BRIEF TO ADVISE

QUERIST: Belfast City Council

Re: Call-in under section 41(1) of the Local Government Act (Northern Ireland) 2014. Decision in respect of the flying of the national flag of Palestine at City Hall on 29 November 2025

Introduction

1. I am instructed that Belfast City Council ("the Council") has received a requisition for call-in of a decision made by the Council at a meeting on 03 November 2025. The decision relates to the flying of the national flag of Palestine at City Hall on 29 November 2025. The decision is described in further detail below.

2. On 12 November 2025, a call-in requisition form, signed by 12 councillors was received by the Chief Executive. It requests call in under sections 41(1)(a) and (b) of the Local Government Act (NI) 2014 ("the 2014 Act"). Section 41(2) of the Local Government Act (NI) 2014 requires Council Standing Orders to make a provision to obtain an opinion from a practising barrister or solicitor before reconsideration of a decision under section 41(1)(b). I am asked to provide an opinion accordingly. Those seeking call in rely on both grounds under section 41(1). Whilst section 41(2) only *requires* the Council to obtain a legal opinion on a requisition made on the section 41(1)(b) ground, instructing solicitors have requested that I consider all grounds of call in relied upon.

3. Those seeking call in of the decision make representations as to the proper procedure to be undertaken by the Council in respect of the call-in request. As requested by instructing solicitors, I address that in a separate opinion.

4. This opinion is structured as follows:

    i. Summary of the key statutory provisions.
    ii. Consideration of the decision subject to request for call in.
    iii. Consideration of the requisition and grounds for call in.

5. I was briefed on 19 November 2025 and asked to provide an opinion on a very urgent basis to enable the Council to progress the call-in request, bearing in mind the date of implementation of the decision and the procedural steps required to enable the Council to consider this matter. I do so accordingly.

Key Statutory Provisions

6. Section 41(1) of the 2014 Act requires that the Council:

    "must make provision requiring reconsideration of a decision if 15 per cent. of members of the council (rounded up to the next highest whole number of necessary) present to the clerk of the council a requisition on either or both of the following grounds-

(a) that the decision was not arrived at after a proper consideration of the relevant facts and issues.

(b) that the decision would disproportionately affect adversely any section of the inhabitants of the district."

7. Section 41(4) of the 2014 Act defines a *"decision"* as being a decision of the Council, or a Committee of the Council, including a decision to make a recommendation.

8. The requirement that 15% of members present the requisition equates to a requirement for at least 9 members to present a requisition in order to constitute a valid call in.

The decision subject to request for call in

9. The decision subject to the request for call in is a decision made by the full Council on 03 November 2025[1]. I am briefed with the Decision Register which records the decision in the following way:

> *"Strategic Policy and Resources Committee- Amendments*
> *…*
> *Human Rights Day 2025- Flag Requests*
>
> *The Council agreed that the minute under the heading "Human Rights Day 2025- Flag Requests" be amended to also provide that, in recognition of the International Day of Solidarity with the Palestinian People, that the Council would erect the National Flag of Palestine above the City Hall on 29th November 2025."*

10. I am instructed that the minute of the Council meeting is not yet available but I have been provided with an electronic link to a recording of the Council meeting, which I have reviewed. When the Strategic Policy and Resources (SP&R) Committee minutes were tabled for discussion, Councillor Murphy spoke on the minute relating to Human Rights Day 2025. He welcomed the decision of the SP&R Committee and stated:

> *"The…UN flag will fly on the 10th of December, marking the Universal Declaration of Human rights…we've heard it touched on…the importance of Human Rights, especially with everything that's going on in the world at present. I think that's particularly important when we see what's unfolding daily in terms of human rights abuses and genocide in Palestine."*

11. Councillor Murphy made comments and observations on "*the ceasefire",* that is, the ceasefire presently in place between Israel and Palestine. Councillor Murphy noted that conflict continues despite that ceasefire. He went on to say that people had contacted him to ask what they could do to *"highlight those human rights abuses and support the*

[1] Although, I note that the form for the requisition for call in refers to the *"date of Committee meeting".* I presume this to be an error.

people of Palestine in whatever way they can". Councillor Murphy referred to efforts by his constituents to fundraise for children and young people in Gaza to access water and food. He went on to say, *"it's also about what we do here".* He continued:

> *"So, I would like to propose that on the 29th of November, which is the international day of solidarity with the people of Palestine, that Belfast City Hall would have the national flag of Palestine flown above the building."*

12. The proposal was seconded and voted upon. In that vote, 41 members voted for the proposal, and 15 voted against it. The proposal was therefore carried.

The Requisition and grounds for call in

13. I am instructed that the Decision Register was issued on 06 November 2025, which started the 5-day working period within which a decision can be called in. This period expired at 10am on 13 November 2025. As noted above, the requisition for call-in was received within that time, on 12 November 2025. It is signed by 12 members. Standing Orders provide (as required by section 41 (1) of the 2014 Act) that a requisition for call in be made by 15% of members of the Council. In Belfast City Council, that equates to a requirement for at least 9 members to present a requisition in order to constitute a valid call in. As the subject call-in request is signed by 12 members of Council, it meets this procedural requirement.

14. The requisition form records that the call in is requested under both grounds contained in section 41 of the 2014 Act, that is:

> 41(1) (a): *"that the decision was not arrived at after a proper consideration of the relevant facts and issues."* ("the procedural ground")
>
> 41(1)(b): *"that the decision would disproportionately affect adversely any section of the inhabitants of the district."* ("the community impact ground").

15. I consider each of the grounds in turn below.

I. Ground 41(1)(a) of the 2014 Act: that the decision was not arrived at after a proper consideration of the relevant facts and issues

16. This is a procedural test. The principle that decision makers must take into account relevant considerations, and conversely must exclude irrelevant considerations from their mind, is one which is well known in public law terms. In the seminal case of Associated Provincial Picture Houses Ltd v Wednesbury Corporation, Lord Greene expressed the requirement this way:

> *"A person entrusted with discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If*

he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'."

17. A decision maker must therefore sufficiently inform itself about the matter before it makes a decision. However, under general public law principles, the weight to be attached to a particular consideration is a matter for the evaluation of the decision maker. I therefore consider the test under Section 41(1)(a) with these well-known public law principles in mind.

18. The call-in requisition form lists 2 reasons in support of the call-in under this ground. I address each in turn below.

i. Breach of section 75(2) of the Northern Ireland Act 1998

19. The call-in requisition form contends, *inter alia*:

"The decision arrived at was done so without a proper consideration of the relevant issues, in particular the council's obligations under section 75(1) and (2) and section 76 of the Northern Ireland Act 1998 ('the 1998 Act')."

20. In respect of the alleged breach of section 75 of the Northern Ireland Act 1998 it is contended:

"There has not been a full EQIA carried out in respect of this issue which, given the context, is plainly divisive and controversial. The Israeli-Palestine conflict generates strong viewpoints in Northern Ireland, with significant community division in respect of who is 'right' or 'wrong'. There is further a strong Jewish community in Northern Ireland, and in the Belfast City Council area in particular. The decision to fly the flag of Palestine plainly represents Belfast City Council taking a side in a divisive international conflict, and thus alienates the Jewish community of the district who will be left feeling fearful and abandoned by their local council. The decision damages good relations between the Jewish community and others in the council area, and also between the unionist and nationalist traditions given the generally strong divisive lines that exist between the two main political traditions on this issue."

21. In respect of the alleged breach of section 76 of the Northern Ireland Act 1998 it is contended:

"The decision discriminates against the Jewish community, by actively "taking a side" in an ongoing international conflict. This is straightforward discrimination against a class of persons on grounds of religious belief and political opinion."

22. Sections 75 and 76 of the Northern Ireland Act 1998 are separate provisions and impose separate duties on public authorities. It is therefore necessary to consider each in turn.

Section 75 of the Northern Ireland Act 1998

23. The Council's duties under section 75 are procedural in nature. That is to say, they are concerned with how decisions are reached. Section 75(1) of the Northern Ireland Act 1998 states:

> *"(1)A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity—*
> *(a)between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;*
> *(b)between men and women generally;*
> *(c)between persons with a disability and persons without;*
> *(d)between persons with dependants and persons without"*

24. The good relations duty is set out in Section 75(2) of the Northern Ireland Act 1998 which provides:

> *"(2)Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group."*

25. I will refer to these duties collectively as *"the Section 75 obligations".*

26. I consider it beyond doubt that, in making the subject decision, the Council was carrying out a function for the purposes of section 75. In Hazell v Hammersmith and Fulham London LBC [1991] 1 ALL ER 545, the House of Lords considered the meaning of the word *"functions"* for the purposes of Local Government Act 1972. It concluded that the word embraces *"all the duties and powers of a local authority: the sum total of the activities Parliament has entrusted to it."*

27. The Section 75 obligations are principally procedural obligations as to how decisions are reached and not substantive obligations, that is to say that they do not prescribe what the resultant decision must be. They require that the decision maker *"have due regard to"* and *"have regard to"* the matters set out, but they do not require a particular outcome.

28. Voluminous case law in this area has grappled with the question-what does the duty to have due regard require in reality? In R (on the application of Baker and others) v Secretary of State for Communities and Local Government [2008] EWCA Civ 141, Dyson LJ considered that question:

> *"What is due regard? In my view, it is the regard that is appropriate in all the circumstances. These include on the one hand the importance of the areas of life of the members of the disadvantaged racial group that are affected by the inequality of opportunity and the extent of the inequality; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing."*

29. Giving the judgment of the Divisional Court in R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 (Admin) Aikens LJ, stated that the duty to have *"due regard"* requires a *"conscious approach and state of mind"*. Significantly, in that case the Court concluded that, the duty under the Disability Discrimination Act 1998 to *"have due regard"* to, inter alia, *"the need to promote equality of opportunity between disabled persons and other persons",* does not impose a requirement to conduct a full equality impact assessment. Rather, *"at the most it imposes a duty on a public authority to consider undertaking a DEIA, along with other means of gathering information, and to consider whether it is appropriate to have one in relation to the function or policy at issue, when it will or might have an impact on disabled persons and disability."*

30. The necessity of equality screening in respect of local government decision making was emphasised by the High Court in this jurisdiction in Re Toner's Application for Judicial Review [2017] NIQB 49. The Court quashed the decision of Lisburn & Castlereagh City Council in respect of the implementation of a public realm scheme because the scheme had not been subject to equality screening. In rejecting arguments that the Council had assessed equality impacts in another, more informal way, the Court concluded that *"a conscious approach to section 75 was required".*

31. The Council has, as it is obliged to do under Schedule 9 of the Northern Ireland Act 1998, published an Equality Scheme which sets out how the Council plans to meet its Section 75 obligations. Chapter 4 states:

> *"4.3 The council uses the tools of screening and equality impact assessment to assess the likely impact of a policy on the promotion of equality of opportunity and good relations."*

32. Once a policy is screened, it will lead to one of three outcomes:

    i. The policy is *"screened in"* and an equality impact assessment will be carried out.
    ii. The policy is *"screened out"* and mitigations are included in the policy and/or an alternative proposed policy is to be adopted.
    iii. The policy is *"screened out"* and no mitigations are required an no alternative policy is proposed.

33. An EQIA is a thorough and systematic analysis of a policy. However, that only takes place where the policy has been screened in. In R (Brown) v Secretary of State for Work and Pensions [2008] EWHC 3158 (Admin) Aikens LJ, concluded that a full EQIA is not required in order to fulfil the *"regard"* and *"due regard"* duties.

34. I therefore do not consider that there is merit in the ground which contends that a full EQIA ought to have been carried out.

35. However, I am instructed that no equality screening exercise was carried out in respect of the decision which is the subject of this call-in request. There is no evidence that the Council had any information before it about the impact the proposal would have on

Section 75 categories before it made its decision. Indeed, the discussion in the Council chamber did not touch upon potential equality issues at all.

36. I am instructed that, after the Council made its decision, the City Solicitor arranged for the Council's Equality and Diversity Officer to commence a draft equality screening document. That draft was completed on 13 November 2025 and I have been provided with a copy of same. It is a detailed and lengthy document. I do not repeat the entirety of its contents. However, some extracts are worthy of particular note and I record them below:

    i. In considering the decision, the draft screening document states:

    "The flying of flags in the north of Ireland is complex and politically sensitive. The iconic nature of City Hall means that it is a regular site of protest for different identity groups, with flags often present as indicators of support for one identity group over another."

    ii. The draft screening document records evidence touching upon each of the section 75 categories in turn. In respect of *"religious belief"* it is records:

    "The Jewish Small Communities Network provides further insight to the Jewish community in Belfast noting 'although the synagogue is today down to under 80 members the Belfast Jewish community continues to make a contribution to life in Northern Ireland out of proportion to its numbers."

    iii. In respect of *"political opinion",* it records:

    "The appearance of Palestinian and Israeli flags, being flown as markers of segregation in Belfast has received attention since the early 2000s. The increased number of Israel flags in U/unionist areas and commentary was assessed using articles from the Belfast Telegraph, the Newsletter and the Irish News. Also surveyed were the newsletters An Phoblacht/Republican News and Loyalist. From their findings the researchers summarised the:

    > *'[Graphic demonstration of the increased prevalence of political symbolism in the post-Troubles era and the way in which groups in Northern Ireland have sought to reference and draw upon similar conflict situations for their own agenda'."*

    iv. In assessing the likely impact on equality of opportunity, the draft assesses the level of impact as minor and further states:

    "The impact of a flag flying for a single day should be considered in proportionality to the adverse impact."

    v. In assessing the likely impact on good relations, the draft assesses the level of impact as minor and further states:

"…the issue of Israel and Palestine has and is continuing to divide the communities listed above which is clearly visible in the public domain."

vi. The draft screening document concludes by recording that the decision should be *"screened out".* In this section of the draft report there is a space for the drafter to *"provide a brief note here to explain how this decision was reached".* That section is not completed in the draft.

37. I will return to the content of the draft screening document when considering the community impact grounds for call in, below. However, for the purposes of considering the procedural ground based on section 75 of the Northern Ireland Act 1998, the most significant thing to note is the timing of the draft screening report. It was created *after* the decision. Council members did not (and still have not) seen and considered that document. It did not therefore inform their decision making.

38. Having carefully considered the principles arising from the case law analysed above and the Council's own Equality Scheme, it is my view that the subject proposal should have been screened *before* the decision was made by Councillors, in order to identify the likely impact on equality of opportunity or good relations for any of the Section 75 categories. I consider this to be a procedural failure with the result that the decision was not arrived at after a proper consideration of the relevant facts and issues

39. I note that the Council's template requisition form for call-in includes advice *"to assist members considering calling in a decision of community impact grounds."* That advice includes *"the decision or policy was not screened for compliance with Section 75 of the NI Act 1998"* and *"the decision is in conflict with the council's equality scheme."* I consider a complaint that the Council has not screened a decision and/or a complaint that the decision was in conflict with the Council's Equality Scheme to fall into the category of Section 41(1)(a)- that it to say, it can give rise to a procedural ground of call-in. That is consistent with the tenor of the authorities outlined above which emphasise the procedural nature of the section 75 obligations. It is also of note that, despite that explanatory note, those seeking call-in categorised this issue as a procedural one. In my view, that is the correct approach.

40. For the reasons outlined above, I therefore conclude that this procedural ground of call in has merit. To be clear, I do not conclude that there has been a *"breach of section 75"* as alleged because there has been a failure to conduct a full EQIA. Rather, I conclude that the procedural failure was the failure to carry out an equality screening exercise before making the decision. When the decision is reconsidered, the outcome of the equality screening exercise will have to be considered. However, I do not conclude that the screening exercise must result in an EQIA.

Section 76 of the Northern Ireland Act 1998

41. It is contended by those seeking call-in that:

"The decision discriminates against the Jewish community, by actively "taking a side" in an ongoing international conflict. This is straightforward discrimination against a class of persons on grounds of religious beliefs and political opinion."

42. Section 76 of the Northern Ireland Act 1998 states:

"(1) It shall be unlawful for a public authority carrying out functions relating to Northern Ireland to discriminate, or to aid or incite another person to discriminate, against a person or class of person on the ground of religious belief or political opinion."

43. *"Discrimination"* is defined in section 98(5): *"a person discriminates against another person or a class of persons if he treats that other person or that class less favourably in any circumstances than he treats or would treat other persons in those circumstances."*

44. In Re Downes' Application for Judicial Review [2009] NICA 26, the Court of Appeal confirmed the factors which must be considered when assessing whether discrimination under section 76 has taken place:

"[56] The question whether discrimination under s 76 has taken place must focus not only on whether it has been shown that a person or class of persons has been discriminated against but also on the nature of the act alleged to constitute discrimination. As to the first of these, Lord Hoffman said in Regina v Secretary of State for Work and Pensions, ex parte Carson and Reynolds [2005] UKHL 37, [2005] 4 ALL ER 545 'Discrimination means a failure to treat like cases alike. There is obviously no discrimination where the cases are relatively different…' To like effect is Lord Nicholls' comments in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] NI 174 that whether the discrimination has been established is ultimately to be determined by asking if the claimant received less favourable treatment than others."

45. The Court of Appeal went on to consider whether the appointment of an interim victims' commissioner was discriminatory under section 76. It concluded:

[57] Whether discrimination has occurred is conventionally addressed by examining the treatment that an actual comparator received or that which a notional comparator would have been accorded and relating this to the treatment meted out to the person alleging discrimination. In this case, Girvan J did not explicitly identify a comparator, although one may suppose that he had in mind the political parties other than the DUP who were not consulted about possible nominees for the post. But here one must concentrate on the act of discrimination alleged. It appears to us that the actual discrimination alleged is the appointment of Mrs McDougall, rather than the decision to consult only the DUP of all the political parties who might have expected to be involved in discussion about the appointment. A failure to consult some political parties while giving privileged access to one party on the issue of an appointment such as this could involve a breach of s 76 but the appointment of Mrs McDougall, although consequent on the consultation of the DUP, is not in our judgment an act of

discrimination under s 76. Put simply, the failure to consult other political parties may have involved discrimination but the appointment of Mrs McDougall did not. She was not aligned to any political party and there is no discernible advantage to the DUP from her actual appointment (as opposed to being consulted about it). There is likewise no corresponding disadvantage to any of the other political parties by the appointment of Mrs McDougall. We do not consider therefore that breach of s 76 has been established."

46. Applying those principles to this matter, first, I consider the nature of the alleged act. That is the flying of the Palestinian flag at City Hall. I recall the conclusions of Kerr J (as he then was) in Re Murphy's Application for Judicial Review [2001] NI 425. He concluded that the Secretary of State had not acted unlawfully in the making of Flags Regulations because:

"The making of the Regulations and the requirement that the Union flag be flown on government buildings do not treat those who oppose this any less favourably. The purpose of the Regulations is, as I have said, to reflect Northern Ireland's constitutional position, not to discriminate against any section of its population."

47. Similarly, in this matter it is necessary to look for the purpose behind the act of flying the Palestinian flag.

48. The purpose can be gleaned from the Decision Register, which records the decision to have been made *"in recognition of the International Day of Solidarity with the Palestinian People."* The draft equality screening document is also instructive. It notes:

"Information on the aim of the International Day of Solidarity with the Palestinian People is extracted from the United Nations website:

In 1977, the General Assembly called for the annual observance of 29 November as the International Day of Solidarity with the Palestinian People (resolution 32/40 B). On that day, in 1947, the Assembly adopted the resolution on the partition of Palestine (resolution 181 (II)).

In resolution 60/37 of 1 December 2005, the Assembly requested the Committee on the Exercise of the Inalienable Rights of the Palestinian People and the Division for Palestinian Rights, as part of the observance of the International Day of Solidarity with the Palestinian people on 29 November, to continue to organize an annual exhibit on Palestinian rights or a cultural event in cooperation with the Permanent Observer Mission of Palestine to the UN.

The resolution on the observance of the International Day of Solidarity with the Palestinian People also encourages Member States to continue to give the widest support and publicity to the observance of the Day of Solidarity."

49. I have also considered the conclusions of the Court of Appeal in Helen McMahon's application for Judicial Review [2019] NICA 29. It considered the lawfulness of the Secretary of State's action in making Flags Regulations, the effect of which was to fly the

Union flag over courthouses for 15 days a year. In considering the effect of that, the Court concluded:

> *"[36] The flying of flags on a small number of selected days over Omagh courthouse does not disrespect the applicant or her community or any part of her community or provide additional respect to the Unionist community or its members. It prefers neither one community over another nor does it hold one individual in higher esteem than another. It is not discriminatory. It simply reflects the constitutional position of Northern Ireland as part of the United Kingdom, as Kerr J has already pointed out."*

50. Focusing on the nature, purpose and effect of the alleged discriminatory act, as required by the legal authorities cited above, I do not consider the act to be discriminatory for the purposes of section 76 of the Northern Ireland Act 1998. Given the expressions cited above about the purpose of the act, I do not consider that it has been established that the act constitutes *" 'taking a side' in an ongoing international conflict",* as suggested by the requisitioners. Whilst opposition to the flying of the flag may be a legitimately and strongly held belief, it does not follow that the act of flying the flag is discriminatory. The flying of the Palestinian flag does not treat those who oppose it less favourably. It does not prefer one community over another.

51. In this regard it is also relevant to note that there is a precedent in the Council, in respect of the Armed forces flag, for flying a flag to coincide with a festival and support those celebrating that festival.

52. I add that class of persons who the requisitioners identify as the victims of alleged discrimination is *"the Jewish community".* I have received no evidence as to the views of anyone from the Jewish community as to the impact of the decision on them. Absent that, it is not possible to conclude that discrimination has occurred.

53. For all the reasons outlined above, I do not consider there to be merit in this ground of call in.

ii. Breach of obligations under the Fair Employment and Treatment (NI) Order 1998

54. Under this heading the requisition form refers to legal advice received in 2012 from David Scoffield QC (as he then was) in respect of the flying of the Union flag at City Hall. The requisition form refers to an extract of that advice in relation to Article 19 of the Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO). Those seeking call in contend:

> *"Those employees who are of a Jewish background, or supportive of Israel as a general political opinion, will feel intimidated and harassed by Belfast City Council taking a side by hoisting the flag of those who have openly declared their intention to murder and ethnic cleanse the Jewish community from their homeland.*

There has been no due consideration or legal advice obtained in respect of the potential liabilities under Article 19 FETO."

55. It is evident from the above that the crux of this ground is the suggestion that advice as to the implications of the legal obligations under FETO arising from the decision were not considered by the Committee. Thus, this is a classic allegation that relevant information was not taken into account when making the decision.

56. FETO governs an employer's duty to its employees. Equality Commission guidance on the duties focuses on the concept of a *"harmonious"* working environment. Since City Hall is a workplace, it is necessary to consider the effect which symbols, emblems and flags have on the working environment.

57. The draft equality screening document is also relevant to this ground. Under the section *"available evidence",* it provides a lengthy summary of advice received in respect of flags and the status of City Hall as a workplace. It goes on to record figures relating to the religious beliefs of Council employees, obtained under FETO monitoring provisions. It therefore appears that if the equality screening had been before the Council before it made its decision, information relating to the duties to employees under FETO would have been available to members for consideration.

58. Given that City Hall is a workplace, and symbolic nature of displays of flags in Northern Ireland, I agree that a relevant consideration in making this decision was the impact the decision might have on employees having regard to the Council's obligations under FETO. As a result, I conclude that the decision was not arrived at after a proper consideration of this relevant issue.

II. 41(1)(b): that the decision would disproportionately affect adversely any section of the inhabitants of the district. ("the community impact ground").

59. The call in requisition form contends that the decision will have a disproportionate adverse impact on the Jewish Community. I do not repeat the lengthy reasoning in the requisition form but, needless to say, I have considered it all carefully. One of the key representations made is that by taking this decision the Council is *"taking a side"* in the conflict between Israel and Palestine. It is contended that the effect of the decision is *"to send a message which is overtly hostile to the Jewish community"*. Concerns around *"antisemitism"* are also raised.

60. There are a number of elements to the test under Section 41(1)(b) test. There must be (i) an adverse effect; (ii) this must be on a specified section of the inhabitants of the district; and (iii) the effect on them must be disproportionate.

61. Test (ii) can be addressed briefly, so I consider it first. The requisition states the section of inhabitants of the district which is adversely affected by the decision to be *"the Jewish*

community". Standing Order 48(b)(4) defines the *"section of the inhabitants of the district"* for the purposes of Section 41(1)(b) of the Local Government (NI) Act as being:

> *"any section of the inhabitants that is clearly identifiable by location, interest or other category (including those categories indemnified[2] in section 75(1) of the Northern Ireland Act 1998)."*

62. The Jewish community is a clearly identifiable section of the inhabitants of the district, so test (ii) is met.

63. I turn now to consider tests (i) and (iii).

64. In respect of both tests, I recall that the language used by the statute is "*that the decision would disproportionately affect adversely any section of the inhabitants of the district".* I emphasise the words "*the decision"* in this context because I consider that the focus must be on the actual effect of the decision made by the Committee. I have already considered the nature and effect of the decision above.

65. I remind myself that the effect of the decision will be to fly the Palestinian flag at City Hall for one day only. I further remind myself of the conclusions of Kerr J in Murphy and the Court of Appeal in McMahon as to the effect of the flying of the Union flag. The words of Horner LJ in McMahon merit repetition:

> *"[36] The flying of flags on a small number of selected days over Omagh courthouse does not disrespect the applicant or her community or any part of her community or provide additional respect to the Unionist community or its members. It prefers neither one community over another nor does it hold one individual in higher esteem than another."*

66. For the reasons already explained above, I do not conclude that the flying of the flag constitutes the Council *"taking a side"* in the conflict between Israel and Palestine. The evidence does not support a conclusion that the decision will *"send a message which is overtly hostile to the Jewish community".* The evidence from the UN on the purpose and aim of the International Day of Solidarity with Palestine People (set out above) does not support such a proposition. Further, I have carefully considered the representations made by Councillor Murphy when he proposed this action. His representations focused on *"support"* for the *"people of Palestine".* It is notable that the support is for the *"people of"* Palestine, not the state of Palestine or its government. Whilst not every elected member or indeed citizen will share the desire to act in support and solidarity, it does not follow that the act is hostile to the Jewish community. Offering support for persons who live in an area involved in a conflict is not automatically hostile towards persons who live in the area on the other side of the conflict.

[2] The word "indemnified" is used in the standing order, but it may be that this is an error and should read "identified".

67. I again note the draft equality screening document, which records that past EQIAs conducted in respect of the permanent flying of the Union flag at City Hall (2012) and in respect of the flying of the Armed Forces flag on a small number of days (2013) did not result in an adverse impact on equality of opportunity.

68. For all these reasons, I do not consider that the decision has an adverse impact on the Jewish community as asserted by the requisitioners.

69. Despite this conclusion, for completes and in order to assist a full consideration of this matter, I will nonetheless consider whether, if an adverse impact was found, it is disproportionate (test iii).

70. There are well established legal tools to analyse the proportionality of a measure. The concept of proportionality, in the legal context, has been imported from jurisprudence European Convention of Human Rights. The essence of the concept in that context is that any interference with Convention rights must be proportionate to the legitimate aim pursued. In that context, the following questions are asked:

    i. Is the objective sufficiently important to justify limiting a fundamental right?
    ii. Are the measures designed to meet the objective rationally connected to it?
    iii. Are the means used no more than necessary to accomplish the objective?

71. *In Azienda Agro-Zootecnica Franchini Sarl v Regione Puglia* Case C-2/10) EU:C:2011:502, *[2011] ECR I-6561*, at para [73] the CJEU said proportionality:

    "requires that measures adopted by Member States in this field do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; where there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued …"

72. Whilst proportionality has its genesis in European law, it is a concept which is has been utilised by the UK courts in assessing the domestic lawfulness of decisions of public authorities (see for example Pham v Secretary of State for the Home Department [2015] UKSC 19). At its simplest, the proportionality principle requires the decision maker to strike a balance between the objective of a particular decision and the interests that might be affected by the decision. I therefore consider that the assessment of the proportionality under section 41(1)(b) of the 2014 Act should be approached with foundational principles in mind.

73. The objective, or purpose, of the decision has already been addressed above. It is to express support for and solidarity with the people of Palestine. In the proportionality balancing exercise, that purpose is on one side of the scales. On the other, is the interests of those who it is said will be affected by the decision, that is the Jewish Community. It is very difficult to assess this matter as there is no direct evidence of the impact on the Jewish community. I have not been provided with any direct evidence of views of members of the Jewish community in respect of the decision. The representations made in the

requisition form as to how the Jewish community might feel about the decision appear general and speculative. No particular rights or interests are specified. However, *arguendo,* for the sake of this assessment, I take at its height the suggestion that members of the Jewish community may feel that the decision demonstrates the Council to be *"taking a side".* Having done so, I consider that there is an argument that any impact is minimal, given the expressed purpose of the decision and the effect of it. It will result in the flying of the flag is for a single day. It will not result in any long term policy change or position on the part of the Council.

74. Therefore, whilst I consider it difficult to conduct the proportionality exercise given the lack of concrete evidence, I consider that, even if it is determined that the decision will cause an adverse impact, there is no evidence that any such impact is disproportionate.

Conclusion

75. In conclusion and summary, my opinion is as follows:

    i. **There is merit in the call-in request under section 41(1)(a) of the 2014 Act (the procedural grounds), because the decision was not arrived at after a proper consideration of relevant facts and issues.** The facts and issues not taken into account in this instance were the potential impacts of the decision on the categories specified in section 75 of the 1998 Act, which ought to have been subject to an equality screening exercise, conducted in accordance with the Council's Equality Scheme. The product of that exercise ought to have been taken into account. I also conclude that a further relevant consideration which was not considered was the potential impacts of the decision on City Hall as a workplace, having regard to the Council's obligations as an employer under FETO. There is overlap between these issues.

    ii. **There is no merit in the call-in request under section 41(1)(b) of the 2014 Act (the community impact grounds), because the decision would not have an adverse disproportionate impact.** For the reasons outlined above, I do not consider that the impact of the decision would be adverse, having regard to the nature, purpose and effect of the decision. Further, if I am wrong about that and assuming *arguendo* that the decision would have an adverse impact, I do not consider that any such impact would be disproportionate, again having regard to the nature, purpose and effect of the decision.

76. The requisitioners also raise what they describe as *"procedural issues in respect of this call in".* Those do not touch upon the section 41(1) grounds for call in, rather they touch upon the correct procedure to be followed by the Council in the processing and determination of this call-in request, under the 2014 Act and Standing Orders. As requested by the City Solicitor, I address those matters in separate advice.

77. I trust that the above is of assistance. Instructing solicitors should not hesitate to contact me should they have any queries in respect of the above.

Denise Kiley KC
The Bar Library
21 November 2025