducated or unsophisticated) and the associated pejorative connotations, that a suggestion of unawareness of a specific issue had been conflated into an accusation of ignorance in general, and of promoting negative stereotypes, by somehow being an invitation for others to legitimise a view that all 'new Scots' were ignorant.
24. For the reasons outlined above, the Panel agreed it was apparent from the context in which it was used, being the questioning of whether someone who may not have lived in the country was aware of a policy in place at the time and its impact, that the Respondent was not questioning the Complainer's potential knowledge, or overall intelligence, based on any protected characteristic. Given this, the Panel did not accept the ESC's finding that the Respondent had sought to distinguish the Complainer on the grounds of her race, ethnicity or skin colour.
25. The Panel also did not accept, in light of this context and the different ways in which the term 'new Scot' is used, that most or all individuals, with full knowledge of the Respondent's remark and the circumstances in which it was made, would reasonably or readily consider it to be offensive or discriminatory.

26. The Panel further noted that the Respondent did not prevent, or seek to prevent, the Complainer from speaking, and indeed had sought to engage with what she had said by providing a response, as she would have been expected to do so in the context of a political debate. As such, it did not consider the Respondent had treated the Complainer less favourably on any ground, or that she had bullied or harassed her.
27. Therefore, for the reasons outlined, the Panel did not find that the Respondent had breached either paragraph 3.2 or 3.3 of the Code.
28. As such, the Panel concluded overall, and on the balance of probabilities, that the Respondent had not breached the Code.
29. Having found, on the face of it, that the Respondent had not breached the Code, the Panel noted it was not required to continue to stages 2 and 3, as noted above.

**Date:** 18 February 2025



**Dr Lezley Stewart  
Chair of the Hearing Panel**