

The International Holocaust Remembrance Alliance working definition of antisemitism and NHS organisations

OPINION

A. Introduction

1. We are asked to advise the Jewish Medical Association (**JMA**) in relation to the International Holocaust Remembrance Alliance working definition of antisemitism and accompanying examples (**IHRA definition**). The JMA is an umbrella organisation which supports Jewish medical professionals in the UK, and promotes links between Israeli and British medicine.
2. We have been asked to advise on the following questions:¹
 - 2.1. Whether, generally speaking, there is any legal impediment to NHS organisations adopting the IHRA definition.
 - 2.2. Whether the IHRA definition, if implemented by an NHS organisation without also producing further guidance, would unduly and potentially unlawfully, impinge on freedom of speech.
 - 2.3. Whether it is necessary for speech relating to Israel to require antisemitic motivation can be said to be antisemitic.

B. Summary of conclusions

3. In summary:
 - 3.1. The IHRA definition is a useful tool which, if adopted, will help NHS organisations to address the serious and worsening problem of antisemitism in the healthcare system. If this problem is not addressed, as Lord Mann has recently concluded, there is real risk that many more Jewish people will be effectively ostracised from the healthcare system. The IHRA definition is a tool which can help to reduce that risk.
 - 3.2. There is no legal impediment to NHS organisations adopting the IHRA definition. On the contrary, the IHRA definition is a tool which can help NHS

¹ We have also been asked to take into account a legal opinion on behalf of Health Workers 4 Palestine which appears to have been sent to NHS Organisations in mid-July 2026 and published online (**HW4P opinion**) <https://www.healthworkers4palestine.com/docs/Legal-implications-of-IHRA-in-NHS.pdf>

organisations fulfil their legal duties, for example under the Equality Act 2010, to prevent discrimination, harassment and victimisation. The definition, which has been already adopted for an extended period by governments and major organisations in the U.K., has been considered on a number of occasions by the courts – no court has found that it is unlawful to adopt it.

- 3.3. The IHRA definition is best understood as guidance which may help an NHS organisation understand modern antisemitism. Some of the illustrative examples, especially those which mention Israel, have caused concern in respect of freedom of speech and freedom of thought, conscience and religion, which are protected in law. In our view, those concerns have often been overstated, and have not come to pass despite the IHRA definition being widely adopted by institutions and governments over the past decade. This is because the text of the IHRA definition does not claim that any of the examples automatically or even presumptively amount to antisemitism; rather, they “*may serve as illustrations*”, they “*could*” be antisemitism and this must be when “*taking into account the overall context*”. Moreover, “*criticisms of Israel similar to that leveled [sic] against any other country cannot be regarded as antisemitic*”. These are adequate safeguards, contained within the text, which would prevent an NHS organisation from breaching legal duties simply because it adopted the IHRA definition.
- 3.4. The examples relating to Israel are important because they recognise that modern antisemitism often manifests as extreme anti-Israel and antizionist rhetoric. Discourse around Israel and Palestine sometimes reflects and propagates classic antisemitic tropes, such as Jewish people being bloodthirsty, child killers or secret puppeteers of global government. This can lead to discrimination and even violence against Jewish people, and indeed accounts for a significant proportion of antisemitic incidents, including terrorist attacks, recorded in recent years. The IHRA definition can help an NHS organisation recognise this and prevent it happening under their watch.
- 3.5. The IHRA definition would co-exist with and not displace NHS organisations’ existing policies and legal duties, including under the Equality Act 2010, the Human Rights Act 1998, codes of conduct and disciplinary and grievance procedures. These duties protect freedom of speech and also require that patients and staff are not discriminated against, harassed or victimised. There may sometimes be tensions between these duties. However, those tensions exist regardless of whether an NHS organisation adopted the IHRA definition. In our view, the IHRA definition can be a useful tool in helping to ensure that

antisemitism is properly understood, particularly when making sensitive decisions which involve freedom of speech and freedom of belief considerations.

- 3.6. There is no legal requirement to place any additional guidance around the IHRA definition. Moreover, to do so would also risk over-complicating and rendering it less useful. The purpose of the IHRA definition is to provide non-legally binding guidance, based on a definition and set of examples. As a guidance document, whilst it is not perfect, it is one which has widespread support within the U.K. Jewish community and amongst its main communal representative bodies. This support has survived the decade since it was drafted, and during which it has often been trenchantly criticised. From an equalities and human rights law perspective, and in the context of the Macpherson principle which is intended to foreground the perception of a victim of racism, the longstanding and ongoing support of Jewish communal organisations should be a weighty consideration in deciding whether to adopt the IHRA definition.
- 3.7. In our view, there is no reason in law to add an “*antisemitic motivation*” requirement to some of the examples as has sometimes been suggested; that is, to require that speech is motivated by hatred of or hostility towards Jews before it is considered to be antisemitic. Motivation/intent will always be a relevant consideration, however, it is well-established in law that racist discrimination and harassment can occur when it is not intended to be racist. To add a requirement for antisemitic motivation could itself be unlawful because it would risk diluting the clearly established legal principles that discrimination and harassment can be established without racist intent.
- 3.8. It would be prudent for an NHS organisation to make clear when it “*adopts*” the IHRA definition what they intend its role to be, however this does not require exhaustive guidance or changes/additions to the text.
- 3.9. In order for it to be effective, NHS organisations should be clear that the IHRA definition will be considered in relation to complaints, disciplinary and grievance processes.

C. **BACKGROUND**

The rise in antisemitism since 7 October 2023

4. There has been a significant rise in antisemitic incidents, including multiple terrorist attacks against the Jewish community, since the Hamas-led terrorist atrocities in Israel on 7 October 2023.
5. The Community Security Trust (CST) has reported record levels of reported antisemitic incidents from 2023 to 2025². In addition to non-violent incidents, there have been a series of attacks which involves serious violence or attempts at serious violence. In the past year alone, there was a fatal terrorist attack at Heaton Park synagogue on Yom Kippur, the fire-bombings of Hatzolah ambulances in Golders Green (a direct attack on an important community healthcare service), an attempted arson attack at Finchley Reform Synagogue, an attempted arson attack at a former Jewish charity premises in Hendon, an arson attack on a memorial wall in Golders Green, two terrorist stabbings in Golders Green and an attempted arson attack at a former-East London Synagogue.
6. It is important context that each of those attacks has been justified as an attack not on Jews but on “Zionists” or as a response to the war in Gaza and the wider Middle East, despite none of the targets having any direct link to that war. In other words, if the purported motivations of the attack are to be taken at face value, they have been attacks on the Jewish community because of its connection (actual and/or perceived) to Israel. In its 2025 Antisemitic Incidents Report, CST highlighted that 1,766 incidents, that is 48% of the annual total, showed explicitly antizionist motivation, compared to 43% in 2024 and 31% in 2023.
7. Jonathan Hall KC, the Independent Reviewer of Terrorism Legislation and Independent Reviewer of State Threats Legislation gave a speech following the Bondi Beach terrorist attack³ in which he highlighted the growing threat of violence arising from the extreme rhetoric regularly heard at “anti-Israel” protests. He said *“When it comes to demonstrations against Israel, we witness a delight in words that spread hatred incautiously. Hatred expressed to Zionists invites hostility to every Israeli and to Jews worldwide. Contrary to all good practice, Zionist is a term that invites stigma and othering... the demonisation of Israelis matters because it is a vehicle for hatred of Jews. My perception is that if you don’t deal with anti-Israeli hatred, you leave wiggle room for those who indulge in anti-Semitism but formally disavow it. Once hatred to Israelis is tolerated then it is carried around like a flame”* (emphasis added).

² <https://cst.org.uk/research/cst-publications/antisemitic-incidents-report-2025>

³ *The Lessons of Bondi Beach: Terrorism, Hatred and the Law*

(<https://policyexchange.org.uk/events/the-lessons-of-bondi-beach-terrorism-hatred-and-the-law/>)

8. In Lord Mann’s rapid review on antisemitism and other forms of racism in the NHS⁴ (**Lord Mann Review**), he highlighted the rise in incidents of concern in the NHS, stating:

The Commission on Antisemitism report [...] (July 2025), co-chaired by Lord Mann and the Right Hon Dame Penny Mordaunt DBE, found a specific unaddressed issue of antisemitism within the NHS that is making Jewish patients uneasy about accessing care and Jewish NHS staff feeling that discrimination against them is not being addressed. This means a real fear in seeking care, considering removing religious symbols before seeking treatment, or being uneasy about asking for kosher meals. [...]

The latest NHS staff survey (2025) results show that 11% of Jewish staff and 16% of Muslim staff have faced discriminatory behaviour from patients or the public in the last 12 months, and 13% of both Jewish and Muslim staff report experiencing discrimination from managers or colleagues at work over the last 12 months. [...]

It is profoundly troubling that NHS staff of all religions, and black and minority ethnic NHS staff, are more likely to experience discriminatory behaviour at work from patients or the public than they were 5 years ago. [...]

Jewish people proportionately face the highest level of reported hate crime of any religious group. Information on reported religious hate crimes based on rates per population using estimates from the 2021 Census, indicate that last year there were 106 recorded religious hate crimes per 10,000 of population targeted at Jewish people, which far exceeds that of other religious groups.

The IHRA definition

9. The IHRA definition first published by the European Monitoring Centre on Racism and Xenophobia in 2005. It was later adopted by the International Holocaust Remembrance Alliance on 26 May 2016.⁵ The definition, described as a “*non-legally binding working definition*” is as follows:

“Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”

⁴ <https://www.gov.uk/government/publications/lord-mann-review-on-antisemitism-and-other-forms-of-racism-in-the-nhs>

⁵ <https://holocaustremembrance.com/wp-content/uploads/2024/01/IHRA-non-legally-binding-working-definition-of-antisemitism-1.pdf>

10. The definition is accompanied by 11 illustrative examples:

1. Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
2. Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
3. Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.
4. Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).
5. Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
6. Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
7. Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.
8. Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
9. Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
10. Drawing comparisons of contemporary Israeli policy to that of the Nazis.
11. Holding Jews collectively responsible for actions of the state of Israel.

11. There are also the following caveats:

- 11.1. *“criticisms of Israel similar to that leveled [sic] against any other country cannot be regarded as antisemitic”;*
- 11.2. The 11 examples *“could”* be antisemitism but only when *“taking into account the overall context”*;

- 11.3. The 11 examples “*may serve as illustrations*”,
- 11.4. The 11 examples are non-exhaustive, that is they are “*not limited to*” the 11 listed examples.
12. In 2016 the UK Parliament’s Home Affairs Committee recommended two additional “*clarifications*” be added in order to allay its concerns over the freedom of speech implications of the IHRA examples⁶, namely:
- It is not antisemitic to criticise the Government of Israel, without additional evidence to suggest antisemitic intent.
 - It is not antisemitic to hold the Israeli Government to the same standards as other liberal democracies, or to take a particular interest in the Israeli Government’s policies or actions, without additional evidence to suggest antisemitic intent.
13. The then-government rejected that proposal. In a written statement on 12 December 2016, the then-Home Secretary said the Government believed that while the definition was “*legally non-binding*” it was nevertheless an “*important tool*” for criminal justice agencies and other public bodies.⁷ As Government policy, it would be for those bodies “*to implement the definition and embed it within operational guidance as relevant*”.
14. The IHRA definition was adopted by the U.K. Government on 12 December 2016 and has also been adopted by the Welsh and Scottish governments.⁸ However, it has no formal legal status. It is not part of U.K. law. It has never been referred to in a court as far as we can tell as an aide to interpretation of existing laws (as opposed to, for example, the interpretation of disciplinary codes which have formally incorporated it – see below).
15. On 1 June 2017, the IHRA definition was adopted by the European Parliament. It has also been adopted by the European Commission, which recommends it as a “*useful tool*”.⁹
16. In its October 2020 report¹⁰ on antisemitism in the Labour Party, the Equality and Human Rights Commission (**EHRC**) confirmed that it had not used the IHRA definition

⁶ <https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/136/13605.htm>

⁷ <https://commonslibrary.parliament.uk/uk-governments-adoption-of-the-ihra-definition-of-antisemitism/>

⁸ *Ibid*

⁹ https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/combating-antisemitism/definition-antisemitism_en - see also the European Commission Handbook on the practical use of the IHRA working definition of antisemitism <https://op.europa.eu/en/publication-detail/-/publication/d3006107-519b-11eb-b59f-01aa75ed71a1/language-en>

¹⁰ <https://www.equalityhumanrights.com/sites/default/files/investigation-into-antisemitism-in-the-labour-party.pdf>

to identify unlawful acts under the Equality Act. That said, the EHRC did conclude that as well as the unwanted conduct identified in the report meeting the definition of harassment without reference to the IHRA it would also meet the IHRA definition and its examples.¹¹ The EHRC did not criticise the fact that the IHRA definition was, by that stage, being taken into account by the complaint-handling unit of the Labour Party.¹²

The IHRA definition in the courts

17. Although the IHRA definition has not been used by courts to interpret existing statutory duties, it has been referred to in cases where it has been incorporated into institutional disciplinary codes.
18. In *The Professional Standards Authority for Health And Social Care v The General Pharmaceutical Council & Anor* [2021] EWHC 1692 (Admin)¹³, Mr Justice Chamberlain (as he was then) held that a disciplinary committee had been entitled to impose a warning on a pharmacist following its finding that his fitness to practise had been impaired by misconduct, after he made antisemitic and offensive comments at a rally in support of Palestine. The disciplinary policy had considered the IHRA definition in making its determination. The court did not criticise its use and, at §§57-62 set out why the “*line between antisemitism and legitimate opposition to political Zionism can in some cases be difficult to draw with confidence and accuracy*” because, first, “*the word “Zionist” (or in some contemporary discourse the contraction “Zio”) is sometimes used by people who regard themselves as progressive, and would be ashamed to use the word “Jew”, to mean exactly that*”, second “*even when “Zionist” is not used euphemistically as a synonym for “Jew”, some criticisms advanced against Zionists as supporters of the state of Israel may reflect underlying antisemitic attitudes*” and, third, “*accusations of antisemitism can be used to malign and discredit those engaging in legitimate criticism of the policy and conduct of the state of Israel and thereby to suppress such criticism*”.
19. In *Nelson and Ors. v Evans* [2021] EWHC 1909 (QB), Mr Justice Butcher held that the Labour Party’s investigation into alleged antisemitism by some of its members was not procedurally unfair or in breach of contract, in circumstances where the party had updated its code of conduct on antisemitism, including making reference to the IHRA definition, but did not publish or make available to the claimants the updated code of

¹¹ Page 116

¹² Page 34

¹³ <https://www.bailii.org/ew/cases/EWHC/Admin/2021/1692.html>

conduct at the outset of the investigation. The High Court made no criticism of the use of the IHRA definition by the party.

20. Most recently, in *Husain v SRA* [2025] EWHC 1170, Mr Justice Chamberlain (as he was then) upheld a decision by the Solicitors Disciplinary Tribunal (**SRA**), to strike a solicitor off the roll of solicitors for making antisemitic and offensive social media posts (see §42 and §44). One of the grounds of challenge was to the SRA tribunal taking into account, along with other definitions, the IHRA definition and referring to it as “*persuasive*”. In his ruling, the judge made the following comments:

Neither the IHRA itself, nor the UK Government, has ever suggested that, if the description in any of the bullet points applies to it, speech or conduct is ipso facto to be regarded as antisemitic. (§101)

If properly understood—i.e. as examples of speech which could, depending on the context, be antisemitic—most of the IHRA’s examples are, in my view, both unobjectionable and useful. They serve to illustrate some of the ways in which hatred or hostility towards Jews has historically been expressed. However, particular care is required in the application of the seventh and eighth examples [denying the Jewish people their right to self-determination and applying double standards in relation to Israel’s behaviour] because they relate to speech which is critical of the historic or contemporary conduct of the State of Israel. (§102)

For all these reasons, where speech is said to fall within the seventh and eighth of the IHRA’s examples, it is unlikely that the substantive content of the message alone will justify the label “antisemitic”. However, depending on the language used, and in context, the speech may be antisemitic. The focus of the court or tribunal should therefore be on the language and context. (§108)

The tenth of the IHRA’s examples was “[d]rawing comparisons of contemporary Israeli policy to that of the Nazis”. Mr Magennis may be right to say that it is not possible to stigmatise every such comparison as necessarily antisemitic. [...] However, to the extent that it was formulated as a criticism of the IHRA’s example, Mr Magennis’s submission was directed at a straw man. The IHRA does not claim that every comparison between Israel and Nazi Germany is ipso facto antisemitic. Its claim is the more modest one that such comparisons could, depending on the context, be antisemitic. [...] Depending on the context, a criticism of Israel which pointedly uses Nazi language and imagery as a racialised taunt of this kind could reasonably be regarded as antisemitic. (§110)

There is a particular danger in applying a pure “ordinary reasonable reader” approach to the question whether a statement is antisemitic, especially if one applies the further gloss that the judgment should be impressionistic and should eschew close analysis. Some instances of

antisemitism use coded language or images, which make conscious or unconscious reference to tropes, false allegations or conspiracy theories about Jews. Some, such as those portraying Jews as sinister controllers of global finance and media, date back to the late nineteenth and early twentieth centuries. Some, such as the blood libel that Jews make matzos from the blood of Christian children, go back much further. The important point, however, is that knowledge about antisemitism as a historical and cultural phenomenon is not universal. An “ordinary reasonable reader” might not have it and so might not appreciate the cultural significance of (say) a cartoon containing a hook-nosed caricature of a banker, an octopus, a vampire or a puppet-master. Once the historical significance of these things is understood, however, the image can be identified as antisemitic—and unequivocally so. (§113)

The most natural way of addressing this is to ask whether the statement or conduct in question would be regarded as antisemitic to an observer with a reasonable understanding of the main historical and cultural manifestations of antisemitism. In this respect, reference to the IHRA’s working definition and examples may help, subject to the caveats set out earlier in this judgment. Reference to case law interpreting the IHRA working definition or commenting on the examples may also assist. In most instances, this is likely to be sufficient for a court or tribunal to decide whether a particular meaning (identified using the approach in *Stocker*) is antisemitic.” (§114)

the Tribunal could not rationally have reached any other conclusion than that Mr Husain had, over a long period, repeatedly tweeted in terms that were both grossly offensive and antisemitic (§126)

21. There has been a vigorous debate since 2016 as to the extent to which the IHRA definition impinges on freedom of speech. Setting out this debate is outside of the scope of this advice. The HW4P opinion, from §§63-72, summarises extra-judicial criticism of the IHRA definition, but notably does not refer to any of the supportive statements from mainstream Jewish organisations which have encouraged public authorities to adopt it¹⁴ or from supportive jurists, for example the legal opinion of David (now Lord) Wolfson KC and Jeremy Brier (now KC) in July 2017¹⁵, which said at §§12-14:

... we recognise that there are some difficult judgment calls which may arise for bodies adopting the Definition. This is inevitable when addressing an issue such as antisemitism, just as it is when racism or homophobia is addressed. However, the few borderline cases (which need to be looked at in context in light of the principles and purpose

¹⁴ There are many such statements e.g. from the [Board of Deputies of British Jews](#), the [Jewish Leadership Council](#), the Antisemitism Policy Trust, the [Community Security Trust](#) and many others which are readily available online.

¹⁵ https://antisemitism.org/wp-content/uploads/2017/07/Opinion-on-the-International-Definition-of-Antisemitism.pdf?utm_source=chatgpt.com

behind the Definition) do not undermine the utility of the Definition overall. The Definition is well-expressed and the central thrust is clear and may be readily understood. Moreover, the Definition has a particular importance in combatting modern antisemitism which, whilst it still involves hatred of Jews, does not always manifest itself as directed expressed against Jews. Allusions to Jewish people and remarks channelled in the veil of “anti-Israel” language, which do not make express reference to Jews, can still be regarded properly and fairly as antisemitic. There is no danger or disadvantage for public bodies or universities in adopting this Definition. It does not seek to stifle free expression or free speech and poses no issue as regards compliance with Article 10 of the European Convention on Human Rights.

22. We agree with that comment, for reasons we expand upon below.

Adoption of the IHRA by the NHS

23. In October 2025, following the Heaton Park synagogue terrorist attack, the then-Secretary of State for Health announced that all NHS England and Department of Health and Social Care arm’s length bodies would be asked to adopt the IHRA definition, and that NHS trusts and integrated care boards would be “*strongly encouraged to follow suit*”.¹⁶ The following day, the Chief Executive and Chief Workforce Officer of NHS England confirmed that NHS England was “*formally and actively*” adopting the IHRA definition and also strongly encouraged NHS organisations to do so.¹⁷
24. The subsequent Lord Mann review referred to the IHRA definition as a “*helpful guide [which] gives confidence to Jewish communities and others that antisemitism is well understood*” and said that its adoption by NHS England and other NHS organisations “*is important because antisemitism can appear in many pervasive forms, some of which people can fail to identify due to lack of understanding, or wilfully or nefariously misinterpret*”. Lord Mann concluded that the IHRA definition “*helps organisations to identify antisemitism and patterns of speech or behaviour that may amount to antisemitism*”.
25. The JMA has called for the adoption of the IHRA definition across all healthcare services, regulation and the medical and health-related academic sectors. It has repeatedly raised serious concerns about the treatment of Jewish and Israeli staff and patients in healthcare settings.¹⁸

¹⁶ <https://questions-statements.parliament.uk/written-statements/detail/2025-10-16/hcws971>

¹⁷ https://www.england.nhs.uk/long-read/request-for-action-on-racism-including-antisemitism/?utm_source=chatgpt.com

¹⁸ E.g. <https://jewishmedicalassociationuk.org/wp-content/uploads/2026/06/JMA-Response-to-Mann-4Jun26.pdf>

The Human Rights Act 1998 (HRA)

26. The HRA gives effect to the European Convention on Human Rights (**ECHR**) for the purposes of UK law. Section 6 of the HRA makes it unlawful for a public authority (including NHS organisations) to act in a way which is incompatible with an ECHR right.
27. Articles 8, 9 and 10 of the ECHR protect, respectively, the right to private and family life, the right to freedom of thought, conscience and religion and the right to freedom of expression. We do not set out the detailed case law relating to freedom of speech, which is well-established.
28. Article 14 protects against discrimination in relation to the enjoyment of other rights and freedoms contained in the ECHR.
29. When a public authority, such as an NHS organisation, interferes with Article 9 or 10, that interference must be:
 - 29.1. in accordance with the law (within the confines of statute or common law); and
 - 29.2. in pursuit of a legitimate aim (these aims are summarised in the subsections of each right, including prevention of disorder, protection of public health and prevention of crime); and
 - 29.3. necessary in a democratic society (any interference must be justified by a pressing social need and must be proportionate to one or more of the legitimate aims as above).
30. In *Bank Mellat v HM Treasury* [2013] UKSC 39 at [20] Lord Sumption defined proportionality as follows:
 - 30.1. whether the objective of the measure is sufficiently important to justify the limitation of a protected right
 - 30.2. whether the measure is rationally connected to the objective
 - 30.3. whether a less intrusive measure could be used without unacceptably compromising the achievement of the objective
 - 30.4. whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective and the effectiveness of the measure, the former outweighs the latter

31. A group or person who engages in any activity or performs any act aimed at the destruction of any of the rights and freedoms in the ECHR are not protected by other rights (Article 17 ECHR).
32. Antisemitism has repeatedly been found to engage Article 17 and therefore preclude an individual or group from claiming other rights in the ECHR: e.g. *M'Bala M'Bala v France*, 2015 [39-40]; *Pavel Ivanov v Russia* (2007). Similarly, negation of the Holocaust has been found to engage Article 17 as it is assumed to incite hatred or intolerance (*Witzsch v Germany (No. 2)* (2005)) as has the promotion and justification of terrorism and war crimes (e.g. *Roj TV A/S v Denmark* (2018) [46-47], regarding a TV channel promoting the PKK; *Hizb ut-Tahrir and Others v Germany* (2012) where the ban on activities by the Islamist association for advocating violence in order to destroy the State of Israel was held to be compatible with the ECHR – the European Court of Human Rights found that “applicant attempts to deflect Article 11 of the Convention from its real purpose by employing this right for ends which are clearly contrary to the values of the Convention, notably the commitment to the peaceful settlement of international conflicts and to the sanctity of human life” [74].

The Equality Act 2010 (EqA)

33. NHS organisations have duties under section 29 of the EqA to protect patients and service users from discrimination and harassment and duties under Part V of the EqA in relation to employees and workers. It is also required, under section 149, to have due regard to the need to eliminate discrimination and harassment, advance equality of opportunity and foster good relations between people who share a relevant protected characteristic and people who do not share it, which includes having due regard to the need to foster good relations.

D. Opinion

34. In our view, and to answer the first two questions posed by the JMA, the IHRA definition can lawfully be adopted by NHS organisations without being edited or being made subject to further guidance or caveats, for the following reasons:
35. First, the IHRA definition has now existed for over a decade and has been considered by courts in various contexts, as summarised above, but no court has found there is a legal barrier to incorporating the IHRA definition into contractual arrangements in unincorporated associations (such as the Labour Party) or disciplinary codes for professionals. As far as we are aware, no court has held that the IHRA definition is unfair or unfit for purpose, even when put to ‘hard edged’ uses such as in codes of conduct. No court has found that its incorporation is incompatible with human rights or equalities duties.

36. Courts have, correctly in our view, identified risks for freedom of speech in treating any of the IHRA examples as axiomatically or even (in the case of examples 7 and 8 – see *Husain*) presumptively antisemitic. However, the IHRA definition does not condone or encourage either of these approaches. Rather, the text makes clear that the examples “could”, “*taking into account the overall context*” amount to antisemitism. These caveats provide, in our view, adequate safeguards for freedom of expression, and it is therefore unnecessary to place any further gloss upon the text to protect freedom of expression.
37. Secondly, the IHRA examples are useful as they identify, in broad terms, the features of modern antisemitism, something which is not always obvious to the general public. As Mr Justice Chamberlain said in *Husain* at §§113-114, “*knowledge about antisemitism as a historical and cultural phenomenon is not universal*” and, therefore, the IHRA “*may help*” public authorities to understand and answer “*whether the statement or conduct in question would be regarded as antisemitic to an observer with a reasonable understanding of the main historical and cultural manifestations of antisemitism*”. In other words, the IHRA definition is useful as tool to assist in the understanding of contemporary antisemitism. This is especially the case in relation to anti-Israel or antizionist rhetoric which sometimes (but by no means always) crosses the line into being antisemitic, for example when it reflects antisemitic stereotypes or tropes – this is both the most controversial and most useful aspect of the IHRA definition, because it highlights a phenomenon which is familiar to Jewish people but not well-understood to others. We discuss this further below.
38. Thirdly, ensuring that antisemitism, and the perspective a significant proportion of Jewish people, is understood within NHS organisations is especially important in the current context of an increase in reported antisemitic incidents and in violent and terrorist attacks against Jewish people, often justified on the grounds that the Jewish people are somehow responsible for the (purported) actions of the Israeli state. NHS organisations have duties to prevent discrimination and harassment, and to keep patients and staff safe. Adopting the IHRA definition would assist NHS organisations in embedding an understanding of modern antisemitism, but without prescribing any particular course of action when it arises. As set out above at §21, the IHRA definition has the support of the UK Jewish community’s major representative bodies, notably the Board of Deputies of British Jews, the Community Security Trust and the Jewish Leadership Council. It therefore reflects the perspective of a significant proportion of the UK Jewish community. This is in contrast to the ‘Jerusalem Declaration’, which although promoted by some smaller organisations, is not supported by any of the major Jewish communal bodies.

39. Ensuring that modern antisemitism is understood within NHS organisations would also apply the Macpherson principle at an institutional level, by foregrounding the viewpoint of alleged victims of racism, without assuming that this viewpoint is determinative.
40. Fourthly, the practical reality is that any NHS organisation which adopts the IHRA definition, and seeks to use it as guidance in (for example) resolving a patient complaint or a disciplinary or grievance issue against a staff member, will need to consider it in the context of any other relevant employment, social media or other policies. These policies will inevitably refer to freedom of expression rights and Equality Act duties (for example the prohibition on discrimination and harassment). It would be unlawful to breach those legal duties in resolving a complaint, but this would be the case whether or not the IHRA definition was adopted.
41. Fifthly, Article 10 freedom of expression rights are important but they are not absolute. The right to freedom of expression can be interfered with when that interference is a proportionate and lawful means of protecting the rights of others. This principle applies in the workplace. Article 10 rights can be, and frequently are, constrained by employment policies. The right to say things which cause offense, protected by Article 10, is frequently curtailed in an employment setting; for example, the cases where proselytizing was considered to give rise to a finding of gross misconduct (e.g. *Wasteney v East London NHS Foundation Trust* [2016] UKEAT 0157/15). Whilst free speech rights are potentially relevant in healthcare settings, and political speech attracts particularly strong protection under the ECHR, healthcare settings also involve highly vulnerable people who may rightly feel uncomfortable and unwelcome, or even harassed, if they are exposed to the strong political opinions of their treating clinician or nurse. It therefore can be lawful to place proportionate limits on the speech of healthcare professionals for the purpose of protecting the rights of patients and other staff.
42. Sixthly, the many critiques of the IHRA definition go too far. There have been many such critiques by eminent jurists and academics, as well as by some (albeit smaller) UK Jewish organisations. However, in our respectful view, those critiques regularly stray into ‘strawman’ arguments such as assuming the IHRA examples will almost inevitably be applied in a particular way, relying on a partial or unfair reading of the text of the IHRA definition – see e.g. §110 of *Husain*.
43. Regardless of whether the IHRA definition is adopted or rejected, complaints and issues such as those set out in the illustrative examples will be raised. The IHRA definition is simply an additional tool to assist in understanding and fairly navigating such complaints.

44. Seventhly, adopting the IHRA definition is only a starting point, not an end in itself. As with any guidance which feeds into, but does not dictate, exercises of discretion, it will be possible for an authority to use the IHRA definition in an unlawful way, for example by failing to apply the safeguards which are very clear from the text and which prevent any of the 11 examples being seen to be axiomatically an example of antisemitism, or by not considering the overall context of a particular incident.

No need for antisemitic motivation

45. Finally, we address the proposition that criticism of Israel which falls within one or other of the working definition's illustrative examples should require antisemitic motivation to be proved before being considered to be antisemitic. We disagree, for the following reasons:

45.1. This is the approach which was recommended by the Home Affairs Select Committee when it considered the IRHA definition in 2016, and which was rejected by the government at the time. In our view it is misguided and misunderstands the purpose of the IHRA definition.

45.2. Chamberlain J said at §113 of *Husain* that “*There is a particular danger in applying a pure “ordinary reasonable reader” approach to the question whether a statement is antisemitic... The important point ... is that knowledge about antisemitism as a historical and cultural phenomenon is not universal*”. The reality which is experienced by many Jewish people, and which the IHRA definition seeks to mitigate, is that discourse around Israel and Palestine sometimes reflects and propagates classic antisemitic tropes, such as Jewish people being bloodthirsty, child killers or secret puppeteers of global government. These tropes can sometimes – perhaps even often – be used without antisemitic motivation, that is being motivated by a hatred of or hostility towards Jews as such. Nonetheless, they risk being understood as antisemitic by those who do understand antisemitism as an historical and cultural phenomenon: unsurprisingly, Jewish people are more likely than others to fall into this category. The primary utility of the IHRA definition, in our view, is to help institutions understand how antisemitism is experienced by Jewish people – and this will include that some people can behave in an antisemitic way without necessarily being motivated by a hatred of or hostility towards Jews.

45.3. There is no support in legislation or case law, as far as we are aware, for requiring antisemitic motivation, defined as hatred or hostility towards Jews as such, before finding an antisemitic incident has occurred. On the contrary,

it is well-established, for example in relation to the EqA, that racist discrimination and harassment can take place without racist motivation. The concept of indirect discrimination is that an otherwise well-motivated policy, criterion or practice can be inadvertently racially discriminatory. Nor does a finding of harassment require racist intent; it is the “purpose OR effect” which is considered. This has been set out expressly in numerous cases, for example in *Professional Standards Authority for Health and Social Care v Health and Care Professions Council* [2021] EWHC 52 (Admin) at §63 :“*harassment cannot be displaced merely by a lack of intent on the part of the alleged perpetrator if the effect is 'violating... dignity' or 'creating an intimidating, hostile, degrading, humiliating or offensive environment' for the alleged victim*”.¹⁹

- 45.4. Whilst political speech attracts a high level of protection under Article 10 ECHR, this does not make it immune from amounting to discrimination or harassment in certain circumstances. If “*antisemitic motivation*” was required in relation to a finding of Israel-related antisemitism in the IHRA definition, this could lead to an NHS organisation finding in a disciplinary process that a doctor has racially harassed a Jewish person due to Israel-related comments during a medical procedure, but also that their comments were not antisemitic under the IHRA definition, because they were not motivated by hatred of Jews. This would be an absurd and unprincipled result, and may itself be unlawful since it could amount to further harassment of the victim.
- 45.5. We do agree that political speech must be treated sensitively. However, there is sufficient room for such sensitivity to be applied in the requirement under the IHRA definition that the “*overall context*” must be taken into account – which would necessarily include the fact that a statement was related to a political issue - and that “*criticisms of Israel similar to that leveled [sic] against any other country cannot be regarded as antisemitic*”. There is no need to include an additional requirement for “*antisemitic motivation*”, and indeed to include it would defeat part of the purpose of the IHRA definition.

What adopting the IHRA means

46. An NHS organisation should make clear when it “*adopts*” the IHRA definition what they intend its role to be. For the reasons set out above this does not require exhaustive guidance or changes/additions to the text. In order for it to be effective, NHS organisations should be clear that the IHRA definition will be considered in complaints,

¹⁹ See also *Pemberton v Inwood* [2018] EWCA Civ 564

disciplinary and grievance processes. It is in these processes, where allegations of antisemitism have been made, that the IHRA definition can be most useful, as a means of understanding modern antisemitism.

E. Conclusion

47. The IHRA definition is best understood as guidance which may help an NHS organisation better understand modern antisemitism. For the reasons set out above, our view is that the IHRA definition can safely and lawfully be adopted by NHS organisations without modification or the need for additional guidance. The 11 examples are not intended to be automatically or even presumptively antisemitic. As the text makes clear, they “*could*” be antisemitic when considered alongside the “*overall context*”. As long as these inbuilt safeguards are respected, the IHRA definition can be a useful tool which is compatible with freedom of speech obligations, including when used in complaints, disciplinary and grievance procedures.
48. We would be happy to discuss any aspect of this opinion further.

REBECCA TUCK K.C.

Cloisters

ADAM WAGNER K.C.

Doughty Street Chambers

27 July 2026