

## **Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held online on Tuesday, 7 October 2025.**

**Panel Members:** Ms Helen Donaldson, Chair of the Hearing Panel  
Dr Lezley Stewart  
Mr Malcolm Bell

The Hearing arose in respect of a report referred by Mr Ian Bruce, the Ethical Standards Commissioner (the ESC), further to complaint reference LA/AB/4081, concerning an alleged contravention of the Councillors' Code of Conduct (the Code) by Councillor Tommy Macpherson (the Respondent).

The ESC represented himself at the Hearing.

### **REFERRAL**

Following an investigation into complaints received on 2 and 5 March 2024 about the conduct of the Respondent, the ESC referred a report to the Standards Commission on 3 July 2025, in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000.

The Standards Commission determined to take no action in respect of some of the issues of complaint outlined in the referral report, for the reasons outlined in a decision issued on 9 July 2025.

The Standards Commission decided to hold a Hearing in respect of the remaining issues of complaint. The substance of these was that the Respondent had failed to comply with the provisions of the Code and, in particular, had contravened paragraphs 3.1, 3.2 and 3.3, which are as follows:

#### *Respect and Courtesy*

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

*3.2: 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.*

### **Preliminary Matters**

The Hearing Panel noted that the ESC had concluded that while the Respondent had, on the face of it, breached the Code in relation to an aspect of the complaint, he considered a restriction on the Respondent's right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) that a formal finding of breach would entail, could not be justified. The Panel advised that the Standards Commission had decided nevertheless that it was both proportionate and in the public interest to hold a Hearing. This was because the Standards Commission considered that holding a Hearing (with the associated publicity) could promote the provisions of the Codes of Conduct and the ethical standards framework. It further considered that the alleged breach was not insignificant or of a technical, minor nature. The Panel noted the Standards Commission had sent the Respondent a list of the matters that it intended to explore at the Hearing. The Panel confirmed that it had no intention of considering any further issues beyond those identified.

The Panel noted the Respondent had advised the Standards Commission that he did not intend to attend the Hearing. The Panel was satisfied that the Respondent had been given proper notice of the Hearing, in

accordance with Section 20 of the 2000 Act and, as such, was content to proceed in his absence. In doing so, the Panel had before it, and considered, the submissions the Respondent had made in writing to both the ESC and Standards Commission, as outlined below.

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

The complaints had been made by two members of the public and concerned two social media posts published by the Respondent on his Facebook page. The Panel noted that the contents of the posts, as outlined below, were not in dispute.

In the first post, published on 8 December 2023, the Respondent stated the following:

*“My default position remains aligned with the United Kingdom government. Further it is my belief Islam has at its core a fanatical hatred of Jews and Western Society and we are through our weak woke political correctness, which is absolute stupidity on our part, willingly importing it. That is my opinion, my belief, neither ignorant nor naïve. I consider myself a patriot, proud of our national and cultural identity; fairness, orderliness, inclusiveness & respect for social norms. There is no shame”.*

In a second post, published on or before 21 September 2024, the Respondent shared a link to a post by a group named ‘Glasgow Friends of Israel’ (GFI), and quoted the following from its content:

*“We know so many councillors and indeed MSPs and MPs from different parties who support Israel but Tommy [the Respondent] must be one of the most outspoken and unashamed supporter and this landed him in trouble in some quarters”.*

The post by GFI, shared by the Respondent, included the following:

*“A certain Israel hater in Argyll who’s a member of an Argyll and Bute Palestinian society, decided to walk into a council meeting and complain about Tommy. Every complaint has to be taken seriously and Tommy has found himself being investigated by the Ethical Standards Commissioner... Meanwhile this nasty Israel hater has ties and a strong affiliation to proscribed terrorist organisations”.*

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

The ESC advised that the Respondent was elected as a councillor to represent the South Kintyre ward in May 2022 and signed a declaration of office confirming he would adhere to the Code on 11 May 2022.

The ESC confirmed that the issues of complaint to be considered at the Hearing concerned the two Facebook posts as outlined above. The ESC advised that the Respondent now accepted the Code applied to his conduct and, further, that he had published the posts.

The ESC explained that the background context to the posts was the conflict in the Middle East, which had escalated following the Hamas attack on Israel on 7 October 2023. The ESC explained that the first post concerned press coverage of the Respondent’s decision to abstain, at a full Council meeting on 23 November 2023, from voting on a motion concerning a potential response by the Council to the conflict. The ESC advised that an amendment to the motion was passed narrowly, with the Respondent being the only elected member to abstain.

The ESC noted that a local newspaper had published an article on the motion and vote on 1 December 2023, in which it highlighted the fact that the Respondent had been the only elected member to abstain. The article further quoted the Respondent as stating that terrorists should not be appeased.

The ESC advised that, following the press coverage, the Respondent published a post on 8 December 2023 outlining his views on the conflict in the Middle East and the UK Government’s position on Hamas. In this, the Respondent also shared an excerpt from the story in the local press and its mention of his abstention from the Council vote. The ESC noted this generated some interest from third parties and, in response to comments that were then posted, the Respondent published a further post the same day (being the one outlined above that is the subject of the complaint).

The ESC advised that he had received two complaints from members of the public about the Respondent's further post of 8 December, and particularly his comment about Islam. The first Complainer alleged the comment was racist, alarming and dangerous. The second Complainer suggested that anyone expressing such a view would not be able to represent all their constituents equally.

The ESC indicated that given the extremely emotive nature of the conflict in the Middle East, he understood why the Complainers and other members of the public may have found the contents of the Respondent's post to be offensive. The ESC suggested, nevertheless, that it was likely there would be many other members of the public who shared the Respondent's beliefs about Islam and supported his views in respect of the then UK Government's position on the matter. The ESC noted that, in the post, the Respondent expressed his views only in general terms and he had not named any specific individuals.

The ESC further acknowledged that the Code should not restrict councillors from expressing their views, provided they did so in a respectful manner. In this case, the ESC contended the Respondent's post simply amounted to an expression of his political views and ideological opinion on the nature of Islam and, as such, was neither discourteous nor disrespectful. The ESC noted that councillors were entitled to hold and express views on matters of public interest or on opposing sides of a debate, even if others disagreed with these. The ESC therefore contended that doing so could not, in itself, reach the threshold for amounting to a failure to foster good relations between different people.

The ESC argued that, as such, the Respondent's conduct in publishing the post would not amount to a breach of either paragraph 3.1 or 3.2 of the Code.

In response to questions, the ESC accepted it could be inferred reasonably, from the full content of the post, that the Respondent was suggesting Islam was not compatible with fairness, orderliness, inclusiveness and respect for social norms. While the ESC accepted this could be considered offensive by Muslims and others, he suggested it was nevertheless a right-wing view or ideology that was relatively common in the UK. The ESC noted, nonetheless, that the making of a critical comment about a religion would not necessarily cause offence to followers of the religion and reiterated that the Respondent's comment had not been directed towards any particular individual or individuals. The ESC contended the comment was entirely ideological in nature and that the Respondent had merely set out his beliefs in order to invite rational debate.

When asked by the Panel whether the fact that the Respondent's views may or may not be commonly held was a factor in determining whether his comment was offensive or whether he had been disrespectful, the ESC indicated he considered that while the Respondent's opinions may not be shared by the majority of people in the UK, they would be held by a proportion of other politicians and his constituents. The ESC noted that the very nature of a democratic society meant its citizens were entitled to hold and express a wide range of views, some of which may be considered objectionable by others. The ESC suggested that the matter before the Panel was a "test case" for the Standards Commission to determine what views were and were not acceptable for councillors to express in Scotland.

Turning to the Respondent's second post, published on or before 21 September 2024, the ESC acknowledged that quoting from and sharing a link to another post could potentially be disrespectful. In this case, the ESC noted that the GFI post shared by the Respondent referred to a member of the public as being a "nasty Israel hater" who had "ties and a strong affiliation to proscribed terrorist organisations".

The ESC noted, however, that the Respondent did not quote the part of the GFI post that referenced the member of the public. The ESC advised that the Respondent had acknowledged, during the course of the investigation, that he should have considered the GFI post in its entirety before sharing it. The ESC further advised that the Respondent had further confirmed, during the investigation, that he had removed the link from his post.

The ESC noted that the Standards Commission’s Guidance on the Code made it clear that quoting from, or sharing, another post could be seen as endorsing its content. In this case, the ESC acknowledged that the Respondent had not authored the comments about the member of the public. The ESC nevertheless contended that in:

- quoting from the post in which the comment about the member of the public had been made;
- sharing a link to that post; and
- thanking that post’s authors,

the Respondent could reasonably be perceived as endorsing its contents in full.

The ESC accepted the member of the public was not named in the post and that a degree of investigation might be required to identify her. The ESC contended, nevertheless, that in endorsing or appearing to endorse a post in which a member of the public was described as “a nasty Israel hater” and accused of having “ties and a strong affiliation” to terrorist organisations, the Respondent had engaged in disrespectful conduct, in breach of paragraph 3.1 of the Code.

In response to questions from the Panel, the ESC advised that the member of public referred to in the GFI post had walked into a Council meeting to try to lobby elected members in respect of the Council’s position on immigrants and refugees in the local authority area.

The ESC advised he did not know exactly when the Respondent removed the link to the GFI post from his own post, but confirmed it had been after he was advised that an investigation was underway. The ESC suggested it appeared that, by removing the link, the Respondent had realised the GFI post was problematic. The ESC nevertheless advised that he was not aware of the Respondent having issued any apology in respect of having originally included the link in his own post.

The ESC recognised that any formal finding of a breach of paragraph 3.1 of the Code would represent a restriction on the Respondent’s right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). The ESC argued that the Respondent would attract enhanced protection with reference to this right, in respect of both posts, given that in publishing them he was engaged, as an elected member, in discussing matters of public concern (namely the ongoing conflict in the Middle East and his position as a politician on this).

The ESC noted that the right to freedom of expression is not absolute and that a restriction on this right can be imposed, if necessary and proportionate, to:

- protect the rights and reputations of others; and
- ensure the standards of public debate did not fall below a minimum level.

The ESC noted, nevertheless, that the Courts have held that there is little scope for restrictions on political speech or on debates on questions of public interest<sup>1</sup>. The ESC further noted that in a political context, a degree of the offensive and aggressive, that would not be acceptable outside that context, must be tolerated<sup>2</sup>.

In considering the Respondent’s right to freedom of expression, the ESC noted it was important to consider the context in which any comment had been made. The ESC advised that the Respondent’s position was that he had published his posts in the context of having been the subject of a targeted campaign on social media, started by the Complainers. The ESC noted the Respondent had provided a copy of an article published in *The National* on May 2024, in which one of the Complainers was quoted as saying that she and other

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<sup>1</sup> Castells v Spain (1992) 14 EHRR 445

<sup>2</sup> Heesom v Public Service Ombudsman for Wales (2014) EWHC 1504 (Admin)

constituents planned to campaign against him if they did not consider the Council's response, to complaints they had made, to be satisfactory.

The ESC advised that the Respondent had argued, in respect of the first post, that Islam was not a race and, instead, was an ideology and doctrine. The Respondent contended that, as such, his comment could not amount to hate speech. The ESC explained that the Respondent had further argued that his comment had been taken out of context and that he was simply expressing his genuinely held belief, based on his lived experiences, that Islam and unmanaged immigration, were having a negative impact on British society and its culture, traditions, and freedoms. The ESC further advised that the Respondent explained that his reference to fanatical Islam concerned "non-violent political Islam", as opposed to violent extremism or terrorism.

The ESC noted that the Respondent had referred to a post, published on social media of a photo of a flag, on which the name of an *Al Jazeera* commentator was written, displayed at a recent kite demonstration held in the local authority area. The ESC advised the Respondent had contended this had been published despite it being known that one of the commentators in question was on record as having previously tagged Hamas officials in a social media post.

The ESC advised that the Respondent had also explained that he was being targeted for expressing his views on Islam. The ESC advised that, in support of this, the Respondent provided photos of posters that had been put up in his village, which included ones containing photos of the Israeli Prime Minister, describing him as being wanted for crimes against humanity.

The ESC advised that he was satisfied that, in the first post, the Respondent was sharing his personal opinion or view, based on his lived experiences, (which he was entitled to hold). The ESC noted that the question was whether, as a politician, the Respondent was entitled to express such a view in the manner he had. The ESC advised that, in concluding the Respondent was so entitled, he had accepted the Respondent's position that his intention was to invite rational debate and, further, that he was expressing a genuinely held belief. The ESC further noted that the Respondent's comment was critical of Islam as a religion (rather than being directed at any individuals), was not blasphemous, and did not amount to an incitement to violence or hatred.

The ESC argued, therefore, that the comment could only, fairly, be characterised as ideological in nature. The ESC suggested restricting the Respondent's right to express such an opinion would be undemocratic and argued that there would be no room for rational debate if politicians were prevented from expressing views simply because others might find such opinions offensive.

Turning to the second post, the ESC acknowledged that one factor that could potentially justify a restriction on the Respondent's right to freedom of expression was the effect his post may have had on the reputation of the member of public in question. The ESC noted that while the Respondent was not responsible for the wording of the GFI post, it had been his decision to repost it.

The ESC acknowledged that Article 10 was unlikely to provide protection for statements about Islam or any religion that were framed in such a way as to be likely to incite hostility, discrimination, or violence against religious groups. The ESC nevertheless noted that, in general, the expression of an opinion was protected by Article 10, even if the view being communicated was unpopular, shocking, or offensive. In support of this contention, the ESC noted that the European Court of Human Rights has determined that freedom of expression includes both opinions that run counter to those defended by a significant part of public opinion and those that are irritating or shocking to others<sup>3</sup>.

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<sup>3</sup> Dink v Turkey nos. 2668/07 and others, 2010

The ESC argued that, in respect of the second post, that the Respondent had not incited any hostility or discrimination. The ESC noted the Respondent had provided information that he considered demonstrated the member of the public's alleged promotion of an *Al Jazeera* commentator who, according to the Respondent had, previously "sought to undermine peace talks" to demonstrate the GFI allegation about her had some basis in fact. The ESC contended, therefore that the comments about the member of the public, contained in the GFI post and seemingly endorsed by the Respondent, were a value judgement, for which the Respondent had provided some basis in fact.

The ESC therefore argued that, when considered in the context as outlined above, the Respondent's conduct was not sufficiently bad or shocking as to justify, as proportionate, a restriction on his enhanced right to freedom of expression (that a formal finding of breach and imposition of a sanction would entail).

The Panel asked the ESC why he had changed the conclusion in his draft report (which had been issued to the Respondent for comment) and the final report referred to the Standards Commission, about whether a restriction on the Respondent's freedom of expression could be justified in respect of the second post. In response, the ESC advised he had not initially considered that there was any basis in fact for the comments made about the member of the public in the GFI post and, as such, had considered the Respondent's sharing of the post to be egregious. The ESC advised that he had changed his mind when the Respondent provided the photograph, allegedly published by the member of public on social media, of the kite containing the name of the *Al Jazeera* commentator who had previously tagged Hamas officials in other social media posts.

The ESC advised that, in addition, the Respondent provided evidence to demonstrate both that a pro-Palestinian group had put up posters of the Israeli Prime Minister next to his house and that the Complainers had advised the press that they were considering launching a 'campaign' against him. The ESC advised that, having considered this evidence, he still considered the Respondent's conduct in sharing the post amounted, on the face of it, to a breach of the respect provision in the Code. The ESC advised, nonetheless, that he had concluded the Respondent had a basis in fact for the concerns he had expressed about being targeted. The ESC explained that this has caused him to change his mind and consider that, in the circumstances, a restriction on the Respondent's right to freedom of expression could not be justified. The ESC confirmed, when asked by the Panel, that he considered this information or evidence to be a sufficient basis for an accusation that the member of the public was a "nasty Israel hater" who had "ties and a strong affiliation to proscribed terrorist organisations".

In response to a question from the Panel about whether he considered the Respondent had endorsed the content of the GFI post, by sharing a link to it, the ESC indicated that while he was "on the fence", he nevertheless acknowledged it would be reasonable for others to perceive that was the case. The ESC advised that he considered the Respondent's primary purpose in sharing the post was to demonstrate he was a supporter of GFI and noted that had the Respondent's intention been to share the accusations about the member of the public, he would have quoted that part of its content in his own post.

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

The Respondent provided written submissions both to the ESC during his investigation and to the Standards Commission in advance of the Hearing. In these, the Respondent initially disputed that the Code applied to his conduct when he had published the two posts in question. The Respondent contended that the question of whether the Code applied to a social media post would depend on its individual subject matter, and that he tended to include his contact details as a footnote in the posts he published on Facebook that were specific to his status as an elected member. The Respondent noted that his contact details were not included in the September 2024 post.

The Respondent contended his first post should be considered in its entirety. The Respondent noted that he published it in response to the press article covering his abstention on the Council motion calling for the Council's to support a ceasefire in Gaza, with the intention of inviting rational engagement. The Respondent

advised that he did not consider the first post to be a breach of the Code and that he was appalled by the accusation he was Islamophobic or racist. The Respondent noted that he had made a clear distinction between “Islam as a religion and set of doctrinal theologies” and “individual Muslims as people”.

The Respondent advised he had a great deal of interaction and engagement with the Islamic world, both as a former Royal Marines Commando and a private contractor. The Respondent advised he was trying to express his genuine concern that Islam was using Western society's democratic institutes and values to promote radical ideology.

In respect of the second post, the Respondent stated he should not be expected to explain a third-party opinion of someone else. The Respondent noted that he did not share or repost the text in the GFI post about the member of the public that was the subject of the complaint. The Respondent contended, in any event, that the member of the public referenced in the GFI post had “long relinquished their individual right to a form of anonymity”. The Respondent nevertheless acknowledged he had made an error in posting the link to the GFI post without considering the full content, and accepted this was a “misjudgement”. The Respondent advised that he subsequently edited the post to remove the link.

The Respondent expressed a general concern that his right to freedom of expression was being compromised by the Complainers. The Respondent contended that the right to freedom of expression included being able to criticise any theological aspect of a religion. The Respondent further contended that while all individuals were entitled to freedom of thought and to express their views, this right did not extend to silencing others or preventing them from exercising their own right to free speech.

## **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 Macpherson.
2. In respect of the first post, the Respondent had not breached the Code.
3. In respect of the second post, the Respondent had, on the face of it, breached paragraph 3.1 of the Code. The Panel determined, however, that having taken into account the Respondent’s enhanced right to freedom of expression under Article 10 of the European Convention on Human Rights, a formal finding of breach could not be made.

## **Reasons for Decision**

1. The Panel was satisfied that, at the relevant times, the Respondent’s Facebook account either named him as a councillor or referred to his council ward. The Panel noted that the subject of the first post was his decision to abstain from voting on a motion at a council meeting. The Panel further noted that the second post referred to the ESC, being the officeholder responsible for investigating complaints about councillors. The Panel agreed, therefore, that both posts concerned Council or councillor related matters. Accordingly, the Panel was satisfied both that the Respondent had identified himself as a councillor on the social media account and that it would be reasonable for members of the public to consider he was publishing both posts in that capacity. As such, the Panel determined that the Code applied to the Respondent’s 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 preventing the disclosure of information received in confidence).

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

3. **The first post:** The Panel noted the Respondent expressed general views on Islam in the first post. While the Panel wished to make it clear it was not endorsing or agreeing with these views, it nevertheless accepted they were ones the Respondent was entitled to hold. The Panel acknowledged that many individuals, including both Muslims and non-Muslims, would find the Respondent's statement about Islam to be inaccurate, inflammatory and offensive. The Panel agreed, nonetheless, that it was a general view about a supposed fundamental belief at the core of a religion, as opposed to a statement or comment about any specific individual or individuals (even if they belonged to, or followed, that religion).
4. The Panel further acknowledged the Respondent's comment appeared immediately after the reference to his support for the UK Government's decision to categorise Hamas as a terrorist organisation. The Panel agreed that, as such, it would be reasonable for anyone reading the post to conclude the Respondent might be linking Islam to Hamas and terrorism. The Panel found, however, that the Respondent mentioned a supposed hatred, he did not accuse any individual or group (outwith those involved with Hamas), of acting or seeking to act upon this. The Panel agreed that suggesting a religion has at its core a hatred of something does not equate to stating that the religion encourages any action to be taken against others in furtherance of such hatred.
5. The Panel noted that the Complainers appeared to suggest the Respondent's post amounted to hate speech. The Panel acknowledged, however, that while there is no universally accepted definition, hate speech is generally regarded as public comment that expresses hate or advocates, promotes or incites, in any form, the denigration, hatred or vilification of, or violence towards a person or group based on a characteristic such as race, religion, sex, or sexual orientation. In other words, provisions protecting against the use of hate speech serve to protect individuals and groups of people rather than particular beliefs, ideologies or religion. The Panel was satisfied that remarks that offend, shock or disturb cannot, by virtue of that alone, amount to hate speech. In this case, the Panel was satisfied that, in his post, the Respondent had not expressed hatred of Islam or of any individual or group and, further, had not advocated, promoted or incited the denigration, hatred or vilification of or violence towards a person or group.
6. In the circumstances, and for the reasons outlined above, the Panel did not consider the Respondent's conduct in respect of the first post would meet the threshold for amounting either to disrespect or a failure to foster good relations in terms of paragraphs 3.1 and 3.2 of the Code.
7. **The second post:** The Panel noted that the second post concerned comments made by GFI on a complaint made to the ESC about the Respondent. The Panel agreed that it was apparent the Respondent posted the quote from, and link to, the GFI post in order to draw attention to it and promote its contents. In the circumstances, the Panel agreed the Respondent's post would be reasonably regarded as endorsing the GFI post in its entirety, even if that had not been his intention.
8. The Panel noted that the GFI post did not name the member of the public it accused of being a "nasty Israel hater" who had "ties and a strong affiliation to proscribed terrorist organisations". The Panel noted, however, that the post referred to the individual in question as having complained about the Respondent in a council meeting. The Panel noted that council meetings are held in public and, further, that there had been press coverage of the complaint made by the individual. The Panel also noted that the Respondent contended that the individual had "long relinquished" their right to anonymity. The Panel was satisfied, therefore, that it was accepted the member of the public referenced in the GFI post was readily identifiable.

9. The Panel was further satisfied that it was objectively disrespectful to endorse a post where a readily identifiable member of the public was accused of having ties and a strong affiliation to terrorist organisations, particularly when there was no evidence the individual in question had been investigated or charged with, let alone convicted of, any related offence. **The Panel concluded, therefore, that the Respondent had, on the face of it, breached paragraph 3.1 of the Code in respect of the second post.**
10. In considering whether the Respondent's conduct in respect of the second post could amount to bullying or harassment, the Panel noted that as an elected politician he was in position of power over the member of public in question. The Panel accepted, nonetheless, that the Respondent had not commented, expanded upon or quoted the specific part of the GFI post that mentioned the individual. The Panel further accepted it had not seen any evidence or suggestion that the Respondent had engaged in repeated conduct towards that individual. The Panel also noted that, upon being advised of the investigation, the Respondent edited his post to remove the link to the post. Having taken account of all these factors and circumstances, the Panel concluded that the Respondent's conduct would not meet the threshold for amounting to a breach of the bullying and harassment provisions in the Code.

**Stage 2: Whether a finding of a contravention of the Code would be a breach of the Respondent's right to freedom of expression under Article 10 of the ECHR**

11. The Panel noted that enhanced protection of freedom of expression under Article 10 applies to all levels of politics, including local politics. The Panel further noted that the Courts have held that political expression is a broad concept and that there is little distinction between political discussion and discussion of matters of public concern<sup>4</sup>. In this case, the Panel noted the Respondent's second post related to the fact a complaint had been made against him, in his capacity as an elected member. The Panel was satisfied this was a matter of public interest and concern. The Panel therefore concluded that the Respondent would attract the enhanced protection of freedom of expression afforded to politicians, including local politicians, under Article 10.

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

12. The Panel noted that the right to freedom of expression is not absolute. Article 10(2) states that restrictions can be imposed, provided they are necessary in order to achieve a legitimate aim. The Panel noted that legitimate aims can include:
- protecting the rights and reputations of others; and
  - ensuring public confidence in local government was not undermined and that a council was not brought into disrepute.
13. The Panel accepted, however, that the Courts have found any restriction on freedom of expression must also be proportionate to the legitimate aim being pursued. As such, the Panel was required to undertake a balancing exercise, weighing the enhanced protection to freedom of expression enjoyed by the Respondent against any restriction imposed by the application of the Code and the imposition of any sanction. In doing so, the Panel had regard to the following findings that have been made by the Courts:
- The necessity of any restriction on the exercise of freedom of expression must be established convincingly and be in response to a pressing social need.
  - In a political context, a degree of the offensive, shocking, exaggerated, emotive, non-rational and aggressive, that would not be acceptable outside that context, should be tolerated<sup>5</sup>.
  - Notwithstanding the high importance of freedom of expression and its relative incommensurability with the interests that are invoked in justifying a restriction, the more egregious the conduct, the

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<sup>4</sup> Thorgeirson v Iceland (1992) 14 EHRR 843

<sup>5</sup> Heesom (ibid)

easier it is likely to be for a Panel to undertake the balancing that is required and justifiably to conclude that what was said or done falls within one of the exceptions to freedom of expression<sup>6</sup>.

14. The Panel further noted that the Courts have determined that a careful distinction must be made between factual statements on the one hand, and value judgements on the other. While the existence of facts can be demonstrated, the truth of value judgements is not susceptible to proof. The Courts have determined that even where a remark amounts to a value judgement, there must exist a sufficient factual basis to support it, failing which it will be deemed excessive. The obligation to have such a sufficient factual basis can be considered proportionate to the nature and degree of the allegation in question, meaning the more serious an allegation, the more sound the factual basis has to be.
15. In this case, the Panel accepted the contention that the member of the public was a “nasty Israel hater” was an opinion or value judgement. The Panel further accepted that it was even arguable that the accusation they had “ties and a strong affiliation to proscribed terrorist organisations” (being a very serious accusation), could be perceived as such. The Panel accepted that there could be evidence of pro-Palestine groups having expressed support for Hamas or hatred of Israel. The Panel nevertheless rejected the ESC’s suggestion that the fact that the member of the public may have published a photo of a kite showing a picture of a journalist from a respected broadcaster (who in turn may have, at some point, tagged a Hamas official), was a basis in fact for the accusation that she, as an individual, had “ties and a strong affiliation to proscribed terrorist organisations”. In making this assessment, the Panel noted it was not uncommon for journalists to tag others on social media in order to draw attention to their reporting. The Panel agreed that doing so could not be perceived, reasonably, as demonstrating support for terrorism. The Panel further noted, in any event, that there was no evidence or suggestion the member of the public in question had tagged the Hamas official in question.
16. The Panel was similarly of the view that evidence demonstrating the Respondent may have been targeted for his views on Islam or the Middle East conflict had no bearing on, or relevance to, the question of whether there was a basis in fact for the contention that the individual and specific member of public referenced in the GFI post had “ties and a strong affiliation to proscribed terrorist organisations”. As noted above, the Panel was satisfied that it had not been presented with any evidence whatsoever to indicate the individual in question had been investigated or charged, let alone convicted of any related offence.
17. The Panel agreed that, given the Respondent’s previously publicly expressed views and the fact that he had both shared and quoted from the GFI post, it was not reasonable to suggest he was doing anything other than endorsing and promoting its contents.
18. The Panel nevertheless noted that, by appearing at a Council meeting where a motion on the conflict in the Middle East was being considered, the member of the public to which the GFI post had referred, had essentially already put herself and her views into the public domain. The Panel agreed that given the contentious nature and strength of views on both sides of the conflict, it would be reasonable for her to expect that, in doing so, she might be the subject of some negative commentary (albeit not necessarily from an elected representative).
19. The Panel further acknowledged that while the Respondent shared the GFI post containing the statement about the individual in question, he had not:
  - authored it himself;
  - mentioned her or commented on her actions or beliefs;
  - specifically named her in his own post (meaning she was not immediately identifiable from the Respondent’s own post); or

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<sup>6</sup> R (Calver) v Adjudication Panel for Wales (2012) EWHC 1172 (Admin)

- quoted from, or drawn attention to, the specific part of the GFI post that contained the allegations about her.

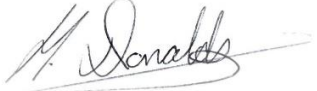
20. The Panel further noted that the Respondent had edited his post to remove the link to the GFI post, when advised that the ESC was investigating the matter, and that he had acknowledged making a misjudgment in posting the link to the post without having considered its full content.

21. Having taken into account the context and factors outlined above, the Panel determined, on balance, that the Respondent's conduct, in sharing a link to the post, was not so excessive as to justify, as proportionate, a restriction on his enhanced right to freedom of expression. The Panel concluded, therefore, that a formal finding of a breach of the Code could not be made.

22. The Panel noted that the ESC had suggested during his submissions that the Panel's decision on this matter could be viewed as a "test case" for determining what views were and were not acceptable for councillors to express in Scotland. The Panel refuted this suggestion entirely. It noted the Standards Commission's role was to determine only whether the Code had been breached.

23. The Panel noted, in any event, that decisions on whether the Code had been breached, which involved consideration of an individual's right to freedom of expression, were entirely context and circumstance specific. These could include not just any words used but also the setting and medium, who they were directed towards, the tone adopted and who was present. The Panel noted it would be perfectly possible, for example, for two councillors to make exactly the same remark, but for one to be found to have breached the Code and the other not, based on the circumstances and context in which they were made. The Panel noted that the Standards Commission had made this clear in a number of previous decisions.

**Date:** 14 October 2025



**Helen Donaldson  
Chair of the Hearing Panel**