



Neutral Citation Number: [2022] EWHC 2508 (KB)

Case No: KB-2022-003160

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 October 2022

Before :

MR JUSTICE JOHNSON

Between :

JOSEPHINE MARY HAYES

Applicant

- and -

(1) DR MARK PACK
(sued as a representative of all members of the
Liberal Democrats except the Claimant)

(2) DUNCAN CURLEY, ALEXANDRA SIMPSON
AND SERENA TIERNEY
(sued as representatives of all members of the
Liberal Democrats in England as at 1st September
2022 except the Claimant)

Respondents

Mariya Peykova (instructed by Branch Austin McCormick LLP) for the Applicant
Richard Mott (instructed by DTM Legal) for the Respondents

Hearing date: 5 October 2022

Approved Judgment

This judgment was handed down by release to The National Archives
on 10 October 2022 at 10.30am

Mr Justice Johnson:

1. The applicant, Josephine Hayes, was a member of the Liberal Democrats party (“the party”). She was expelled from the party on 1 September 2022 as a result of a decision of a complaints panel (“the panel”). She says that her expulsion breached rules of natural justice and was otherwise flawed. She wishes to stand in forthcoming elections for the President of the party. She can only do so if she is a member of the party. Nominations for the elections close at 6pm on Monday, 10 October 2022. Ms Hayes seeks an injunction that will enable her to take part in those elections. Her application for an injunction was issued on 28 September 2022. She has not yet issued a claim form.
2. The first respondent, Dr Mark Pack, is the current President of the party. Duncan Curley, Alexandra Simpson and Serena Tierney are named as the second respondent. They are the members of the panel. The respondents are sued as representatives of all members of the party.
3. Ms Hayes seeks an order that:
 - (1) The respondents are prevented from enforcing the panel’s decision until the court gives a final judgment on the claim that Ms Hayes proposes to bring, and
 - (2) The respondents must not do anything to prejudice Ms Hayes’ position in relation to the forthcoming elections for the President of the Federal Board of the Liberal Democrats.
4. The hearing took place on 5 October 2022. At the conclusion of the hearing, I refused the application for the following, summary, reasons:
 - (1) Ms Hayes has not established a right to an interim remedy before she starts her claim.
 - (2) Ms Hayes has not established a sufficient case on the merits to justify the grant of injunctive relief.
 - (3) The balance of convenience weighs against the grant of injunctive relief.
5. I refused permission to appeal. I said that a reserved written judgment, giving full reasons for the decision, would be provided in time to enable Ms Hayes to pursue a renewed application for permission to appeal (and, if permission were granted, the substantive appeal) before the deadline for nominations for the forthcoming elections. This is that judgment.

The background

6. Ms Hayes was a founding member of the party. She has held many positions within the party, including regional candidates chair for the East of England and membership development officer of the Colchester local party. On 1 January 2020 she was elected to the Federal Board of the party for a three-year term.

Ms Hayes' involvement in complaint made by Dr Pack ("Issue 3")

7. In the course of 2020, Dr Pack made an anonymous complaint about the conduct of another party member. Due to a procedural error, Dr Pack's identity as the complainant was revealed to that party member, who then informed Ms Hayes. Ms Hayes wrote to Dr Pack in respect of the complaint. She said that the complaint was placing improper pressure on the subject of the complaint, that this might prejudice police investigations, and that could itself be an offence. She said that if the complaint was not withdrawn then the consequence could be police investigation, and she would hold Dr Pack responsible for that.

Ms Hayes' involvement in selection of PFCC candidate ("Issue 2")

8. In December 2020 Ms Hayes was elected as the regional candidates chair for the East of England. She took office on 1 January 2021. She was responsible for identifying a candidate for the post of Essex Police Fire and Crime Commissioner. Her preferred choice had resigned from the party. His candidature was opposed by some within the party. There was a lengthy debate between Ms Hayes and Dr Margaret Joachim (the party's English Candidates Chair) as to the applicable procedure. On 20 February 2021 Lucy Nethsingha (the party's Regional Chair for the East of England) sent an email to 7 recipients, including Ms Hayes, and copied to Dr Joachim. The email indicated that there were concerns about the suitability of Ms Hayes' preferred candidate, and that complaints had been made against him which remained unresolved. The email asked the recipients to indicate their opinion as to whether Ms Hayes' preferred candidate should be appointed, and whether they had been fully informed of the outstanding complaints. Ms Hayes responded to the same email distribution list. She said that there were no outstanding complaints against her preferred candidate.
9. Ms Hayes' preferred candidate obtained a copy of the email of 20 February 2021. He issued a claim against the party's officers and complained to the Information Commissioner alleging data breaches by the party.
10. On 24 August 2021, Ms Hayes sent a WhatsApp message to the party's Federal Board ("the WhatsApp message"). She said that she was "reliably informed" that unless the complaint was resolved to the complainant's satisfaction by 5pm that day, the Information Commissioner would fine the party at least £10,000 and the ruling would be published within 2 days. As a result of this message, Kerry Buist (acting in the place of the party's data protection officer who was away) provided Dr Pack with the correspondence that had taken place with the Information Commissioner. After reviewing that correspondence, Dr Pack posted a message to the same WhatsApp group to say that there was no outstanding deadline and that the party was defending the case.
11. On 1 September 2021, the Information Commissioner sent an email to the party's data protection officer which said that it appeared that the party was complying with its data protection obligations and that the case would be closed.

Ms Hayes' conduct at Federal Board meeting ("Issue 1")

12. At an online meeting of the Federal Board on 4 September 2021, Ms Buist said that the party had received an email from the Information Commissioner saying that the complaint was now closed but that (having taken advice from external lawyers) she was not able to share the correspondence. Ms Hayes posted, in the online chat, a comment: “I do not accept that Kerry’s statements are accurate.” She posted a further comment: “Remember I am directly elected”. The Board voted to remove Ms Hayes from the meeting. It is rare for a member to be removed from a Federal Board meeting in this way: in the experience of those who commented on the issue, it has never happened before.

Dr Pack’s complaint against Ms Hayes

13. On 2 February 2022 Dr Pack filed a complaint against Ms Hayes. He alleged she had:
- (1) behaved inappropriately towards party staff, such as falsely accusing a member of staff of law-breaking.
 - (2) breached the party’s confidentiality rules.
 - (3) shown a pattern of threatening others in the party.
 - (4) breached the code of conduct.
 - (5) made false claims against Dr Pack, including that he was party to a police investigation.
14. Dr Pack set out the detail of his complaint over 17 pages (excluding an appendix). He identified the conduct of Ms Hayes about which he complained, the respects in which he alleged Ms Hayes had acted contrary to the party’s constitution and code of conduct, and the sanction that he said should be imposed (which was expulsion from the party).
15. On 16 February 2022, the Information Commissioner wrote to Ms Hayes’ preferred candidate. He was told that the Information Commissioner considered that the Liberal Democrats had not complied with its data protection obligations in relation to the processing of his personal data.
16. The panel was appointed in accordance with the Party’s rules to address the complaint made by Dr Pack. Each member of the panel is a solicitor or barrister. They each confirmed they did not have any conflict of interest or any personal interest in the outcome of the complaint. Checks were conducted to confirm that was so. The panel decided how best to case manage the complaint resolution process. It identified three discrete allegations that it would consider at a hearing, and it would then decide how to deal with the remaining issues following that hearing. On 1 June 2022, the panel sent to Dr Pack and Ms Hayes a “Complaints Panel Procedure Notice.” This identified the three issues to be determined:
- (1) Ms Hayes’ behaviour towards Kerry Buist at the Federal Board meeting on 4 September 2021 (see paragraph 12 above) (“issue 1”).

- (2) Ms Hayes' actions and behaviour relating to the process for selection of a Liberal Democrat candidate for the post of Essex Police, Fire and Crime Commissioner (see paragraph 8 above) ("issue 2").
- (3) Ms Hayes' attempt to influence the outcome of complaints made by third parties (see paragraph 7 above) ("issue 3").
17. Ms Hayes was provided with a bundle of 179 pages. This included Dr Pack's complaint, and witness statements from Dr Pack, Kerry Buist, Dr Joachim, Ms Nethsingha and several others.
18. A hearing took place on 26 July 2022. The panel provided its written decision on 1 September 2022. Ms Hayes received a copy of the decision on 2 September 2022.

The panel's decision

19. In respect of issue 1, the panel concluded that Ms Hayes' conduct was not in the best interests of the Party, and constituted bullying of a member of staff, in breach of the party's constitution and code of conduct. The panel revoked Ms Hayes' membership, and decided that she should be expelled from the party.
20. In respect of issue 2, the panel found that Ms Hayes deliberately failed to take into account the fact that her proposed candidate was likely to be unacceptable to the local party who would be responsible for campaigning for him if he was selected. It concluded that her conduct breached the code of conduct, that she was not acting in the best interests of the party and that she risked bringing the party into disrepute. It permanently excluded her from standing for or holding office in any capacity within the Party.
21. In respect of issue 3, the panel found that Ms Hayes had improperly attempted to close or suspend an ongoing internal complaint. It concluded that her conduct would substantially lower the party's reputation in the mind of a fair and objective observer. It decided to expel her from the party.

Ms Hayes' proposed underlying claim

22. Ms Hayes has not issued a claim form. Nor has she provided the court with proposed draft particulars of claim. It has been necessary to seek to identify her proposed claim from a combination of (a) the skeleton argument lodged in support of the application, (b) pre-action correspondence, (c) Ms Hayes' witness statements, and (d) Ms Peykova's oral submissions.
23. In the skeleton argument, it is said that proposed underlying claim is based on "the law of contract", and that the panel's "numerous procedural failures amount to a breach of the implied terms of the Constitution. In particular, the [panel] was in breach of the implied requirement to observe the rules of natural justice." The skeleton argument sets out, in detail, the matters that are said to amount to "procedural failures".
24. In respect of issue 1, the complaints are:

- (1) The panel made a finding about the WhatsApp message, but this was outside the scope of issue 1 because it was posted on a private WhatsApp group (to which Ms Buist did not have access) and it related to another individual.
- (2) The panel's finding that the applicant bullied Ms Buist was plainly wrong.
- (3) The panel erred in observing that Dr Pack made the complaint in his capacity as President of the party.
- (4) The panel gave undue weight to the fact that the complainant was the President of the party.
- (5) The sanction was disproportionate.

25. In respect of issue 2, the complaints are:

- (1) The panel was wrong to refer to an extract from the party's complaints guidance which indicated that it was permissible to disclose that a complaint had been made if the complaint related to an approved candidate. Ms Hayes' preferred candidate was not "an approved candidate" so this guidance did not permit the disclosure of the fact that complaints had been made about him.
- (2) Ms Hayes had been conducting an elected role provided for by the constitution, and the complaint related to her political strategy or tactics. The party's complaints guidance indicated that this type of conduct is not a matter for the complaints process.
- (3) Issue 2 was framed in a "vague and unparticularised manner."
- (4) The panel erred in finding that Ms Hayes knew about the complaints against her preferred candidate.
- (5) The panel erred in finding that Ms Hayes had known that her preferred candidate would not be viewed favourably.
- (6) The panel erred in finding that it was probably Ms Hayes that forwarded Ms Nethsingha's email to her preferred candidate.

26. In respect of issue 3, the complaint is that the sanction imposed was disproportionate and the panel failed to have regard to mitigating factors.

27. I indicated to Ms Peykova that these complaints do not all appear, on their face, to amount to alleged breaches of the rules of natural justice. In response, she said that Ms Hayes did not just rely on an implied term to comply with the rules of natural justice. Ms Hayes also sought to rely on additional implied terms that had been articulated in pre-action correspondence. These are that:

- (1) the panel would act in a reasonable, logical and rational manner, remain non-partisan, adhere to the civil standard of "on the balance of probabilities", only find facts where there was "sufficiency of evidence", give words their ordinary and necessary meanings, refrain from substituting its own view in respect of political

or executive decisions, and maintain a rigid approach to what is necessary and sufficient to try specific allegations.

(2) Complaints and their resolution would be dealt with fairly and in a reasonable time.

(3) Any sanction would be proportionate.

28. In her oral submissions, Ms Peykova also advanced a claim (not raised in either the skeleton argument or the pre-action letter, but contained in Ms Hayes' witness statement) that the panel had been actuated by bias against Ms Hayes.

Interim remedy prior to starting claim

29. The purpose of an interim injunction is to further the overriding objective of dealing with the case justly. An interim injunction is usually made in extant proceedings to ensure that the purpose of an otherwise viable claim is not defeated without court oversight prior to trial, and that a position is preserved that enables the court to secure the ends of justice at trial: *National Commercial Bank Jamaica Ltd v Olint Corp Ltd* [2009] UKPC 16 [2009] 1 WLR 1405 PC at [16] - [19].

30. A claim is started by issuing a claim form: Civil Procedure Rules Part 7, rule 7.2(1). When issuing a claim form the claimant is required to pay a court issue fee (unless the fee is remitted), to provide a concise statement of the nature of the claim, and to verify the claim form by a statement of truth. This procedural rigour is important. It ensures that there are extant proceedings which the proposed injunction will serve. It enables the court, when deciding whether to grant the injunction, to focus on the issues identified in the claim form (and any particulars of claim). It provides a template against which each of the elements of the test for the grant of interim relief may be assessed, particularly the merits of the claim and the balance of convenience.

31. Ms Hayes has not started her claim. In Mr Mott's skeleton argument, filed on 3 October 2022, he argues that injunctive relief should not be granted before the issue of proceedings. The point is not addressed in Ms Hayes' witness statement, or in the skeleton argument that was filed on her behalf.

32. There is power to grant an interim remedy before a claim has started. The circumstances in which that is permitted are prescribed by the Civil Procedure Rules, Part 25, rule 2(b). That states:

“the court may grant an interim remedy before a claim has been made only if—

(i) the matter is urgent; or

(ii) it is otherwise desirable to do so in the interests of justice;

...”

33. Ms Peykova says this is a case of urgency. It is only a short period of time since Ms Hayes became aware of the panel's decision. Her attention, and that of her legal team, has been focussed on the need to secure injunctive relief. They have dealt with matters expeditiously. It has, Ms Peykova says, not been practicable to issue a claim

form within the time available. Ms Hayes proposes an undertaking to issue the claim form within 21 days. When pressed on the point, Ms Peykova agreed that a claim form could be issued earlier than that if the court so directed.

34. Alternatively, Ms Peykova said it was desirable in the interests of justice to grant an interim remedy before the issue of a claim form because of the complexity of the proposed claim and the difficult issues that it raises.
35. I do not consider that either element of the test in rule 25.2(b) is established.
36. As to urgency, Ms Hayes was notified of her expulsion on 2 September. She needs to secure interim relief by 10 October. That is a period of 5 weeks. The test for urgency in rule 25.2(b)(i) must be assessed in the context of the time available to secure an interim injunction, and the time that is reasonably required to issue a claim form. Where the former exceeds the boundaries of the latter then the matter is urgent: unless an injunction is granted before the issue of proceedings it will be too late. Conversely, where there is ample time to issue proceedings before securing an injunction the matter is not sufficiently urgent to justify the grant of an injunction before starting the claim.
37. Ms Hayes has had more than ample time to start her claim. She has not given any good reason for failing to do so. In her witness statement, she says (but as a general observation, not in respect of the failure to start the claim) that she “had to crowd fund this matter” and that this “has caused some delay to my application.” She does not, however, proffer this as a reason for not starting the claim.
38. I do not accept that the need to focus attention on securing injunctive relief means that Ms Hayes could not issue a claim form. Little additional work was required. Even after the respondents drew attention to the point in their skeleton argument, Ms Hayes still did not start her claim or address the reasons for not doing so.
39. The matter has now become urgent, but Ms Hayes is not entitled to rely on urgency that is a consequence of her own inaction. Even if that were permissible, I would not exercise the residual discretion to grant an injunction given that Ms Hayes has had an ample opportunity to issue a claim but has delayed doing so.
40. As to the interests of justice, there are circumstances where a case is not urgent but where it is in the interests of justice to grant an interim remedy before starting the claim. An example is a claim for relief under the jurisdiction recognised in *Norwich Pharmacal v Commissioners of Customs & Excise* [1974] UKHL 6 [1974] AC 133, where such relief is necessary in order to enable the applicant to start the claim. Another example is a claim for inspection under section 33(1) of the Senior Courts Act 1981 where that is necessary before the claim is started.
41. Here, it is not necessary for Ms Hayes to secure an interim remedy in order to start her claim. She could have started her claim before making the application for an interim remedy, or at the same time as making her application, or even on the day of the hearing. She could have done so at any time within the last month. The complexity or difficulty of the underlying issues does not render it just to grant an interim remedy before starting the claim. On the contrary, it is more desirable that a claim form is issued (and, ideally, that draft particulars of claim are prepared) where the underlying

issues are complex or difficult. The court is not assisted in assessing the merits of the claim or the balance of convenience by the absence of a claim form or particulars of claim. That is particularly so where Ms Hayes seeks to advance novel arguments as to the scope of the contractual duties in relation to the exercise of disciplinary proceedings by an unincorporated association (see paragraph 27 above), and where she seeks to advance an allegation of bias (see paragraph 28 above).

42. Accordingly, Ms Hayes has not established that the court may grant an interim remedy before she starts her claim. For that reason, I dismiss the application.
43. In case I am wrong on that issue, I also consider the application on its merits on the assumption that the test in rule 25.2(b) is satisfied.

The test for the grant of an interim injunctive

44. The general test for the grant of an interim injunction is that set out by the House of Lords in *American Cyanamid Co (No 1) v Ethicon Ltd* [1975] UKHL 1 [1975] AC 396. The applicant must show that the underlying claim is sufficiently meritorious to justify the grant of injunctive relief, and that the balance of convenience weighs in favour of the grant of relief. The underlying principle is that the court should take whichever course will cause the least irremediable prejudice, taking account of the merits of the claim: *National Commercial Bank* at [19].
45. It is common ground, that where an injunction is sought that seeks to prevent the respondent from engaging in unlawful activity, the courts generally require only that there is a serious question to be tried (or, in other words, that the applicant has a real prospect of success): *American Cyanamid* at 407G. Conversely, the parties agree that where a mandatory injunction is sought, requiring the respondent to take positive steps, the court may consider whether there is a “high degree of assurance” that the claimant will succeed at trial: *Nottingham Building Society v Eurodynamics Systems* [1993] FSR 468 *per* Chadwick J at 474. Likewise, it was agreed that a more exacting test is generally applied where the grant of an interim injunction will have the practical effect of finally determining the issues between the parties: *NWL v Woods* [1979] 1 WLR 1294 *per* Lord Diplock at 1307B.
46. This resulted in predictable, but unproductive, debate as to whether the injunction sought was prohibitory or mandatory in nature, whether it would determine the issues between the parties or whether a speedy trial might still fulfil a practical purpose. The debate was misplaced. Such arguments are “barren” and do not “do justice to the complexity of a decision as to whether or not to grant an interlocutory injunction”: *National Commercial Bank* at [20] - [21]. The threshold prospect of success that is required for the grant of an injunction is linked to the balance of convenience, and to the precise nature of the order sought, and to the consequences of granting or refusing the order. The question of whether an order is prohibitory or mandatory, or whether it will finally determine the issues, may assist as factors in that analysis. But it is not as simple as classifying the type of injunction into one of four discrete types to produce an inflexible threshold merits test.
47. For the reasons that I explain in more detail in the context of the balance of convenience, in the circumstances of this case I consider that Ms Hayes needs to demonstrate that she is likely to succeed at trial.

48. Mr Mott suggested that in cases such as the present, where injunctive relief is sought against a political party, there is an additional test of “exceptionality”: the application should be refused save in exceptional circumstances. He placed particular reliance on the decisions in *Choudry v Triesman* [2003] EWHC 1203 (Ch), *Nattrass v UK Independent Party* [2013] EWHC 3017 (Ch), and *Hayes v Sarah Virginia, Baroness Brinton* [2019] EWHC 1785 (Ch).
49. In *Choudry* members of the Labour party sought interim injunctions requiring their party to nominate them as candidates in local elections. Stanley Burnton J observed that a relationship of trust and confidence was necessary between a political party and its candidates for elected office. He considered that it followed that “save possibly in the most exceptional circumstances, the court should not compel a registered political party to permit candidates to stand for election in its name if the party has genuine and substantial concerns as to the regularity and honesty of the procedure for their selection.”
50. In *Nattrass*, the applicant sought an injunction to restrain the United Kingdom Independence Party from a ballot of individuals selected to stand as its candidates in forthcoming elections. HHJ Purle QC considered that the consequences of granting relief were such that “the court should require exceptional circumstances before it interferes with the selection processes of a political party.”
51. In *Hayes*, Ms Hayes (the applicant in the present proceedings) sought an interim mandatory injunction requiring her to be selected as a candidate for the party in European parliamentary elections. Zacaroli J refused the application. In doing so, and after analysing in detail the consequences of granting relief on the particular facts of the case, he indicated that it would only be in “extreme cases” that such an order would be appropriate.
52. I do not consider that these cases establish a general proposition that a court should only grant an injunction against a political party if there are “exceptional circumstances”. Rather, in each case the judge considered that the consequences of granting relief, on the particular facts, were such that significant irremediable damage would be caused. For that reason, the balance of convenience inevitably fell in favour of refusing the injunction unless there were strong (“exceptional”) countervailing features sufficient to change the balance. This might be an exceptional level of prejudice to the applicant if the injunction were not granted, or it might be a demonstration that the applicant is very likely to succeed at trial. The cases do not establish a freestanding principle that an injunction against a political party should only be granted if a test of exceptionality (whatever that might mean) is met.

The merits of the underlying claim

53. Ms Hayes is on strong ground when she contends that there is a contract between the members of the party (so, at the relevant time, including Ms Hayes), reflected in the party’s constitution and rules: *Conservative and Unionist Central Office v Burrell* [1982] WLR 522 *per* Lawton LJ at 525D. So too, when she contends that it is an implied term of that contract that any disciplinary proceedings will be conducted in accordance with the principles of natural justice: *Lee v Showmen’s Guild of Great Britain* [1952] 2 QB 329 *per* Denning LJ at 342. More broadly, I am prepared to assume that Ms Hayes will succeed at trial in establishing implied terms to act fairly

and rationally: *Rothery v Evans* [2021] EWHC 577 (QB) *per* Cavanagh J at [168] (and for the detailed reasons given by Cavanagh J in his analysis at [131] – [177]).

54. Some of Ms Hayes' claimed implied obligations (see paragraph 27 above) are more ambitious. On one view they would have the effect of providing a route of appeal from disciplinary decisions of unincorporated associations to a court. The party's rules themselves provide for an internal route of appeal, thereby contemplating that errors might be made by a panel that could then be corrected on appeal. Ms Hayes is unlikely to establish at trial that any error of analysis (however inconsequential) made by the panel necessarily amounts to a breach of an implied contractual term.
55. In any event, I do not consider that Ms Hayes has established that she is likely to succeed in showing that the panel's decision was flawed.
56. In respect of issue 1 (see paragraph 24 above):
- (1) The panel expressly recognised that the WhatsApp message was part of the "background" to issue 1. But it was part of the complaint that had been advanced, and Ms Hayes was on notice as to the point. She had an opportunity to address it. The panel's findings in respect of the point were not essential to its overall resolution of issue 1 or to the sanction that was imposed.
 - (2) Whether Ms Hayes' conduct towards Ms Buist amounted to bullying was a matter for the evaluative assessment of the panel based on the material that was before it. It undertook that assessment and gave reasons for its conclusion. Ms Hayes is unlikely to establish that those findings amount to a breach of contract.
 - (3) The panel's observation that the complaint was made in the complainant's capacity as President of the party was not a factor that was relevant to its essential reasoning. Even if the panel is completely wrong about that (and I do not consider that Ms Hayes is likely to establish even that), it is of no consequence.
 - (4) There is nothing in the panel's reasoning to suggest that it attached "undue" (or any) weight to the fact that the complainant was the President of the party. It was in respect of this issue that Ms Peykova suggested that the panel was biased against Ms Hayes. There is no basis to conclude that the panel was biased.
 - (5) The panel found that Ms Hayes had not acted in the best interests of the party, and that she has brought the party into disrepute. The party's constitution (at article 3.8(b)) indicates that membership of the party may be revoked on the grounds of conduct which is likely to bring the party into disrepute. I do not consider that Ms Hayes is likely, at trial, to establish that the panel acted in breach of contract by revoking her membership.
57. In respect of issue 2 (see paragraph 25 above):
- (1) Ms Hayes' complaint about the panel's treatment of the party's guidance applies to the question of whether or not it was permissible to disclose the fact that the complaints had been made against Ms Hayes' preferred candidate. This was only of tangential relevance to issue 2. Even if Ms Hayes is right about the effect of the

guidance, that does not undermine the panel's central conclusion in respect of issue 2, or the sanction that it imposed.

- (2) Issue 2 concerned Ms Hayes' conduct (in internal party communications) in championing a candidate who, on the panel's findings, was obviously unacceptable to the local party. This was not an external facing political strategy. It is difficult to draw the precise dividing line as to what should and should not (on the party's internal guidance) fall within the disciplinary process. I do not consider that Ms Hayes is likely to establish that the panel's assessment of this issue amounted to a breach of any implied contractual term.
 - (3) It is unlikely that Ms Hayes will establish that she was given insufficient particulars of issue 2. As well as Dr Pack's complaint (which itself provides considerable detail), Ms Hayes was provided with a detailed statement from Dr Joachim, together with exhibits comprising relevant email and other communications. Ms Hayes provided a 10 page, 46 paragraph, witness statement in response to issue 2. She also put in detailed representations. The documentation shows that she was well able to address all of the relevant points.
 - (4) The question of whether Ms Hayes knew about the complaints against her preferred candidate was an issue of fact for the panel to resolve on the evidence. Ms Hayes has not shown that she is likely to establish that its finding amounts to a breach of contract.
 - (5) The complaint about the finding that Ms Hayes must have known that her preferred candidate would not be viewed favourably by her colleagues in the party was likewise an issue of fact for the panel to resolve. Again, it is unlikely that Ms Hayes will establish that its finding amounts to a breach of contract.
 - (6) The panel did not spell out its reasoning for concluding that Ms Hayes sent Ms Nethsingha's email to her preferred candidate. But its likely reasoning can be inferred without difficulty. It was an inference based on the limited distribution list (including Ms Hayes), the relationship between Ms Hayes and her preferred candidate, the motive that Ms Hayes may have had for forwarding the email, and the lack of any apparent motive on the part of any of the other recipients. Again, I do not consider that Ms Hayes is likely to establish that the finding amounts to a breach of contract.
58. In respect of issue 3, Ms Hayes is unlikely to succeed in showing that the sanction was disproportionate, for the same reasons as apply in respect of issue 1 (see paragraph 56(5) above).
59. Accordingly, Ms Hayes has not established that she is likely to succeed in her underlying claim. For this separate reason, I refuse to grant an injunction.

The balance of convenience

Consequences of refusing an injunction

60. Ms Hayes has been a member of the party for many years. She has been elected and appointed to different offices within the party. She judges that now is the right time to

seek election for appointment as President of the party. She has secured support for her candidacy. At the time of her witness statement, 43 (out of the party's 80,000 members) had indicated to her that they would be prepared to nominate her for election. The number has risen since then and she believes that, if an injunction is granted, she will receive the 200 nominations necessary to secure a place on the ballot. Ms Hayes has also raised almost £5,000 in crowdfunding to bring this application, which is likewise indicative of the level of support that she enjoys.

61. Mr Mott argues that the impact on Ms Hayes of not granting an injunction is limited. If she succeeds at trial, then she may be able to put herself forward in the next cycle of elections which will occur in three years. I do not consider this is an answer to the detriment that she will sustain if an injunction is not granted. The fact is that she considers that now is the time to run. She has a body of contacts and support built up over many years of membership of, and service to, the party. If an injunction is not granted, she will not be a member of the party between now and trial. Her relationships with others in the party may weaken or fracture. Her level of support may reduce. A final injunction following trial is unlikely to remedy the detriment she will sustain if an interim injunction is not granted now. Moreover, Ms Hayes has particular reasons for wishing to run now. She has concerns about the governance of the party. She wishes to ventilate those concerns through the vehicle of the elections. She says that no other candidate is in a position to describe those concerns. Further, the current President, Dr Pack, is seeking re-election. Ms Hayes wishes to stand against him.
62. A refusal to grant an injunction will mean that Ms Hayes will not be able to put herself forward for election. It will also mean that those who wish to nominate her for election will not be able to do so. I agree with the submissions advanced by Ms Peykova that this amounts to a significant detriment. It is not something which can be compensated by an award of damages. It is the type of detriment that can, in principle, be remedied by an injunction.

Consequences of granting an injunction

63. Ms Hayes says that if an injunction is granted and her claim subsequently fails then there will be no significant detriment to the respondents, even if she is elected as President. That is because each voting member casts a single transferable vote. It will be straightforward to recount the votes, treating votes for Ms Hayes as void, enabling the runner-up to be appointed President. The party's rules provide for precisely this process to occur in the event of the death of a successful candidate.
64. In my judgment, to the contrary, the grant of an injunction would occasion significant prejudice to the party and its members if it subsequently turns out, at trial, that Ms Hayes was lawfully expelled from the party.
65. Irrespective of the forthcoming elections, an injunction would re-instate Ms Hayes as a member of the party. She would be entitled to resume the positions she held at the point of her expulsion. That would mean that she would be required to work with others in the party, and they would be required to work with her. There has been a breakdown of trust and confidence between Ms Hayes and at least some members of the party, including some members of the local party with whom Ms Hayes would work, and including the party's current President. Leaving aside the political context,

the law recognises the undesirability of enforcing a contract of service where there has been a breakdown of trust and confidence. The Employment Tribunal does not generally grant re-instatement or re-engagement if there has been a breakdown of trust and confidence: Employment Rights Act 1996, section 116(3)(b), *Kelly v PGA European Tour* [2021] EWCA Civ 559 [2021] ICR 1124 *per* Lewis LJ at [43] – [46]. More generally, the courts will not usually grant specific performance of a contract which depends on mutual trust and confidence where that has been lost: *Vertex Data Science v Powergen Retail Ltd* [2006] EWHC 1340 (Comm) [2006] 2 Lloyd's Rep 591 *per* Tomlinson J at [46]. I agree with the observation of Cavanagh J that this need for caution reads across to the present type of case: *Rothery* at [196].

66. So far as the election process is concerned, the task of unpicking the result is not likely to be as straightforward as Ms Hayes suggests. There is force in Mr Mott's submission that an election involves complex dynamics of campaigning, debate, and hustings. The overall impact that a candidate has on an election is not reflected only by the number of votes that candidate ultimately attracts.
67. There is also force in Mr Mott's submission that Ms Hayes' participation in the elections would be likely to cause political, reputational and public relations damage to the party, and its individual members, given that she is someone that the party has expelled for the reasons set out in the panel's decision.
68. In the event that Ms Hayes is elected President, the damage to the party, and its members, would be more extensive. It would mean that the party would have as its President a person that it had expelled and whose Presidency would be dependent on the outcome of court proceedings. It would raise questions about the validity and sustainability of decisions made by the President in the period between her election and a subsequent order revoking the injunction. It would also have the consequence that the candidate who would otherwise have been elected President would be prevented from serving as President for their full tenure, and the members of the Party would be denied the benefit of the service of that President for their full tenure.

Balance of convenience

69. I leave out of account prejudice that could be met by an award of damages. So far as Ms Hayes is concerned, I do not consider that the prejudice to her could be remedied by an award of damages. There are elements of the potential prejudice to the party and its members that could be the subject of monetary compensation: for example, the costs of legal advice as to management of the process, or the costs of re-running an election or recounting the results. This could, in principle, be subject to a call on an undertaking in damages. Ms Hayes is prepared to offer such an undertaking. Mr Mott suggests that Ms Hayes may not be able to honour the undertaking. He points to the fact that she has raised crowd funding for these proceedings. I do not consider that in the circumstances of this case these points are determinative. The respondents have not sought to quantify the potential losses that might be incurred. If the only concern were Ms Hayes' ability to satisfy an award of damages, then any injunction could be subject to fortification of the cross-undertaking in damages by way of a payment into court. More importantly, the damage that is capable of monetary remedy is only a very small component of the overall picture. There is significant potential prejudice on both sides of the balance which is not capable of monetary remedy.

70. The prejudice to Ms Hayes of not being able to run in the elections (by reason of her expulsion) is comparable to the prejudice to other candidates if she were able to run (as a result of the grant of an injunction). If Ms Hayes would otherwise be elected, then the prejudice to her of not being granted an injunction is comparable to the prejudice that would be occasioned to the candidate who would be elected if an injunction were not granted. These impacts are, very broadly, equal and opposite. The balance does not clearly fall on one side or the other.
71. But the further impacts identified at paragraphs 65 - 68 above must also be taken into account. These are all significant further adverse impacts that would be borne by the respondents if an injunction is granted but which cannot be accommodated by an undertaking in damages.
72. The merits of the case are relevant to the balance of convenience: the stronger Ms Hayes' case the more weight should be attached to the prejudice occasioned by not granting an injunction. In the light of the competing prejudices explained above, Ms Hayes needs to show that she would be likely to succeed at trial if the balance is to tip in her favour. But Ms Hayes has not shown that she would be likely to succeed at trial (see paragraphs 53 – 59 above).
73. It follows that the balance of convenience falls strongly against the grant of an injunction.

Outcome

74. Ms Hayes is not entitled to a grant of injunctive relief before the issue of proceedings. That is because:
 - (1) when Ms Hayes was informed of her expulsion, the matter was not sufficiently urgent to justify the grant of a remedy before starting a claim.
 - (2) it is not, on the facts of the case, in the interests of justice to grant an injunction before starting a claim.
75. Further, Ms Hayes has not shown that her underlying proposed claim has sufficient merit to justify the grant of the injunction she seeks.
76. Further, Ms Hayes has not shown that the balance of convenience favours the grant of an injunction. The irremediable damage that would be caused if an injunction is granted significantly outweighs the irremediable damage that would be caused if an injunction is refused.
77. For each of these reasons, I refused the application.