Neutral Citation Number: [2025] EWHC 402 (KB)

Claim No: KB-2022-003160

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/02/2025

Before :

MR JUSTICE FOXTON

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Between :

JOSEPHINE MARY HAYES	**Claimant**
- and -	
(1) DR MARK PACK (sued as a representative of all members of the Liberal Democrats except the Claimant)	
(2) DUNCAN CURLEY, ALEXANDER SIMPSON AND SERENA TIERNEY (sued as representatives of all members of the Liberal Democrats in England except the Claimant)	**Defendants**

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Josephine Mary Hayes (in person)
Richard Mott and **Lauren Hitchman** (instructed by **DTM Legal**) for the **Defendants**

Hearing dates: 30 and 31 January, 3, 4 and 5 February 2025
Written submissions: 10, 13 and 17 February 2025

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Approved Judgment

This judgment was handed down remotely at 10.00am on 27 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE FOXTON

Mr Justice Foxton:

1. This action involves a claim by the Claimant ("**Ms Hayes**"), who was and claims still to be a senior member of the Liberal Democrats ("**the Party**"), against the Party, represented in these proceedings by the Defendants. By a Decision Notice dated 1 September 2022 ("**the Decision Notice**"), the Party purported to expel Ms Hayes, that decision following complaints made against Ms Hayes by Dr Mark Pack, who is President of the Party.

2. Three of the complaints ("**the Complaints**") were investigated and largely upheld by a complaints panel ("**the Panel**"). Ms Hayes alleges that the Panel's handling of the Complaints, and the issuing of the Decision Notice by the Party were in breach of the contract between her and the other members of the Party, and that the Decision Notice is of no effect. She seeks reinstatement (or, more precisely, confirmation of what she claims to be her present status).

3. Given the subject-matter of these claims, it is right that I should record at the outset of this judgment that Ms Hayes presented her case respectfully and courteously. It is clear that Ms Hayes feels very strongly about her dealings with the Party and the subject-matter of this case, and holds particularly strong feelings so far as Dr Pack is concerned. Those strong feelings are clearly reciprocated, to some degree. That makes the courteous manner in which Ms Hayes presented her case commendable.

4. Ms Hayes did, however, look to explore her various disputes with the Party in cross-examination, even when they were not relevant to the relatively limited set of issues which I had to decide. In this judgment, I have limited myself to deciding the facts and issues which are relevant to the pleaded claims for relief within the applicable legal framework, and not sought to summarise or analyse all of the numerous emails, WhatsApp messages and social media threads I was referred to where they are not relevant to the issues which arise for determination at this trial.

5. Both parties were invited to file written submissions after oral closings to address specific issues at the court's request. Ms Hayes' written submissions, particularly those filed on 13 February 2025, sought to raise new points not raised at the hearing and which the Party had not had an opportunity to address. However, the limited post-hearing submissions the court permitted were not an opportunity to raise points which should have been argued at the hearing.

The applicable legal principles

6. The Party is an unincorporated association, with the legal relationship between the members being a matter of contract on the terms set out in the Party's constitution and rules at the time the member joins the association, and such rule changes as are subsequently made in a manner consistent with the terms of the constitution and rules at that time, or for which there is some subsequent contractually significant act of approval (*Conservative and Unionist Central Office v Burrell* [1982] 1 WLR 522, 525; *Aldcroft v International Cotton Association Limited* [2017] EWHC 642 (Comm), [132] and *Evangelou and Ors v Iain McNicol* [2016] EWCA Civ 817). As Beatson LJ noted in the latter case at [19]:

> "A person who joins an unincorporated association thus does so on the basis that he or she will be bound by its constitution and rules, if accessible, whether or not he or she has seen them and irrespective of whether he or she is actually aware of particular provisions".

7. Where the rules of an unincorporated association provide for a power of expulsion on the part of a particular body or officer, they generally confer that power on the identified decision-maker as a matter of contract. While the exercise of that power will usually be subject to certain legal constraints, the power in question is one conferred on the contractual decision-maker, not the court. As a result, there are significant limitations on the Court's ability to interfere with the decision. The particular restraints which ordinarily arise as a matter of contract when a contract confers a power of decision (or as it is sometimes put, "a contractual discretion") will vary according to the nature of the decision and the context. In the case of purely commercial decisions – for example the price at which to realise contractual security – they are likely to be more limited than in a case where a power of expulsion arises under the rules of an unincorporated association, particularly so far as limitations on the process by which the decision is arrived at are concerned.

8. There is a body of case law which sets out the limitations which are usually implied in relation to the making of a contractual decision in this latter context, and the concomitant ability of the courts to intervene to prevent or remedy the breach of contract which a failure to comply with those limitations would entail. In *Chitty on Contracts* (35th) at [13-076], the position so far as "expulsion of members" is concerned is summarised as follows:

> "The court will not restrain the exercise by a club of a power, contained in its rules, to expel members unless it is shown that what has been done is, in fact, contrary to the rules or has been done in bad faith or, at least where some sort of inquiry is contemplated, where the rules of natural justice have been infringed. It has been said that to give one reason for expelling a member and to act upon another is evidence of bad faith. In a case of expulsion it was held that the issues were whether the rules of the club had been observed, whether the committee had given the member a fair hearing and whether it had acted in good faith. Every member of the committee must be summoned to the meeting or the proceedings may be invalidated. Notice must be given to the member of the charge made against them and they must have a proper opportunity of being heard in their own defence; a rule purporting to deprive them of this right would probably be invalid as contrary to public policy. If a decision of a committee, based on the opinion of the committee, is challenged, the court will only interfere if there was no evidence upon which to base the opinion, in which case it will declare the decision ultra vires. The club cannot oust the jurisdiction of the courts by making the committee the final arbiter on questions of law; and the construction of the rules is always a question of law."

9. That summary reflects the different language which courts have used to describe their limited powers of intervention in the decisions of contractual decision-makers of this kind over prior decades (the last case cited in the footnotes being from 1971). However, the themes which emerge are immediately familiar in more modern statements of the law of contractual discretions:

i) Any express limitations in rules on the exercise of the power must be complied with. Ascertaining the meaning of the rules involves a conventional exercise of contractual interpretation: *Evangelou*, [19]-[20].

ii) There is an obligation to exercise the power of expulsion in good faith, which includes an obligation to exercise the power for a proper purpose.

iii) In a context where the decision is to be reached following some form of inquiry or process, there are implied terms as to how the process is to be operated (cf. *Braganza v BP Shipping* [2015] UKSC 17 and contrast in a different context *Lehman Brothers International (Europe) (In Administration) v Exxonmobil Financial Services BV* [2016] EWHC 2699, [285]-[287] (Comm)). There was no dispute that for a decision of this kind by a private body, the relevant obligation is properly characterised as an obligation to adhere to the rules of natural justice: *Lee v Showmen's Guild of Great Britain* [1952] 2 QB 329, 342. I consider precisely what that entails below.

iv) When a challenge to such a decision is brought in court proceedings, the issue for the court is not whether, on the evidence before it, it would have reached the same answer, but whether the decision fell within the scope of the contractually permissible decisions open to the decision-maker. In more recent contractual discretion cases, that is usually described as an obligation not to reach an arbitrary, perverse or irrational decision (*Socimer International Bank Ltd v Standard Bank London Ltd* [2008] EWCA Civ 116 and, in contexts rather closer to the present case, *Williamson v Formby* [2019] EWHC 2639 (QB), [23.5]; *Neslen v Evans* [2021] EWHC 1909 (QB), [11] and *Rothery v Evans* [2021] EWHC 577 (QB), [166]-[167]).

v) As Lord Sumption JSC explained in *Hayes v Willoughby* [2013] UKSC at [14]:

> "A test of rationality … applies a minimum objective standard to the relevant person's mental processes. It imports a requirement of good faith, a requirement that there should be some logical connection between the evidence and the ostensible reasons for the decision, and (which will usually amount to the same thing) an absence of arbitrariness, of capriciousness or of reasoning so outrageous in its defiance of logic as to be perverse."

vi) The application of that test will be influenced by the type of issue which the contractual decision-maker must decide. Sometimes, as in *Braganza*, it is a binary question of fact ("Did X happen?"), in which the task of the court in determining whether the given answer meets the contractual requirement of rationality may be relatively easy. On other occasions, the decision may involve the application of more evaluative or open-textured criteria. In *Rothery*, [176], Mr Justice Cavanagh observed that "the extent of the implied obligation of rationality recognised in *Braganza* depends on the type of contractual decision that is in issue. These vary enormously. In *Braganza*…the contractual decision was a binary factual and objective decision about whether the reason for the C's husband's death was suicide or not. The current case is concerned with a more subjective and political decision". Unpacking that observation, where the decision involves an evaluative application of open-textured criteria rather than primary fact-finding, there is likely to be a greater range of reasonable opinions open to the decision-maker, and

it may be a more difficult task to identify matters which should have, but were not, taken into account, or vice versa, than when the issue is one of fact.

vii) Further, where the criteria involve an assessment of the impact of conduct on the association itself (e.g. whether a decision was in its best interests or whether conduct has brought or might bring the association into disrepute), the decision-making body stipulated by the contract between the members of the association will inevitably be better placed to answer that question than the court – essentially a form of "institutional competence". That is particularly the case when the association is a political party, and its best interests and reputation closely linked to its prospects of electoral success.

10. The contractual obligation to conduct the disciplinary proceedings of an association fairly, or in accordance with the principles of natural justice, has three core elements: (a) the right to be heard by an unbiased tribunal; (b) the right to have notice of charges of misconduct; and (c) the right to be heard in answer to those charges: *Ridge v Baldwin* [1964] AC 40, 132 (Lord Hodson). It has been noted that the obligation to conduct proceedings fairly and the requirements of natural justice "must not be allowed to discredit themselves by making unreasonable requirements and imposing undue burdens" (*McInnes v Onslow Fane* [1978] 1 WLR 1520, 1535), burdens which would ultimately have to be borne by the members of the association as a whole with whatever cost consequences that might entail. As Lord Mustill observed when considering the requirements of natural justice in a public law context in *R v Secretary of State for the Home Department ex parte Doody* [1994] 1 AC 531 at 560-561, "what fairness demands is to be dependent on the context of the decision, and this is to be taken account in all its aspects", and

> "It is not enough for them to persuade the court that some procedure other than the one adopted by the decision-maker would be better or more fair. Rather, they must show that the procedure is actually unfair. The court must constantly bear in mind that it is to the decision maker, not the court, that Parliament has entrusted not only the making of the decision but also the choice as to how the decision is made."

11. As Popplewell J noted in *Dymoke v Association for Dance Movement Pyschotherapy UK Ltd* [2019] EWHC 94 (QB), [63], "what procedural fairness requires in practice may differ from body to body. A small voluntary organisation may not be expected to employ the more formal and elaborate procedures which are required of a larger and better resourced organisation."

12. Finally, there is the issue of what the consequences are when it has been established that there has been a failure to comply with the legal requirements attaching to the contractual decision. This is a topic which has been addressed extensively in the context of public law decisions (see generally *De Smith's Judicial Review* (9th) Chapter 18). In that context, the main remedies are set out in ss.29 and 31 of the Senior Courts Act 1981 and CPR Pt 54:

i) The court can make a mandatory order compelling compliance by the decision-making body with the public law duty which has been breached.

ii) The court can make a quashing order which quashes the decision reached in an unlawful manner, with the court having the power under s.31(5) of the 1981 Act to send the matter back to the decision-maker for a fresh decision, or (in rare and limited cases where the challenged decision is essentially judicial in nature and certain other conditions are satisfied) to take the decision itself.

iii) The court can make a prohibitory order preventing the public body from taking certain further steps on the basis of the unlawful decision.

iv) The court can grant injunctions or make declarations.

13. These remedies are discretionary, albeit that discretion must be exercised according to well-established legal principles, and the court is not bound to grant relief at all or a particular type of relief even if satisfied that the public body has acted unlawfully. Relevant factors include delay, the extent of the applicant's standing, whether a remedy would serve a practical purpose and the extent to which the applicant has suffered harm In addition by virtue of s.31(2A) of the Senior Courts Act 1981, the High Court must refuse to grant relief on an application for judicial review, and may not make any award under the Senior Courts Act 1981, if "it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred" (save in limited circumstances).

14. When the court is engaged with a complaint about the exercise of a contractual decision-making power, then absent cases where a statute defines the particular remedies (in particular s.68 of the Arbitration Act 1996), the considerations underlying the various public law remedies – the consequences of the contractual non-compliance on the claimant, whether it deprives the decision of contractual status and if so whether the court can take the decision itself, the impact of relief on the clamant, the defendant and third parties – must all be accommodated within the principles and doctrines of the law of contract. The burgeoning law on contractual discretions has devoted comparatively little attention to these difficult questions. However, much is likely to turn on the nature and character of the deviation from the contractually required mode of decision-making.

15. If the effect of the non-compliance is to deprive the decision of contractual status (i.e. it is in the nature of a jurisdictional error), then there will have been no valid decision for the purposes of the contract, and there seems no scope for any counterfactual analysis as to whether avoiding that error would have led to a different outcome. Whether an error is or is not of this kind will essentially be a matter of construction of the contract. It might be that only some types of non-compliance have this effect, and then only where there has been a material departure from the contractual terms relating to the making of the determination has this effect.

16. In such a scenario, the issue will arise as to whether the court simply leaves the parties to determine how to act in the status quo ante confirmed by the court's finding that there has been no valid determination for the purposes of the contract (e.g. by leaving the contractual decision-maker to make a fresh determination) or whether the court can itself take the decision. In many contractual contexts, the nature of the decision may be such as to make it obvious that the parties could not have intended that the court would itself be able to make the determination. Decisions as to whether a member of a political party had brought the party into disrepute and should have their membership revoked

are decisions of this kind. Sometimes the decision may of a commercial kind, where it is inherently more likely that the parties intended that, in the event that a dispute as to whether a decision had been arrived at in a contractual manner led to a decision that there had been no valid decision for the purposes of the contract, the court could itself reach a binding decision. *Macquarie Bank Ltd v Phelan Energy Group Ltd* [2022] EWHC 2616 (Comm), [40]-[41] and *BNP Paribas Trust Corporation UK Ltd v URO Property Holdings SA* [2022] EWHC 3251 (Comm), [171[-[174] may be examples of, or consistent with, such an approach, as may *Clark v Nomura International Plc* [2000] IRLR 766 at [81]-[82] (although cf *Horkulak v Cantor Fitzgerald International* [2004] EWCA Civ 1287 below).

17. In some cases, the complaint will relate to a matter which was not on the critical path to the decision (or at least was not a necessary step on that path) because the decision-maker actually decided (rather than merely could have decided) that there was more than one basis for reaching the decision ultimately reached. One example of this state of affairs is when a contractual decision-maker reaches a conclusion based on a number of independent reasons, one of which can be impugned by reference to the legal limitations on the decision-making power and one cannot. Mr Mott referred to two decisions in this regard. The first was *Eclairs Group Ltd v JKX Oil & Gas Plc* [2015] UKSC 71 in which Lord Sumption (with the support of Lord Hodge) addressed the position where a fiduciary decision was taken for more than one purpose, one improper and one not. Lord Sumption endorsed a "but for" analysis in this context – would the same decision have been reached "but for" the influence of the improper purpose. In the second, *No 1 West India Quay (Residential) Ltd v East Tower* [2018] EWCA Civ 250, the Court of Appeal applied the same approach to cases where a decision-maker gave two alternative (and independently sufficient) reasons for reaching a decision, one good and one bad. These two cases did not involve the court hypothesising a reason not in fact present in the decision-maker's mind nor a purpose which the decision-maker did not in fact have in mind, and the counterfactual analysis required is of a limited kind.

18. Alternatively, it may be possible to treat the departure from the contractually required mode of determination as a breach of contract sounding in damages, calculated by reference to the effect of the breach on the outcome. Where this is the correct characterisation, once again relief will not be discretionary, and the court will have to determine what the outcome would have been had the contractual decision-maker complied with the contractual obligations as to how the decision should be reached. The Court of Appeal noted in *Horkulak v Cantor Fitzgerald International* [2004] EWCA Civ 1287, [51]:

> "[The Judge's] second task was to assess the amount of the bonus likely to have been paid, bearing in mind the flexibility afforded by the contractual language. Thus the exercise would not permit the judge simply to substitute his own view of what would have been a reasonable payment for the employer to make, but required him to put himself in the shoes of those making the decision, and consider what decision, acting rationally, and not arbitrarily or perversely, they would have reached as to the amount to be paid."

This approach necessarily involves a counterfactual analysis of what difference compliance with the contractual requirements would have made.

19. In the specific context of members' clubs, this distinction between departures from the contractual rules which invalidate the decision, and those which sound in damages, was considered in *Speechley & Ors v Allot & Ors* [2014] EWCA Civ 230. The Court of Appeal stated at [28]-[30]:

> "28. There are, in my judgment, two separate questions:
>
> i) What do the rules require?
>
> ii) What is the effect of non-compliance with those requirements?
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> 29. The answer to the first of these questions is a question of interpretation of the rules. In answering that question, the rules are to be interpreted in the same way as any other contract, making due allowance for the fact that the rules are intended to be operated by non-lawyers … The answer to the second question involves a rather different inquiry. The point was well-made by Sir Stanley Burnton in *Newbold v The Coal Board* [2013] EWCA Civ 584 in which concerned the validity of notices of subsidence damage. He said at [70]:
>
> > 'In all cases, one must first construe the statutory or contractual requirement in question. It may require strict compliance with a requirement as a condition of its validity. In *Mannai* at 776B Lord Hoffmann gave the example of the lease requiring notice to be given on blue paper: a notice given on pink paper would be ineffective. Against that, on its true construction a statutory requirement may be satisfied by what is referred to as adequate compliance. Finally, it may be that even non-compliance with a requirement is not fatal. In all such cases, it is necessary to consider the words of that statute or contract, in the light of its subject matter, the background, the purpose of the requirement, if that is known or determined, and the actual or possible effect of non-compliance on the parties. We assume that Parliament in the case of legislation, and the parties in the case of a contractual requirement, would have intended a sensible, and in the case of a contract, commercial result.'"

20. In cases in which the failure to comply with the contractual obligations attendant on the making of the decision does not invalidate the decision, and a remedy is sought in damages, it will be necessary to determine what the correct counterfactual is. Where, for example, the complaint is that the decision-maker relied on a matter which a party to the determination did not have a fair opportunity to address, is the correct counterfactual one in which the decision-maker had not relied on that matter, or one in which the relevant party had a fair opportunity to respond to it?

21. There will be some types of complaint – the failure to determine the amount of a contractual bonus being a good example – when a decision by the court that there has been no valid determination for the purposes of the contract, with the court making its own determination, and the court awarding damages based on a counterfactual analysis of what the outcome of a compliant procedure would have been, may both in theory be available and lead to broadly similar outcomes. A failure to conduct a valid process for the purposes of the contract will be a breach, and the court's counterfactual analysis or

independent decision will replicate in some manner or form the outcome of a compliant process. However, this will not always be the case. Where, for example, the decision in question involves the expulsion of a member of an association, there will be very real differences in the consequences which follow depending on whether the failure to follow the contractual process in all required respects has the effect that there has been no effective decision to expel the member, or an effective decision in the course of which there has been a breach of contract.

22. The question of whether non-compliance with the requirements of the contract so far as the decision-making is concerned is that there is no valid decision, or a valid decision reached in breach of contract (raising the issue of what the effect of the breach of contract is) will ultimately be a matter of construction. There are some failures in natural justice – for example, that the decision was reached by a tribunal which was actually or apparently biased – which instinctively would seem to fall into the former category. However, the failure to consider a single piece of evidence or to allow a fair opportunity to deal with one among many arguments might lend itself more naturally to an analysis which requires the court to consider what the effect of the breach was. In a statutory context, the court has had to grapple with issues of this kind when considering the "substantial injustice" requirement of s.68 of the Arbitration Act 1996 (see *Mustill & Boyd on Commercial and Investor State Arbitration* (3rd) [14.109]-[14.112]).

23. There are certain forms of contractual remedy – in particular injunctive relief – which are discretionary, like their public law counterparts. However, the withholding of declaratory relief when a challenge is brought to the validity of a contractual decision would lack the legal (although conceptually obscure) significance of the refusal of such relief in a public law context. If the court has found that no decision has been reached for the purposes of the contract, the issue as to whether it is willing to issue a declaration to that effect would seem to add little.

24. There is also the issue of whether and, if so, to what extent, the court proceedings in which the contractual challenge is brought, to the extent that they allow for a full and fair determination of an issue which was not handled fairly in the contractual process, can "cure" that prior deficiency. Arguments of this kind have succeeded in public law challenges (see Sir Michael Fordham, *Judicial Review Handbook* (7th), [36.4]) and in challenges under s.68 of the Arbitration Act 1996 (*Aiteo Eastern E&P Co Ltd v Shell Western Supply and Trading Ltd* [2024] EWHC 1993 (Comm)). However, these instances generally involve cases where the court's decision-making or re-hearing power arises under a statute specifically concerned with decisions of the kind impugned. Save where the court must reach a decision as part of conventional counterfactual analysis in the law of contract, it is difficult to see how a challenge in court in respect of the exercise of a contractual decision-making power can have a "curative" function. Certainly, a state of affairs in which the court became the effective decision-maker on an issue such as whether a member of a political party should be expelled would be highly undesirable.

25. Finally, it must be doubtful whether every rule or provision which appears in a contractual decision-making process creates an independent contractual obligation which sounds in damages, as opposed to being factors relevant to whether the ultimate or overriding contractual obligation to provide a fair process or comply with the rules of natural justice has been discharged. If, for example, the contract provides a time-limit for a particular step to be taken in a complaints process which is not observed or

permitted, it seems improbable that the court always can be required to undertake a counterfactual analysis of whether and to what extent the contractual decision-maker would have reached a different conclusion if the time limit had been adhered to. Rather, the departure from the time limit appearing in the contractual process, and any other procedural decisions which bear on that (e.g. whether further time was allowed at a later stage, or an opportunity to answer a fresh argument for which the contractual process did not provide) will be relevant factors in determining whether the contractual obligation to comply with the rules of natural justice has been satisfied overall.

The role of the court: a further factor

26. Before moving to the facts of this case, I should record one notable feature of the litigation context in which these issues have arisen in this case. This has been a five day hearing to determine the contractual validity of the decision of a contractual decision-maker reached following a three hour hearing. That contractual hearing involved a fundamentally different type of process to the adversarial hearing with extensive disclosure and cross-examination which has taken place before me. In contrast to some other contexts in which the court is asked to conclude that the decision of a contractual tribunal has been arrived at unfairly, the material before the court includes the internal and confidential exchanges between members of the tribunal (cf. *P v Q* [2017] EWHC 148 (Comm)), drafts of their determination (which, mercifully, the court was not taken to) and a member of the tribunal has given evidence and been cross-examined by the claimant.

27. In these circumstances, the court must be astute to ensure that its findings go no further than those necessary to determine the dispute. If, for example, the court concludes that the finding of the contractual decision-maker was one reasonably open to it on the evidence before it, it will not be necessary, and frequently will not be appropriate, for the court to offer a rival view based on the different evidence and arguments it has heard. In such a scenario, if the court reaches a different view, it would not change the contractual decision or its legal effects, merely risk bringing the legitimacy of that conclusion into question. And given that, fairness would suggest that a claimant who cannot obtain the benefits of a different (but legally irrelevant) favourable view from the court should not be exposed to the jeopardy of an equally legally irrelevant finding by which the tribunal's adverse finding is compounded by a public decision to the same effect by a court.

The organisation and structure of the Party

28. I was provided with an Agreed Organisational Structure. The Party comprises three national parties or "States": the English Liberal Democrats, the Welsh Liberal Democrats and the Scottish Liberal Democrats. Ms Hayes was a member of the English Liberal Democrats. In addition to the States, there is a Federal Party which oversees the States and is responsible for the States' governance and compliance. The Federal Board is the governing body of the Federal Party.

29. Within each State, there are regional parties, which are further comprised of local parties. Ms Hayes was a member of the regional party for the East of England ("**the Eastern Regional Party**"), established under Article 4.1 of the constitution of the English State, and chair of that party from 2017-2020. Each regional party has its own constitution.

The Applicable Rules

30. All members of the Federal Party are bound, as a matter of a contract, to the Federal Constitution. Article 3.8 of the Federal Constitution provides:

> "Membership may be revoked on one or more of the following grounds:
>
> A. material disagreement, evidenced by conduct, with the fundamental values and objectives of the Party;
>
> B. conduct which has brought, or is likely to bring, the Party into disrepute;
>
> …
>
> E a breach of the standards set out in Article 3.1(b)".

31. Article 3.1(b) provides:

> "Members or Registered Supporters of the Liberal Democrats must treat others with respect and must not bully, harass, or intimidate any Party member or Registered Supporter, member of staff employed to support Liberal Democrats, Party volunteer, or member of the public. Such behaviour will be considered to be bringing the Party into disrepute".

32. Article 3.8 provides that membership cannot be revoked unless the member has been notified of the grounds on which revocation is to be considered and has been given a reasonable opportunity to reply. There is a right of appeal against any revocation as set out in Article 23 ("Complaints Procedure"). Article 23.3 provides:

> "The Federal Board shall have power, after appropriate consultations, to make and from time to time vary procedures for the handling of complaints ('the Complaints Procedures'). These Complaints Procedure shall include an appeals procedure …"

33. The relevant version of the Party's Independent Complaints Process ("**the Complaints Process**") was dated 20 September 2021. That is a detailed document, which includes provisions to the following effect:

    i) Paragraph 1.2 said that the Standards Office "will not accept complaints which do not fall within the definition of a 'Complaint' under these rules. If a person is not sure whether their complaint meets the criteria they may contact the Standards Office for advice and/or review the flow chart at Appendix 1 – Who should I report a complaint to? Decisions of the Lead Adjudicator on whether a Complaint meets this criteria or not are final".

    ii) Complaints are sent to a panel which decides whether to hold a hearing or to dismiss the complaint on the basis of written evidence only (paragraph 6.4).

    iii) If a hearing is to be held, the complainant and respondent may submit questions in writing which they wish the Panel to ask (paragraph 6.7).

iv) At the hearing, panel members ask questions of both parties and any witnesses, and allow the complaint and respondent to explain their position, set out their evidence and respond to each other's statements (paragraph 6.10).

v) There is a right of appeal to an Appeals Panel if a complaint is upheld or against any sanction (paragraph 7.6). This paragraph provides:

> "The Appeals Panel will consider all the evidence previously submitted to a Panel in relation to the Complaint and decide whether there is any evidence that (a) the decision made by the Panel was obviously incorrect, or (b) the decision did not take into account relevant evidence available to it; or (c) the Panel applied a sanction which was disproportionate to the harm caused."

34. Part 3 of the Complaints Process contains "Guidance and explanatory notes", which are "to help people involved in Complaints to understand the rules set out in Part-1", with those rules taking priority in the event of conflict:

i) Part 3 allows the Senior Adjudicator to keep the identity of a complainant confidential (including from the subject of the complaint) in appropriate cases. It also emphasises that "where any personal or identifying information about a party or witness to a Complaint is shared with any other party or witness", the Party expects the information to be kept confidential, and that "the Party will take any misuse of this information to harass, bully or intimidate Respondents, Complainants or witnesses very seriously indeed".

ii) Part 3 also emphasises that people not involved in a complaint should not try and interfere with the process, and that one of the best ways of ensuring that this does not happen is to keep the details of the complaint confidential until the Complaints Process is complete.

iii) It states that the panel "may choose" to ask an investigator to look at the evidence and interview parties, albeit this will not happen in most cases.

iv) A section entitled "Timelines, Extensions and Postponements" states that best practice was for a complaint to be dealt with as quickly as possible, but makes it clear that an extension to the timeline could be allowed "in exceptional circumstances".

v) Part 5 contains a definition of "Complaint" as being "an allegation about the behaviour of a member of the Party", and also identifies "certain types of complaint … not covered by this process". These includes:

a) Complaints about data management or breach of data protection rules, including GDPR.

b) Complaints about "members acting in their capacity as returning officers".

vi) Appendix 1 is a flowchart. The heading to the flowchart states that the Complaints Process "deals with complaints against individual members, whose actions could bring the party into disrepute. If your complaint is not of that kind but instead relates to other rights of appeal … these systems remain in full effect and should

be used instead. This means the procedure does not apply where the complaint is about how a party process works – such as the candidate approval process, candidate selections or deselections, elections to internal bodies (including the decision of a returning officer acting in the course of their role), acceptance or refusal or new members … This process does have a role where the complaint is against an … elected official / representative of the party acting in that capacity, where their behaviour could bring the party into disrepute, but only after certain other processes have been completed".

vii) The flowchart asks if the complaint is about a member "acting in their capacity as a Returning Officer, Candidate/PPC, employee of the Party, elected MP, MSP or Senedd member or regional state or local party officer" and states (emphasis in original) "*NB just because somebody holds such a role does not mean they are acting within that role. If you are not sure, contact the Standards Officer who can advise*". The line leading from this box in the flowchart states that where the complaint is made against a Returning Officer, local/regional/state party officer or candidate PPC" then "this is NOT covered by the Federal Complaints procedure". For local officers, "the Regional Parties in England are responsible for handling complaints against Regional Parties and Regional Party officers acting in that capacity".

viii) Appendix 2 suggests that before making a complaint, "check Appendix 1 to see if the complaint will be accepted into this process or should it be reported to a different person". It provides for an initial decision by the Standards Office to send the complaint to the panel or dismiss it, with a power of appeal to a Review Panel if the complaint is dismissed (but not if it is allowed). Reading the Complaints Process as a whole, the Standards Office's decision at that stage would include whether or not the complaint fell within the Complaints Process.

35. Ms Hayes suggested in opening that the version of the Complaints Process which both parties had treated as applicable at the relevant time was not in fact operative, and that the Complaints Process approved by the Party conference in September 2019 was in materially different terms ("**the Rival Version**"). Ms Hayes said that she had found the Rival Version on her iPad the previous day. The issue had been raised in correspondence that day, and Ms Hayes had been informed that the Rival Version was a draft of the Complaints Process, not the approved version, albeit it had been sent in error to some complainants and respondents (but not Ms Hayes). I made it clear to Ms Hayes that if she wished to advance this point, an application would have to be made to amend the statements of case. In the event, the Rival Version was not adduced in evidence and no application for permission to amend was made. I am satisfied that there is nothing in this point. The version of the Complaints Process sent to the Panel members and Ms Hayes is that which the parties had hitherto agreed to be the correct version, and that is the version which appears on the Party website.

36. The Party maintains a list of adjudicators who sat on Panels under the Complaints Process, one of whom is designated the Lead Adjudicator. When the new Complaints Process was adopted by the Party in 2019, the Lead Adjudicator, Mr Fred Mackintosh KC of the Scottish Bar, issued three guidance notes to assist panel members.

37. The first entitled "Achieving Natural Justice in the New Complaints Process" of 11 June 2019 ("**the Natural Justice Note**") sought to address concerns which had evidently

been expressed "that a complaints system which does not permit cross-examination of a complaint by the respondent would not be in accordance with the rules of natural justice". Mr Mackintosh KC set out his views as to why the Complaints Process was in accordance with the rules of natural justice, and why the system had been designed to be inquisitorial rather than adversarial.

38. The second, entitled "Lead Adjudicator's Note 1" ("**Note 1**") addressed the issue of what complaints could be brought under the Complaints Process. The Note recorded that other rights of appeal arising under State Party constitutions "about such things as candidate selections and approval, elections to internal bodies, acceptance of new members and the operation of the State Party and its local parties remain in full force and effect". Mr Mackintosh KC expressed the view that:

    i) where an alternative appeal route already existed within the State Party then the Complaints Process "will not get involved as to do so would be contrary to the federal nature of the party";

    ii) this also applied where the relevant State Party specifically restricted the right of appeal;

    iii) "where a Respondent is carrying out an elected role provided for in the constitution and the issue is about their political strategy or tactics that they adopt, disputes over that are not a matter for the new complaints procedure as the Respondent is democratically accountable for their actions";

    iv) "where the allegation is bullying, harassing or intimidating any Party member, member of staff employed to support the Liberal Democrats, Party volunteer, or member of the public contrary to Article 3.1(b) of the Federal Constitution that will always be a matter for the complaints procedure"; and

    v) "the new complaints procedure will not resolve issues that are properly for discussion and democratic decision in a part of the party unless the manner in which disputes are conducted become extreme".

    Paragraph 14(iv) of the Note 1 provides:

    > "Where a respondent is carrying out an elected role and the complaint is about their political strategy or tactics that they adopt disputes over that are not a matter for the new complaints procedure as the Respondent is democratically accountable for their actions".

39. Mr Mackintosh KC also issued a guidance note on sanctions on 12 February 2020 (the "**Sanctions Guidance**") emphasising the need for proportionality when adopting sanctions, and the need to consider the interests and resources of the Party as a whole. It was not suggested that these guidance notes had contractual effect as between party members, but they provide relevant context to the disciplinary proceedings in issue in this case.

40. Finally, reference was made to the Members' Code of Conduct, and in particular the Code of Conduct introduced on 25 February 2014 (the "**Code of Conduct**"). It provided, amongst other things, that members:

> "have the right to be treated fairly, equally and within the bounds of party rules. You also have the responsibility to behave in a way that does not negatively impact other members, staff, volunteers, people who interact with the Party in a professional capacity, or the party's reputation."

41. At one stage, there appeared to be a dispute as to whether this document formed part of the contract between members of the Party, although Ms Hayes did accept that the Code of Conduct had been approved by the English State. In fact, nothing turns on whether this document was incorporated into the contract of membership. For present purposes, the following should be noted:

    i) The Complaints Process defines a "Complaint" as "an allegation by any Complainant about the behaviour of a member of the Party". Clearly failure to comply with a Code of Conduct promulgated from time to time to set out how members are expected to behave is capable of forming the basis of an "allegation … about the behaviour of a member of the Party", whether or not the Code of Conduct itself has contractual status (just as the court will frequently have regard to codes of conduct when assessing criticisms of the conduct or behaviour).

    ii) More pertinently, the Complaints Process contains a definition of "Bringing the Party into Disrepute" which states:

> "The Party can be 'brought into disrepute' under Article 3.8 … by something a member does (an 'act'), by something a member does not do (an 'omission'), or by a number of acts and/omissions by a member taken together (a 'course of conduct') which would substantially lower the Party's reputation in the mind of a fair, objective and right-thinking observer. A few examples of behaviour that could bring the Party into disrepute are breaches of the Constitution, its policies or the Members' Code of Conduct, or behaviour described in any grounds for revocation of membership set out in Article 3.8".

    The Complaints Process, therefore, which it is common ground has contractual force, expressly provides for the relevance of the Code of Conduct.

The background

42. Ms Hayes is a founding member of the Party, who has stood as its candidate in various national and local elections and held a number of senior offices. On 1 January 2020, she was elected to the Federal Board for a 3-year term. From 1 January 2021, Ms Hayes was Chair of the Regional Candidates Committee ("**RCC**") for the East of England. There are RCCs for each region in England which have a role co-ordinating and regulating the processes for the adoption and selection of candidates in the relevant region.

43. Dr Mark Pack was a member of the Federal Board of the Party. He subsequently became President of the Party.

The background to Issue 3

44. In very general terms, there were a series of disputes between members of the Party which led to various complaints being made against some members, including against a

Mr Jon Sheller. Mr Sheller, for his part, claimed that there had been an orchestrated social media campaign using dummy accounts to damage other party members, including a Mr Jason Hunter. Mr Sheller said he had been in contact with the police in relation to the social media campaign, and that he was assisting the police in understanding the alleged manipulation of social media. There is evidence of some police contact with Mr Sheller in which he gives an account of how "twitter amplification" can take place. Mr Sheller's actual role and behaviour was a matter of dispute, which it is not necessary (or indeed possible) to resolve in these proceedings. Ms Hayes had dealings with both Mr Hunter and Mr Sheller about these matters, and formed the view that they were or might be the victims of malicious complaints. It is clear that Ms Hayes formed and maintains very strongly held views about the rights and wrongs of these events, and very adverse views of the way in which Dr Pack dealt with them. No doubt equally strong views are held by some others to the contrary effect. I was taken to a number of documents in which these claims and counterclaims were ventilated, but it is not necessary to set them out. They are simply part of the background to the events with which the Panel was concerned.

45. During 2020, Dr Pack made an anonymous complaint ("**Complaint 552**") about Mr Sheller in relation to statements Mr Sheller had made in a Zoom call with Bristol party members in August 2020 in which it was suggested that Mr Sheller had misrepresented his role and/or authority. A decision was taken by a Party adjudicator to suspend Mr Sheller's membership of the Party pending the determination of Complaint 552. Mr Sheller adopted the position that the complaint was an attempt to interfere with his dealings with the police, and clearly passed that view on to Ms Hayes, who was persuaded of it.

46. Ms Hayes contacted Mr Neil Christian, the Lead Adjudicator in the Party's Complaints Process, on 13 and 16 October 2020 to express a number of concerns about the complaint against Mr Sheller and his suspension, suggesting that the complaints against Mr Sheller might be motivated by his assistance to the police (claiming Mr Sheller was a "witness or potential witness for the prosecution"), and referring to s.51 of the Criminal Justice and Public Order Act 1994 which makes it a criminal offence intentionally to intimidate another person knowing or believing that that person is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings, and intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with.

47. Mr Christian replied, stating that Mr Sheller's account of events was not accepted, and that proper procedures were being followed. Ms Hayes was not assuaged, and on 27 October 2022 she wrote to Mr Christian making a number of requests, including that Mr Sheller immediately be sent the evidence against him. Mr Christian responded explaining the steps being taken to ensure that the various complainants against Mr Sheller had been made by real (and different) people, and stating that complaints had been made by what he described as two groups of people against each other, with both sets being investigated. Ms Hayes repeated and amplified her concerns in a letter of 1 November 2020, in which she suggested that Dr Pack was the complainant and that the complaint should be put on hold pending the police investigation. It is clear from this letter that Ms Hayes was in close contact with Mr Sheller on this subject. Mr Christian stated that, having made enquiries as to what police investigations were underway, the complaint would not be stayed as Ms Hayes had requested. Ms Hayes was clearly very

unhappy with that decision, and the decision to proceed with a complaints hearing relating to another member stating "this matter must be postponed. If it is not postponed I have to draw inferences about the reasons".

48. An inadvertent error had led to Dr Pack's identity as the complainant being revealed to Mr Sheller, who at some point told Ms Hayes. Ms Hayes formed the view that Complaint 552 had not been made in good faith, but to interfere with the assistance Mr Sheller was said to be giving to individuals and the police in relation to the investigation of allegations of misconduct by other Party members. On 8 December 2020, Ms Hayes sent Dr Pack the following email:

> "I very strongly suggest that you withdraw Complaint 552 in order to end the dilemma confronting X [i.e. Mr Sheller], in which he should not be placed. Right now, this complaint could be perceived as placing improper pressure on X to the possible prejudice of police investigations. That in itself could be an offence. You can re-file a complaint later if thought fit.
>
> If you do not withdraw Complaint 552 then I suspect that the consequence could be police intervention and I will hold you responsible for that."

She copied Jeremy Hargreaves into the email (thereby informing him that Dr Pack was the anonymous complainant) "so that at least one other party elder is aware".

49. On 9 December 2020, Dr Pack responded, stating:

> "Regarding police investigations, if anyone has knowledge of a police investigation and believes there is a credible risk to that investigation, the correct path would be to put the police investigation team and our Standards Office in touch with each other.
>
> Regarding your other statements, I note that the party's complaints process sets out clearly the need to protect anonymity in cases and also the need to avoid any harassment, bullying, or intimidation based on information about people involved in cases."

50. He concluded by saying that he would refer Ms Hayes' email to "the [complaints] process". On 10 December 2020, Ms Hayes responded to Dr Pack, repeating her suggestion that Dr Pack should withdraw his complaint, once again copying in Mr Hargreaves as "a witness to this thread." She accused Dr Pack of leaking Mr Sheller's suspension to his employer, and lodged a complaint against Dr Pack, accusing him of "attempting to steer and misuse the disciplinary process against John Sheller and now against [her]."

51. Ms Hayes' communications with Dr Pack concerning his complaint against Mr Sheller formed one of matters raised by Dr Pack in his complaint against Ms Hayes. Although the events giving rise to this complaint were the first to occur, it has been referred to as "Issue 3".

The background to Issue 2

52. As I have stated, in December 2020, Ms Hayes was elected as Chair of the RCC for the Eastern Regional Party. In March 2021, there was to be an election for the office of Essex Police, Fire and Crime Commissioner ("**PFCC**"). The candidate previously selected by the Party, Callum Robertson, withdrew on 3 January 2021 because he was no longer resident in the area. When a new candidate was sought, no prospective candidates came forward.

53. Any candidate had to be from the Party's approved list of candidates, which was maintained by the English Candidates Committee ("**ECC**"), itself established under Article 19.1 of the Federal Constitution. There is a document dating from 2018 which provides that candidates who had been on the approved list, and then has ceased to be so, could be returned to the approved list. In particular it provided:

> "Candidates who lost their approved status through lapsing (more than 3 month gap in their membership) or resigning from the party must on rejoining wait until they have completed a year's membership before being re-assessed"

54. The validity of this provision – which I shall refer to as the "**One Year Rule**" – was in dispute between Ms Hayes and Dr Joachim at the time relevant to Issue 2. The position is as follows:

    i) Article 19.1 of the Federal Constitution provides for the establishment of a Candidates Committee for each State Party, whose function is "to make provision for there to be lists of approved candidates …"

    ii) Article 19.2(b) of the Federal Constitution (adopted in 2019) provides:

> "In deciding whether to enter an applicant on a list, each State Candidates Committee shall take into account:
>
> B. the previous participation by the applicant in the work of the Party or a former Party …; new members of the Party may apply to be entered on the list and if their application otherwise satisfied the States Candidates Committee their previous participation in other walks of life can be taken into account …
>
> D such other considerations as may be relevant in the circumstances."

    iii) The dispute was whether the introduction of the "One Year Rule" was compatible with Article 19.2(b), a dispute on which the Federal Appeals Panel later favoured Ms Hayes' interpretation.

55. In February 2021, Ms Hayes sought to propose Mr Jason Hunter as the Essex PFCC candidate. Mr Hunter had resigned from the Party in September 2020, at a time when there were multiple outstanding complaints against him in the Party's Complaints Process. Those complaints had lapsed upon his resignation. The background to Mr Hunter's resignation was connected with the concerns which Ms Hayes had previously raised regarding the complaint against Mr Sheller, and indeed it was Mr Hunter who had put Ms Hayes in touch with Mr Sheller.

56. The Chair of the ECC, Dr Margaret Joachim, together with some other members of the Party, took the view that Mr Hunter was not eligible to be a candidate because of the One Year Rule.

57. With the election approaching, the Party's Candidates Office became involved, Ms Lauren Winters of that office writing to Ms Hayes and Dr Joachim on 17 February 2021 stating that Ms Hayes had the power to select the candidate, but that Ms Hayes has asked whether she needed to discuss the proposed appointment with the co-ordinating committee or take their views into account before doing so. Dr Joachim replied that day, stating that Ms Hayes would "be within her rights just to appoint, but it would be more sensible to discuss in advance with the candidates committee. They may know something she doesn't!" Ms Hayes replied to Dr Joachim, noting that "Indeed, [her] regional candidates committee members might have useful input". Ms Hayes stated that she had identified a strong candidate, but there had been "a break of a few months in his membership" and the prospective candidate was not on the approved list now. Ms Hayes asked whether the proposed candidate could, in effect, be fast-tracked onto the approved list on the basis of a "one off waiver".

58. An exchange of emails between Ms Hayes and Dr Joachim ensued, in which their positions were maintained in strenuous, but polite, terms, culminating in Dr Joachim stating (on 20 February 2021) that "Jason Hunter is not an approved candidate. Therefore you cannot appoint him." On 18 February 2021, Mr Hunter re-joined the Party.

59. In her email, Ms Hayes had stated that "colleagues in my region whom I have consulted are enthusiastic". Dr Joachim sought to ascertain how far there had been consultation in relation to Mr Hunter, and to that end, on 20 February 2021, Ms Nethsingha wrote to members of the RCC and the Essex County Co-ordinating Committee (the "**EC3**") asking whether they had been consulted about the appointment of Mr Hunter. She stated that she "believed there are some concerns from the wider party as to Jason's suitability, as there are some unresolved complaints which have been made against him". There were eight recipients of this email, including Ms Hayes. The email ("**the Nethsingha Email**"*)* concluded by asking "could you let me know your opinion on the idea of appointing Jason Hunter as Police and Crime Commissioner Candidate for Essex, and whether you have been informed of all the outstanding complaints issues". Email exchanges followed, in which Ms Hayes suggested that there were no outstanding complaints against Mr Hunter, and others referred to five outstanding complaints which had not been progressed at the time of Mr Hunter's resignation. At 23.17 on 20 February 2021, Ms Hayes stated "I want him approved ASAP so please let me know when that will be and what is the impediment". Dr Joachim responded setting out the procedure she contended should be followed, including a process of consultation, and the need for the candidate to be an approved candidate.

60. At 12.26 on 21 February 2021, Ms Hayes sent an email in the same chain stating "I have asked Jason about unresolved complaints. He does not know of any" (such that she had clearly spoken to Mr Hunter on the subject of complaints against him by this time).

61. By 16.39 on Sunday 21 February 2021, the Nethsingha Email had been provided to Mr Hunter. He emailed Ms Nethsingha at that point referring to the email, and raising a number of questions about its contents. At 18.24, Mr Hunter sent a copy of his email exchange with Ms Nethsingha to Ms Hayes, stating "update … for your information". It

is clear that by that point, Ms Hayes knew that Mr Hunter had a copy of the Nethsingha Email, and that they had already had some form of exchange about it that day (given the "update" reference). It was Ms Hayes' evidence that she had not asked Mr Hunter who had sent him the email, and in the course of her evidence she suggested that Mr Sheller (who was not an addressee of the Nethsingha Email) had later told her that he had provided the email to Mr Hunter. At 19.31, Ms Nethsingha sent Ms Hayes an email expressing concern as to who might have provided the email to Mr Hunter. Ms Hayes did not engage with that query.

62. Mr Hunter sent a pre-action letter to Ms Nethsingha personally on 23 February 2021, headed "Breach of Confidentiality, Misuse of Private Information and Damage to Reputation". That letter included a number of legal phrases and references. Mr Hunter included a screen shot of the Nethsingha Email. A document which was not before the Panel – Particulars of Claim in County Court proceedings commenced by Mr Hunter against Ms Nethsingha, Dr Joachim and the Party – alleged that Mr Hunter had not received the Nethsingha Email from an immediate addressee, but from "an unrelated third party".

63. Shortly after sending his pre-action letter, Mr Hunter (a) filed a complaint with the Information Commissioner's Office (the "**ICO**") on the basis that the Nethsingha Email was a breach of his data protection rights and (b) sued both the Party and Ms Nethsingha personally.

64. Tense but formally correct exchanges continued between Ms Hayes and Dr Joachim. On 28 February 2021, Ms Hayes wrote to Lauren Winters, a Candidates Manager then employed by the Party, stating that "it is my wish and the overwhelming wish of the [RCC] to appoint [Mr Hunter] as Essex PFCC Candidate". This reflected the clear majority of the members of the RCC supported Mr Hunter, but not Mr Whitehouse. An ECC meeting took place on 27 March 2020. By a 13:1 majority, the ECC concluded that Mr Hunter could not be elected as a candidate, both because of the One Year Rule, and because "adverse media coverage could be easily found and might be used to discredit him, other candidates and the party during the campaign". Ms Hayes refused to appoint another suggested candidate, who was on the approved list but who had yet to take the PGCC test, because "she wanted Jason Hunter to be the candidate".

65. In the event, a Mr Jon Whitehouse was appointed by Dr Joachim, relying on a provision in the "Procedure for Appointing an Approved Candidate" which provided "appointment decisions are made by the [RCC] but in the event of a dispute the appointment can be referred to the Chair of the [ECC] whose decision shall be final". Mr Whitehouse had not taken the PFCC test at the time of his appointment, and although arrangements were made for him to take the test subsequently, his appointment was not conditional on passing it.

66. Ms Hayes brought an appeal to the Federal Appeals Panel challenging the One Year Rule. On 1 April 2021, the Federal Appeals Panel concluded that the effect of Article 19.2(b) was that any new member – including a rejoining member – was immediately eligible to be placed on the approved candidates list, and that the "One Year Rule" was not valid, but that conduct and resignation were matters which might legitimately be taken into account in deciding whether to place applicants on the approved candidates list. That decision was circulated by Dr Joachim on 2 April 2021.

67. At some point in early April 2021, Ms Hayes' power to nominate an official Party candidate as a Delegated Nominating Officer was revoked. On 8 April 2021, Ms Hayes wrote to Dr Joachim making strong, but formally worded, criticisms of her conduct, in particular that Dr Joachim had exceeded her authority, ridden roughshod over the RCC, contradicted herself and wasted time. She stated that Mr Whitehouse was not an approved candidate, and that she would be "taking this further". While strongly worded, reflecting strongly held convictions, the tone of this communication was not inappropriate, and the final statement was not, in my view, untoward.

68. Finally, on 23 August 2021, Ms Hayes sent Dr Joachim a further email, raising a series of questions about these events culminating in the appointment of Mr Whitehouse. While probing and insistent in tone, neither the letter nor the language are untoward. Ms Hayes stated that she was formulating a formal complaint and "felt it only fair to give you the opportunity to explain yourself". Once again, that statement cannot, of itself, be criticised.

The background to Issue 1

69. On 24 August 2021, prior to the Federal Board meeting scheduled for 4 September 2021, in a message to the Federal Board's WhatsApp group (the "**24 August 2021 WhatsApp**") Ms Hayes said:

> "I am reliably informed that unless the party resolves Jason Hunter's complaint of a Data Protection breach to his satisfaction (presumably including a public apology) by 5 pm today the ICO will fine the party at least £10k. I gather that the ICO ruling will be published on their website in a day or two. An aggravating factor was failure to communicate with Jason."

Ms Hayes confirmed this information had come from Mr Hunter, and her contribution to the chat reveals some familiarity with his complaint to the ICO. She went on say that the "ICO ruling will be on their website in a day or two". Dr Pack obtained a report from the Party's Head of Compliance, who said that the Party had not conceded it had broken the law, no deadline had been set and the Party was simply waiting for the ICO to respond. Ms Hayes stated that "I am given to understand that the ICO have issued a short decision on this complaint that the information held in the Complaints' System can only be used for administering complaints, unless the data subject consents".

70. A Party employee contacted the ICO to clarify the position, to be told in an email of 1 September 2021 that "it appears the Liberal Democrats are complying with their data protection obligations. Should Mr Hunter come back to us again, I will explain this to him."

71. As a result, a new item relating to Mr Hunter's ICO case was added to the agenda for the 4 September 2021 Board meeting, as the first item on the agenda.

72. On 27 August 2021, Dr Pack emailed all Federal Board members stating that he had "checked with staff, who have also checked with the ICO, and so can confirm that: we are not under ICO investigation; we have not received a £10,000 fine; our Data Protection Officer has always maintained that the Party has no case to answer; and the Lead Adjudicator does not believe we have broken the rules outlined in the complaints procedures".

73. The Federal Board meeting on 4 September 2021 was chaired by Dr Pack. There is a dispute as to what happened at that meeting, which the Panel had to resolve:

    i) It is clear that at the meeting, Ms Kery Buist, the Party's Head of Compliance, stated that the ICO had not made an adverse ruling and indeed had written to the Party confirming that the case was closed. Dr Pack confirmed he had seen correspondence to this effect.

    ii) Ms Hayes asked to see the correspondence which Kerry Buist said she could not disclose. Ms Hayes refused to accept this.

    iii) There is no transcript or recording of the hearing, which would have been the best evidence of the precise terms and tone of these exchanges.

    iv) It is clear from the meeting "chat" exchanged between the participants that Ms Hayes was specifically asked whether she was accusing Ms Buist of lying, and that she did not take the opportunity to refute this, but nor did she say she was.

    v) If the chat messages are to be taken at face value, a number of those participating in the meeting viewed Ms Hayes as having attacked Ms Buist, and the issue of the treatment of members of staff is a predominant theme in the "chat". Those comments include "it is surely against the code of conduct for Board Members to attack staff in this way", "this is appalling", "what I am trying to achieve is members of the Board treating staff members with respect"; "I too am horrified by how a member of staff is being attacked in this way by a board member"; "I will leave this meeting if this isn't resolved very soon, this is appalling"; culminating in suggestions Ms Hayes should be removed from the meeting.

    vi) Dr Pack proposed a resolution which would remove Ms Hayes from the meeting. That motion was carried by 20 votes to none, with two abstentions.

    vii) The "chat" continued after Ms Hayes had been removed from the meeting, with messages such as "I am so sorry you were treated like that Kerry" (with which numerous other participants expressed agreement); "I'm so sorry you have to go through that, totally unacceptable"; "this is my first meeting as staff rep and I am appalled at the behaviour shown to a member of staff giving up their time to attend the meeting. But I would like to thank the members of the board who spoke out against this attack".

    viii) During and after the meeting, there were various communications sent to Ms Buist by participants in the meeting apologising for her treatment.

    ix) There was a dispute as to how far these documented communications were a fair reflection of the tone and terms of Ms Hayes' statements, or reflected some opportunism, "group think" and undue sensitivity.

74. On 5 September 2021, Ms Hayes appealed against the Panel's decision to exclude her from the Federal Board meeting to the Federal Appeals Panel. On 15 September 2021, Mr Mike Dixon, the Party's Chief Executive Officer, contacted Ms Hayes asking for an opportunity to talk about the incident involving Ms Buist (Mr Dixon is responsible for party staff). The tone of that email was even-handed and constructive, clearly looking

for an informal resolution, and making it clear that similar issues had arisen with other Federal Board members in the past and had been satisfactorily resolved. Ms Hayes responded saying she would welcome an opportunity to discuss the substance of various concerns she had, but only once she had seen the correspondence she had requested access to at the meeting and to which Ms Buist had referred. When Mr Dixon replied that he was looking for a conversation "entirely about tone and impact on people", Ms Hayes replied "unlike you I wish to talk about substance, not tone, so I am not prepared to talk without having received the information I have specified." No meeting took place.

75. On 24 November 2021, Mr Jeremy Hargreaves contacted Ms Hayes in the context of her proposed appeal, after the Federal Appeals Panel had issued a preliminary ruling which would allow Ms Hayes to see (but not to copy) the Party's correspondence with the ICO, on the condition that Ms Hayes would offer an apology to Ms Buist and undertake to keep the material confidential. Ms Hayes sent a detailed email in reply, setting out her position and stating that she had nothing to apologise for and "could not in good conscience apologise for something [she] did not do." She described the offer to share the information with her on the basis on which it was offered as "insulting".

Dr Pack's Complaint

76. On 3 February 2022, Dr Pack filed the Complaint concerning Ms Hayes with the Party's Standards Office. It comprised a 9-page exposition, 15 witness statements and 58 supporting documents. Ms Hayes was notified of it on 4 March 2022 and asked for a response within 14 days in accordance with a standard direction sent out by the Party's Standards Office. The Lead Adjudicator and Standards Officer appointed three of the Party's Adjudicators to hear the Complaint: the presiding member was Ms Alexandra Simpson, a former Tribunal Judge (Immigration and Asylum Chamber) who was appointed a Party Adjudicator in late April 2020, and the other adjudicators initially appointed were Mr Gordon Wilson and Ms Serena Tierney, both of whom are experienced lawyers. A preliminary hearing was set for 28 March 2022.

77. On 22 March 2022, Ms Hayes served her response (a 29-page statement). At a Pre-Hearing Review on 28 March 2022, a potential conflict of interest emerged so far as Mr Wilson was concerned, and he was later recused and replaced by Mr Duncan Curley, another lawyer.

78. On 19 May 2022, the Standards Office sent the Panel members a pro forma email stating that the time to file evidence had passed and no further evidence would be accepted beyond that point. That was not in fact how the Panel chose to conduct the hearing, as will be seen (and their right to extend time is clearly stated in the Complaints Process). For that reason, I do not regard this communication as relevant to Ms Hayes' natural justice complaint.

79. On 1 June 2022, the Panel (now comprising Ms Simpson, Ms Tierney and Mr Curley) made a Complaints Procedure Directions Notice ("**the Directions Notice"**) as follows:

    i) Only Issues 1 to 3 would be considered in the first instance.

    ii) Ms Hayes was directed to serve up to two witness statements of no more than 10 pages each by 12 noon on 4 July 2022.

iii) A hearing length of 2 ½ hours was set (reflecting the fact that the Panel members are volunteers, and Ms Tierney and Mr Curley were in full-time employment), although in the event it lasted for over three hours.

iv) The hearing was fixed for 26 July 2022 at 18.30.

v) Any requests for the Panel to ask questions of other parties or witnesses had to be submitted 48 hours before the hearing date.

vi) The structure of the hearing was summarised.

80. The Directions Notice was sent to the Standards Office, who did not send it on to Ms Hayes until 10 June 2022.

81. By a letter to the Standards Office, Ms Hayes sought further information in relation to the Directions Notice on 13 June 2022, including why she had been limited to two witnesses, and seeking the disclosure of certain information and documents. Ms Hayes complained that Dr Pack had obtained and used personal data and confidential information in breach of the GDPR. This was passed on to the Panel on 21 June 2022. On 27 June 2022, Ms Hayes said that she was awaiting a response, but would be away at the Liberal International Conference in Sofia, Bulgaria, from 30 June to 3 July. She requested an extension of time to 8 July 2022 to file her witness evidence.

82. On 4 July 2022, a response from the Standards Office, into which the Panel had input, clarified that both Complainant and Respondent were entitled to call two witnesses per Issue, in addition to their own evidence. The Panel refused the disclosure request, and stated that the alleged breach of the GDRP was not a matter for the Panel and Ms Hayes should if she wished to pursue it further take it up with the relevant Party organisation. Ms Hayes was given an extension of time to 5pm on 19 July to file her witness statements. Ms Hayes filed five witness statements on 4 July 2022, with one to follow. Ms Hayes filed further evidence on 19 July 2022.

83. On 22 July 2022, the Standards Office informed Ms Hayes that there was "no need for either party to call witnesses, since the Panel anticipates receiving all the evidence in writing before the hearing." On 24 July 2024, Ms Hayes submitted a list of 158 questions which she wanted the Panel to ask, 45 directed at Dr Pack, and the remainer directed to other witnesses from whom Dr Pack had served statements, but who the Panel did not require at the hearing.

84. The hearing took place online via Zoom on 26 July 2022 and lasted over three hours. There is a transcript of the hearing. The Panel had previously agreed which of the three of them would take the lead on which issue. Dr Pack went first on Issue 1, and was questioned by Ms Simpson, followed by Ms Hayes, who was similarly so questioned. The same procedure was followed for the other issues, Ms Tierney taking the lead on Issue 3 and Mr Curley on Issue 2. Some of the questions or topics raised in Ms Hayes' list of suggested questions were raised by the Panel, but the clear majority were not.

85. I accept that the Panel members deliberated immediately after the hearing and again two days later, and that each member was responsible for producing the first draft of that part of the decision dealing with the issue on which they had taken the lead, with those drafts being shared, and the subject of discussion and agreement thereafter.

86. The Decision Notice was issued on 1 September 2022. It is 19 pages long, in single spaced typing. The following conclusions were reached:

    i) As to Issue 1, the Panel upheld the Complaint. Ms Hayes's membership of the Party was revoked and she was expelled from the Party.

    ii) As to Issue 2, the Panel upheld aspects of the Complaint. Ms Hayes was permanently prohibited from standing for or holding office within the Party.

    iii) As to Issue 3, the Panel upheld the Complaint. Again, Ms Hayes' membership of the Party was revoked and she was expelled from the Party.

87. Ms Hayes did not invoke her (limited) right to appeal to the Federal Appeals Board, but brought these proceedings.

Ms Hayes' Case that the Decision Notice and Complaints Procedure Involved Breaches of Contract

88. Ms Hayes has advanced a wide range of criticisms of both the procedure followed by the Panel, and the Panel's conclusions in the Decision Notice. At my request, Ms Hayes and the Defendants produced an agreed list of the various points made. I address that list below, using the numbering in the agreed list.

Complaints relating to matters of evidence

C1 The Panel considered all previously filed evidence, in breach of an indication that it would consider only the evidence filed in relation to the three issues

89. Ms Hayes' complaint here arises from paragraph 10 of the Decision Notice. This lists the documents supplied to the Panel by the Standards Office *before* the decision was taken to limit the initial hearing to the three issues, including Ms Hayes' response to the full range of allegations made by Dr Pack (although I accept she had yet to file witness statements on all these issues). The Decision Notice expressly states:

> "Prior to issuing the Procedure Notice, the Panel had read and considered the earlier documents in the Hoowla file for this case".

90. There is nothing in this criticism. In order to determine how best to manage the Complaint, and what procedural directions to give, the Panel needed to familiarise themselves to some degree with the full range of allegations made, and the responses to them. They would have been open to criticism for not doing so. But there is no material which suggests that, for the purposes of arriving at the conclusions on Issues 1 to 3, the Panel had regard to evidence other than that relating to those three issues. Ms Simpson denies that was the case, and I accept that evidence. It is noteworthy that I was not taken to any part of the Decision Notice which it was suggested that the Panel had had regard to material filed other than for the purpose of determining the three issues.

C2 The Panel failed to consider whether certain evidence was permissible and wrongly permitted it to be used although Ms Hayes could not use impermissible material to defend herself

91. This complaint concerns the fact that the tribunal concluded that the complaint that Dr Pack had deployed confidential or personal data was a matter to be raised with the Standards Office.

92. In her email of 13 June 2022, Ms Hayes stated:

> "Finally, I have not had a satisfactory answer on how Dr Pack got hold of the personal data and confidential information belonging to non-parties that he is using, nor on what exemption or justification he, and indeed those involved in running the Complaints process, seek to rely on to excuse what otherwise is a blatant breach of GDPR."

93. This comment could reasonably be understood as raising a substantive complaint against Dr Pack in relation to the obtaining of the evidence, rather than an objection to the admissibility of that evidence (not least because no attempt was made to identify which evidence it was said should not be admitted and the issues to which it related). Not surprisingly, the Panel responded to it in that light, stating in the Directions Notice:

> "The Respondent's final request is not a matter for the Panel and they should if they wish to pursue it further take it up with the relevant Party organisation".

94. There is no evidence this was ever done, nor that any argument was advanced to the Panel that particular documents should not be admitted in evidence for this reason. As Ms Hayes confirmed in her evidence, the most prominent examples given in her witness statement of documents which Ms Hayes contended should not have been deployed by Dr Pack did not concern Issues 1 to 3, but other matters which the Panel did not need to determine. The matters raised by Issues 1 to 3 were relatively circumscribed, and I do not recall any document which might arguably have been subject to a GDPR constraint being relied upon by the Panel.

95. Even if an issue had arisen in relation to the admissibility of a document relevant to Issues 1 to 3, questions of admissibility would, in any event, be a matter for the Panel which, as a contractual tribunal, is not bound by the strict rules of evidence. Even in civil court proceedings, there is no general doctrine that documents obtained in breach of confidence are inadmissible: *Phipson on Evidence* (20th) [1-87] and [39]-[33] and specifically in relation to evidence which it is alleged was illegally obtained *Helliwell v Piggott-Sims* [1992] FSR 582. This is also the case where evidence is said to have been obtained in breach of a third party's rights (*Hollander on Documentary Evidence* (15th) [27-09]).

96. To the extent that there is a discretion to exclude such material, there was no attempt to ask the tribunal to exercise it, still less to formulate a clear case as to which specific evidence the objection relates to; the legal and factual basis for the objection (rather than a generalised appeal to "GDPR") or the effect on each of the three issues. That remained the position before me. It has not been established that any evidence relevant to Issues 1 to 3 was obtained in breach of the GDPR, or that any such evidence formed the basis of the Panel's conclusion.

97. So far as Ms Hayes self-denying ordinance is concerned, the examples of documents I was taken to in closing as material which Ms Hayed felt unable to deploy before the Panel were materials which had been provided to Ms Hayes which she suggested

contained materials which others were obliged to keep confidential. I found it difficult to understand why this material was subject to an obligation of confidentiality in Ms Hayes' hands, but if it was, and it should not have been provided to Ms Hayes, and for that reason she was right not to deploy it, that can give rise to no criticism of the Panel, nor render the process before the Panel unfair.

C3 The Panel took account of irrelevant evidence on Issue 1

98. This relates to the reference in the Decision Notice to comments in a WhatsApp group. Dr Pack had referred to a comment posted by Ms Hayes in the Federal Board WhatsApp chat on 25 August 2021 stating that "I am reliably informed that unless the party resolves Jason Hunter's complaint of a Data Protection breach to his satisfaction (presumably including a public apology) by 5pm today the ICO will find the party at least 10k".

99. That communication formed highly relevant background to the events at the Federal Board on 4 September 2021 because, as will be apparent from the account of the facts set out above, it was Ms Hayes' method of challenging Ms Kerry Buist's rebuttal of this assertion which formed the basis of the Issue 1 complaint. This evidence was obviously highly relevant. The tribunal's finding that "resolving the matter to Jason Hunter's satisfaction" was "a threat designed to intimidate the Party into behaving in a particular way that she wanted" and "not in the Party's best interests" was not one of the bases for the Panel's finding that Ms Hayes' treatment of Ms Buist during the meeting on 4 September 2021 "amounted to bullying of a member of staff."

100. It is apparent from the evidence of Ms Simpson that in reaching their conclusion on Issue 1, the Panel regarded the context as including Ms Hayes' assistance of Mr Hunter to bring a claim against the Party. In short, the Panel concluded that Ms Hayes attempts to obtain sight of documents from Ms Buist relating to Mr Hunter's ICO complaint was part of the assistance Ms Hayes was providing to Mr Hunter, and all the more unreasonable given what the Panel found to be the obvious conflict of interest involved in Ms Hayes using her position on the Federal Board to obtain material to assist someone bringing proceedings against the Party. I am satisfied that it was open to the Panel to conclude that this was relevant to Issue 1 – both because the context and legitimacy of the request was capable being relevant to whether the means by which it was pursued amounted to "bullying", and because Ms Hayes' motivation may make it more likely that, when thwarted, Ms Hayes pursued her request in an inappropriate way. I am not persuaded that such a decision falls outside the tribunal's primary role of determining what significance the evidence had and what that evidence established.

C4 The Panel ignored or overlooked relevant evidence

101. This complaint concerns the following evidence:

    i) In relation to Issue 1, a witness statement from Lord Strasburger, who attended the Federal Board meeting of 4 September 2021 and abstained on the motion to remove Ms Hayes from the meeting, that Ms Hayes was polite and did not accuse Ms Buist of lying.

    ii) In relation to Issue 2, that the tribunal's finding that "there was no evidence that [Ms Hayes] raised her proposal to appoint Mr Hunter as the Essex PFCC with the

Essex County Co-ordinating Committee" failed to take account of Ms Hayes' evidence of communications with Simon Banks.

102. There is a threshold difficulty with these complaints. The evaluation of the evidence is for the tribunal, which has the primary fact-finding role. The tribunal is not required to set out, in a formulaic fashion, every piece of evidence relied upon, nor specifically address each piece of evidence placed before it (any more than a court is). The court will not assume that there has been a failure to consider evidence simply because it is not mentioned. There is an approximate, but not precise, analogy with commercial arbitration (another contractual tribunal), in which the court will only review an award on the basis that evidence was overlooked in, at best, exceptional cases (*UMS Holding Ltd v Great Station Properties SA* [2017] EWHC 2398 (Comm), [16]-[32]). The cases summarised in Teare J's judgment note that "Arbitrators and awards cannot be criticised simply because they do not address each and every item of contentious or even non-contentious evidence", that "arbitrators who are required to give reasons in their awards do not have to list all the arguments or items of evidence as advanced which they accept and which they reject"; that "an award … necessarily cannot set out every piece of evidence in the case" and that "a failure to refer to any particular piece of evidence in the award or reasons is … no basis for attacking an award or contending that the evidence in question was not taken into account."

103. In relation to both these issues, therefore, I would not have been willing to infer that a tribunal composed of three experienced lawyers failed to consider evidence, simply because they do not specifically refer to it.

104. In this case, unusually, there is evidence from Ms Simpson that the Panel did consider this evidence, and setting out the Panel's reasons for concluding that it did not lead to a contrary conclusion. Those explanations are credible, and well within the domain of the Panel's fact finding competence.

105. Ms Simpson says that the Panel considered the evidence of Lord Strasburger, together with all the other evidence from participants in the meeting, and the voting to expel Ms Hayes (20-zero with Lord Strasburger abstaining), and reached their conclusion on the balance of probabilities. That evidence is supported by the fact that the Panel was referred by Ms Hayes to Lord Strasburger's evidence during the hearing, and Mr Curley quoted from Lord Strathberger's statement. There is, therefore, no sufficient basis for concluding that the Panel did not take it into account.

106. In relation to Ms Hayes' contact with Mr Banks, Ms Simpson says rather less, that the Panel reached its conclusion on the evidence before it, but she confirmed in her oral evidence that the Panel did have regard to Ms Hayes' evidence about her dealings with Mr Banks, and I accept that evidence. It is important to recall that the Panel's conclusion was that Ms Hayes did not "liaise adequately" with the EC3 and failed "properly" to involve EC3, findings which can accommodate the evidence of Ms Hayes' dealings with Ms Banks. The Panel did state that "there was no evidence that she raised her proposal with [EC3]", which I accept would not be accurate if intended to refer to any individual member of EC3, as opposed to EC3 as a whole.

107. I accept that there are emails between Ms Hayes and Mr Simon Banks of the EC3 in which Mr Hunter is raised as a possible candidate, e.g. an email sent "in strict confidence" on 12 February 2021. Ms Hayes referred to these before the Panel ("if you

actually look at the evidence you will see what I did was I consulted Simon Banks, at length, repeatedly"). There is no reason to reject Ms Simpson's evidence that the Panel considered this evidence, and no basis for drawing the inference that it was overlooked.

108. Further, Ms Hayes' own evidence to the Panel acknowledged that there was opposition to Mr Hunter from some Essex members. On the basis of her own statement there does not appear to have been any consultation of the EC3 as a whole but only with Mr Simon Banks. Ms Hayes states:

> "The EC3 was welcome to meet and tell me what it thought, though EC3 was no substitute for a ballot of members after a contest. I was aware that a bunch of people in and connected with Chelmsford LP was passionately opposed to Jason. I was also aware of long-standing friends of Jason who disagreed with the criticism and would love to see him stand".

Elsewhere, Ms Hayes stated that "I liaised with the chair of the co-ordinating committee". The evidence of Ms Nethsingha placed before the Panel also suggested there had been insufficient consultation with Essex members. There was also evidence before the Panel from Mr Sandbach stating that "we needed to deal better, and with more understanding, with colleagues who took a different view" of Mr Hunter's merits as a candidate.

109. In these circumstances, there was evidence before the Panel which could be relied upon to answer the communications with Mr Banks, and I cannot conclude that the Panel failed to consider the evidence of communications with Mr Banks. That is sufficient to reject this criticism. Finally, I would note that there are emails before me – but which were not before the Panel, and therefore have not formed the basis of my decision – which are consistent with the Panel's conclusion. Mr Whitehouse, a member of the EC3 said in an email of 22 February 2021 that "it would have been better to keep EC3 in the loop … I know virtually nothing about either individual". Mr Robinson, another member of the EC3 claims not to have been consulted (per his email of 21 February 2021).

Complaints relating to issues of procedure

C5 The Panel proceeded on the incorrect basis that the Complaint was brought by Dr Pack as President

110. In its "Summary of findings of fact and conclusion", the Panel stated, "the Complainant is the President of the Liberal Democrats who had made this complaint in that capacity". Dr Pack is the President of the Party. The office held by any complainant has no significance in the Complaints Procedure. The document initiating the Complaint simply stated it had been made by "a party member", although Dr Pack's statement stated that he was the President of the Party, as well as identifying the senior roles held by Ms Hayes.

111. There is nothing in the Decision Notice to suggest that the issue of whether Dr Pack has brought the Complaint in a particular capacity had any impact on the procedure followed or the conclusions reached, despite Ms Hayes' repeated assertions to the contrary. Indeed, the Complaints Process offered no scope for any different approach. Ms Simpson, whose evidence I accept, stated that Dr Pack's status as President had no

effect or influence on the Panel's decision-making (and the impression that I formed of Ms Simpson is that she would not have been influenced by an extraneous and irrelevant consideration of that kind). Indeed it was Ms Hayes who suggested that "someone in the Complainant's position in the party should not be able to initiate complaints", a submission which the Panel rejected.

C6 Dr Pack's complaint could not fairly be accommodated within the Complaints Process

112. Ms Hayes objected that Dr Pack's Complaint in its initial formulation was too large and "sprawling" to be fairly accommodated within the Complaints Process, and that the Panel should have dismissed it on that basis, leaving Dr Pack to bring a series of separate complaints. In support of that assertion, Ms Hayes relies on the 14-day period she had to respond under the Complaints Process, and the 7-day period in which the Panel was to provide its decision.

113. There is, however, no express limit on the size of a complaint which can be brought within the Complaints Process, nor are the 14- and 7-day periods immutable (the Complaints Process acknowledging a panel's power to extend time). Further, the terms of the Complaints Process contemplate that a single complaint reference may involve a number of individual complaints:

    i) It contemplates that there may be a counter-complaint by the respondent.

    ii) It provides for the Panel to review and set a hearing for "the Complaint(s) [and] any Counter-Complaint(s)."

114. In her preliminary response to Dr Pack's complaint on 8 March 2022, Ms Hayes criticised the form of Dr Pack's complaint, and reserved her right to seek further time to serve her evidence (which in due course, in relation to Issues 1 to 3, she received). She did not, however, suggest that the Complaint should be dismissed on that basis.

115. Further, the submission that the Complaint was too large and diffuse, and should have been "divided up so it could be managed in a fair way" (as Ms Hayes put the point in her opening) sits ill with Ms Hayes' complaint that the Panel did not have power to order that Issues 1 to 3 be determined first (even though this would clearly have been possible if, instead of there being one complaint, a series of complaints between the same complainant and same respondent had been filed at the same time, and the same panel appointed to hear all of them).

116. I reject the suggestion that the Panel had no power to determine the order in which the issues raised by Dr Pack's complaint would be determined, or to determine some complaints first, and leaving the position of others open until the position on the first three complaints was known. The Panel having formed the view that the fair and efficient disposal of the Complaint within the Complaints Process required this course – as Ms Simpson made clear they had, and for understandable reasons – the Panel clearly had the implied power under the Complaints Process to make case management orders to ensure that the Complaint was resolved in a manner which they concluded would be fair to both parties and the Panel itself. A concomitant of the implied obligation under the Complaints Process for a fair procedure complying with the requirements of the rules of natural justice is a power on the part of the tribunal, to the extent it was not

inconsistent with the express terms of the rules, to make case management decisions reasonably intended to secure that end.

117. Finally, Ms Hayes did not object to the Panel's case management decision to hear Issues 1 to 3 first, and at the hearing she accepted the obvious undesirability of hearing all of the complaints together at a 3-hour hearing. Her complaint at the trial was not that the Panel should have adopted another procedural course, but that it should have refused to hear the Complaint. I am satisfied that the members of the Party would have regarded the suggestion that a complex complaint could not be determined under the Complaints Process, and that the panel appointed to hear such a complaint lacked case management powers to ensure it was decided fairly and expeditiously, as absurd, and, if asked if this was the effect of the Complaints Process, would have responded "of course not".

C7 The Panel misdirected itself as to the definition of "bullying"

118. Ms Hayes complains that the Panel:

> "misdirected itself as to what constitutes bullying and who was being bullied".

119. On the issue of what constitutes "bullying", the Panel applied the ACAS definition of "bullying" as:

> "Unwanted behaviour from a person or group that is either
>
> - Offensive, intimidating, malicious or insulting, or
> - An abuse or misuse of power that undermines, humiliates, or
> - Causes physical or emotional harm to someone.
>
> Bullying might:
>
> - be a regular pattern of behaviour or a one-off incident,
> - happen face-to-face, on social media, in emails or calls,
> - happen at work or in other work-related situations,
> - not always be obvious or noticed by others."

120. That definition is provided by ACAS by way of "advice for employees and employers". In circumstances in which Issue 1 concerned the treatment of an employee of the Party. I can see no objection in the Panel deriving assistance from the ACAS guideline as to the meaning of what is ultimately an ordinary English word for the Panel to apply in all the circumstances of the case (cf *Brutus v Cozens* [1973] AC 854, 861).

121. Ms Hayes had two principal objections. The first was the suggestion in the ACAS definition that "bullying" could be constituted by a single incident, rather than an ongoing course of conduct. She relied in this regard on the *Oxford Modern English Dictionary* (although this was not referred to before the Panel). This defined a "bully" as "a person who habitually seeks to harm or intimidate those whom they perceive as vulnerable", but does not include any requirement of habituality in its definition of

"bullying". One can well see that some form of persistent behaviour might be thought appropriate before someone was described as a bully (although someone who has stolen once will generally be referred to as a thief). However, there is no similar requirement of persistent behaviour for conduct to be described as "bullying". The *Oxford English Dictionary*, to which I referred the parties, defines "bullying" as:

> "to behave in an overbearing, intimidating, or aggressive manner towards (someone); (now usually) to seek to harm, intimidate, or coerce (someone perceived as vulnerable), esp persistently or repeatedly".

122. While that definition notes that the concept of bullying is especially constituted by persistent or repeated behaviour, it does not suggest that the concept is confined to such behaviour. Further, both that definition and the ACAS definition did not require the party who undertakes the conduct in question to have had a particular intention. As a matter of ordinary English language, I do not accept there are such implicit limitations, although no doubt the longer a particular pattern of behaviour continues, the easier it may be to characterise it as bullying.

123. Ms Hayes also objected to the Panel's findings as to how she had behaved and how that behaviour was to be characterised. It is right that I should record that neither in Ms Hayes' conduct before me in court (admittedly the very particular context of a barrister appearing in front of a judge in a formal environment) nor her correspondence placed before me evidenced a bullying persona. Her correspondence is certainly forceful, challenging on occasions, dogged and at times dogmatic. It is also wholly uncompromising. However, it could not fairly be described as bullying.

124. However, the issue for the Panel concerned conduct on a very specific occasion, and on an issue on which Ms Hayes clearly held and holds strong feelings, and the issue for the court is whether the Panel's conclusion on that questions falls outside the range of decisions rationally open to the Panel on the evidence which was before it not how the court would have decided this issue if it had arisen for determination before it. To pick up one reference made by Ms Hayes, it was for the Panel to decide if her conduct crossed "the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable" (*Majrowski v Guy's and St Thomas NHS Trust* [2007] 1 AC 224. [30]).

125. There was evidence before the Panel in the form of the "chat" during the meeting and contemporaneous correspondence, and witness evidence from some of those participating, including Mr Paul Moat (who said that "this incident is by far the worst behaviour from a member of our party, directed at a member of staff, that I have witnessed"), Ms Trudy Church and Ms Buist herself, all of which supported the conclusion that Ms Hayes' treatment of Ms Buist had been inappropriate. Against that background, I do not feel able to conclude that it was not open to the Panel to determine that this was an incident of bullying for the purposes of the Members' Code of Conduct.

126. Further, an impressionistic question of this kind relating to the tone and manner of dealings between members of and staff employed by a members' organisation is one where context is extremely important, and one which the association's own decision-making body is best placed to determine.

C8 The subject-matter of Issues 1 to 3 fell outside the scope of the Complaints Process

127. This criticism arises from the statements made as to the type of complaint which can be brought within the Complaints Process in:

    i) Mr Mackintosh KC's Note 1: see [38].

    ii) The definition of Complaint in Part 5 of the Complaints Process: [34(v)].

    iii) The flowchart in Appendix 1 to the Complaints Process: [34(vi)-(vii)].

128. The first question which arises is whether the issue as to the type of complaint is jurisdictional in nature, being essential to the existence of a contractually valid determination and hence renewable de novo by the court, or whether it involves an issue which it was for a contractual decision-maker to determine, with that determination only being capable of challenge before the courts on *Braganza* grounds. In the arbitration context, issues of this latter kind are sometimes referred to raising questions of admissibility, which is to say that the existence of the adjudicative power of the contractual decision-maker is not dependent on them, but they involve a decision by the contractual decision-maker as to whether the complaint is one which should be considered or not.

129. Unfortunately, the terms of the Complaints Process are thoroughly unsatisfactory in their treatment of this issue:

    i) The definition of "Complaint" in Part 5 of the Complaints Process is not particularly illuminating in this regard. It explains that "certain types of complaint [are] not covered by this process", but gives no guidance as to what they are, beyond a number of non-exhaustive illustrations, none of which is directly engaged here.

    ii) The Natural Justice Note and Note 1 are not themselves contractual documents, but express views by the-then Lead Adjudicator.

    iii) There is a potential conflict between paragraph 1.2 stating that the Lead Adjudicator's decision on whether a complaint meets the criteria is final and paragraph 3.1 which gives the claimant a right to appeal against a decision to dismiss a complaint (and which is also reflected in the flowchart).

    iv) There is no statement of what is to happen when a respondent wishes to challenge the decision to admit a complaint.

130. So far as any decision by the Lead Adjudicator is concerned:

    i) I reject the suggestion that the provision that the Lead Adjudicator's decision is "final" is repugnant to the definition of Complaint. It appears in the main paragraphs of the Complaints Process, and the suggestion that such a term is repugnant because of an alleged conflict with a definition is hopeless. In any event, there is no repugnancy between a provision that certain types of complaint cannot be brought in the Complaints Process, and a provision specifying that the decision of an identified decision-maker as to whether a particular complaint was of the prohibited type is final.

ii) That provision for "finality" would appear to prevent a panel from re-opening that question once referred to them. Nonetheless, I will proceed in this case on the basis that it did remain open to Ms Hayes to raise this issue before the Panel, Mr Mott being content for the court to proceed on that basis.

iii) In each case, I am satisfied that the decision is one for the contractual decision-maker, subject to limited review, rather than a jurisdictional fact for de novo determination by the courts as Ms Hayes submitted. The statement that the Lead Adjudicator's decision is final precludes the suggestion that the decision can be re-argued without limitation before the court. It was not argued (and I would not have accepted any argument) that the reference to the decision being "final" was sufficient to preclude a challenge on such grounds, because the contractual provision for finality would only apply to a decision reached in accordance with any limitations imposed by the contract.

iv) Further, the language used in the Complaints Process to describe the types of complaint which will and will not be accepted is vague and incomplete, and the criteria to be applied evaluative and eminently open to different opinions. It is highly unlikely that the parties intended an issue of that kind to be jurisdictional in nature.

131. In this case the evidence establishes the following:

i) On 4 March 2022, Ms Hayes and Dr Pack were informed that the Standards Office had reviewed the Complaint and recommended to the Lead Adjudicator that it be referred to a panel and the Lead Adjudicator had agreed.

ii) That communication enclosed the Lead Adjudicator (Mr Christian)'s statement confirming the Decision to refer the Complaint to a panel.

iii) I am satisfied that this constitutes a decision by the Lead Adjudicator that the Complaint fell within the Complaints Process. I am not willing to infer that in holding that Dr Pack's Complaint should be entered into the Complaints Process and referred to a panel, the Lead Adjudicator failed to apply his mind to paragraph 1.2, which is a key factor in determining whether a complaint should be so accepted.

132. Did Ms Hayes raise this issue before the Panel?

i) In her covering email to the Standards Office of 8 March 2022, Ms Hayes stated that Dr Pack's Complaint "is criticising how I have carried out my elected roles to the members who elected me, not to the complainant". She did not refer to paragraph 1.2 of the Complaints Process nor submit that the Complaint should be dismissed on that ground.

ii) On 22 March 2022, Ms Hayes filed a document entitled "Defence of Jo Hayes to complaint 385579 by Mark Pack", in which Ms Hayes set out her substantive response to Dr Pack's complaint generally (i.e. not just Issues to 3). This advanced the contention that Dr Hayes' complaint was too large and sprawling to come within the Complaints Process, but advanced no argument by reference to paragraph 1.2,

iii) Ms Hayes' evidence on Issue 2 referred to her "elected mandate" and her acting as the chair of an elected committee." This is the only reference in her written evidence filed in response to Issues 1 to 3 which might be said to bear on the paragraph 1.2 issue.

iv) I have reviewed the transcript of the hearing before the Panel. There is no submission by Ms Hayes which the Panel ought to have understood as raising the contention that Issues 1 to 3 fell outside the scope of the Complaints Process, although she did frequently mention her mandate as a democratically elected officer as a reason why she had acted as she had.

133. So far as the approach taken by the Panel is concerned:

i) Ms Simpson confirmed in her witness statement that it reflected the input of Ms Tierney and Mr Curley. Ms Simpson stated that she had noted that Ms Hayes had stated that she had acted as a democratically elected officer.

ii) Ms Simpson confirmed her familiarity with the Complaints Process, on which she had been trained, and had referred to regularly. She specifically responded to an allegation in this litigation that the Panel should not have considered Issue 2 by stating "the Panel took the view that Issue 2 related to her relationship with other party and/or committee members rather than with 'political strategy and tactics'".

iii) In her oral evidence, Ms Simpson said that Note 1 had not been drawn to her attention in relation to the Complaint against Ms Hayes, but gave evidence that the Panel's findings concerned (in effect) the manner in which Ms Hayes had conducted herself. She said of the members of the Panel "we didn't – when we looked at it – think that it actually involved you in your role as – sort of .. a panel", saying the Panel had upheld Ms Hayes' right to appoint the candidate but "it was how you interacted with the committee that was the problem". She also stated that she had seen the reference in Ms Hayes' original response to the Complaint about acting as an elected officer, had decided to exclude most of the Complaint from the hearing (i.e. all bar Issues 1 to 3) but that "the bullying complaint really had nothing to do with you being an elected officer" and "the interference with the … complaint process ….. was again nothing to do with what whether you were elected or not (to some extent that played a part in how we went through things)".

134. In these circumstances my conclusions are as follows:

i) The Lead Adjudicator did decide the Complaint was appropriate to go to a panel. No reasons were given, but the Complaints Process does not provide for reasons. While it may be appropriate to imply an obligation to provide reasons on request (not least to allow someone who has had a complaint rejected to exercise their right to appeal to a Review Panel), no request was made. The Lead Adjudicator's decision can only be challenged on *Braganza* grounds.

ii) Ms Hayes did not challenge the admissibility of the Complaint before the Panel, but did raise arguments relying on the suggestion she was acting as an elected officer. I accept Ms Simpson's evidence that those arguments (and therefore the substance of a paragraph 1.2 complaint albeit not in that form) were considered

and rejected by the Panel. That conclusion is reviewable only on *Braganza* grounds.

iii) So far as Issues 1 and 3 are concerned, it is clear that it was reasonably open to the contractual decision-maker to conclude that the complaints should be accepted within the Complaints Process (and indeed the contrary is not seriously arguable).

iv) Issue 3 concerned an email sent by Ms Hayes to Dr Pack, copying in Mr Hargreaves, asking Dr Pack to withdraw or stay a complaint against Mr Sheller. Whatever Ms Hayes' motivations for sending the communication, this did not involve the discharge of any official function on her part as an elected official. Any member of the Party, whether they held elected office or not, would have been able to send a similar letter. The object of Ms Hayes' letter – to affect the progress of a complaint under the Federal Complaints Process – was not a matter relating to the operations of the Regional Party. The complaint against Ms Hayes did not concern a decision taken qua member of the RCC, and did not concern matters of political strategy or tactics. No alternative complaints or appeal procedure which was said to be more appropriate for Issue 3 was identified.

v) Issue 1 involved the alleged treatment of a Party employee at a meeting. The mere fact that Ms Hayes was elected to the Federal Board did not have the effect that her dealings with Party employees at a Federal Board meeting were incapable of falling within the Complaints Process. In particular, the complaint was about the tone or manner of Ms Hayes' dealings with an employee, not the fact of seeking information for use in her capacity as a Federal Board member (i.e. the complaint was about the medium, not the message). I note that the Note 1 states that "when the complaint is about bullying, harassment or intimidation – whether of a member, staff, or indeed a member of the public – that will always be a matter for the complaints procedure".

vi) Issue 2 raises more complex issues. Ms Hayes' role as chair of the RCC did give her the right to select the candidate for Essex PFCC. The complaint at the failure to carry out appropriate consultation can be said to be closely connected with the discharge of that office. However, the Panel's criticism was of the manner in which Ms Hayes had set about the issue of Mr Hunter's nomination, not her right to do so or the merits of the decision itself. She stated that the Panel had concluded that Ms Hayes had "rid[den] roughshod over the rest of the committee". That conclusion was reasonably open to the Panel.

vii) The complaint about the alleged leaking of the Nethsingha Email to Mr Hunter cannot realistically be said to fall outside the scope of the Complaints Process on this ground, and the contrary is not seriously arguable. The separate issue of whether this issue was properly before the Panel is considered at C20 below.

135. Finally, Ms Hayes suggested that a previous Lead Adjudicator (Mr Mackintosh KC) in a decision of 18 May 2020 but wrongly dated 4 October 2019 had applied Note 1 and paragraph 1.2 to dismiss a complaint of hers which was similar to Dr Pack's Complaint. She argues that the Party cannot argue for a conflicting approach in this case, relying on the principle that a party cannot blow "hot and cold" in *Express Newspapers Plc v News (UK) Ltd* [1990] 1 WLR 1320. That is a decision more often cited than applied, and I am not persuaded it has any application here:

i) The (limited) material before me does not suggest that the complaint considered by Mr Mackintosh KC was, materially, "on all fours" with Dr Pack's complaint.

ii) In any event, I cannot see how the principle that a party cannot "approbate and reprobate" is applicable to the decisions of two different Lead Adjudicators in two different complaints (and which did not involve identity of parties). Mr Christian was obliged to reach his own view on the issue before him, and that view is final as a matter of contract. That decision was final as much for Dr Pack as for Ms Hayes.

C9 The Panel did not call any witnesses or put questions to them

136. Ms Hayes' first argument was that the Complaints Process gave her a contractual right that witnesses would be present and questioned at the hearing, with the Panel only have the power to dismiss complaints on the basis of written evidence, not to uphold them. That argument relied on the fact that:

i) Paragraph 6.5 which provides that the Panel had the power ("may") to order an investigator to interview witnesses and produce a report. As paragraph 3 of Part 3 of the Complaints Process records, this is a matter for the panel's choice, and is likely to be rare.

ii) Paragraph 6.8 provides for the parties to notify the Panel if they wanted the Panel to ask questions of other parties or witnesses.

iii) Paragraph 6.10 provides that "at the Panel hearing, the Panel members will ask questions of both parties and any witnesses, and allow the Complainant to explain their position, set out their evidence and respond to each other's statements".

137. It is clear from paragraph 6.10 that neither party (the complainant and the respondent) has the right to ask questions, that being a matter for the panel. Nor can I accept that the effect of paragraph 6.8 is that the panel is required to ask witnesses every question a party to the complaint wishes them to ask (and Ms Hayes accepted this in her written submissions filed on 13 February 2025). Rather, unsurprisingly for a relatively informal private complaints procedure operated by volunteers in their free-time, it is for the panel to decide which questions are asked (which must, necessarily, also leave it open to the panel to decide that in a particular case, no witnesses other than the parties to the complaint need attend the hearing as well as deciding what questions – if any – should be asked of those present).

138. The Complaints Process did allow for the questioning of witnesses by the panel where the panel concluded that this was necessary. That complies with the requirements of natural justice. As it was put in *General Medical Council v Spackman* [1943] AC 627, 635-6:

> "The duty of considering the defence of a party accused, before pronouncing the accused to be rightly adjudged guilty, rests on any tribunal, whether strictly judicial or not, which is given the duty of investigating his behaviour and taking disciplinary action against him. The form in which this duty is discharged – e.g. whether by hearing evidence viva voce or otherwise – is for the tribunal to decide."

139. In these circumstances, the relevant issue is whether the exercise of that discretion in such a way as to question of Dr Pack and Ms Hayes, but not other witnesses, itself breached the rules of natural justice. I am satisfied it did not. This was a complaints procedure run by a private organisation with volunteer adjudicators, and it was not required to operate the same procedure for fact-finding as a court. The Panel had a significant quantity of contemporary documents, in addition to "live" evidence from two of the principal protagonists. The issues were principally concerned with the characterisation of and inferences to be drawn from the various communications. I accept Ms Simpson's evidence that the Panel considered the statements of the various witnesses and decided it was not necessary to hear from anyone other than Dr Pack and Ms Hayes.

140. In these circumstances, I do not think it can be said that the decision to proceed without live evidence from non-party witnesses when addressing these three issues amounted to a breach of the rules of natural justice.

C10 The Panel leaked the Decision Notice to some of the Party's MPs before Ms Hayes was notified of it

141. Even if established, this allegation would not appear to have involved a breach of the obligation to conduct a determination in accordance with the rules of natural justice, although it might have lent colour to an allegation of bias. However, no evidence was adduced to support the contention that the Panel leaked the determination (Ms Hayes simply asserted it without identifying the source or basis of the assertion), nor was such a suggestion put to Ms Simpson in cross-examination.

C11 The Panel was biased and had predetermined their decision

142. In the course of the hearing, Ms Hayes confirmed that the only allegation of bias maintained was one of apparent bias against Ms Tierney. As is well-known, apparent bias involves asking "whether a fair-minded and informed observer would conclude that there was a real possibility of bias" (*Halliburton Co v Chubb Bermuda Insurance Ltd* [2020] UKSC 1083). "Bias" means a predisposition or prejudice against one party's case or evidence on an issue for reasons unconnected with the merits of the issue (*R v Inner West London Coroner ex parte Dallaglio* [1994] 4 All ER 139, 151).

143. The basis of the allegation is the manner and nature of the questioning of Ms Hayes by Ms Tierney in the hearing. However, the Panel was conducting an essentially inquisitorial rather than adversarial proceeding, and one in which a large volume of written material had been filed and read in advance, with the oral hearing of a limited duration in which it was necessary to approach the issues directly. It is not, therefore, particularly surprising that the questioning on some issues by the Panel was more direct and muscular than might be seen in court proceedings.

144. In closing, Ms Hayes expanded on that complaint by submitting that the members of the Panel had predetermined their decision. She relied in this regard on the fact that notes taken by Ms Simpson prior to the hearing referred, among other things, to what sanctions might be appropriate if the complaints were made out.

145. Once again, given the nature of the Complaints Process – extensive pre-hearing filings which must be read and absorbed in advance of a very short oral hearing – I do not find

it surprising or concerning if Panel members came in seeking to test provisional views or points of concern with one party's case, nor that, in reading in, they had considered what possible outcomes there might be. As Leggatt LJ noted in *Bubbles & Wine Ltd v Lusha* [2018] EWCA Civ 468, [34]:

> "There is nothing wrong with a judge indicating provisional views, and advocates are generally grateful for such indications as it gives them an opportunity to correct any misconception which the judge may have and to concentrate in their submissions on those points which appear to be influencing the judge's thinking. The expression of such views could only be thought to indicate bias if they are stated in terms which suggest that the judge has already reached a final decision before hearing all the evidence and argument".

146. Provided the Panel had an open-mind, and a readiness to consider and accept the responses given and re-visit any provisional views accordingly, there can be no complaint. This Panel comprised a highly experienced former judge and two practising lawyers, all giving up their time as volunteers and none of them having any personal interest in the outcome. There is no basis for any suggestion that they entered the hearing with a closed mind as to its outcome. Indeed a transcript taken at the end of the hearing of part of their internal deliberations makes it clear that they did have an open mind, and had changed their position on certain matters as a result of the hearing. The wholly unrealistic basis of the bias challenge in this case was reflected in the failure properly to confront Ms Simpson on this issue in cross-examination.

Complaints relating to findings of fact

147. The court has no general jurisdiction to hear challenges to the fact findings of contractual tribunals. Provided the decision-making process is fair, and the decision meets the requirements of rationality, the court cannot and will not interfere. For that reason, I can deal with most of these challenges relatively briefly.

C12 The Panel wrongly found that Ms Hayes had a conflict of interest in relation to the Federal Board and Mr Hunter

148. This refers to the Panel's finding that "there is a clear conflict of interest between supporting someone who is actively engaged in pursuing both a complaint to the ICO and a court claim against the Party, and being part of the Party's discussions about to handle those claims, thus obtaining information useful to the competitor". This finding did not form the basis of the Panel's conclusion on Issue 1, which was concerned with the alleged treatment of Ms Buist, with the result that a challenge to the finding would not affect the Panel's decision.

149. It was open to the Panel to find, on the evidence before them, that Ms Hayes was a close ally and supporter of Mr Hunter (indeed she described him in her evidence to the Panel as a friend), who had discussed Mr Hunter's complaints and claims against the Party with him, and who was sympathetic to those claims and, essentially, "in his camp". It was also open to the Panel to conclude that these circumstances involved a potential conflict of interest between that affiliation with Mr Hunter and Ms Hayes' duties as a member of the Federal Board, which made it in appropriate for Ms Hayes to see the Party's communications with its legal advisers in relation to Mr Hunter's claims, or participate in the discussion about them. I should make it clear that I am not making any

finding that Ms Hayes would not have respected the confidentiality of the Federal Board discussions. This issue does not arise before me, nor was that an issue which arose before the Panel.

C13 The Panel wrongly erred in its factual findings to the addressees and purpose of the Nethsingha Email

150. Ms Hayes criticises the Panel's statement that Ms Nethsingha sent her email "in order to check that they were aware of" Ms Hayes' intention to appoint Mr Hunter as Essex PFCC. That conclusion was clearly open to the Panel, because the Nethsingha Email stated that Ms Nethsingha had been asked by Dr Joachim to "find out how much consultation had happened" and that she was "writing to ask whether you have all been consulted on the idea of appointing Jason Hunter".

C14 The Panel erred in its construction of Ms Hayes' email exchange with Dr Pack concerning Complaint 552

151. This involves a challenge to the Panel's conclusion on Issue 3 that Ms Hayes' email to Pack was intended to "frustrate the complaints procedure" and involved threatening and inappropriate language.

152. I accept that this is certainly not the only characterisation which might be applied to Ms Hayes' exchanges with Dr Pack, and that other, more benign, characterisations are possible. However, the only issue for the court is whether it is an available construction. I have concluded that this was a conclusion open to the Panel, for which it gave reasons which are logically capable of supporting its conclusion. In particular, the Panel pointed to (a) Ms Hayes writing to Dr Pack when he was entitled to confidentiality in relation to his complaint under the Complaints Process; (b) the fact that the emails to Dr Pack followed unsuccessful correspondence by Ms Hayes with the Lead Adjudicator asking him to withdraw or suspend the complaint; (c) the copying in of another senior Party figure, which was relied upon in support of the suggestion that Ms Hayes was attempting to influence the process; (d) what was said by the Panel to be Ms Hayes' inability to explain her reasons for arguing that the complaint against Mr Sheller should be dropped or suspended; and (e) what the Panel found to be the unreasonable and unjustified assertion that continuing with the complaint might involve some form of criminal offence.

153. The fine line between a "threat" and a "warning" (which was Ms Hayes' characterisation of her emails) is well-known. Where any particular communication lies on that spectrum, and when it reaches the point that one interpretation is more appropriate than another, is a highly evaluative and context specific question. The Panel's conclusion on that issue fell within the generous evaluative and fact-finding ambit contractually open to it.

C15 The Panel erred in finding that Dr Joachim was entitled to be informed of open complaints against Mr Hunter and communicate them to relevant Party officers

154. This complaint refers to an entry in a chronological list of fact findings in relation to Issue 2 at paragraph 43 of the Decision Notice, where the Panel state "Dr Joachim, as Chair of the English Candidates Committee was entitled to be informed of any open complaints under the Complaints Procedure registered against approved candidates or

against candidates for approved status and was obliged to communicate such information to those involved in a candidate approval or selection process". The thrust of this paragraph is that the chair of the ECC was entitled to be informed of open complaints against someone seeking and who was in the running for selection as a candidate, as were those involved in the selection process.

155. This issue concerns the operation of a political party on a matter close to its core political aim of electoral success, namely the selection of candidates and the political risks posed by any particular candidates. It is an issue of a kind which a court is particularly ill-equipped to judge, and where the political party's own internal complaints procedure involving supporters of that party is far more competent to reach a view. The Panel had evidence from Dr Joachim as to the functions of the ECC. Once again, this is not one of those rare cases in which the court can revisit the factual findings of the contractual decision maker.

C16 The Panel erred in finding that Ms Hayes was Ms Buist's employer

156. This criticism relates to one of the Panel's findings on Issue 1, the relative positions of Ms Hayes and Ms Buist. I accept that is relevant context for the issue of whether Ms Hayes' conduct towards Ms Buist at the Federal Board meeting of 4 September 2021 amounted to bullying.

157. There is no dispute that Ms Buist is a paid employee of the Party. The Panel found that Ms Hayes was a "very senior member of the Party". I did not understand that finding to be in dispute, and it was certainly open to the Panel given the senior offices and positions to which Ms Hayes had been elected. The Panel found that:

    i) The Federal Board, of which Ms Hayes was a member, was "responsible for oversight of operations, including employment of staff". On the evidence before me, that was an accurate shorthand summary of a complex position, in which there were various lines of management which ultimately led to the Federal Board.

    ii) The Panel stated that Ms Hayes had accepted that Ms Buist was effectively employed by the Federal Board. Ms Tierney put a question to Ms Hayes stating "the Federal Board is ultimately the employer of the party's staff and I think you, Jo, would accept that that's case or by all means correct me if you think I've misunderstood it and also that as an employer there is a duty to employees … to make sure that their workplace is one in which they are treated with dignity and respect. Would you accept that?" Ms Hayes replied "yes", and did not express disagreement with Ms Tierney's statement that she would accept her description. On the basis of this exchange, this finding was clearly open to the Panel.

    iii) Ms Buist was in a position of significantly less power than Ms Hayes, and not entitled to speak as of right, unlike Ms Hayes. The hearing before the Panel proceeded, without challenge, on the basis that Ms Buist was not entitled to speak as of right, at a Federal Board meeting when this suggestion was put to her. The conclusion that there was a power imbalance between a member of staff and a very senior member of the Party and member of the Federal Board was clearly open to the Panel, and is in many respects obvious. Ms Hayes on a number of

occasions drew an analogy between her position on the Federal Board and a non-executive director of a board of company directors.

158. In short, the Panel's findings on this issue are not capable of being challenged in these proceedings.

C17 The Panel made findings fact on issues that were not before it

159. This allegation is not particularised in the Particulars of Claim, but in her closing submissions, Ms Hayes referred to the following:

    i) Whether Ms Hayes leaked the Nethsingha Email to Mr Hunter. This is dealt with at C20 below.

    ii) Whether Mr Sheller was helping a police investigation.

    iii) Whether Ms Hayes was supporting Mr Hunter. This is dealt with at C19 below.

160. So far as the issue of whether Mr Sheller was helping a police investigation is concerned, this was an issue specifically raised by Ms Hayes in her answer to Issue 3. Ms Hayes adduced a statement from Mr Sheller dealing with his alleged involvement with the police, and Ms Hayes' own statement dealing with Issue 3 contained numerous references to Mr Sheller's alleged assistance to the police (paragraphs 30-33, 36, 103-104 and 106). Dr Pack's complaint was that Ms Hayes' statement that his complaint "could be viewed as improper pressure on Jon Sheller 'to the possible prejudice of police investigations'" was false and "an invention" and that there was "no credible evidence" that Mr Sheller "has become a police expert witness". At the hearing, Dr Pack stated that Mr Sheller's claims that he was helping the police "shouldn't be taken at face value" and criticised Mr Sheller's credibility. Ms Hayes responded by asserting Mr Sheller was assisting a police investigation, and justifying her emails to Dr Pack on the basis that "there are a number of legal principles that … pressure on a person who is assisting the police in their investigations can be construed as an attempt to pervert the course of justice."

161. Against that background, it was entirely foreseeable, and indeed virtually inevitable, that the Panel would reach conclusions on how reasonable Ms Hayes' assertions of a risk of interference with the course of justice were, including Dr Pack's assertion that there was no credible evidence of Mr Sheller being a police witness or expert.

C18 The Panel wrongly made findings of fact in relation to the powers of the Information Commissioner's Office which were not an issue at the hearing

162. The only discussion of the ICO is in that part of the Decision Notice dealing with Issue 1, the alleged bullying of Ms Buist at the 4 September 2021 Federal Board meeting. The powers of the ICO are, at best, matters of peripheral background fact to that question. The particular comments made by the Panel are whether the ICO had power to order data controllers to apologise or to resolve complaints to the satisfaction of a data subject. This was a very short summary of a complex subject, but I am not persuaded that, viewed in those terms, it was inaccurate. The ICO will ask data controllers to do more work to help resolve a complaint or explain their position, and make recommendations to data controllers to improve their practices, and it can also take

regulatory action, but it cannot make an organisation apologise if things have gone wrong. Nor can it make the complainant final arbiter of whether the complaint has been satisfactorily resolved (as Ms Hayes effectively had to accept in closing). Further, only the court, and not the ICO, can award compensation.

163. This complaint does not assist Ms Hayes, therefore, both because the challenge relates to a peripheral matter, and not a finding essential to the Panel's conclusion on Issue 1, and because the Panel's conclusion was not obviously wrong in any event.

C19 The Panel wrongly found that Ms Hayes had a "role in supporting" Mr Hunter which was not an issue before the Panel and was not correct

164. I have essentially dealt with this issue in the context of the conflict of interest issue at C12 above. It was open to the Panel to conclude that the reason why Ms Buist had been advised not show documents relating to Mr Hunter's complaint to the ICO was relevant to the issue of whether Ms Hayes' treatment of Ms Buist was appropriate (not least because Ms Hayes justified and explained her approach to this issue by reference to what she regarded as a wholly unreasonable refusal to allow her access to that documents). This was, therefore, a matter on which the Panel was entitled to reach a finding, and which Ms Hayes had and took an opportunity to address.

165. The issue for the court is not whether the court concludes that this finding was correct, but whether it was a conclusion reasonably open to the Panel on the evidence before it. The Panel did not find that Ms Hayes was advising or representing Mr Hunter, but "supporting" him. For the reasons I have set out at C12 above, I have concluded that it was open to the Panel on the evidence before it to conclude that this was an appropriate characterisation of Ms Hayes' interactions with Mr Hunter.

C20 The Panel wrongly found that it was Ms Hayes who provided the Nethsingha Email to Mr Hunter

166. The Panel made this finding as part of Issue 2 at paragraphs 51 and 52, which the Panel described as "serious misconduct by the Respondent that was clearly not in the best interests of the Party as she well knew" and which "risks bringing the Party into disrepute". They made a separate finding that Ms Hayes' failure adequately to consult failed to consider the Party's best interests and reputation (paragraph 58). There is then a compendious finding on Issue 2 which appears to embrace both issues. A single sanction (prohibiting Ms Hayes from standing for or holding office in any capacity within the Party) was imposed.

167. Dr Pack's Complaint filed on 3 February 2022 enclosed a 9 page document which included a section introduced by the words "This complaint focuses on issues that have directly involved me, but there have also been widespread concerns raised by others in the party of similar inappropriate behaviour on other occasions too", language which might be thought to suggest that what followed was not at the heart of the complaint. This section included the following:

> "W9, from Regional Party Chair, council leader and former MEP, Lucy Nethsingha, provides additional evidence of inappropriate behaviour by Jo Hayes, including both directly towards Lucy Nethsingha and in exposing her to bullying behaviour from another party member."

168. W9 was an email from Ms Nethsingha of 7 December 2021 which made a number of complaints about Ms Hayes including in relation to the selection of the Essex PFCC and stating:

> "The day after I sent this email to a very small circulation (7 people) I was contacted by Mr Hunter, who had been shown a copy of the email. He then threatened me with legal action the following day, and wrote a series of extremely aggressive and threatening emails. The legal threats and approach to a local journalist in the run up to my own election as Leader of Cambridgeshire County council were incredibly stressful. While this all occurred with the name of Mr Hunter, I fully believe that he was given information by Jo, as I do not believe that anyone else to whom I sent the original email was in contact with Mr Hunter at that time, or would have passed on my email. Her action in passing on my private email led to very serious harassment by someone who had been suspended from the party."

169. I should note in passing that I do not accept Ms Hayes' suggestion that this was a complaint relating to "breach of the data protection rules": the complaint was about the distribution of a private email to a third party who had then brought proceedings by reference to it.

170. Ms Hayes' initial response, prepared under considerable pressure of time, did not directly address the leak allegation but did engage with Ms Nethsingha's email. She referred to Mr Hunter bringing a County Court claim "against the party and Lucy Nethsingha, who shared his personal data and confidential information with, among others, the regional candidates committee", and to Ms Nethsingha landing herself with that claim by meddling.

171. The Panel then ordered the three issues to be determined first. I accept that the Nethsingha Email is capable of falling within the scope of Issue 2, where the Panel dealt with it ("the Respondent's actions and behaviour relating to the selection process for a Lib Dem candidate for Essex Police, Fire and Crime Commissioner"), given the width of the term "behaviour".

172. Following that direction:

    i) On 4 July 2022, Ms Hayes served four witness statements, including one from her addressing the Essex PFCC issue. She did refer when dealing with Issue 1 to the alleged unlawful use by Ms Nethsingha of Mr Hunter's personal data in the Nethsingha Email and the claims Mr Hunter had brought, by way of background to the discussion at the Party Federal Board meeting of ICO handling of Mr Hunter's complaint (i.e. Issue 1). In her statement addressing Issue 2, she referred to the Nethsingha Email but not to Ms Nethsingha's expressed belief that Ms Hayes had leaked it to Mr Hunter.

    ii) On 8 July 2022, Dr Pack served his three witness statements, including a statement from Ms Nethsingha addressing the Nethsingha Email, and stating her belief that Ms Hayes had leaked the Nethsingha Email to Mr Hunter These were provided to Ms Hayes on 12 July 2022.

iii) On 19 July 2022, Ms Hayes served one further witness statement addressing Issue 3 (but not Issue 2).

173. Both Dr Pack and Ms Hayes sent questions to the Panel which they wished them to ask. None of Dr Pack's suggested questions for Ms Hayes addressed this issue. Ms Hayes' suggested question for Ms Nethsingha made it clear that Ms Hayes was challenging both the truth of Ms Nethsingha's allegation and her basis for asserting it, and that she wanted questions asked about this. In the event, no questions were asked about this issue at the hearing.

174. I have given careful consideration to the issue of whether the treatment of this issue complied with the contractual obligation to deal with the Complaint in accordance with the rules of natural justice. The allegation had featured initially in an email which formed part of a large quantity of material filed by Dr Pack. I do not feel able to draw the inference that Ms Hayes deliberately chose not to respond to this allegation in her first filing because it was true: this suggestion was not put to Ms Hayes in cross-examination in this trial; the response was filed to a substantial document under pressure of time; and Ms Hayes' statement dealing with Issue 2 was served before Ms Hayes saw Ms Nethsingha's statement, although she had seen her December 2021 email; and Ms Hayes' suggested questions for Ms Nethsingha expressly raised this issue which is a rather strange thing to do if Ms Hayes was "lying low".

175. In the course of this hearing, Mr Mott very properly accepted that if the court was to be asked to make a finding that Ms Hayes had leaked the Nethsingha Email to Mr Hunter, Ms Hayes had to have a chance to answer that complaint from the witness box. That submission is even more true of the hearing before the Panel, give the rather oblique way in which this allegation had come to feature in the complaint process against Ms Hayes. Ms Nethsingha herself had no knowledge of whether her email had been leaked by Ms Hayes or not, merely a surmise. While I accept that the Panel had a wide discretion as to how to conduct the hearing, and was not obliged to call witnesses for cross-examination or ask particular questions save where the contractual obligation of natural justice required this, the allegation of deliberate misconduct by Ms Hayes in leaking the email was a stark and serious one, which Ms Nethsingha was unable to give first hand-knowledge of, which Ms Hayes clearly did not accept, and yet which was not even mentioned at the hearing.

176. I am satisfied that in these circumstances, the making of a finding on this issue involved a breach of natural justice on the Panel's part. The issue of what the consequences of such a finding would be were not debated at the hearing but in written submissions afterwards. The arguments potentially raised the issues of:

i) whether this breach vitiated the decision and sanction on Issue 2, or whether Ms Hayes has a claim for damages;

ii) if the latter, whether the correct counterfactual is that the allegation had never been the subject of a finding, or what the finding would have been had Ms Hayes had a fair opportunity to respond to it at the hearing; and

iii) what the effect would be of the court proceedings, and whether the court should reach its own view following a hearing at which the allegation had been fairly put

and explored, and, if so, whether that would somehow "cure" the earlier contractual breach.

177. Mr Mott argued that this was, in effect, a case in which the Panel had adopted two independent and sufficient reasons for its conclusion, one of which was not vitiated by any natural justice failing in relation to the other. I accept that the Panel found that Ms Hayes' (other) conduct in relation to the selection of the EPFCC candidate risked bringing the Party into disrepute, and that this finding was not vitiated by the finding of the leak of the Nethsingha Email. However, the Panel imposed a single sanction on Issue 2. I do not feel able to conclude with sufficient confidence that the two separate Issue 2 breaches were independent but sufficient bases for that sanction. Generally, when sanctions are imposed, regard is had to the totality of the impugned conduct, with additional findings of sanctioned behaviour aggravating the overall position. The "two independent sufficient reasons" argument apart, Mr Mott did not seek to argue that the breach was of a kind which sounded in damages rather than invalidated the decision. Those arguments would have raised a number of difficult issues, which I would not have been willing to resolve in post-hearing submissions.

178. In these circumstances, I propose to uphold Ms Hayes' contention that making this finding involved a breach of natural justice. Given the impossibility, on the face of the Decision Notice, of distinguishing the effect of this finding and the other Issue 2 findings on the Panel's sanction on Issue 2, I am satisfied that the breach of natural justice in relation to the Nethsingha Email also "infects" or undermines the Panel's decision on the Issue 2 sanction, which I hold to be of no effect as a matter of contract for that reason.

C21 The Panel wrongly criticised Ms Hayes for asking to see the email from the ICO at the Federal Board Meeting

179. I have addressed this issue when dealing with the conflict of interest issue at C12. It was open to the Panel to conclude that Ms Hayes' friendship with Mr Hunter, and the fact that she had clearly discussed his ICO complaint with him and appeared supportive of that complaint, made it inappropriate for Ms Hayes to see the legal advice the Party had received relating to Mr Hunter's complaint. Ms Hayes did not accept that view, or the correctness of the legal advice to that effect which the Party's lawyers had provided. But it was open to the Panel to conclude that it was unreasonable for Ms Hayes to maintain her demand to see the documents, even though she had been told that the Party's legal advisors had said that this should not happen.

C22 The Panel wrongly failed to criticise Dr Joachim for her view that Mr Hunter was ineligible due to the One Year Rule

180. As Dr Joachim was not the subject of the Complaint, the Panel was not required to express any views on whether Dr Joachim behaved reasonably or unreasonably in relying on the One Year Rule against the background of the 2019 amendment to the Federal Constitution (see [54] and [66] above). For what it is worth, there was clearly scope for argument as to whether the amendment to the Federal Constitution would apply to individuals who had previously been members of the Party, resigned and rejoined, as well as individuals joining the Party for the first time. The Federal Appeals Panel concluded that question in favour of the view held and propounded by Ms Hayes,

but did so by different routes, and it cannot be said that the contrary view was so obviously untenable that Dr Joachim could not reasonably have held it.

Conclusion

181. For these reasons:

    i) Ms Hayes' many challenges to the Panel's determination in relation to Issues 1 and 3 fail. The circumstances in which decisions of a private contractual tribunal can be challenged before a court are narrow, and when the decisions concern an association of members for reasons of political affiliation and the decision in question is one reached by three lawyers, more challenging still. I realise this will come as a bitter blow to Ms Hayes as a founder member of the Party, and someone who has devoted a great part of her life to the Party's success.

    ii) Ms Hayes' challenge to the Panel's determination on Issue 2 succeeds on the basis set out at C20 above, but not on the other basis advanced. Having regard to the manner in which this question was treated at the hearing, I am satisfied that Ms Hayes' success should be reflected in a finding that the Panel's conclusion that she leaked the Nethsingha Email was reached in breach of the contractual obligation to comply with the rules of natural justice, and that the sanction imposed in respect of Issue 2 is not contractually valid. Given the failure of Ms Hayes' challenge to the sanction imposed in respect of Issues 1 and 3, that may be a pyrrhic victory.

182. Finally, I should record that in the course of this case, the court has been taken extensively through the inner workings of a private political association, and the often painstakingly detailed work done by its members and officers. The individuals involved are almost all volunteers, giving up considerable amounts of time and attention as participants in the national democratic process. That is as true of Ms Hayes as it is of Dr Pack and Ms Simpson, and the other Party members who were participants in the various events which were considered by the Panel and placed in evidence before the court. It is, to say the least, unfortunate that disputes between individuals who apparently share a common set of political ideals should generated such friction and ill-feeling, and that they have proved incapable of consensual resolution.