

## **Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held online on Monday 30 October 2023.**

**Panel Members:** Ms Anne-Marie O’Hara, Chair of the Hearing Panel  
Ms Suzanne Vestri  
Mr Paul Walker

The Hearing arose in respect of a Report referred by Mr Ian Bruce, the Ethical Standards Commissioner (the ESC), further to complaint reference LA/As/3780, concerning an alleged contravention of the Councillors’ Code of Conduct (the Code) by Councillor Fatima Joji (the Respondent).

The ESC was represented at the Hearing by his Senior Investigating Officer, Mrs Angela Glen. The Respondent was represented by Mr Scott Martin, solicitor.

### **Referral**

Following an investigation into a complaint received on 15 July 2022 about the conduct of the Respondent, the ESC referred a report to the Standards Commission on 10 August 2023, in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act).

The substance of the referral was that the Respondent had failed to comply with the Councillors’ Code of Conduct dated December 2021 (the Code) and, in particular, that she had contravened paragraph 3.1, which states:

#### ***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.***

### **Evidence Presented at the Hearing**

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

The ESC’s representative advised that it was not in dispute that, in a number of Twitter (now known as ‘X’), posts on 14 and 15 July 2022, the Respondent:

- accused the Complainer of “harassing and hounding” others;
- called the Complainer “toxic”, “scum”, “hypocritical scum” and a “disgusting hypocrite”;
- invited the Complainer to “absolutely gtf”, (gtf’ being a widely understood acronym meaning ‘get to fuck’);
- stated that the Complainer did not “deserve [her] respect”; and
- named the Complainer in the biography section of the account and stated that he was “toxic”.

The ESC’s representative noted that the Respondent was first elected as a councillor on 5 May 2022 and that she signed a declaration of acceptance of office the following day, in which she undertook to comply with the provisions of the Code.

The ESC’s representative noted that the Complainer is a Scottish independence campaigner, who is responsible for a blog entitled ‘Wings Over Scotland’. A description on the blog states that it is a “political media digest and monitor, which also offers its own commentary”. The ESC’s representative advised that after the blog’s official Twitter account was, at the time, suspended for violation of the platform’s rules against hate content, the Complainer created a new account entitled ‘The Ghost of Wings Over Scotland’, which he uses to post political commentary. The ESC’s representative contended that the Complainer is so

closely associated with the blog and the account that he is often referred to as ‘Wings over Scotland’ or ‘Wings’ for short.

The ESC’s representative advised that, on 14 July 2022, the Complainer commented on the Twitter account that as a particular individual who was standing to be the leader of the UK Conservative party was “a young black female working-class immigrant”, she would be a good candidate. The Respondent re-posted this tweet on the same date and referred to the Complainer, as “toxic”, “scum” and a “clown”, while stating that he could “absolutely gtf”. The ESC’s representative noted that the Respondent repeatedly stated in her posts that the Complainer had harassed members of the SNP network from ethnic minority backgrounds. The ESC’s representative advised that the Respondent also updated her Twitter biography to include a sentence at the end to state “[Name of the Complainer] is toxic”. The ESC’s representative noted that in response, the Complainer published a blog post about the Respondent, entitled “a little respect”, on 15 July 2022, which featured screenshots of the Respondent’s tweets.

The ESC’s representative advised that the Respondent accepted, in a response submitted on the ESC’s draft report, that she accepted her use of some words, such as ‘scum’ and ‘toxic’, in respect of the Complainer, amounted to a breach of paragraph 3.1 of the Code, and that it was not acceptable for her, as an elected representative, to have employed such language.

The ESC’s representative noted, however, that the Respondent disputed that the Code applied to her when she was engaging with the Complainer on social media. The ESC’s representative contended that it did apply, at the time, for the following reasons:

- the Twitter account used by the Respondent expressly referred to her as a councillor, as it was entitled ‘Cllr Fatima (Zahra) Joji’, and was a public account, meaning it was open to anyone to view;
- the account’s biography stated that the Respondent was an SNP councillor for Westhill and District and provided her council email address;
- at the time of the ESC’s investigation, a post was ‘pinned’ on the account stating that the Respondent would not always check direct messages as she gave priority to constituents and professional requests;
- the Respondent referred to herself as “an elected rep” during the exchange with the Complainer;
- the overwhelming majority of the account’s content related to politics or matters of public interest, including re-tweets from the Council’s official twitter account;
- the Respondent had a significant number of followers and followed a large number of accounts, including ones representing various other politicians.

The ESC’s representative argued, therefore, that not only had the Respondent clearly identified herself as a councillor on the account, but that she would be considered objectively by members of the public to be acting as such when posting on its pages. The ESC’s representative noted that the Respondent had also argued, in submissions made to the ESC, that the Code did not apply as the comments were posted during the summer holidays. The ESC’s representative contended, however, that the Code applied for the duration of an elected member’s appointment.

Turning to the question of whether the posts and comments about the Complainer amounted to a breach of the Code, the ESC’s representative firstly addressed the Respondent’s accusation that he had harassed and hounded councillors from black, Asian and minority ethnic backgrounds. The ESC’s representative submitted that making such an allegation about another person was inherently disrespectful as it could cause reputational damage. The ESC’s representative contended that this was particularly the case given that harassment can be a criminal offence. The ESC’s representative argued, therefore, that the Respondent had, on the face of it, breached paragraph 3.1 of the Code, which requires councillors to treat others with courtesy and respect.

The ESC's representative accepted, nevertheless, that the Respondent would attract enhanced protection in respect of her right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR), as she was engaging with the Complainer over a matter of public interest with a political background; namely the nomination of a politician from an ethnic minority background as Conservative party leader.

The ESC's representative contended a restriction of the Respondent's enhanced right to freedom of expression, that a finding of a breach of the Code, and the subsequent imposition of a sanction would entail, was not justified in respect of the Respondent's accusation that the Complainer had hounded and harassed others. The ESC's representative explained that this was because the Respondent was stating her opinion and expressing a value judgement about the Respondent's conduct. The ESC's representative noted that the Respondent had provided reasons as to why she held this view; namely the negative blogs the Complainer had published both about her and about other SNP members from ethnic minority backgrounds.

The ESC's representative noted that the sharing of such a value judgement can be excessive and gratuitous, especially if it lacks any basis in fact whatsoever. The ESC's representative argued, however, that it was apparent, in this case, that the Respondent had reasons for her view that the Complainer had hounded and harassed others. In addition, The ESC's representative contended that the Respondent's comment to the effect that he had done so was not especially bad or shocking, particularly given it did not contain any polemical language, verbal threats or swearing. The ESC's representative argued, therefore, that a restriction to the Respondent's right to freedom of expression in respect of her accusation that the Complainer had hounded and harassed others was not necessary and could not be justified.

The ESC's representative then addressed the Respondent's use of the words 'toxic' and 'scum' to describe the Complainer, both in tweets and in the account's biography. The ESC's representative submitted that referring to someone, in a public forum, as 'disgusting', 'scum' or 'toxic', and / or any combination of such terms, was again inherently disrespectful and discourteous. The ESC's representative stated this was because 'scum' is commonly understood to refer to someone as worthless or contemptible, and 'toxic' as someone who is harmful or unpleasant, and whose behaviour causes harm and upset. The ESC's representative explained that it was not in dispute that the Respondent stated in the series of tweets she posted, that the Complainer did not deserve her respect.

The ESC's representative acknowledged the Respondent's position was that the Complainer was targeting her, and her colleagues, and that she had been sufficiently scared for her well-being as to report the matter to the police. The ESC's representative empathised with the Respondent in this regard, particularly in light of the substantial number of individuals who follow the Complainer's blog and Twitter account.

ESC's representative noted, nevertheless, that the Standards Commission's Guidance on the Code states that councillors must treat everyone they come into contact with, in their role as a councillor, with courtesy and respect, even if they disagree with the person's views. It further advises that it is usually better to try to focus on the issue itself, rather than making any personal comments about an individual. The ESC's representative contended, however, that the Respondent had failed to follow this advice. The ESC's representative suggested that it was evident from the context in which the Respondent made the comments about the Complainer, that she intended to cause offence and to be disrespectful. The ESC's representative noted that there was a difference between making comments about an individual's views and them as a person. In this case, it was evident that the Respondent's references to the Complainer as 'toxic' and 'scum' were an attack on the Complainer himself, rather than a judgement about his website, blog or views. The ESC's representative argued, therefore, that the Respondent had, on the face of it, breached paragraph 3.1 of the Code by referring to the Complainer as 'toxic' and 'scum'.

The ESC's representative again accepted, however, that the Respondent would attract enhanced protection in respect of her right to right to freedom of expression under Article 10 of the ECHR, as she was engaging in

a debate on a matter of political and public interest, namely the nomination of a politician from an ethnic minority background as Conservative party leader.

The ESC's representative argued that a restriction on the Respondent's right to freedom of expression, in respect of her calling the Complainer 'scum' and 'toxic', was justifiable. This is because such a restriction was necessary and proportionate to the Code's legitimate aims, which included:

- maintaining standards and ensuring the conduct of public life at the local government level did not fall below a minimum level;
- protecting the reputation and rights of others; and
- ensuring confidence in elected members and the Council itself.

The ESC's representative acknowledged that the Respondent felt victimised, bullied and harassed by the Complainer, who had or held opposing values and beliefs. The ESC's representative further acknowledged that it was a natural response for someone, when they feel targeted, to respond in kind. The ESC's representative noted that the Respondent had every right to respond, but did not accept that she was entitled to do so in a manner that was personal, gratuitous and offensive, and fell below the minimum level of standards that the public is entitled to expect of its elected members. The ESC's representative accepted that this may seem unfair in light of any provocation, but noted that, in contrast to members of the public, the Respondent, as a councillor, had committed to abiding by a Code of Conduct.

The ESC's representative noted that it was arguable that the Respondent was expressing a value judgement about the Complainer. The ESC's representative argued, however, that even where a statement or comment amounts to a value judgement, "there must exist a sufficient factual basis to support it, failing which it will be excessive". The ESC's representative contended that the Respondent's references to the Complainer as 'disgusting', 'scum' and 'toxic' were intended to cause personal offence and to be disrespectful, demeaning and possibly even humiliating. The ESC's representative contended that even if the Respondent was making a value judgement, and such a judgement had even a minimal basis in fact, this would not detract from the personally offensive and gratuitous nature of the remarks. The ESC's representative noted that the Respondent could have made her views about the Complainer's conduct and beliefs known in a more respectful manner, without resorting to personal abuse. In the circumstances, the ESC's representative contended that a finding of a breach of paragraph 3.1 of the Code would be justified.

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

The Respondent's representative argued that the "simple, unvarnished truth" was that it was evident from his blog and Twitter account that the Complainer was 'toxic'. The Respondent's representative further argued that it was evident from press coverage that this was a widely held view. In support of this, the Respondent's representative referred the Panel to an article in the *New Statesman*, in which it was stated that the Complainer's website and social media output was "awash in transphobic vitriol and conspiracy theories" and had "been toxic for years". The Respondent's representative further referred the Panel to articles covering the Complainer's unsuccessful defamation case against the former Scottish Labour party leader, in which the Court held that the Scottish Labour party leader's reference to the Complainer having posted homophobic tweets was fair comment. In his judgment, the presiding Sheriff noted that the Complainer had "chosen insult and condemnation as his style".

Turning to the question of whether the Respondent's right to freedom of expression under Article 10 of the ECHR should be restricted, the Respondent's representative noted that the Courts have held that only a very narrow margin of appreciation must be afforded to competent national authorities to restrict discussions on matters of public interest. Comments in the political context, which amount to value judgements, are tolerated even if untrue, as long as they have some or any factual basis. Even a statement of fact will be tolerated if what was expressed was said in good faith and there is some reasonable (even if incorrect) factual

basis for saying it<sup>1</sup>. The Respondent's representative contended, in this case, that the Respondent's remarks about the Complainer could only be described as gratuitous if they did not have any factual basis. The Respondent's representative argued, however, that it was evident from the press article and court case that the Respondent's remarks were fair comment and, further, that they had a firm factual basis. The Respondent's representative submitted, therefore, that a restriction on the Respondent's Article 10 rights was not justified.

The Respondent's representative accepted that paragraph 3.1 of the Code requires councillors to treat others with courtesy and respect. The Respondent's representative noted, however, that respect was a relative concept as what it meant was dependent on the setting. For example, what might be described as disrespectful conduct at a funeral could well be acceptable at a football match. The Respondent's representative argued that the fact that respect was setting-dependent was a concept that everyone learned from an early stage, with even children being able to understand between the need to behave differently in a playground to a classroom. The Respondent's representative argued that it was evident from the nature of the discourse on the Complainer's blog and Twitter account, that the Respondent's remarks had been made in a setting where the type of language she had used was not unknown or abnormal and where there had been a great deal of provocation. The Respondent's representative submitted, therefore, that in the context of the nature of the discourse in which she had engaged, the Respondent had not been disrespectful and had not breached paragraph 3.1 of the Code.

The Respondent's representative further contended, in any event, that the Code did not apply to the Respondent's conduct in making the remarks. The Respondent's representative advised that the Complainer lived in Bath, had no known connection to Aberdeenshire and that none of his comments had concerned the Council or its functions. The Respondent's representative acknowledged that the Code stated it could apply in a situation where an individual had self-identified as a councillor. The Respondent's representative argued, however, that there still needed to be some link to the individual *acting* as a councillor. To support this contention, the Respondent's representative noted that an individual would not be considered to be acting as a councillor or that the Code would apply at a wedding, simply because they had been introduced as an elected member by a fellow guest.

In response to questions from the Panel, the Respondent's representative accepted that paragraph 1.6 of the Code states that it applies in all situations, and at all times, where an individual is acting as a councillor, has referred to themselves as a councillor *or* could objectively be considered to be acting as a councillor. The Respondent's representative reiterated his argument, however, that self-identification as a councillor was not determinative and was merely a factor to consider

The Respondent's representative acknowledged that the article in the *New Statesman* had referred to the Complainer's website as being 'toxic', rather than him as an individual as such. The Respondent's representative argued, however, that there was no real difference as the Complainer and his blog and website were perceived as synonymous and interchangeable.

## **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 Joji.
2. The Respondent, had on the face of it, breached the courtesy and respect provision in the Code.

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<sup>1</sup> *Lombardo v Malta (2009) 48 EHRR 23*

3. A restriction on the Respondent's right to freedom of expression under Article 10 of the ECHR was justified. As such, a formal finding of a breach of paragraph 3.1 of the Code was found.

### **Reasons for Decision**

In reaching its decision as to whether there had been a breach of the Code, the Panel took the following three-stage approach, as outlined in the Standards Commission's Advice Note on the Application of Article 10 of the ECHR:

- First, it would consider whether the facts found led it to conclude, on the balance of probabilities, that the Respondent had failed to comply with the Code.
- 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 the protection of the reputation or rights of others).

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

Having considered the evidence led, and the submissions made orally at the Hearing and in writing, the Panel was satisfied that the factual basis of the complaint was not in dispute.

The Panel noted that:

- the Respondent's Twitter account was entitled "Cllr" Joji, contained a 'pinned' Tweet stating that she gave priority to constituent enquiries; and noted, in the biography that she was an SNP councillor;
- the Respondent had self-identified as an "elected rep" during the exchange with the Complainer.

The Panel noted that the Code applies in all situations, and at all times, where an individual is acting as a councillor, has referred to themselves as a councillor, or could be considered objectively to be acting as a councillor. The Panel agreed with the ESC's representative that the Code applied for the duration of an elected member's appointment.

In this case the Panel was satisfied that the Respondent had self-identified as a councillor on the account and in the exchange with the Complainer. The Panel further considered that the Respondent could be considered objectively to be acting as a councillor during the exchange. This was because it was evident that the account was the one she used for council related business and, further, her exchange with the Complainer concerned matters of political concern. The Panel determined, therefore, that the Code applied.

The Panel acknowledged the Respondent's representative's point that the Respondent's comments to the effect that the Complainer had harassed and hounded people amounted to opinions or value judgements, which had a basis in fact. The Panel nevertheless agreed with the ESC's representative that making a statement to the effect that a member of the public had harassed and hounded others was discourteous and disrespectful, given the likelihood of resulting reputational damage from the making of such a serious accusation. While the Panel acknowledged the Respondent's position that she was standing against what she perceived to be bullying and harassment of individuals from ethnic minorities in politics, it noted that the Complainer had not 'tagged' or mentioned the Respondent in any posts that led to the exchange. The Panel found, therefore, that the Respondent had chosen to make accusations about him in an open and public forum, without any direct provocation.

The Panel agreed that both 'scum' and 'toxic' were clearly derogatory terms. The Panel further agreed that it was evident from the context of the full exchange, that the Respondent used the term 'scum' and 'toxic' as descriptors of the Complainer's character, to attack him as an individual, rather than to express an opinion on, or rebut, any particular views he held or conduct in which he had engaged. The Panel further noted that



the Respondent's decision to name the Complainer and describe him as 'toxic', in the open biography section of her page, meant that anyone viewing it would have been presented with this characterisation, even if they had no prior knowledge of the Complainer or any dispute he may have had with the Respondent. In addition, the Panel noted that the Respondent had stated, in the exchange, that the Complainer could 'absolutely 'gtf', being an acronym for 'get to fuck', and that he did not deserve her respect. The Panel agreed with the Commissioner's representative that this demonstrated that the Respondent intended to be disrespectful and to cause offence.

The Panel accepted, to some extent, the Respondent's representative argument that the degree to which conduct might be considered respectful was dependent on the setting. While the Panel agreed that it was not uncommon for some discourse on social media to be offensive and rude, it did not consider, however, that this negated the requirement for a councillor to abide by the Code. The Panel agreed that, if she had wished to do so, the Respondent could have challenged the Complainer's conduct and views in a manner that was compliant with the Code, and that did not involve resorting to using derogatory terms to insult and attack him in a public forum. The Panel noted that the Code could well be perceived as obliging councillors to conduct themselves on social manner in a more respectful way than that expected or required of members of the public. The Panel was satisfied, however, that this was entirely appropriate given that councillors, as politicians, are public figures and leaders, and the public has a right to expect them to behave accordingly.

The Panel agreed with the Commissioner's representative, therefore, that the Respondent's overall conduct was objectively disrespectful. The Panel concluded that the Respondent had, on the face of it, contravened the requirement in paragraph 3.1 of the Code for councillors to treat everyone with courtesy and respect.

**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**

Having found, on the face of it, that the Respondent had breached paragraph 3.1 of the Code, the Panel proceeded to consider the applicability of Article 10.

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>2</sup>. In this case, the Panel was satisfied that the Respondent was engaging in a debate on a matter of public interest, namely the representation of those from ethnic minority groups in politics. In the circumstances, the Panel considered that the Respondent would attract the enhanced protection of freedom of expression afforded to politicians, including local politicians, under Article 10.

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

The Panel nevertheless noted that the right to freedom of expression is not absolute. Article 10(2) states that restrictions can be imposed, provided they are necessary in order to achieve a legitimate aim. As noted by the ESC's representative, legitimate aims can include ensuring that the conduct of public life at the local government level, including public debate, does not fall below a minimum level so that public confidence in democracy is not eroded. The Panel noted a restriction can also be imposed to protect the reputation and rights of others (including members of the public) and to ensure or maintain confidence in elected members and the council itself.

The Panel noted, 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 this case, as the

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<sup>2</sup> *Thorgerison v Iceland (1992) 14 EHRR 843*

issues being discussed by the Respondent concerned matters of public interest or concern, the Panel noted there was limited scope under Article 10(2) for a restriction on the Respondent's right to freedom of expression. The Panel proceeded to consider whether the restriction involved by the finding that the Code had been breached was therefore proportionate and justified, in terms of Article 10(2).

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

The Panel noted that the Courts have held that, in a political context, a degree of the immoderate, offensive, shocking, exaggerated, provocative, controversial, colourful and emotive, that would not be acceptable outside that context, is tolerated. The Courts have also held that comments made in a political context, which amount to value judgements, are tolerated even if untrue, as long as they have some or any factual basis. Even a statement of fact will be tolerated if what was expressed was said in good faith and there is some reasonable (even if incorrect) factual basis for saying it.

Given the information before it, including the article in the *New Statesman* and the decision in the defamation case he had brought, the Panel accepted that the Respondent's accusation that the Complainer had been "harassing and hounding" individuals amounted to a value judgement that appeared to have a basis in fact. The Panel further considered that the comment was an expression of the Respondent's opinion on the Complainer's previous actions, rather than a personal attack on his character. The Panel acknowledged the ESC's representative's point that harassment can be a criminal offence and, as such, it was a serious accusation to make. The Panel considered, however, that it was evident from the context that the Respondent used 'harassing' to convey the general sense of the word, rather than to accuse the Complainer of a specific criminal offence. In the circumstances the Panel considered, on balance, that the accusation of "harassing and hounding", was a value judgement that did not amount to an egregious or offensive attack on the Complainer's character. As such, the Panel was not persuaded that a restriction on the Respondent's rights to freedom of expression under Article 10 could be justified in respect of that aspect of the complaint.

The Panel considered, however, that the Respondent's classification of the Complainer as "scum" and "toxic" in the context of inviting him to "gtf", were personal attacks on him and his character. The Panel understood that the Respondent had felt compelled to comment, but considered that she could have done so, and could have expressed her views and opinions on the Complainer's posts, without resorting to personal abuse of that nature. The Panel did not accept that the Respondent's representative's position that the piece in the *New Statesman* demonstrated that such characterisations were value judgements that had a basis in fact, given the reference in the article referred to the Complainer's website as being 'toxic', rather than him as an individual, and given it made no mention of the word 'scum'. The Panel agreed with the ESC's representative that in calling the Complainer "scum" and "toxic" the Respondent had engaged in entirely offensive and gratuitous personal abuse.

The Panel was satisfied, therefore, that the imposition of a restriction on the Respondent's right to freedom of expression in the circumstances, in respect of her description of the Complainer as "scum" and "toxic", was relevant, sufficient and proportionate. The Panel concluded, therefore, that it was satisfied that a finding of breach, and the subsequent application of a sanction, would not contravene Article 10. It concluded a finding of a breach of paragraph 3.1 could be made.

#### **Evidence in Mitigation**

The Respondent's representative asked the Panel to note that Respondent's conduct had taken place during a Twitter exchange over only two days and was, therefore, limited both in scope and duration. The Respondent's representative further asked the Panel to note that there had been no gain or benefit to the Respondent, pecuniary or otherwise.



The Respondent's representative accepted that the breach of the Code as found could not be classed as inadvertent or technical, but contended that the contravention could not be classed as particularly serious when viewed in the context in which the Respondent's conduct occurred. The Respondent's representative noted, in this regard, that the Complainer, as the individual directly affected by the conduct, was someone who had chosen to engage in political commentary that had been described by a national publication as 'toxic' and had resulted in the permanent deletion of his previous Twitter account.

The Respondent's representative noted that the Respondent was a woman from a minority ethnic background who had endured a considerable amount of abuse over the years, including that directed at her by the Complainer. The Respondent's representative advised that the Respondent was an activist on matters involving women's rights and minority rights, and reiterated that she had simply been trying to stand against the bullying and harassment of representatives from these groups. The Respondent's representative noted that the ESC had recognised the abuse the Respondent had suffered and had empathised with her position.

### **SANCTION**

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

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

### **Reasons for Sanction**

In determining the appropriate sanction, the Panel considered:

- whether the interference (i.e. the proposed sanction) was the minimum necessary, or whether less restrictive means could be employed; and
- whether the benefit of that sanction outweighs its adverse impact on the Respondent's right to freedom of expression. For example, whether any benefit in applying a sanction in respect of protecting the rights and reputations of others, or to ensure a minimum standard of public debate, would outweigh any impact on the Respondent.

In making its decision on sanction, the Panel had regard to the Standards Commission's Policy on the Application of Sanctions. A copy of the policy can be found on the Standards Commission's website, here: <https://www.standardscommissionscotland.org.uk/cases/hearing-rules>. The Panel began by assessing the nature and seriousness of the breach of the Code.

The Panel noted that the requirement for councillors behave with courtesy and respect is a key requirement of the Code. The Panel noted that a failure to do so can lower the standards of public debate and erode public confidence in politicians and the democratic institutions they represent. The Panel noted that there was nothing that would have prevented the Respondent from commenting on the Complainer's conduct or any of his public posts, particularly if she disagreed with views he had expressed. The Panel agreed, however, that there was no reason why she could not have done so without resorting to personal insults and abuse.

The Panel was concerned that the Respondent had subjected a member of the public to offensive and demeaning personal comments. The Panel considered that in making such comments, in an online public forum, the Respondent had reduced the standards of public debate to a level that could erode public confidence in politics and the role of a councillor.

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

The Panel was pleased to note, in mitigation, that the Respondent had recognised that the language she had used was unacceptable, given her position as an elected representative. The Panel further noted that the Respondent had co-operated fully with the investigative and Hearing processes. In addition, the Panel accepted that there was no evidence of repeated behaviour over a long period of time, of dishonesty and / or concealment, or of any previous or subsequent contraventions of the Code by the Respondent.

The Panel acknowledged the Respondent's contribution to public life and, as someone that had endured similar abuse, she had been attempting to stand against what she perceived to be bullying and harassment of individuals from ethnic minorities in politics, albeit she had done so in a manner that contravened the Code.

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

The Panel acknowledged the Respondent's representative argument that the Respondent had been provoked and that the Complainer had chosen to engage in political commentary in a forum where it was not unusual for intemperate language to be used. The Panel further acknowledged that a Sheriff had found that the Complainer himself had "chosen insult and condemnation as his style". The Panel noted, however, that the Respondent had agreed, as part of her acceptance of office as a councillor, that she would abide by the terms of the Code, which clearly included the requirement to behave with courtesy and respect towards everyone, at all times, when acting in her capacity as a councillor.

The Panel further noted that councillors are not obliged to engage with members of the public on social media. The Panel agreed that if they choose to do so, they should be able to make points, express views and engage in public debates without resorting to profanities and personal abuse.

The Panel noted that it was obliged to select a sanction that involved the minimum interference necessary with the Respondent's right to freedom of expression under Article 10, while achieving the aims of maintaining standards in public life. Having considered and weighed up all the mitigating and aggravating factors and, particularly, the context in which the Respondent's comments had been made, and her acceptance that her use of language was not appropriate, the Panel concluded that in the circumstances of the case neither a suspension nor a disqualification could be warranted or justified. The Panel considered that a censure, being an indication of its severe public disapproval of the Respondent's conduct, was the appropriate sanction in the circumstances.

### **RIGHT OF APPEAL**

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

**Date:** 2 November 2023



**Anne-Marie O'Hara  
Chair of the Hearing Panel**