Commissioner for
Ethical Standards in Public Life
in Scotland
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

COMMISSIONER'S REPORT

Under section 9 of the Scottish Parliamentary Standards Commissioner Act 2002, as amended (the "**2002 Act**").

Confidentiality

The 2002 Act requires that the investigation process shall be conducted in private.

Case Ref:		MSP/SP/4321
Date:		19 November 2025
Complainer:		Ms Alison Morris
COMPLAINT AGAINST		
Respondent:		Ms Ash Regan MSP
	Member for:	Edinburgh Eastern

Report Summary: Breach

The Commissioner concluded the Respondent breached section 9.1 of the Code of Conduct for Members of the Scottish Parliament, 8th Edition, dated 6 May 2021 ("the Code").

The Commissioner's view is that, should the Scottish Parliament consider a sanction is appropriate in this case, a restriction on the Respondent's right to Freedom of Expression under Article 10 of the European Convention on Human Rights may be justified.

Introduction

The Scottish Parliamentary Standards Commissioner Act 2002 (the "2002 Act") empowers the Commissioner to investigate complaints about the conduct of MSPs and report upon the outcome of such investigations to the Scottish Parliament. The purpose of this document is to report on the outcome of the Commissioner's investigation.

Background

1. Ms Ash Regan ("the Respondent") is an MSP for Edinburgh Eastern Constituency. She was first elected as an MSP in 2016. She initially represented the SNP until she joined the Alba Party in 2023. On 10 October 2025, she resigned from the Alba Party and now sits as an independent MSP.

2. On 16 April 2025, the Supreme Court released its judgment in the case *For Women Scotland Ltd vs The Scottish Ministers*. Following this, Maggie Chapman MSP publicly criticised the ruling and expressed her views on its implications. Ms Chapman is the Deputy Convenor of the Equalities, Human Rights and Civil Justice Committee.

3. On 22 April 2025, the Respondent wrote to the Presiding Officer of the Scottish Parliament to share her concerns about Ms Chapman's comments. She shared a copy of this letter on social media (X, formerly Twitter).

4. Ms Alison Morris ("the Complainer") submitted her complaint to the Commissioner on 12 May 2025 (see **Appendix 1**). She complained that the Respondent publicly disclosed her complaint, breaching section 9.1 of the Code. She also complained about other issues which the Commissioner did not accept for investigation, and which are not covered in this report.

Complaint

5. Initially, the Commissioner considered the Respondent may have breached section 9.2 of the Code, and notified her that he would be investigating the following issue:

   "The Respondent breached section 9.2 of the Code by disclosing details of her complaint about Maggie Chapman prior to the Standards, Procedures and Public Appointments Committee confirming if the Ethical Standards Commissioner would be investigating it."

6. However, it became clear during the investigation that section 9.1 of the Code was more relevant to this complaint. This was because the Respondent's letter to the Presiding Officer about Ms Chapman would not amount to an excluded complaint under section 9.6 of the Code. Therefore, the complaint the Commissioner has investigated and reported on is:

The Respondent breached section 9.1 of the Code by disclosing details of her complaint or intention to complain about Maggie Chapman MSP prior to the lodging of the complaint with the Commissioner.

7. Evidence obtained included:
    a. complaint form dated 12 May 2025;
    b. Respondent's X post and letter to Presiding Officer of 22 April 2025;
    c. email from the Respondent dated 9 July 2025;
    d. email from the Presiding Officer dated 25 July 2025; and
    e. email from the Clerks to the Standards, Procedures and Public Appointments Committee dated 12 August 2025.

Stage 1: Admissibility

8. Section 6 of the 2002 Act requires the Commissioner to complete an assessment of admissibility of the complaint, known as 'Stage 1'.

9. Three tests must be satisfied for a complaint to be admissible:

    1) The complaint must be 'relevant' (including that the conduct complained about may amount to a breach of a relevant provision).
    2) Specific requirements relating to the form and content of the complaint.
    3) The evidence must suggest the conduct complained about may have taken place.

10. The Commissioner was satisfied this complaint passed these tests as it matched the specific requirements on the form and content of a complaint to be considered admissible. The Commissioner considered the evidence suggested the Respondent may have breached section 9 of the Code. Therefore, the Commissioner concluded the complaint was admissible, and proceeded to a full investigation, 'Stage 2'.

Stage 2: Investigation

11. This investigation was carried out in terms of the Commissioner's powers under the 2002 Act and the Directions issued to the Commissioner by the Parliament under the same Act. The 2002 Act requires this report to outline whether the complaint is factually proven, and the Commissioner's conclusions as to whether the Respondent breached a relevant provision.[1]

12. The standard of proof the Commissioner must apply is that applicable to civil proceedings, this being the balance of probabilities. This means the Commissioner must be satisfied that it is more likely than not that a given event occurred.[2]

Evidence considered

13. On 22 April 2025, the Respondent posted on X saying: "I've formally reported Maggie Chapman MSP to the Presiding Officer and Standards Committee following her dangerous dismissal of the Supreme Court's ruling on the Equality Act as a 'political attack'. MSPs have a duty to uphold the law, not undermine it."

[1] Under section 9(2) of the 2002 Act
[2] Under section 8(2) of the 2002 Act

14. Attached to her X post was a copy of her letter to the Presiding Officer of the same date, outlining her concerns about Ms Chapman's comments **(see Appendix 2)**.

15. The Respondent's letter said she was "writing formally to raise concerns regarding public comments made by Maggie Chapman MSP". She said that, given Ms Chapman was Deputy Convenor of the Equalities, Human Rights and Civil Justice Committee, her comments risked undermining public confidence in the independence of the judiciary and "the impartiality of the Parliament's equalities scrutiny function". She referred to sections of "the Scottish Parliament's Code of Conduct for Members (9th edition, 2023)" which she believed Ms Chapman had breached. The Commissioner is unaware of this edition of the Code, and the Respondent did not confirm where she obtained the sections of this version of the Code that she quoted from.

16. Nonetheless, the Respondent said she thought Ms Chapman's remarks were "incompatible with the standards of conduct expected of all MSPs and particularly those in committee leadership positions".

17. She said: "I respectfully request that this matter be considered by the relevant parliamentary authorities. It is imperative that all members of Parliament, particularly those in leadership positions, uphold the rule of law, demonstrate respect for judicial independence and maintain the dignity of our institution. I would be grateful if you could advise what further steps may be taken in this regard."

18. The Respondent's office emailed the Presiding Officer a copy of her letter on 22 April 2025. The subject heading of her email was "Formal complaint – advice request". The covering email said: "Please find attached a letter seeking your guidance re: Ash's formal complaint regarding the conduct of member Maggie Chapman."

19. Her office also forwarded this email to the Clerks to the Standards, Procedures and Public Appointments Committee ("the SPPAC Clerks"). The covering email said: "Ash seeks the SPPA committee's advice on the process of a formal complaint regarding member conduct. I have forwarded you Ash's letter to the PO for a complaint on the conduct of Maggie Chapman MSP over the weekend in reference to Wednesday's Supreme Court ruling."

20. In response on 22 April 2025, the SPPAC Clerks advised that section 9 of the Code sets out that complaints, other than excluded complaints, should be made to the Commissioner.

21. The SPPAC Clerks also said: "You may also wish to be aware that Section 9 sets out that Members should not disclose a complaint, or the intention to make a complaint. These provisions are set out to protect the integrity of the complaints process and apply in relation to any complaints made under the Code and disclosing information of this nature could in itself give rise to a complaint under the code."

22. The Presiding Officer emailed the Respondent on 25 April 2025 and advised that such complaints would initially be investigated by the Commissioner's office. The Presiding Officer also said: "You have asked for my advice. You will appreciate

that recommendations arising from the investigation of complaints may come before the Parliament in due course. I am required to act impartially at all times and must, therefore, avoid any comment that may compromise the independence of the processes for investigating complaints."

23. The Commissioner did not receive any complaint from the Respondent regarding Ms Chapman's conduct.

24. The Presiding Officer's office advised the Commissioner's office that she did not log the Respondent's letter as a formal complaint. She did not do so because "the issue raised was not an excluded complaint and therefore not within the Presiding Officer's jurisdiction under the Code of Conduct for MSPs, the correspondence from Ms Regan was not logged as a formal complaint."

25. The SPPAC Clerks advised that they treated the Respondent's correspondence "as a request for advice on the Code of Conduct".

Respondent's position

26. The Respondent wrote to the Commissioner on 9 July 2025 in response to the complaint. Her letter is attached as **Appendix 3**.

27. The Respondent's position is that she did not lodge any complaint with the Commissioner, and accordingly the suggestion she "leaked" a complaint is unfounded. In her letter she makes the following comments:

    a) "The correspondence cited is directed to the Presiding Officer and the Parliament's Standards, Procedures and Public Appointments Committee, expressly reporting a **concern**, *not a complaint*. In the closing paragraph, I request **advice** rather than action." (Respondent's emphasis).

    b) "When advised that I could escalate the matter as a formal complaint to the Ethical Standards Commission, I concluded such an escalation was better left to members of the public and I would continue to pursue the matter of parliamentary process through the committee effectiveness routes available to ensure that robust and transparent processes would be in place should such an issue arise again with any committee convenor or deputy convenor."

Conclusions on the facts

28. There is no dispute that the Respondent wrote to the Presiding Officer on 22 April 2025 about Ms Chapman's conduct. There is also no dispute that she subsequently posted a copy of this letter on social media. In this respect, the Commissioner is satisfied that the complaint is factually proven.

29. The Commissioner has assessed whether the Respondent's communications amounted to a complaint or an intention to complain, and whether this breached the Code or relevant provisions, as set out below.

Did the Respondent breach the Code?

30. The Commissioner has considered whether the Respondent breached the following provision of the Code:

Section 9: Enforcement of the rules

Disclosure

1. Members must not disclose, communicate or discuss any complaint or intention to make a complaint to or with members of the press or other media prior to the lodging of the complaint or during Stages 1, 2 and 3 of the procedure for dealing with complaints (this procedure is set out in the guidance on the Code of Conduct (the Code)). Stage 3 is completed when the Standards, Procedures and Public Appointments Committee has made a report to the Parliament.

31. The Commissioner does not consider that the Respondent's X post is, in itself, necessarily captured by the Code, because posting on social media is not a parliamentary duty. However, in contacting the proper authorities (the Presiding Officer and the SPPAC) to report her concerns, the Commissioner is persuaded she was engaged in her parliamentary duties[3]. As such, her decision to publicise that intention and a copy of her letter, addressed to the Presiding Officer, clearly engaged the provisions of the Code. Section 9.1 precludes the disclosure of complaints "with members of the press or other media" prior to the lodging of a complaint or completion of the complaints process. The complaint is focused on the Respondent's publicising of a complaint or intention to make a complaint about another MSP on "other media" which, in this case, is a social media platform, X. Section 9.1 would also have applied if the Respondent's letter was shared with a newspaper, in a blog, a televised interview, podcast or any form of "other media". If the interpretation of "other media" in section 9.1 did not include social media platforms, then any MSP who wished to complain about another MSP or their intention to do so would be able to publicise with impunity the details of such a complaint before any investigation had taken place. A stricter interpretation of "other media" would therefore prevent and frustrate the underlying spirit and purpose of section 9.1, which is to protect and preserve the integrity of the Code and any investigatory processes.

32. The Respondent's position is that her letter to the Presiding Officer, which she posted on X, was not a complaint or representative of an intention to complain. She has shared with the Commissioner her view that she was reporting her concerns and requesting advice, not complaining. As she did not lodge a complaint, it is her position that she could not have "leaked" one, in breach of the Code.

33. However, the Commissioner considers the Respondent's distinction between raising a complaint and raising a concern – or indeed an intention to do so – is semantic. The two terms have the same substantive meaning and are often used interchangeably. The Commissioner is satisfied that the Respondent's letter and X post amount to, or could reasonably be interpreted as, a complaint or an intention to complain about another MSP. The Respondent publicly sought advice on how to complain about Ms Chapman and outlined what she wanted to complain about. The Commissioner believes this, at the very least, amounts to an intention to make a complaint. The fact she ultimately did not submit a

[3] The introduction to the Code sets out the standards of conduct for members of the Scottish Parliament in relation to their "Parliamentary duties as an MSP."

complaint to the Commissioner's office is immaterial. Section 9.1 of the Code does not require a formal complaint to be lodged before the provision is engaged, given its reference to "intention to make a complaint".

34. On balance, the Commissioner considers it is likely the Respondent had either made a complaint or intended to make a complaint. Had the Respondent not been intending to submit a complaint about Ms Chapman, she would likely not have asked for advice on how to do so. The language in her letter and X post, such as "formally raising concerns" and "formally reported Maggie Chapman" suggests to the Commissioner that the Respondent was either complaining or intending to do so. She referred to the Code of Conduct (albeit quoting an inaccurate version) and said Ms Chapman's remarks were incompatible with the expected standards of conduct. Moreover, the Respondent's covering emails to the Presiding Officer and SPPAC Clerks specifically mention her "formal complaint" about Ms Chapman's conduct.

35. The Commissioner considers that a member of the public reading the Respondent's letter would reasonably consider that it was a complaint about Ms Chapman. Indeed, this was the view of the Complainer.

36. For the above reasons, the Commissioner concludes that the Respondent's letter to the Presiding Officer and communications with the SPPAC Clerks on 22 April 2025 amounted to either a complaint about Ms Chapman or indicated the Respondent's intention to make a complaint. Raising this with the appropriate parliamentary authorities in confidence to seek advice would be compatible with the confidentiality provisions in the Code. Making that intention public via social media is not.

37. Under section 9.1, MSPs must not disclose, communicate or discuss any complaint or intention to make a complaint. This applies prior to lodging the complaint with the Commissioner, during the Commissioner's investigation, and before the SPPAC reports to Parliament on the complaint.

38. The Respondent's complaint was addressed to the Presiding Officer, not the Commissioner. The Presiding Officer informed the Respondent that she should direct her complaint to the Commissioner. She ultimately chose not to do so.

39. Nonetheless, she posted her complaint on X, sharing her concerns about Ms Chapman's conduct before lodging any complaint with the Commissioner. The Commissioner considers that this amounts to the public disclosure of a "complaint or intention to make a complaint to or with members of the press or other media prior to the lodging of the complaint". For the purposes of section 9.1 of the Code, the Commissioner considers the Respondent's letter either amounted to a complaint (albeit sent to the incorrect office) or an intention to complain. Even though the Commissioner's office never received her complaint, the Respondent clearly intended to make one. Disclosing, communicating or discussing a complaint or an intention to complain is not acceptable conduct under the Code. Therefore, in the Commissioner's view, the Respondent was in breach of section 9.1 of the Code.

40. **Conclusion: the Respondent breached the Code.**

Respondent's right to freedom of expression

41. As the Commissioner considered the Respondent breached section 9.1 of the Code, he next considered her right to freedom of expression under Article 10 of the European Convention on Human Rights.

Does the Respondent have an enhanced right to freedom of expression?

42. Politicians commenting on matters of public or political interest have an enhanced protection to the right to freedom of expression under Article 10.

43. In this case, the Respondent published a complaint on social media regarding another MSP's comments on a matter of significant public interest. Given she was commenting on a matter of political and public interest, the Respondent is entitled to enhanced protection to her freedom of expression under Article 10.

Is a restriction on the Respondent's right to freedom of expression justifiable?

44. There is little scope for restrictions on political speech or on debate on questions of public interest. In a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, controversial, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.

45. However, the right to freedom of expression is not absolute. Restrictions can be imposed to ensure the conduct of public life does not fall below a minimum level or endanger public confidence in democracy. There must be proportionate, relevant, and sufficient reasons to justify restrictions on freedom of expression.

46. The Code was drafted to protect the right of MSPs to fair and confidential investigations into complaints about their conduct, which would subsequently be adjudicated on by their peers in the SPPAC and, ultimately, in the chamber of the Scottish Parliament. The Respondent's complaint or intention to complain about Ms Chapman should have remained confidential until all stages of the procedure for handling such complaints were completed. The Respondent publicised her intention to complain about a fellow MSP before Ms Chapman had an opportunity to defend herself during an independent and confidential investigation.

47. There is a difference between publicly criticising an MSP and publishing a complaint or intention to complain about an MSP. The existence of section 9.1 of the Code shows that Parliament has evidently already reached a view on this. The Respondent had ample opportunity to express her views on Ms Chapman's comments on the Supreme Court ruling. She could have done so, publicly, without disclosing her complaint or intention to complain.

48. Article 10 of the ECHR is a qualified right. Article 10.2 states that:

> "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation

or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

49. In this case, Ms Chapman had a right to the protection of her reputation until such time as due process had been followed. As the Code makes clear, due process would mean that no other MSP should have publicly complained or publicly set out an intention to complain about Ms Chapman until the stages of a formal complaint process had been completed. If the Respondent's disclosure of her complaint was protected by her Article 10 rights, this would set a precedent whereby MSPs could publish complaints or an intention to complain in breach of the Code to attack political opponents. This could damage the integrity of the complaints process and undermine public confidence in the system. It may also jeopardise the public perception of the Commissioner's ability to conduct fair and impartial investigations into MSPs' conduct, free from the influence of commentary in the media or public debate between other MSPs. Most MSPs have public profiles and access to the media. If they were permitted to disclose complaints about political opponents before the process was complete, this could allow them to create a narrative or influence the public perception of a complaint under investigation, which would in turn jeopardise the integrity of any standards framework.

50. For the above reasons, the Commissioner considers there are proportionate, relevant and sufficient reasons to justify restricting the Respondent's right to freedom of expression.

51. It is not for the Commissioner to recommend or comment on whether any sanction should be imposed on the Respondent. This is a matter for the SPPAC. The Commissioner has nevertheless undertaken this analysis of the Respondent's Article 10 rights, to inform the SPPAC's deliberations.

The Commissioner's views

52. Based on the evidence gathered at investigation, and the above reasoning, the Commissioner's views on the complaint are as follows:

The Respondent breached section 9.1 of the Code by disclosing details of her complaint or intention to complain about Maggie Chapman MSP prior to the lodging of the complaint with the Commissioner.

- **Complaint is factually proven.**
- **The Respondent breached section 9.1 of the Code**
- **A restriction on the Respondent's right to freedom of expression under Article 10 of the ECHR may be justified.**

Draft report

53. As the Commissioner considers the Respondent breached the Code, he was required to send her a draft copy of this report, to allow her to make representations on the conclusions.[4]

[4] In accordance with section 9(3) of the 2002 Act

54. The Commissioner sent a draft report to the Respondent on 30 October 2025. The Respondent's representative submitted comments on her behalf on 12 November 2025. The Respondent's representative is Mr Roddy Dunlop KC.

55. The Commissioner has carefully considered Mr Dunlop's comments but did not consider them to be sufficiently compelling as to alter his views on the complaint. As a consequence, the Commissioner has annexed Mr Dunlop's representations in full as an attachment to this report at **Appendix 4**. Mr Dunlop's comments and the Commissioner's views on these are summarised in the following points:

a) **Paragraphs 1 – 6:** The Commissioner does not dispute the factual background of this complaint. The Commissioner agrees that the Respondent was entitled to speak out and criticise Ms Chapman. The Commissioner also agrees that the Respondent was entitled to enhanced protection to her right to freedom of expression.

b) **Ground 1: a proper interpretation of section 9.1**. Mr Dunlop considers that section 9.1 does not apply to MSPs who complain or intend to complain about another MSP. He contends that section 9.1 only prevents the disclosure of complaints or intentions to complain by MSPs who are the *subject* of the complaint.

c) The Commissioner disagrees with this interpretation because it is too narrow and not representative of the spirit or meaning of section 9.1 of the Code. The ordinary meaning of the words in section 9.1 is clear. The provision is written in plain English and would be readily understandable by the public, including the Complainer, without reference to convoluted legal arguments. The Commissioner further notes that the advice from the SPPAC Clerks, provided in response to the Respondent's request for guidance, makes it clear that section 9.1 of the Code may be engaged. Neither the guidance from the SPPAC Clerks nor the guidance on application of the Code provide that section 9.1 applies only to disclosure by MSPs who are the *subject* of a complaint. Section 9.3 specifies that a *subject* of a complaint or intended complaint may issue a brief statement if a complaint or intention to complain has been publicised. This could only suggest that if section 9.1 was intended to cover only the subject of a complaint, it would specify this (which it has not) – instead, section 9.1 applies to all *members*, regardless of being the originator or subject of a complaint.

d) **Ground 2: ambiguity.** Mr Dunlop considers that the Respondent's fundamental right to freedom of expression should not be overridden by general or ambiguous words.

e) The Commissioner disagrees that section 9.1 is ambiguous. It is set out in plain language which should be readily understandable by the public and all members, including the Respondent.

f) **Ground 3: enhanced protection.** Mr Dunlop considers the Commissioner's justifications in support of restricting the Respondent's right to freedom of expression were "lacking and wrong in law".

g) The Commissioner agrees that the Respondent has enhanced protection to her right to freedom of expression. The Commissioner included his

observations on Article 10 and freedom of expression in this report to assist the SPPAC with its deliberations. It is the role of the Respondent's peers to decide whether a sanction is appropriate, and if so, what that sanction should be. This includes deciding whether the Respondent's right to freedom of expression should be restricted. The Respondent will have the opportunity to make representations to the SPPAC on her rights under Article 10.

h) **Points 29 - 32:** Mr Dunlop objected to some of the Commissioner's prior wording at paragraphs 46 and 49 of the draft report. He said the Respondent spoke out "not to damage Ms Chapman's reputation, but rather to raise serious concerns as to her conduct in denigrating the justices of the Supreme Court". He also said she did not seek to undermine her reputation but raised "a legitimate and widely held concern as to her actions."

i) The Commissioner would observe that the Respondent and Ms Chapman have publicly expressed opposing views on the gender recognition reform debate and are publicly associated with different sides of this debate. This tends to suggest that the Respondent's comments were, at least, targeted at an ideological opponent. Nonetheless, and further to the representations made, the Commissioner has amended paragraphs 46 and 49, removing the reference to undermining and intentionally damaging Ms Chapman's reputation, given that it is not entirely germane to the question of breach.

j) **Points 22, 32, 34, 35 and 37:** The Respondent's representative said there was no pressing social need to preclude MSPs from revealing an intention to complain when they could to "express the subject matter of that intended complaint". He referred to the pressing social need not to stop an MSP from criticising a political opponent. He does not consider the Respondent's disclosure could damage the integrity of the complaints process or damage public perception, because she was still free to condemn Ms Chapman's actions, and members of the public could comment freely on complaints. He disagrees that the Respondent's conduct could jeopardise public perception of the ability to conduct fair and impartial investigations. He also notes that judges are unable to publicly defend themselves when they are criticised.

k) The fact that the Respondent was entitled to criticise Ms Chapman without disclosing her intention to complain is referred to at paragraph 47 above. The Respondent could have strongly criticised Ms Chapman, and defended the judiciary, without referring to her intention to complain.

l) The "pressing social need" justifying a restriction is not to prevent criticism of other MSPs. It is to prevent the early disclosure of complaints about other MSPs, and to ensure that MSP complainers cannot influence the public perception of the Commissioner's investigation, the complaints process or jeopardise the integrity of any standards framework. Unlike most members of the public who submit complaints, MSPs have public profiles and access to the media. This means that they could, in theory, use this public platform to create or influence a narrative about, or the public perception of, a complaint under investigation or which could be under investigation in future. Members of the public also do not undertake to comply with the provisions of a code of conduct. In contrast, MSPs commit to complying with the Code because of the position that they hold in public life.

m) The Code was approved by Parliament, and section 9.1 was included for a reason. The Commissioner understands that it was intended to protect the integrity of the complaints process. If the Respondent's right to freedom of expression was not restricted, this may set a precedent, permitting MSPs to disclose complaints before the investigation process is complete. In the Commissioner's view, that would render section 9.1 ineffectual, undermining the spirit of the Code and the integrity of any standards framework.

n) In any event, the reason section 9.1 was included in the Code is, to an extent, irrelevant. It is a rule MSPs are obliged to follow, and it states that MSPs must not disclose a complaint or their intention to complain. The Respondent did so, in breach of the Code. It will be for the SPPAC to determine whether such conduct should be permissible in this and in similar future cases.

o) The Commissioner has amended paragraph 49 of the report to clarify some of the reasoning for why a restriction may be justified in this case.

p) **Point 38**: Mr Dunlop referred to Ms Chapman's "unprecedented and unwarranted" accusations against Supreme Court justices. The Commissioner would simply observe that this complaint and report relate to the conduct of the Respondent, not Ms Chapman.

Ian Bruce
Ethical Standards Commissioner

Enclosed:

Appendix 1 – Initial complaint
Appendix 2 – Respondent's letter to the Presiding Officer
Appendix 3 – Respondent's response to the complaint
Appendix 4 - Respondent's representative's comments on draft breach report

END OF REPORT

Ethical Standards Commissioner

COMPLAINT FORM

Please use this form if you wish to make a complaint alleging misconduct against:
(a) a councillor; or
(b) a member of a devolved public body; or
(c) an MSP.

If you wish to make a complaint about a lobbyist, or if you need help to complete the form, please telephone the Ethical Standards Commissioner on **0131 347 3890** or email investigations@ethicalstandards.org.uk

The complaint must be **legible** and **signed** by you. Please note that we assess complaints independently and therefore cannot assist with drafting your complaint.

Your details

Title: Mr / Mrs / Ms / Councillor / Dr / Other (please specify) Ms

First Name: Alison **Surname:** Morris

Address: [redacted]

Postcode: [redacted]

Phone number (Day): [redacted] **(Evening):** [redacted]

E-mail: [redacted]

Who are you complaining about?

Please give the name of the councillor(s), member(s) or MSP(s) you consider has / have broken the Code of Conduct* and the name of their council or public body.

Name of the councillor/member/MSP	**Name of their council or public body** (not applicable for MSPs)
Ash Regan MSP	

*The Councillors' Code of Conduct, Code of Conduct for the public body and the MSPs' Code of Conduct can be found on our website under 'What we can investigate': **https://www.ethicalstandards.org.uk/complaints**. Paper copies are available on request.

Whistleblowing A whistleblower is someone who reports an incident of wrongdoing they see at work, and does so in the public interest.
If you are making a such a disclosure, please place an X in this box. ☐
We may contact you to clarify the circumstances.

Use of your Personal Data We will process your personal data when investigating your complaint. We have a privacy statement that explains how we use your information. It can be accessed on http://www.ethicalstandards.org.uk/privacy-policy/. Paper copies are available on request.

We will, as far as possible, investigate your complaint confidentially. Please note, to enable a full and fair investigation it is likely that your complaint will be forwarded to the person you are complaining about and to a limited number of senior officers in the relevant council/body. If we conclude that there has been a breach your complaint will then be passed to the Standards Commission for Scotland or relevant Committee in the Scottish Parliament.

What are you complaining about? Please describe each incident in as much detail as possible.

Three separate breaches of the MSP Code of Conduct, specifically 9.1: disclosing a complaint to the media during stage 1 of the complaint, 7.5: disrespectful treatment of other MSPs and 7.6: harassment of another MSP. Details and evidence are provided on the separate letter that is attached with this form.

Please continue on a separate sheet if necessary

On what date(s) did this happen? Normally, you should make a complaint within one year of the incident.

Evidence provided of breaches between 21.04.25 and 01.05.25.

Have you made a complaint about this behaviour to any other public authority? For example to the council or body concerned, the Scottish Public Services Ombudsman or any Parliamentary Authority.

No. I am following the advice on the Scottish Government website to submit the complaint to yourself.

Supporting Evidence: Please attach copies of documents, names and details of witnesses and any other evidence you feel is relevant to your complaint. Please **do not send** originals. **Please ensure you provide sufficient evidence to support your complaint. Without this we may not be able to proceed**.

Declaration

I confirm that the information I have given in this form is correct to the best of my knowledge. I request that the Ethical Standards Commissioner investigates this allegation.

Signed: The Complainer **Date:** 12.05.25

Please send this form to: **Ethical Standards Commissioner, Thistle House, 91 Haymarket Terrace, Edinburgh EH12 5HE** or **investigations@ethicalstandards.org.uk**

[redacted]

12th May 2025

Ethical Standards Commissioner
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

Dear Commissioner

Re: Conduct of Ash Regan MSP

I am writing to raise concerns about the conduct of Ash Regan MSP. Her actions appear to have breached the MSP Code of Conduct in three distinct ways, as set out below:

9.1. ***Members must not disclose, communicate or discuss any complaint or intention to make a complaint to or with members of the press or other media prior to the lodging of the complaint or during Stages 1, 2 and 3 of the procedure for dealing with complaints…Stage 3 is completed when the Standards, Procedures and Public Appointments Committee has made a report to the Parliament*.**

On 22nd April Ash Regan submitted a complaint to the Presiding Officer regarding Maggie Chapman MSP. The same day she published a copy of the complaint on her Facebook page. That same day her complaint was reported in the Scottish Daily Express, BBC News, Holyrood.com and The Herald.

It is inconceivable that the complaint can have gone through all three stages by the time she published her Facebook post at 2.30pm. It is clear that Ms Regan chose to disclose and publicise her complaint during stage 1, in clear breach of the Code of Conduct.

7. 5. ***Members must treat the following individuals with courtesy and respect:***

- ***other MSPs***

On 1st May, Ash Regan shared a video to her Facebook page in which she was interviewed on Talk TV with Mike Graham, where she described the Green party's support of trans rights as extremist. "*Certainly, what we've seen from members of the green party I would say is quite extremist ideology*."

The definition of the word extremist is "a person who holds extreme political or religious views, especially one who advocates illegal, violent, or other extreme action".

To inaccurately represent the seven Scottish Green MSPs in this manner is neither courteous nor respectful. This represents a clear and concerning breach of the MSP Code of Conduct.

7.6. ***Members must not behave in a manner towards those individuals in 7.5 or any individuals they are in contact with in their capacity as MSPs that involves bullying, harassment (including sexual harassment), or any other inappropriate behaviour.***

Ash Regan's call for Maggie Chapman to resign on 21st April; publicising of her complaint about her on 22nd April; maligning her in a TV interview on 1st May and saying that she and the rest of the Equalities Committee have "got this wrong over and over again and need to go", constitutes hounding and harassment of Maggie Chapman purely because she has stood firm on a matter that Ms Regan disagrees with.

Of particular concern is the claim in Ash Regan's self-publicised letter of complaint about Maggie Chapman, in which she states that "*as reported in the Telegraph Ms chapman claimed [the ruling] was 'not based in law*'." The Telegraph article of 22 April 2025 makes no such claim. Nor does Maggie Chapman say this in videos of her speeches in Aberdeen and Dundee. I can find no evidence that she said it at all.

Ash Regan appears to have deliberately misrepresented and exaggerated Maggie Chapman's comments. This may have had significant repercussions for fair and accurate reporting of the events that took place and could have led to a completely inappropriate dismissal from the Equality and Human Rights Committee. This is an extremely serious matter, and is most definitely a breach of the MSP Code of Conduct.

I urge you to treat these matters with the utmost seriousness. It cannot be allowed to stand that an MSP so flagrantly ignores the Code of Conduct while simultaneously seeking to use that same Code as a means of targeting other MSPs with whom she disagrees.

I enclose evidence of the relevant letters, interviews and articles.

I am a constituent of Ash Regan and intend to contact her personally to share my views about current political issues. In light of this I request that my name be kept confidential in relation to this complaint.

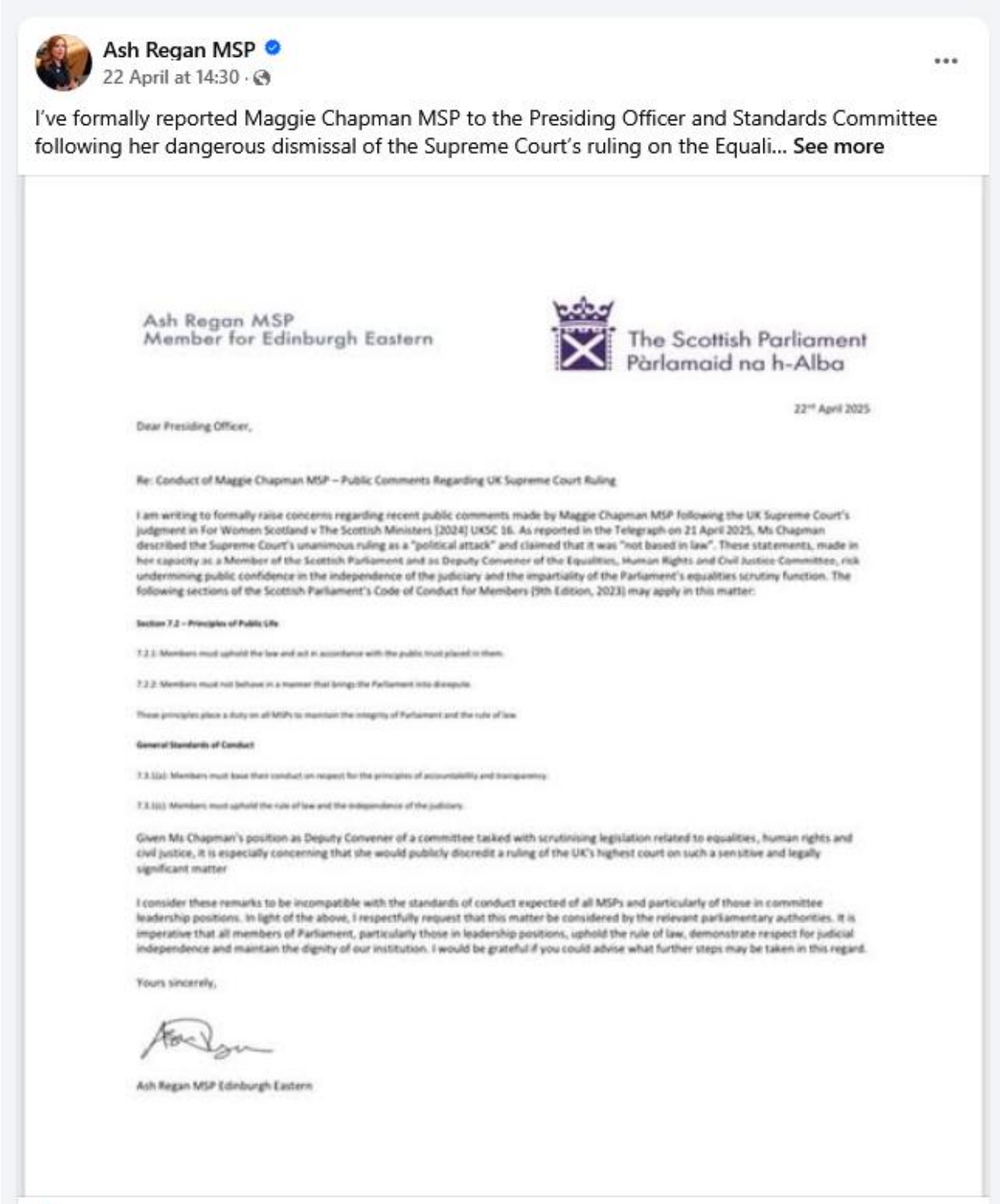
Yours sincerely

[redacted]

Alison Morris

01. Ash Regan's Facebook post stating she had made a complaint about Maggie Chapman's conduct.

www.facebook.com/AshReganALBA, 22.04.2025



Ash Regan MSP
22 April at 14:30 ·

I've formally reported Maggie Chapman MSP to the Presiding Officer and Standards Committee following her dangerous dismissal of the Supreme Court's ruling on the Equali... See more

Ash Regan MSP
Member for Edinburgh Eastern

The Scottish Parliament
Pàrlamaid na h-Alba

22nd April 2025

Dear Presiding Officer,

Re: Conduct of Maggie Chapman MSP – Public Comments Regarding UK Supreme Court Ruling

I am writing to formally raise concerns regarding recent public comments made by Maggie Chapman MSP following the UK Supreme Court's judgment in For Women Scotland v The Scottish Ministers [2024] UKSC 16. As reported in the Telegraph on 21 April 2025, Ms Chapman described the Supreme Court's unanimous ruling as a "political attack" and claimed that it was "not based in law". These statements, made in her capacity as a Member of the Scottish Parliament and as Deputy Convenor of the Equalities, Human Rights and Civil Justice Committee, risk undermining public confidence in the independence of the judiciary and the impartiality of the Parliament's equalities scrutiny function. The following sections of the Scottish Parliament's Code of Conduct for Members (9th Edition, 2023) may apply in this matter:

Section 7.2 – Principles of Public Life

7.2.1: Members must uphold the law and act in accordance with the public trust placed in them.

7.2.2: Members must not behave in a manner that brings the Parliament into disrepute.

These principles place a duty on all MSPs to maintain the integrity of Parliament and the rule of law.

General Standards of Conduct

7.3.1(a): Members must base their conduct on respect for the principles of accountability and transparency.

7.3.1(c): Members must uphold the rule of law and the independence of the judiciary.

Given Ms Chapman's position as Deputy Convener of a committee tasked with scrutinising legislation related to equalities, human rights and civil justice, it is especially concerning that she would publicly discredit a ruling of the UK's highest court on such a sensitive and legally significant matter

I consider these remarks to be incompatible with the standards of conduct expected of all MSPs and particularly of those in committee leadership positions. In light of the above, I respectfully request that this matter be considered by the relevant parliamentary authorities. It is imperative that all members of Parliament, particularly those in leadership positions, uphold the rule of law, demonstrate respect for judicial independence and maintain the dignity of our institution. I would be grateful if you could advise what further steps may be taken in this regard.

Yours sincerely,

Ash Regan MSP Edinburgh Eastern

02. Telegraph article referred to in Ash Regan's letter of complaint

The Telegraph "*Green MSP urged to quit after accusing Supreme Court of bigotry*", 21.04.25 www.telegraph.co.uk/politics/2025/04/21/green-msp-urged-quit-after-accusing-supreme-court-trans/

03. News articles reporting on Ash Regan's complaint about Maggie Chapman

Scottish Daily Express "*Ash Regan reports Maggie Chapman for alleged breach of MSPs' code of conduct*" www.scottishdailyexpress.co.uk/news/politics/ash-regan-reports-maggie-chapman-35098133#amp-readmore-target

BBC "*Lawyers criticise MSP's attack on gender ruling*" www.bbc.co.uk/news/articles/cx25xzy4eggo

Holyrood "*Faculty of Advocates says Maggie Chapman unfit for equalities role after Supreme Court attack*" www.holyrood.com/news/view,faculty-of-advocates-says-maggie-chapman-unfit-for-equalities-role-after-supreme-court-attack

The Herald "*Chapman defends "bigotry" claim despite legal backlash*" www.heraldscotland.com/news/25108207.chapman-defends-bigotry-claim-despite-legal-backlash

04. Ash Regan's interview on Talk TV

01.05.25 www.facebook.com/share/v/1Fr7DEK8zc/

05. Facebook post calling for Maggie Chapman to resign

06. Video of Maggie Chapman's comments in Aberdeen, 22.04.25

www.facebook.com/share/v/1CRKzMgjkr/

07. Video of Maggie Chapman's comments in Dundee, 19.04.25

https://www.youtube.com/watch?v=0pWxxERLo3E

Ash Regan MSP
Member for Edinburgh Eastern

The Scottish Parliament
Pàrlamaid na h-Alba

22nd April 2025

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Yours sincerely,

Ash Regan MSP Edinburgh Eastern

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Ash Regan MSP
@AshReganMSP

I've formally reported Maggie Chapman MSP to the Presiding Officer and Standards Committee following her dangerous dismissal of the Supreme Court's ruling on the Equality Act as a 'political attack'.

MSPs have a duty to uphold the law, not undermine it.
#ScotParl #WomensRights #RuleOfLaw #JudicialIndependence

12:54 PM · Apr 22, 2025 · **153.6K** Views

386 1.6K 8.7K 94

Post your reply Reply

[redacted] @... · Apr 22
We must uphold the laws Maggie accepts. I am at odds to understand why an environmental party have such desires to push a trans agenda on the world.

Bunch of weirdos. I hope they're banished from Holyrood in May 2026.

21 27 531 12

[redacted] Apr 22
Thank you ash

1 70 4.2K

Ash Regan MSP
Member for Edinburgh Eastern

The Scottish Parliament
Pàrlamaid na h-Alba

22nd April 2025

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I would be grateful if you could advise what further steps may be taken in this regard.

Yours sincerely,

Ash Regan MSP Edinburgh Eastern

Ash Regan MSP
Member for Edinburgh Eastern

The Scottish Parliament
Pàrlamaid na h-Alba

Reference: MSP/SP/4321 **9th July 2025**

Sent by email to: investigations@ethicalstandards.org.uk

Dear Iain,

Thank you for your message. I have responded as requested to the outstanding points, to address the complaint, Reference:/SP/4321, below:

The Respondent breached section 9.2 of the Code by disclosing details of her complaint about Maggie Chapman MSP before the Standards, Procedures and Public Appointments Committee confirming that the Ethical Standards Commissioner will not be carrying out an investigation or, where such an investigation has been carried out, that the Ethical Standards Commissioner will not be carrying out any further investigation.

1. Please provide any comments you have on this complaint. (We do not need your comments on the dismissed parts of the complaint which we are not investigating further.)

I wish to address, in the clearest possible terms, the suggestion that I "leaked" a complaint to the Ethical Standards Commission. This suggestion is unfounded; I made no complaint to the ESC, as the records will show. The correspondence cited is directed to the Presiding Officer and the Parliament's Standards, Procedures and Public Appointments Committee, expressly reporting a **concern**, *not a complaint*. In the closing paragraph, I request **advice** rather than action. This matter falls under the wider concerns raised in the Parliament's Committee Effectiveness review, which I took an active role in. I spoke in the debating chamber on the Committee Effectiveness debate, in addition to submitting both written and oral submissions to the Standards, Procedures and Public Appointments Committee on key areas of parliamentary learning.

The published letter to the Convenor and Depute Convenor of the Equality, Human Rights and Civil Justice Committee, from the Dean of the Faculty of Advocates, was concerning, leaving me with a sense of duty as a member of the Scottish Parliament to raise these very serious concerns within Parliament. I quote from the Dean's letter, *"Not only do comments such as these – which as they stem from an elected politician and Deputy Convenor many will take seriously – fail to respect the Rule of Law; not only do they constitute an egregious*

breach of Ms Chapman's duties to uphold the continued independence of the judiciary (s.1(1)(a) of the Judiciary and Courts (Scotland) Act 2008); but they go further than that, and create a risk of danger to the Members of the Court themselves. This behaviour is irresponsible and reprehensible."

The intervention above highlights the same gravity on this matter as the feedback I received from the public, underlining the expectation that the roles of committee convenor and depute convenor are held to the same standards as those of Cabinet Ministers. Conduct deemed unbecoming of a ministerial role can be addressed via a Vote of No Confidence Motion; yet, no equivalent procedure appears to exist for convenors/deputy convenors the critical committee function of Parliament, thus I sought advice within Parliament from the Presiding Officer and SPPA as to how I address the issues raised regarding serious concerns on a deputy convenor's conduct, by Parliamentary process.

Considerable public and media interest had emerged from the EHRCV committee deputy convenor's public comments on the Supreme Court. Mindful of Parliament's tight debating schedule and the limited opportunity for raising questions as a single MSP, I chose to write to obtain clarity to address the mounting, grave concerns about trust in our Parliament raised by constituents and the wider public. Transparently sharing my request for advice via correspondence is entirely analogous to Members routinely seeking procedural guidance via a point of order raised at committee or in the debating chamber, both of which are livestreamed and archived to be available to the public via Scottish Parliament TV.

When advised that I could escalate the matter as a formal complaint to the Ethical Standards Commission, I concluded such an escalation was better left to members of the public and I would continue to pursue the matter of parliamentary process through the committee effectiveness routes available to ensure that robust and transparent processes would be in place should such an issue arise again with any committee convenor or deputy convenor.

I went on to support the following motion raised by a member of the EHRCV Committee. Motion reference: S6M-17413 Public Trust and Confidence in the Equalities, Human Rights and Civil Justice Committee, submitted by: Tess White, MSP North East Scotland, Scottish Conservative and Unionist Party. Date lodged: Thursday, 08 May 2025

Accordingly, no complaint was ever lodged by me to be "leaked." I trust this resolves this matter.

2. Your letter to the Presiding Officer of 22 April 2025, which you posted on social media, refers to "sections of the Scottish Parliament's Code of Conduct for Members (9th edition, 2023)". You quoted several provisions. The latest published version of the Code is the 8th edition, 2021, which is on the Scottish Parliament's website. Can you confirm where you accessed the 9th edition from 2023 and provide a copy of this, if possible?

I do not see any reference to the Code of Conduct provisions quoted above in the complaint made against me. Given that my letters were merely seeking procedural **advice**, I would of course have attached source documents to any official complaint to your office had I proceeded to file one; however, I did not.

3. Please let us know if the Standards, Procedures and Public Appointments Committee and/or the Presiding Officer has been in touch with you about how they will be progressing with your complaint and provide a copy of any decision they have issued.

As I have explained above, *no complaint* was lodged by me; I sought only **advice**, which I received and determined not to pursue, as outlined above. I trust this resolves the matter.

Yours sincerely,

Ash Regan MSP, Edinburgh Eastern

Response on behalf of Ash Regan MSP

To Draft Commissioner's Report dated 30 October 2025 in respect of a complaint made by Ms Alison Morris

1. Ms Regan welcomes the opportunity to respond to the Draft Report. She contends that it is flawed, and requires to be reconsidered, for the following reasons.

The factual backdrop

2. As recorded at [2] of the Draft, on 16 April 2025 the Supreme Court handed down judgment in *For Women Scotland Ltd vs The Scottish Ministers*. The following weekend, Maggie Chapman MSP spoke at a public rally. She did not restrict herself, as is suggested in the Draft at [2], to criticising the ruling and expressing her views on its implications. Rather, as was widely publicised, she condemned what she called "bigotry, prejudice and hatred coming from the Supreme Court".

3. It is clear, or at the very least it was Ms Regan's honest and reasonably held opinion, that Ms Chapman's comments were inconsistent with her duties as an MSP (such as, for example, to uphold the continued independence of the judiciary: s.1 of the Judiciary and Courts (Scotland) Act 2008). Ms Regan's views in that regard were shared by many, including both the Faculty of Advocates and the Law Society of Scotland, both of whom spoke publicly to condemn Ms Chapman's attacks on the Supreme Court justices.

Basic legal principles

4. Ms Regan was entitled to speak out in response. The right to freedom of expression has for centuries been a basic right open to all citizens in this country, and in particular to elected representatives. "Free speech is a fundamental common law right": *R v Shayler* [2003] 1 AC 247 per Lord Bingham at [21]. It has been described as "the primary right" without which "an effective rule of law is not possible", "the lifeblood of democracy" and "a brake on the abuse of power by public officials": *R v Secretary of State for the Home Department ex parte Simms* [1999] 2 AC 115 per Lord Steyn at 125G and 126F-H. It "constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment": *R (Lord Carlile) v Home Secretary* [2015] AC 943 per Lord Sumption at [13].

5. Fundamental rights cannot be abrogated by ambiguous words, even in a statute (and all the less so in a Code of Conduct). As explained by Lord Hoffmann in *ex p. Simms* at p.131:

> "Parliamentary sovereignty means that Parliament can, if it chooses, legislate contrary to fundamental principles of human rights. The Human Rights Act 1998 will not detract from this power. The constraints upon its exercise by Parliament are ultimately political, not legal. But the principle

> of legality means that Parliament must squarely confront what it is doing and accept the political cost. ***Fundamental rights cannot be overridden by general or ambiguous words.*** This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual."

6. The same principle applies when considering Article 10 ECHR. The European Court of Human Rights has held that "freedom of expression is important for everybody, [and] especially so for an elected representative of the people," such that interference with the freedom of expression of an MSP is subject to the closest scrutiny (*Castells v Spain* (1992) 14 E.H.R.R. 445 at [42]). That being so, before there can be any question of interference with Art 10, a need for clarity and precision forms part of the requirement in article 10(2) of the Human Rights Convention that any interference with the right to freedom of expression must be "prescribed by law": *Sunday Times v The United Kingdom* (1979-80) 2 EHRR 245 at [49]. Any exceptions to Art10 must be construed strictly, and the need therefor established convincingly: *Jerusalem v Austria* (2003) 37 EHRR 25.

The Code of Conduct

7. The basis for the Draft Report is the Commissioner's provisional conclusion that a breach of Section 9.1 of the Code is made out. Such a conclusion would be wrong, on three separate but linked bases.

Ground 1: a proper understanding of Section 9.1

8. It is of the first importance to understand that the Code regulates complaints ***about*** Members, and not complaints ***by*** Members. That is plain from a simple reading of the Code. Thus, for example, Section 9.4 indicates that "Complaints ***in relation to the conduct of Members of the Scottish Parliament under the Code*** are initially investigated by the Commissioner for Ethical Standards in Public Life in Scotland".

9. Thet being so, when one considers Section 9.1 (the Section founded on in the Draft), one sees that the "Members" on whom the restriction is imposed are those who are ***the subject of*** complaints: not those who may make the complaint.

10. Section 9.1 reads as follows:

> "Members must not disclose, communicate or discuss any complaint or intention to make a complaint to or with members of the press or other media prior to the lodging of the complaint or during Stages 1, 2 and 3 of the procedure for dealing with complaints…"

11. Read in context, that prohibition clearly applies only to the subject of the complaint. Indeed, no other reading would make sense. The Code does not apply to any other member of the public, and only binds MSPs. No other person making a complaint (or intending to do so) would or could be precluded from discussing that with the press. It would be wholly inconsistent with the freedom of expression both at common law and under Art10, and the enhanced protection available to elected politicians in speaking on matters of public interest, to hold that the restriction on commenting on a complaint or intention to complain applies only to complainers who happen to be MSPs, and not to anyone else in society.

12. Rather, the clear import of Section 9.1 is to prevent the Member who is the ***subject*** of the complaint from speaking to the press whilst it is being investigated. That this is so is underlined by the partial exemption from Section 9.1 contained in Section 9.3, which provides as follows:

> "3. Where, during the period when the restriction on disclosure applies, any complaint or intention to make a complaint has been publicised in the press or other media ***without the involvement of the member who is the subject of the complaint or intended complaint***, ***that member may issue a brief statement***. In doing so, ***the member must, so far as possible, avoid discussing details of the complaint or intended complaint***."

13. Accordingly, on a proper understanding of Section 9.1, that Section has no application in the present context. It would have prevented Ms Chapman from speaking to the media about any complaint (or Ms Regan's intention to complain, if Ms Chapman were aware of it), until and unless Section 9.3 was engaged. However, it had no application to Ms Regan as the potential or intended complainer.

Ground 2: ambiguity

14. If the foregoing does not represent the true meaning of Section 9.1, at worst for Ms Regan that section, read in context, is ambiguous – in that, on that hypothesis, it could be read either as applying only to the MSP about whom the complaint is made, or as to that Member ***and*** the complainer (if, and only if, the complainer was also an MSP). Given the unlikelihood of an MSP having restrictions imposed on her freedom of expression on a matter of public interest when no other member of society is so restricted, the Section is clearly ambiguous. As such, the necessary precision for any interference with freedom of expression is wholly absent: fundamental rights cannot be overridden by general or ambiguous words.

Ground 3: enhanced protection

15. The Draft correctly finds (at [43]) that Ms Regan was entitled to enhanced protection as she was speaking on a matter of (substantial) public interest, and (at [44]) that there is little scope for restrictions on such speech. It also correctly recognised (at [48]) that any restriction would need to be justified under Art10(2).

However, the analysis as to the existence of justification is lacking, and wrong in law.

16. Art10(2) provides that the only permissible restrictions are those which:

> "are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".

17. Thus there are three requirements, none of which is here met.

Prescribed by law

18. First, the restriction must be "prescribed by law", which entails clarity and precision, and lack of ambiguity. For the reasons already given (at §14 above), the necessary clarity is absent.

Necessary in a democratic society

19. Second, the restriction must be "necessary in a democratic society". The courts have consistently interpreted this phrase to require that any interference with the right to freedom of expression must correspond to a "pressing social need" and be "proportionate to the legitimate aim pursued." It is not enough for a measure merely to be reasonable, desirable, or useful; it must be convincingly established as required in the particular circumstances, and the reasons given by the national authorities must be "relevant and sufficient" to justify the restriction: see e.g *Shayler* and *Ex p. Simms,* cited above.

20. In the present situation, the starting point is recognition of two truisms: first, that even on the Commissioner's current reading of Section 9.1, there is no restriction on the freedom of any complainer other than an MSP complainer preventing him or her from discussing that complaint with the media; and second, that there is no restriction on someone in the position of Ms Regan from criticising, trenchantly if that is deemed appropriate, the comments made by Ms Chapman about the Supreme Court (a freedom expressly recognised in the Draft, at [47]).

21. As to the first of these points, there is no pressing social need to preclude MSPs alone from such discussions when any other complainer would be free to do so. That would make little sense given the enhanced protection afforded to elected politicians.

22. As to the second, there is no pressing social need to preclude MSPs from revealing an intention to complain when they are, at one and the same time, entirely free to

express the subject matter of that intended complaint to the world at large. There is no qualitative difference between (1) stating that the actions of a given MSP were disgraceful and to be condemned; and (2) stating that the actions of a given MSP were disgraceful and to be condemned and were to be referred to the Commissioner. The lack of any operative difference between these two statements shows the lack of pressing social need in the restriction found in the Draft, and underlines the fact that the restriction which would arise from the finding of breach would be grossly disproportionate.

23. There is thus no basis for holding the restriction necessary in a democratic society.

The listed justifications under Art10(2)

24. Finally, restrictions on freedom of expression are only justified if they are necessary "in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".

25. Only two of the listed justifications are even potentially in play, and one of those points away from the correctness of the conclusions in the Draft. These will be taken in turn.

26. The only one founded upon in the Draft is "the protection of the reputation or rights of others". In that regard, the Draft states as follows:

> "46. The Code was drafted to protect the right of MSPs to fair and confidential investigations into complaints about their conduct, which would subsequently be adjudicated on by their peers in the SPPAC. The Respondent's complaint or intention to complain about Ms Chapman should have remained confidential until all stages of the procedure for handling such complaints were completed. In publicising her intention to complain about a fellow MSP before that member had an opportunity to defend herself during an independent and confidential investigation, the Respondent intentionally sought to damage the reputation of Ms Chapman…
>
> 49. In this case, Ms Chapman had a right to the protection of her reputation until such time as due process had been followed. As the Code makes clear, due process would mean that no other MSP should have publicly complained or publicly set out an intention to complain about Ms Chapman until the stages of a formal complaint process had been completed. If the Respondent's disclosure of her complaint was protected by her Article 10 rights, this would set a precedent whereby MSPs could publish complaints or an intention to complain in breach of the Code in order to attack political opponents by publicly undermining their reputation. This could damage the

integrity of the complaints process and undermine public confidence in the system. It may also jeopardise the public perception of the Commissioner's ability to conduct fair and impartial investigations into MSPs' conduct."

27. This betrays several errors.

28. First, the aim of the Code cannot have been "to protect the right of MSPs to fair and confidential investigations into complaints about their conduct". As already observed, the restriction on discussions with the media applies to MSPs who are the subject of complaints. It does not apply to complainers. As any complainer (or at the very least any complainer who is not an MSP) is entirely free to discuss a complaint which they have submitted, it is erroneous to read the Code as imposing confidentiality: the vast majority of complaints are likely to be made by members of the public, and not MSPs.

29. Second, at [46] in the Draft, one finds a quite remarkable proposition, as follows: "in publicising her intention to complain about a fellow MSP before that member had an opportunity to defend herself during an independent and confidential investigation, the Respondent intentionally sought to damage the reputation of Ms Chapman".

30. That is a very serious allegation, which was never put to Ms Regan. There is no factual foundation therefor, whatsoever. It is categorically denied. The purpose of the statement complained of was not to damage Ms Chapman's reputation, but rather to raise serious concerns as to her conduct in denigrating the justices of the Supreme Court (a point returned to below).

31. Third, a similar point arises from para [49], in which it is said that:

> "If the Respondent's disclosure of her complaint was protected by her Article 10 rights, this would set a precedent whereby MSPs could publish complaints or an intention to complain in breach of the Code in order to attack political opponents by publicly undermining their reputation."

32. As to this, there was no attempt to undermine Ms Chapman's reputation: rather, a legitimate and widely held concern as to her actions was raised. Moreover, and in any event, there is no pressing social need to prevent an MSP from criticising a political opponent: on the contrary, in any healthy democracy there is a pressing social need ***not*** to do so.

33. Fourth, it is similarly erroneous to base the decision on the proposition that "Ms Chapman had a right to the protection of her reputation until such time as due process had been followed". That makes no sense, given that the Draft already recognises (correctly) that Ms Regan would have been entitled to condemn her actions publicly, as indeed others had done.

34. Fifth, it is moreover wrong to contend that Ms Regan's actions "could damage the integrity of the complaints process and undermine public confidence in the

system", in circumstances where she was free to condemn Ms Chapman's actions publicly, and where any member of the public who complained about those actions could comment freely on the complaint.

35. Sixth, the comment that protecting Ms Regan's freedom of expression might "also jeopardise the public perception of the Commissioner's ability to conduct fair and impartial investigations into MSPs' conduct" is similarly inexplicable, and for similar reasons. So to hold would mean that if, for example, the President of the Law Society, or one of the Judges of the Supreme Court, had made a complaint and revealed that (s)he had done so, the public would be at risk of thinking that the Commissioner could not investigate the matter fairly and impartially. No sensible member of the public would so consider.

36. Finally, the Draft fails to recognise that one of the factors in Art10(2) is where restrictions are necessary "for maintaining the authority and impartiality of the judiciary". The flip-side of this is that speech ***designed*** to maintain the authority and impartiality of the judiciary cannot sensibly be restricted.

37. Judges who are criticised in public are in an invidious position. Constitutionally, they must remain mute, and cannot (or, at least in the vast majority of cases, do not) speak out in their own defence. That defence rests with others – primarily, the legal profession, and elected politicians. The duty on the latter to speak in defence of the judiciary is underlined by s.1 of the Judiciary and Courts (Scotland) Act 2008. Ms Regan recognised and obtempered that duty. Ms Chapman did not.

38. It is thus a considerable irony that the Commissioner seeks to condemn the actions of Ms Regan in speaking out in opposition to Ms Chapman's unprecedented and unwarranted accusations of bigotry on the part of the Supreme Court justices. Such condemnation is wholly incompatible with the duties on and freedoms enjoyed by Ms Regan, and with basic notions of a free and democratic society.

Conclusions

39. The Draft is, with great respect, deeply flawed; lacking in factual foundation; and erroneous in law. If carried into effect, it would represent an egregious breach of Ms Regan's fundamental rights, at common law and under ECHR. The Commissioner is a public body within the meaning of the Human Rights Act 1998, and as such cannot lawfully act in such a manner.

40. For these reasons, the Commissioner is respectfully requested to reconsider the position, in light of the foregoing, and (having done so) to reject the complaint – as irrelevant (on the basis of Ground 1), which failing as unfounded (on the basis of Grounds 2 and 3).

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11 November 2025.