Neutral Citation Number: [2019] EWHC 2639 (QB)

Case No. QB-2019-002799

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice,
Strand, London WC2A 2LL

Date: 10 October 2019

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

- -

Between :

CHRISTOPHER WILLIAMSON M.P.

Claimant

- and -

JENNIE FORMBY
(sued as a representative of all members of the Labour Party except the Claimant)

Defendant

- -

Aileen McColgan (instructed by **Bindmans LLP**) for the **Claimant**
Rachel Crasnow QC and **Tom Gillie** (instructed by **Greenwoods GRM LLP**) for the **Defendant**

Hearing date: 12 September 2019

- -

Approved judgment

I direct that pursuant to CPR PD39A para. 6.1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

THE HONOURABLE MR JUSTICE PEPPERALL:

1. Chris Williamson MP is a controversial figure in the Labour movement. Some consider that he is an "apologist" for antisemitism within the Labour Party. To others, he is a champion of free speech who has defended colleagues who have been wrongly accused of antisemitism.

2. Mr Williamson joined the Labour Party in 1976 and has served the Party as a councillor on Derby City Council, including for two periods as Council Leader; as the Member of Parliament for Derby North from 2010-2015 and again since 2017; and as a shadow minister.

3. On 27 February 2019, Mr Williamson was suspended as a member of the Party pending an internal investigation into allegations that he had brought it into disrepute. On 26 June 2019, Labour's National Executive Committee ("NEC") Disputes Panel concluded that Mr Williamson had broken the Party's rules but that he should be readmitted with a formal warning.

4. The panel's decision provoked outrage and, on 9 July 2019, the NEC Disputes Panel determined that its earlier decision could not safely stand. On 19 July 2019, the NEC referred Mr Williamson's case to Labour's National Constitutional Committee ("NCC"). No notice of hearing has yet been issued by the NCC.

5. Fearful that the matter might not be resolved quickly and that he would not be allowed to stand for the Labour Party in the event of an early general election, Mr Williamson issued these proceedings on 6 August 2019. The case is brought against Jennie Formby, the Labour Party's General Secretary, as a representative of the Party. Mr Williamson seeks declarations that the 26 June decision stands and that the subsequent decisions on 9 and 19 July were unlawful. Further, he seeks an injunction restraining the Party from pursuing the case against him.

6. On 3 September 2019, Labour launched a second disciplinary case against Mr Williamson and he was re-suspended as a member of the Party pending investigation. Mr Williamson seeks a declaration that this further suspension was unlawful and an injunction restraining the party from pursuing its proposed investigation into the new allegations.

7. It is important to stress at the outset of this judgment that this case is not about whether Mr Williamson is, or is not, antisemitic or even whether he has, or has not, breached the rules of the Labour Party. The issue is whether the Party has acted lawfully in its investigation and prosecution of such charges against Mr Williamson.

THE GOVERNANCE OF THE LABOUR PARTY

8. The Labour Party is an unincorporated association. It is governed by the Labour Party Rule Book 2019, the NEC Terms of Reference and the NEC Standing Orders. This case concerns charges pursuant to chapter 2.I.8 which provides that members should not "engage in any conduct which in the opinion of the NEC is prejudicial, or in any act which in the opinion of the NEC is grossly detrimental to the Party." The rule continues, in so far as it is relevant to this case, by providing that the NEC shall treat as conduct prejudicial to the Party:

> "any incident which in their view might reasonably be seen to demonstrate hostility or prejudice based on … race; religion or belief …; these shall include but not be limited to incidents involving racism, antisemitism, Islamophobia or other racist language, sentiments, stereotypes or actions"

DISCIPLINARY ACTION

9. By chapter 1.VIII.3.A, the NEC has the duty and power:

> "to uphold and enforce the constitution, rules and standing orders of the Party and to take any action it deems necessary for such purpose, ….;
>
> in furtherance of such duties it shall have the power to suspend or take other administrative action against individual members of the Party subject to the provisions of the disciplinary rules set out in Chapter 6 below of these rules."

10. Chapter 6 makes provision for disciplinary action to be taken either nationally by the NEC or locally by a Constituency Labour Party (a "CLP"). Chapter 6.I.1 provides:

> "The NEC shall take such disciplinary measures as it deems necessary to ensure that all Party members and officers conform to the constitution, rules and standing orders of the Party.
>
> Such powers shall include:
>
> A. In relation to any alleged breach of the constitution, rules or standing orders of the Party by an individual member …, the NEC may, pending final outcome of any investigation and charges (if any), suspend that individual … from office or representation of the Party notwithstanding the fact that the individual concerned has been or may be eligible to be selected as a candidate in any election or by-election. The General Secretary or other national officer shall investigate and report to the NEC on such investigation. Upon such report being submitted, the NEC may instruct the General Secretary or other national officer to formulate charges against the individual … concerned and present such charges to the NCC for determination in accordance with their applicable procedures. Without prejudice to Chapter 1.VIII.5, the powers of the NEC and General Secretary under this sub-clause may be exercised, as the NEC deems appropriate, through such persons as may be designated …
>
> C. Where in the opinion of the NEC there are circumstances which might warrant the use of its powers under [sub-clause] A above …, the NEC

> may issue written warnings to any individual member of the Party drawing attention to the conduct which in the opinion of the NEC is either incompatible with continued membership of the Party or may be in, or may lead to, a breach of the constitution, rules or standing orders of the Party. The issue of any written warning under this sub-clause shall not prevent the conduct that is the subject of such warning being called into question following any subsequent exercise by the NEC of its powers under [sub-clause] A above …, and both the fact of the issue of such warning and the conduct that is the subject of the warning may be used in the evidence referred to the NCC."

11. Chapter 2.III.2 provides:

> "Without prejudice to any other provision of these rules and without prejudice to its powers under Chapter 1.VIII, the NEC shall be empowered to determine any dispute or question which may arise in respect of membership of the Party, either by considering the matter itself or by referring the matter to the NEC Disputes Panel for a decision. In such cases, the NEC's decision, or the decision of the NEC Disputes Panel as approved by the NEC, shall be final and binding."

12. As to the NCC's role in disciplinary matters, chapter 1.IX.2 provides that the NCC has the duty and power "to determine by hearing or otherwise such disciplinary matters as are presented to it" by either a CLP or the officers of the Party on the instructions of the NEC. Upon finding a case proved, the NCC has wide powers to impose disciplinary sanctions including warnings and reprimands, suspension, withholding or withdrawing endorsement as a candidate or prospective candidate, and expulsion.

13. Appendix 6 sets out the procedure to be followed in NCC cases. In broad outline, the NCC appoints a panel, usually of three NCC members, and convenes a full hearing at which a member, referred to as the "presenter", presents the case against the respondent. Formal charges, the respondent's answer to the charges, and the evidence to be relied on by both parties are exchanged in writing in advance of the hearing. The presenter and the respondent present their respective cases and can be questioned by the other and the panel. Further, the panel may allow other witnesses to give oral evidence. Closing statements are then made and the panel adjourns to consider its decision. If a finding of misconduct is made, the panel hears mitigation before again adjourning to determine the appropriate disciplinary action. Any decision of the NCC in disciplinary matters is final.

14. Paragraph 6D(i) of Appendix 6 provides:

> "The rules under which the NCC operates make it clear that the NCC and its panels are concerned only with the charge(s). The procedures adopted on behalf of the Party … in advance of a referral to the NCC are not matters for the NCC dealing with a particular case. The NCC is entitled to (and will) act on the basis that the charges are properly brought before them and cannot become embroiled in dealing with complaints about the administration of any

> investigation leading to the charges. Any such complaint will therefore not be entertained by the NCC or panel thereof unless it is material or relevant to the consideration of the evidence to be used by the presenter in support of the charges."

15. Accordingly, disciplinary matters are dealt with at national level as follows:

    15.1 Disciplinary charges are initially considered by the NEC. The member against whom the charge is brought may be suspended pending the determination of the matter.

    15.2 Upon considering an investigation report, the NEC may take no action, refer the case to the NCC or issue a written warning.

    15.3 There is no right of appeal from the NEC's decision.

    15.4 Unless there is no case to answer, the NCC deals with cases rather more formally at inter partes hearings at which it considers evidence and argument.

    15.5 Procedural shortcomings at the NEC stage cannot usually be considered by the NCC.

    15.6 Upon making a finding of misconduct, the NCC has significantly greater powers. It can impose a suspension by way of a sanction (rather than simply pending the determination of a case), withhold or withdraw the endorsement of the member as a candidate in an election or even expel the member.

THE ORGANISATION COMMITTEE, NEC DISPUTES PANEL & ANTISEMITISM PANELS

16. It is necessary to consider more closely the exercise of the NEC's powers and to differentiate between:

    16.1 the NEC itself;

    16.2 the sub-committees of the NEC and, in particular, the Organisation Committee;

    16.3 the NEC Disputes Panel; and

    16.4 antisemitism panels.

17. Chapter 1.VIII.5 provides:

> "All powers of the NEC may be exercised as the NEC deems appropriate through its elected officers, committees, sub-committees, the General Secretary and other national and regional officials and designated representatives appointed by the NEC or the General Secretary. For the avoidance of doubt, it is hereby declared that the NEC shall have the power to delegate its powers to such officers and committees and sub-committees of the NEC and upon such terms as from time to time it shall see fit."

18. The NEC Terms of Reference identify the Organisation Committee as a sub-committee of the NEC. The protocol for the committee provides:

> "1 The Organisation Committee is a sub-committee of the NEC, appointed by the NEC and comprising of NEC members. Any member of the Organisation Committee is entitled to sit on the Disputes Panel.
>
> The Organisation Committee has delegated authority to take decisions on behalf of the NEC. The Organisation Committee exercises this authority in approving the recommendations of the Disputes Panel. In all instances where delegated authority is taken, the decision will be identified and recorded in the minutes and reported to the full NEC.
>
> All discussion and papers presented to the Committee are confidential and may not be disclosed outside of the NEC membership.
>
> 3 … The NEC Disputes Panel is a panel of the Organisation Committee and is responsible for:
>
> - Hearing membership appeals
> - Re-admission applications
> - Party disputes and conciliation
> - Minor investigations and local government appeals where referred to the NEC
>
> The NEC Disputes Panel operates in a quasi-judicial fashion …"

19. The rules do not contain any formal provisions in respect of antisemitism panels. The evidence before me is that such panels were set up in order to deal with this highly sensitive issue within the Labour Party. They are formed from selected members of the Organisation Committee. While they have no formal status, the evidence clearly indicates that they are treated as Disputes Panels; indeed, in its correspondence with Mr Williamson, the Labour Party referred to the decision of the antisemitism panel on 26 June 2019 as being a decision of a Disputes Panel.

THE PROPER APPROACH TO THE RULES

20. In Lee v. Showmen's Guild of Great Britain [1952] 2 Q.B. 329, Denning LJ (as he then was) drew a distinction between the court's approach to clubs and domestic tribunals regulating some trade or professions:

> "In the case of social clubs, the rules usually empower the committee to expel a member who, in their opinion, has been guilty of conduct detrimental to the club; and this is a matter of opinion and nothing else. The courts have no wish to sit on appeal from their decisions on such a matter any more than from the decisions of a family conference. They have nothing to do with social rights or social duties. On any expulsion they will see that there is fair play. They will see that the man has notice of the charge and a reasonable opportunity of being heard. They will see that the committee observe the procedure laid down by the rules; but they will not otherwise interfere …
>
> It is very different with domestic tribunals which sit in judgment on the members of a trade or profession. They wield powers as great as, if not greater than, any exercised by the courts of law. They can deprive a man of his livelihood. They can ban him from the trade in which he has spent his life and which is the only trade he knows. They are usually empowered to do this for

> any breach of their rules, which, be it noted, are rules which they impose and which he has no real opportunity of accepting or rejecting. In theory their powers are based on contract. The man is supposed to have contracted to give them these great powers; but in practice he has no choice in the matter. If he is to engage in the trade, he has to submit to the rules promulgated by the committee. Is such a tribunal to be treated by these courts on the same footing as a social club? I say no. A man's right to work is just as important to him as, if not more important, than his rights to property. These courts intervene every day to protect rights of property. They must also intervene to protect the right to work."

21. Rachel Crasnow QC, who appears together with Tom Gillie for the Labour Party, submits that this case is not to be equated with that of a domestic tribunal regulating a trade or profession. In fairness, she does not press the point too far and accepts that questions of membership of a political party are far removed from the social club cases.

22. A member expelled from a tennis club might feel aggrieved, but he or she can ultimately join another club even if it is less conveniently located or its facilities are not quite as congenial. I accept that suspension from the Labour Party does not prevent an MP from sitting in Parliament until the next election. Equally, suspension does not prevent an MP from standing for re-election either as an independent or for any other party. That said, one needs to be realistic. Party allegiances are deeply rooted in an MP's political beliefs. However poorly treated by their party, very few politicians would consider crossing the floor save on the basis of some philosophical or policy difference with the direction taken by their party. While the Labour Party argues that Mr Williamson could stand as an independent socialist candidate, the reality is that very few independents succeed in general elections. There is therefore a significant risk that disqualification from selection as a Labour Party candidate would end Mr Williamson's parliamentary career. I am therefore satisfied that the practical effect of suspension is to put at risk Mr Williamson's ability to continue to earn his living as MP for Derby North. Accordingly, this case falls far closer to the domestic tribunal cases than those concerning exclusion from sports and social clubs.

23. The proper approach to the rules is not in dispute:

    23.1 The relationship between an unincorporated association, such as the Labour Party, and its members is governed by the law of contract: Evangelou v. McNicol [2016] EWCA Civ 817, at [19].

    23.2 The contract is to be found within the rules: Choudhry v. Tresiman [2003] EWHC 1203 (Comm), at [38]; Evangelou, at [19].

    23.3 The proper approach to the construction of the rules is, like any issue as to the construction of a contract, a matter for the court: Evangelou, at [20].

    23.4 The usual principles of contractual construction and as to the implication of terms therefore apply equally in the case of the rules of an unincorporated association: Evangelou, at [20].

23.5 Where a contract confers a power or discretion upon one party, the law implies a term that such party will exercise it in good faith and that it will not act arbitrarily, capriciously or irrationally. Such implied constraint upon the contractual decision-maker imports public-law principles into the exercise of the contractual power or discretion: Braganza v. BP Shipping Ltd [2015] UKSC 17, [2015] 1 W.L.R. 1661; Socimer International Bank Ltd v. Standard Bank London Ltd [2008] EWCA Civ 116, [2008] Bus L.R. 134; Evangelou, at [24]; Jones v. McNicol [2016] EWHC 866 (QB), at [43].

24. While the Court of Appeal in Evangelou implied a Braganza term in the case of an earlier edition of these rules, much the same territory is in fact covered by the express term at chapter 2.II.7:

> "Members have the right to dignity and respect and to be treated fairly by the Labour Party. Party officers at every level shall exercise their powers in good faith and use their best endeavours to ensure procedural fairness for members."

25. In this case, Mr Williamson seeks the court's intervention in respect of ongoing disciplinary proceedings. Ms Crasnow refers me to the decision of Mann J in Hendy v. Ministry of Justice [2014] EWHC 2535 (Ch), in which Deputy Master Hendy sought injunctive relief to restrain continued disciplinary action by the Ministry of Justice. Mann J summarised the applicable principles at [49]:

> "(a) The court will be prepared to intervene in a disciplinary process if it is demonstrated that the proceedings are being conducted on a basis that makes their conduct a breach of contract such that the pursuit would also be a breach …
>
> (b) [The caselaw reviewed] does not identify what breaches are sufficiently serious for these purposes, but in my view they have to be breaches or errors which make the continued pursuit unfair in a manner which cannot be remedied within the proceedings themselves.
>
> (c) Nonetheless, the court will not 'micro-manage' an employment disciplinary procedure."

26. In Bradley v. The Jockey Club [2005] EWCA Civ 1056, [2006] L.L.R. 1, the Court of Appeal considered the proper approach upon a challenge to the Jockey Club's decision to suspend a former jockey. The court approved the approach of Richards J (as he then was) at first instance:

26.1 The court's role is supervisory. Its function is not to take the primary decision but to ensure that the primary decision-maker operated within lawful limits.

26.2 The court's review function in such cases is very similar to that of the court upon a claim for judicial review. "[T]he essential concern should be with the lawfulness of the decision taken: whether the procedure was fair, whether there was any error of law, whether the exercise of judgment or discretion fell within the limits open to the decision maker, and so forth."

27. Lord Phillips MR added, at [20]:

> "Professional and trade regulatory and disciplinary bodies are usually better placed than is the court to evaluate the significance of breaches of the rules or standards of behaviour governing the professions or trades to which they relate."

28. Ms Crasnow rightly cautions against the court seeking to step into the shoes of the decision-maker. The question is not what the court would have done but whether the Labour Party is in breach of contract in its conduct of these disciplinary proceedings.

THE ORIGINAL DISCIPLINARY CASE

THE INITIAL SUSPENSION

29. On 27 February 2019, Ms Formby wrote to Mr Williamson informing him that the Party had received a large number of complaints about his conduct. It was said that, taken together, they added up to a pattern of behaviour that might bring Labour into disrepute putting Mr Williamson in breach of chapter 2.I.8 of the Party's rules. The letter continued:

> "I have personally spoken to you about the damaging effect of this pattern of behaviour on Jewish communities and on the Labour Party's efforts to rebuild trust with those communities …
>
> The pattern of behaviour has included allegations of campaigning in favour of members who have been formally disciplined by the Party for antisemitism; failing to delete retweeted material from a Holocaust denier, even after it was pointed out to you that the retweeted content belonged to an individual with such unacceptable views; tweeting and signing petitions in favour of an individual who a Labour council has refused to allow to perform in their premises because of the individual's history of antisemitism; sharing platforms and giving public praise to people with a history of allegations of antisemitism against them; publicly attacking the Board of Deputies of British Jews, just hours after a synagogue suffered a mass shooting in the United States, which caused deep fear among every Jewish household."

30. Ms Formby explained that Mr Williamson was being suspended pending investigation. The suspension was imposed forthwith but subject to the approval of the next NEC meeting. On 2 April 2019, the Labour Party's Governance and Legal Unit posed a set of questions for the purposes of the investigation. Mr Williamson provided his written answers through his solicitors on 16 April.

THE DECISION OF 26 JUNE 2019

31. On 26 June 2019, Mr Williamson's case was considered by an NEC Disputes Panel comprising the Rt. Hon. Sir George Howarth MP, the Rt. Hon. Keith Vaz MP and Huda Elmi. The Labour Party explains in its evidence that this was a specialist antisemitism panel. The panel found misconduct but, rejecting the recommendation of the internal investigator, determined that the matter should be dealt with by

issuing a formal warning rather than referring Mr Williamson to the NCC. By a letter of the same date, the Party's Governance and Legal Unit formally confirmed the outcome. It explained:

> "The panel found that you have engaged in conduct online and offline that, due to its reckless and needlessly provocative nature, was grossly detrimental to the Party. As an MP you are a role model in society and you have a duty to observe higher standards of conduct than others; the panel felt this was an aggravating factor in your case. The panel felt that it was important to make clear that, regardless of your intent, your conduct may reasonably be seen to involve antisemitic sentiments, stereotypes and actions. This includes, but is not limited to, conduct such as:
>
> - Making references to 'dark forces … using their power' and 'their contacts in the media' to 'undermine this project', which may understandably be seen by some to repeat the trope of nefarious Jewish control of the media.
> - Sharing a petition calling for the reversal of the decision of Islington Council to prohibit Gilad Atzmon from performing on their premises. As you are now aware, Mr Atzmon has been accused of denying the Holocaust.
> - Making reference to 'antisemitism smears' and claiming that the party has been 'too apologetic', which may reasonably be interpreted by some to imply that complaints of antisemitism in the Labour Party are fabricated and treats complaints of antisemitic racism less seriously than other forms of racism."

32. The letter noted Mr Williamson's apology for sharing the Atzmon petition but recommended that he should make a formal public apology for his general conduct. The letter then issued Mr Williamson with a formal warning:

> "The panel has therefore decided to exercise the power of the NEC to issue you with this formal warning about your conduct under rule 6.I.C …"

33. The proceedings of the Disputes Panel are supposed to be confidential. Nevertheless, the decision of this panel was immediately leaked to the press together with the views expressed by the individual panel members. Indeed, Mr Williamson says that he learnt of the decision not from the Party but from media reports.

THE FALLOUT FROM THE JUNE DECISION

34. The panel's decision was immediately and roundly condemned:

    a) On 26 June, the Rt. Hon. Dame Margaret Hodge MP claimed that the complaints system was a "complete sham." Apparently referring to Mr Williamson's closeness to the Labour leader, Dame Margaret added:

> > "This is not zero tolerance. This is letting your political pals back in and turning a blind eye to Jew-hate. Every decent Labour Party member must challenge this."

b) The vice-president of the Board of Deputies of British Jews said that the decision was an "utter disgrace." The chief executive of Campaign Against Antisemitism added:

> "The decision to reinstate [Mr Williamson] shows that the Labour Party's leadership holds British Jews in contempt and demonstrates that the Equality and Human Rights Commission was right to act on our referral and open a full statutory investigation into Labour's antisemitism crisis."

c) By 27 June, some 90 Labour MPs and peers led by the Deputy Leader, Tom Watson MP, were reported to have demanded that the leader withdraw the whip. Observing that they could not overstate the "depth and breadth of hurt and anger" felt about the decision, the politicians wrote:

> "It is clear to us that the Labour Party's disciplinary process remains mired by the appearance of political interference. This must stop. We need a truly independent process.
>
> We call on Jeremy Corbyn to show leadership by asking for this inappropriate, offensive and reputationally damaging decision to be overturned and reviewed.
>
> Ultimately, it is for Jeremy Corbyn to decide whether Chris Williamson retains the Labour whip. He must remove it immediately if we are to stand any hope of persuading anyone that the Labour Party is taking antisemitism seriously."

d) The press reported that almost 70 Labour Party staff members wrote to the General Secretary expressing their dismay at the decision.

e) A group of 72 politicians, many of whom might well have been among the 90, formally wrote to the Party demanding that the Parliamentary Labour Party remove the whip at a forthcoming meeting.

35. By 27 June, Mr Vaz appears to have had second thoughts about the matter. He telephoned Ms Formby. Thomas Gardiner, Labour's Director of Governance and Legal and its sole witness in these proceedings, recounts the telephone conversation as subsequently reported to him:

> "I am informed by the General Secretary … that Keith Vaz MP … contacted her by telephone on 27 June 2019 and told her that he had been undergoing medical treatment which was continuing. He told her that he really hadn't been well and in fact felt he had not been fit to consider any of the cases dealt with that day."

36. Mr Vaz then emailed Ms Formby:

> "Further to our conversation, as you know yesterday I was asked to serve at short notice on an antisemitism panel as a panel member had pulled out. I agreed and went urgently to Southside despite having medical treatment that day, which continued after the meeting.

> Comments in relation to one of the individuals under consideration was (sic) selectively leaked to the media. There were five people in the room. I do not consider this had anything to do with your officers. The result of the breach of confidentiality means that every one of the individuals under consideration yesterday could potentially mount a legal challenge.
>
> The disciplinary process involved extremely serious matters. The process needs to be fair to all and to be seen to be fair and all must be treated equally and no favour should be shown to anyone. In my view, having served on the NEC for 15 years, I consider the decisions the panel made yesterday cannot stand. In order to ensure complete integrity of the process either a new panel should be convened or all the cases from yesterday should be referred to the Disputes Committee for reconsideration."

37. Ms Formby forwarded Mr Vaz's email to the NEC with the suggestion that the issue should be placed on the agenda of the "Disputes Committee" on 9 July 2019.

THE DECISIONS OF 9 & 19 JULY 2019

38. At a meeting on 9 July 2019, the NEC Disputes Panel noted that Mr Vaz "had raised objections to the release of confidential information from [the 26 June] panel and concerns around his health at the time it was convened." After discussion, the Disputes Panel determined by 16 votes to 6 that the decisions taken by the panel on 26 June could not stand and that all cases would be reconsidered by a newly constituted panel.

39. By letter dated 9 July 2019, the Governance and Legal Unit informed Mr Williamson that the NEC Disputes Panel had that day determined that the decisions taken by the June panel could not "safely stand" and that his case would therefore be reconsidered by a future panel.

40. On 19 July 2019, the NEC Disputes Panel decided to refer Mr Williamson's case to the NCC. This outcome was confirmed in a letter of the same date. Further, Mr Williamson was told that he would remain suspended until the NCC had determined his case.

ANALYSIS

41. Aileen McColgan, who appears for Mr Williamson, rightly submits that his challenges to the decisions of 9 and 19 July effectively stand or fall together. If he succeeds in his challenge to the 9 July decision then the original disciplinary case was at an end and there was nothing to be referred to the NCC. On the other hand, if the Disputes Panel was entitled to set aside the June decision, Ms McColgan accepts that there are no independent grounds for challenging the decision on 19 July.

The status of a decision of the Disputes Panel

42. From my earlier review of the rules and evidence, it is clear that:

42.1 The NEC itself may refer a disciplinary case to the NCC or, in the alternative, issue a formal warning.

42.2 While these powers vest in the NEC, they are formally delegated to the Organisation Committee.

42.3 In turn, the Organisation Committee delegates the responsibility for deciding cases to the Disputes Panel. All members of the Organisation Committee are also members of the Disputes Panel. Cases are, however, heard by smaller panels drawn from the full Disputes Panel; in this case consisting of three members.

42.4 Decisions of the Disputes Panel are subject to the approval of the Organisation Committee.

Can the Party reopen disciplinary decisions?

43. Ms Crasnow argues that irrespective of the question of the Organisation Committee's power to approve or reject decisions of a panel, the rules must on their true construction allow the Party to reopen disciplinary proceedings. She cites McKenzie v. National Union of Public Employees [1991] I.C.R. 155, in which Popplewell J (as he then was) considered whether a union could reopen disciplinary proceedings against a branch secretary. Mr McKenzie had been expelled in breach of the procedure set out in the union's rules and sought declarations that such disciplinary action was void and that he remained branch secretary. The union sought to remedy its mistake by summoning him to participate in a fresh disciplinary hearing. Drawing on a number of earlier authorities, Popplewell J held that the union was entitled to rehear the case and put right the procedural shortcomings in the original decision if "in all the circumstances justice requires it." At page 170, the judge added that the test was what was "reasonable and fair."

44. In my judgment, the Labour Party has a like power to reopen decisions where the original decision of a panel was flawed. I consider the limits of such power more fully below.

The decision to remit the case to a further Disputes Panel

45. Accordingly, there is no doubt that the Organisation Committee had power both to approve and to reject the decision of the antisemitism panel. Further, it had power in any event to reopen the decision already made. It was, however, required to exercise such powers fairly and in good faith (chapter 2.II.7) and not to act arbitrarily, capriciously or irrationally (Braganza; Socimer; Evangelou and Jones above).

46. Mr Gardiner says that the NEC has opened an internal review into Mr Williamson's complaint and that it will in due course rule as to whether the Disputes Panel was entitled to remit his and other cases to a fresh panel. No date has, however, been given for when such review will be completed and Mr Williamson is entitled to a judicial decision upon his case.

47. In considering the exercise of the powers to reject a panel decision and to reopen a case, the court should be astute not to allow concepts of fairness to make unreasonable demands upon the Labour Party. As Sir Robert Megarry V.C. observed in McInnes v. Onslow Fane [1978] 1 W.L.R. 1520, at page 1535:

> "I think that the courts must be slow to allow an implied obligation to be fair to be used as a means of bringing before the court for review honest decisions of bodies exercising jurisdiction over sporting and other activities which those bodies are far better fitted to judge than the courts. This is so even where those bodies are concerned with the means of livelihood of those who take part in those activities. The concepts of natural justice and the duty to be fair must not be allowed to discredit themselves by making unreasonable requirements and imposing undue burdens."

48. Here, while the contractual position is that panel decisions are subject to approval of the Organisation Committee, the evidence indicates that in practice the rules are not strictly followed:

    48.1 The decision taken by the panel on 26 June was not presented as an interim decision. On the contrary, the Party's Governance and Legal Unit wrote to Mr Williamson on 26 June in unequivocal terms informing him of the final outcome in his case to issue a warning pursuant to chapter 6.I.1.C. I was told in the course of submissions that it is the Party's usual practice to send such letters after panel hearings without either waiting for the approval of the Organisation Committee or expressing the decision as interim and subject to approval.

    48.2 The minutes of the meeting of 9 July 2019 at which the June decision was reconsidered describes it as a meeting of the NEC Disputes Panel. Constitutionally, any approval or rejection of the panel's decision was a matter for the Organisation Committee and not the Disputes Panel.

    48.3 The minute of the discussion on 9 July does not indicate that the meeting was simply considering the routine exercise of the Organisation Committee's usual power to approve or reject the June decision.

    48.4 The Governance and Legal Unit wrote on 9 July to inform Mr Williamson that the NEC Disputes Panel had determined that the June decision could not stand. There was no indication that this was a decision of the Organisation Committee.

    48.5 The Party wrote on 19 July to explain that the NEC Disputes Panel had decided to refer Mr Williamson's case to the NCC. Again, there was no suggestion that this was anything other than a final decision and no evidence has been placed before me that it has since been approved by the Organisation Committee.

49. If the Party wishes to treat the decisions of its panels as no more than interim then it needs to follow its own rules. Specifically, the NEC needs to revise its procedures in order to ensure that panel decisions are not presented as final and that they are subsequently considered by the Organisation Committee for approval before being either approved or rejected. I reject Ms Crasnow's submission that this would impose an undue burden upon the Party.

50. In my judgment, fairness to a member requires that, where the Party communicates an apparently final panel decision in unequivocal terms concluding a disciplinary case without reference to the NCC:

    50.1 the Organisation Committee should not decline to approve such decision; and

    50.2 the Party should not itself reopen the case with a view to referral to the NCC,

    without proper reasons.

51. I accept that the court should be slow to reject the Party's assessment of whether in a particular case there are or are not proper reasons for withholding approval or reopening the matter. There is, however, a difference between according due deference to the internal disciplinary process and simply rubber-stamping the Party's decisions. There must be proper grounds for the decision, even if the court would not itself have reached the same conclusion.

52. This case does not require an exhaustive analysis of the reasons that might justify the rejection of a panel's decision even after an unequivocal communication of a final decision, or the reopening of the NEC's decision even after such approval. Since, however, there is no right of appeal by either the member or the investigating officer, fairness must require that cases be reconsidered where the panel overlooked some important evidence, or where its decision was procedurally unfair or obviously wrong. McKenzie itself is a good example. The original decision expelling the branch secretary was procedurally flawed. The union was plainly entitled to reopen the matter. Indeed, had it failed to do so, the branch secretary could properly have complained that his expulsion was in breach of contract.

53. I turn then to consider the evidence in this case.

(i) Obviously wrong

54. Many in the Party plainly believe that the decision of the June panel was wrong. Labour did not, however, put its case on this basis. Nor was it suggested that the panel had overlooked some important evidence.

(ii) Mr Vaz's health

55. Mr Vaz raised issues about his health once colleagues reacted vociferously to the panel's decision. The evidence on this issue is unsatisfactory:

    55.1 While Mr Gardiner's second-hand account of Mr Vaz's telephone call with Ms Formby focused on his fitness, Mr Vaz's subsequent email did not state in terms that he had not been fit to sit on the panel on 26 June. Indeed, Mr Vaz's chief concern then appeared to be that there had been breaches of confidence.

    55.2 There is no evidence before me from Mr Vaz.

    55.3 It would be surprising if, as an experienced Parliamentarian, Mr Vaz:

a) had taken part in an important meeting if he felt himself unfit to do so; and

b) then failed clearly to make that point in his subsequent email.

55.4 Further, there is no evidence from either Sir George Howarth or Ms Elmi. If Mr Vaz had been so unwell that he was not fit to serve on the panel, it is surprising that this experienced politician and Ms Elmi had not themselves raised the issue of his fitness either at the time or subsequently.

(iii) Confidentiality and political interference

56. Mr Vaz was right to lament the leaks from the disciplinary process. Such breach of confidence was not of itself a proper reason for reopening the decision in Mr Williamson's case, and Ms Crasnow did not seek to argue otherwise. She did, however, submit that Mr Vaz appeared to be hinting at political interference in the handling of the Williamson case. She submitted that a decision mired by political interference, or the appearance of political interference, could not stand.

57. There are straws in the wind that support a theory that there might have been some political interference:

57.1 On 27 June 2019, the Labour MPs and peers demanding the removal of the whip from Mr Williamson wrote:

> "It is clear to us that the Labour Party's disciplinary process remains mired by the appearance of political interference. This must stop. We need a truly independent process."

57.2 On 28 June 2019, the BBC reported:

> "Mr Vaz was brought into the process at the last minute and the theory being advanced by some in leadership circles is that he initially and mistakenly did what he thought Mr Corbyn wanted, the better to avoid a deselection threat.
>
> When he saw the strength of the backlash, he suggested effectively rerunning the process."

57.3 Shabana Mahmood MP raised her concerns at the NEC Disputes Panel meeting on 9 July 2019, although it is not clear whether she was referring to possible interference in the original decision or in the decision to reopen matters. The minutes record:

> "Shabana Mahmood requested that it be minuted that the Party should investigate the circumstances surrounding the reconvening of the antisemitism panel. She informed the meeting of her concerns around political interest in the quasi-judicial functions of the NEC …"

58. If, however, the Labour Party wished to defend its decision to reopen the case on the basis that there was political interference in the original June decision then it should have filed evidence dealing with the point. It is not open to the Party to hint at some improper interference, or at least the appearance of improper interference,

in the disciplinary process in order to justify its decision to reopen matters. One would expect it to have taken a clear course, either:

58.1 dismissing allegations of interference, in which case there would be no basis, at least on that ground, for reopening the panel's decision; or

58.2 putting in evidence its concern that there was political interference, or at least the appearance of such interference, and justifying its decision of 9 July on that basis.

(iv) The outcry following the June decision

59. Mr Williamson argues that the true reason for reopening his case was the outcry provoked by news of the original decision. In his evidence, Mr Gardiner responded:

> "Mr Williamson evidently believes that this negative press commentary was the driver of the subsequent decision to set aside the 26 June decision. I do not understand this to be the case though I should add that every member of the Party is aware that press comment is a factor which cannot be disregarded if the Party's aims and programme are to be achieved."

60. This is a nuanced response. Mr Gardiner does not deny that the negative press coverage was a factor, he simply "does not understand this to be the case." Further, he then defends the importance of paying attention to press coverage. I accept that it would no doubt be difficult to identify the precise reasons why a majority of the twenty-two NEC members who cast a vote on the issue decided to remit the decision to a fresh panel. In the absence of other proper reasons, it is not, however, difficult to infer that the true reason for the decision in this case was that members were influenced by the ferocity of the outcry following the June decision. Indeed, Ms Crasnow realistically accepted that such inference might be properly drawn and positively asserted that the Party was entitled to take account of the outcry provoked by the original decision.

61. While not a court of law, the protocol for the Organisation Committee explains that the NEC Disputes Panel operates in a quasi-judicial fashion. An important aspect of acting judicially is that the NEC should decide cases fairly and impartially in accordance with the rules and evidence; and not be influenced by how its decisions are seen by others. Internal and press reaction to a decision are not of themselves proper grounds for reopening a case that was not otherwise procedurally unfair or obviously wrong.

CONCLUSIONS

62. I therefore conclude that, having communicated the panel's decision as final, the Labour Party acted unfairly in that there was no proper reason for reopening the case against Mr Williamson and referring the original allegations to the NCC. Such complaint cannot be taken before the NCC and it is appropriate for the court to grant declaratory relief.

THE SECOND SUSPENSION

THE FACTS

63. By a letter dated 3 September 2019, the Party's Governance and Legal Unit notified Mr Williamson of fresh allegations against him. The allegations were said to include:

> "- Sending an email to a member of the public who had complained to you about your criticisms of Margaret Hodge MP that referred her to a video on YouTube. The video described Ms Hodge as 'cheapening and exploiting the memory of Jewish suffering'; 'trivialising the memory of the Holocaust'; and requesting that she 'get the hell out of the Labour Party'; among other offensive personal statements about her.
>
> - Publicly legitimising or endorsing the misconduct of members or former members of the Party that the NEC has found, in its opinion, to be grossly detrimental or prejudicial to the Labour Party.
>
> - Undermining the Party's ability to campaign effectively against antisemitism by publicly characterising the disciplinary processes of the Party in relation to cases of alleged racism as politically motivated and/or not genuine."

64. The letter noted that Mr Williamson was currently suspended pending determination of the earlier allegations by the NCC. He was further suspended in relation to the new allegations. The letter posed 31 written questions, which Mr Williamson answered on 5 September.

ANALYSIS

65. While the Labour Party is no longer able lawfully to pursue the original disciplinary case against Mr Williamson, that does not afford him immunity from any subsequent disciplinary action. Accordingly, the NEC is entitled to investigate and process any new allegations made against Mr Williamson and the court should not lightly interfere in the Party's decisions to investigate or to re-suspend him pending such investigation. Equally, it should not micro-manage the disciplinary process.

66. Ms McColgan accepts that the September charges are new. She argues, however, that the case has been "cobbled together" in order to justify Mr Williamson's continued suspension. Further, she points to the timing which, she submits, is suspicious:

66.1 At 4.48pm on 2 September 2019, Mr Williamson's lawyers sought a speedy hearing of this case.

66.2 At 7.03pm that same evening, the Labour Party was considering a new case against Mr Williamson. At that point, Ms Formby was not herself persuaded of the need to suspend in respect of the new allegations.

66.3 Officials argued the point and ultimately Ms Formby agreed that suspension was justified.

66.4 On 3 September 2019, the new allegations were made.

67. Ms McColgan's argument is superficially attractive but does not withstand scrutiny:

    67.1 The evidence before me is that some of the allegations set out in the letter of 3 September arose from complaints made to the Labour Party. In any event, the allegations are largely in respect of incidents alleged to have occurred after the date of the original disciplinary allegations. Some allegations pre-date the original case but were not brought to the Party's attention until later. There is nothing inherently unfair in investigating these fresh allegations or in referring them to the NEC Disputes Panel.

    67.2 It is clear that some investigation was undertaken before officers put the new allegations to Mr Williamson. I do not accept that these allegations were "cobbled together" late on 2 September; rather it appears that matters were already in train well before that date.

    67.3 I accept that the Party might have decided that the new allegations should be made before the hearing on 12 September, but I do not consider that any such decision was necessarily inappropriate. Indeed, no doubt the Party would have been criticised if it had deliberately delayed commencing the new case until after the hearing before me.

    67.4 The emails placed before the court show that the question of suspension was carefully considered and that Ms Formby did not start from the presumption that Mr Williamson should be suspended. The fact that, if proven, these allegations represent further misconduct in connection with Mr Williamson's words and actions in addressing the issue of antisemitism justified the Party in taking a serious view of the case.

    67.5 In any event, a Part 8 hearing conducted by legal argument upon the papers is not a suitable vehicle to enquire into the Labour Party's motives in bringing this second case against Mr Williamson.

68. In my judgment, there is nothing in the new allegations, the timing of the letter of 3 September or the decision to suspend that entitles me to take the view upon the papers that the Labour Party is acting either unfairly or other than in good faith. I therefore refuse relief in respect of Mr Williamson's recent re-suspension. The new disciplinary case must run its course.