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## CONFIDENTIAL

### Sent via e-mail only to:

[julie.marson.mp@parliament.uk](mailto:julie.marson.mp@parliament.uk)

Date: 9<sup>th</sup> November 2023

Dear Ms Marson

### Initial assessment decision letter – alleged breach of Councillor’s Code of Conduct

In accordance with East Herts Council’s Complaints Handling Procedure for matters relating to the Councillors’ Code of Conduct, I write to confirm the outcome of the Initial Assessment of your complaint.

In coming to this decision, the following has been considered:

- Your original letter of complaint dated 10<sup>th</sup> October 2023,
- Five screenshot of Cllr Butcher’s X (formally Twitter) pages,
- Cllr Butcher’s response to my request for information dated 12<sup>th</sup> October 2023,
- East Herts Council’s Councillor Code of Conduct (please click [here](#));
- East Herts Council’s Complaints Handling Procedure for matters relating to the Councillors’ Code of Conduct (please click [here](#))

I have also liaised with the Council’s Independent Person, Mr Nicolas Moss, a person appointed under section 28 of the Localism Act 2011 who may be consulted on Councillor Complaints and came to this decision following such consultation.

The decision is that the complaint is not capable of further consideration, this is because the Councillor was not acting in his capacity as a councillor at the time of the incidents complained of.

A summary of the complaint and reasons for this decision are as follows:

You referred to two tweets and three retweets made by Cllr Butcher on two separate X (formally Twitter) accounts belonging to him. These tweets and retweets concerned the conflict in the Middle East, which had recently been reignited after the terrorist atrocities perpetrated by Hamas against Israel on 7<sup>th</sup> October 2023.

Before I can consider the appropriateness, or otherwise, of the tweets and retweets themselves, I must first satisfy myself as to whether Cllr Butcher was in fact acting in his capacity as a councillor at the time they were sent.

Under section 27(1) of the Localism Act 2011 a “relevant authority”, which includes East Herts Council, is placed under a statutory duty to “promote and maintain high standards of conduct by members and co-opted members of the authority”. Under section 27(2) a relevant authority “must in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority **when they are acting in that capacity**” (my emphasis added).

The words highlighted above narrowed what could be caught by a standards complaint. Prior to the introduction of the Localism Act in 2011, the (now defunct) national Code of Conduct applied not only when a member was acting in their capacity as a councillor, but also when they were purporting to do so.

The Localism Act, which replaced the previous national framework, is unfortunately vague on the question of what constitutes acting in an ‘official capacity’. The Government has also not published any guidance on interpretation and there is no case law arising from the Localism Act to assist on this point either. There is, however, well established case law from earlier hearings under the old national framework which are still relevant today.

Whilst not exactly the same as the activity undertaken by Cllr Butcher, the matter of being ‘in capacity’ in relation to online activity was considered by Judge Laverick in First Tier Tribunal Case No. LGS/2011/0537. In that case, where a councillor was writing in an online blog, Judge Laverick took the view that it was entirely reasonable for a councillor to write posts in their private capacity even if they clearly identified themselves as a councillor in those posts. The key determining factor when considering whether a councillor is writing within their official capacity is whether the content is sufficiently connected to Council business in order for the Code to be engaged; to consider otherwise was found to be a disproportionate restriction of an individual’s freedom of speech and right to a private life. Judge Laverick accepted that under those

circumstances a councillor could make offensive, and possibly defamatory, comments that may affect the reputation of the Council without necessarily breaching the Council's Code of Conduct.

The legislation, as it is now, therefore only applies the Code of Conduct to members when conducting Council business, when carrying out their constituency work or when acting as a representative of the authority. A distinction must be drawn between that person as a councillor and that person as a private individual; a councillor is not a councillor twenty-four hours a day.

Turning to the matter at hand, as the conflict in the Middle East is not Council business, nor connected to any Council business, it is clear from the principle set out in the First Tier Tribunal case above that Cllr Butcher's tweets and retweets cannot be captured by the Council's Code of Conduct.

A further point, separate and distinct to the Code of Conduct, which I had to consider was Cllr Butcher's position, at the time, as Chairman of East Herts Council.

Paragraph 3.7.2 of the Council's Constitution states that "the Chairman is the ceremonial head of the council and ... must maintain an apolitical stance, especially when chairing Full Council meetings".

Clearly, the tweets and retweets referred to above were not apolitical and would have been problematic with regards to Cllr Butcher's position as Chairman of the Council, however, as Cllr Butcher stepped down from this role on 13<sup>th</sup> October 2023 there is nothing more for me to consider on this aspect either.

Whilst I am sure you will be disappointed with the outcome; I do hope you will appreciate that I have given it sufficient consideration in reaching the conclusion that I have.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Ellis', written in a cursive style.

James Ellis

**Head of Legal and Democratic Services and  
Monitoring Officer**