Neutral Citation Number: [2020] EWHC 1538 (QB)

Case No: QB-2019-000937

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/06/2020

Before :

MR JUSTICE SOOLE

- -

Between :

CHRISTOPHER DAVID BARNETT	**Claimant**
- and -	
ADAM WALKER (1) **CLIVE JEFFERSON (2)** **THE BRITISH NATIONAL PARTY (3)** **VICKI McKENZIE (4)** **VALERIE DONOHUE (5)**	**Defendants**

Mr James Tumbridge (instructed by **Tilbrook's**) for the Claimant
Mr Adam Wagner (instructed by **Mitchells Solicitors**) for the Defendants

Hearing dates: 9 and 10 June 2020

- -

JUDGMENT

Mr Justice Soole:

1. This action concerns an internal dispute within the British National Party, a political party which is an unincorporated association and registered with the Electoral Commission. The Claimant is a former member of its National Executive Committee (NEC). He claims (and the Defendants dispute) that he continues to be a member of the Party. The First Defendant is the Chairman of the Party, also referred to as its Leader. The Second Defendant is the Deputy Chairman and National Treasurer of the Party. The Third Defendant is named as the British National Party. The Fourth Defendant[1] is Head of Membership and a member of the NEC. The Fifth Defendant was at the commencement of the proceedings a co-signatory to two Building Society accounts belonging to the Party. The action was discontinued against her after she ceased to be a co-signatory.

2. The Claimant does not sue in a representative capacity; nor is the claim made against any of the Defendants in a representative capacity.

3. There are before me 4 applications. In order of time they are (i) the Claimant's application dated 5 July 2019 (issued 14 August 2019) for judgment in default of defence (ii) the Defendants' application dated 12 December 2019 (issued 3 January 2020) to strike out and/or dismiss the claim; and/or for relief from sanction in respect of late filing of its Defence (iii) the Claimant's application dated 15 January 2020 to join an undisputed member of the Party, Mr Paul Sturdy, as Second Claimant (iv) the Claimant's application dated 19 May 2020 to strike out the Defence.

4. Although there is dispute as to the date when the Defendants filed their Defence, it is now accepted that it has been filed. In consequence, and in the light of the amendment to CPR Rule 12.3(1) introduced with effect from 6 April 2020, the Claimant accepts that the application for judgment in default of defence must be dismissed.

5. The Claimant also now accepts that the Third Defendant, as an unincorporated Association, is not a legal entity. Accordingly, in the absence of any statutory provision to the contrary, it cannot sue or be sued in that name.

6. The Claim Form issued 18 March 2019 identifies the brief details of claim as *'The proper interpretation and implementation of an unincorporated Association's constitution'* and attaches the Particulars of Claim.

7. In order to understand the issues which arise it is necessary to consider the Particulars in detail; and they must be read together with this judgement.

8. The Particulars begin with the averment that the Claimant is a member of the Party; and that his membership was 'current from 2009 – 2018, when via an email dated December 7th 2018, the First Defendant informed him that he was suspended from the Party. The validity of the suspension is not accepted' (para.1). The Particulars contain no further reference to the issue of suspension. The Defendants are then identified.

[1] The Fourth and Fifth Defendants as identified in the Claim Form are placed in reverse order in the Particulars of Claim. In this judgment I follow the order in the latter.

9. The next section (paras.7-13) is headed 'Matters complained of'. Paragraph 7 states that *'The Party is being mis-managed, both financially and procedurally'*.

10. Paragraph 8 refers to the Claimant's solicitors' letter before action and summarises its contents in paragraph 9.

11. Paragraph 9.1 states that the Constitution has not been published on the Party website 'and in the public domain' since December 2016; that this is contrary to clause 1.5 of the Constitution; and that it was removed without membership consent. I interpose that the Claimant's references to the Constitution are to version 14.2 dated 19 July 2014.

12. Paragraph 9.2 states that *'the Party Constitution has been amended without following the valid procedure for such changes'*.

13. Paragraph 9.3 states that there was no Party Conference in 2017, no General Members meetings in 2017 or 2018; and that in each of the years 2015-18 the National Executive Committee (also known as the Advisory Council) did not meet 'the required four times'.

14. Paragraph 9.4 states that *'Members of the NEC/Advisory Council were wrongly removed without due process'*.

15. Paragraph 9.5 states that the posts of Deputy Chairman and National Treasurer being held by the same person, i.e. the Second Defendant, *'creates a governance problem as it is creating conflicts of interest'*.

16. Paragraph 9.6 states that building society accounts have been opened and used for party funds without proper approval *'and therefore contrary to the Constitution'*; and that the National Treasurer is precluded by clause 8.16 of the Constitution from being a signatory on accounts holding Central Party funds.

17. Paragraph 9.7 states that *'The democratic structure has collapsed due to the lack of meetings, and removal or lack of officers of the NEC'*.

18. Paragraph 9.8 states *'Elections for Regional Officers are not possible due to the conditions in the Constitution that are not being respected. One of the conditions is for the purchase of a Party Magazine, that the Central Party produces and the regions distribute, the Chairman has failed to produce the Magazine and so the regions cannot meet their obligations to buy it.'* That completes reference to the letter before action.

19. Paragraph 10 then states that *'…the party has had its funds miss used by the First and Second Defendants for private purposes.'* No particulars are provided.

20. Paragraph 11 states that a new Constitution called 'Edition 14.4a' was amended on 27 November 2018. It *'is now on the Party website'*, but was *'not published as required within 21 days'*. It then states that Edition 14.4a *'was not properly approved by the party members as required by the Constitution'*.

21. Paragraph 12 makes the same assertion. Paragraph 13 states that the last properly approved version of the Constitution was version 14.2 dated 19 July 2014.

22. The next section (paragraphs 14-21) is headed 'Causes of action/complaints'. Paragraph 15 states that the Defendants *'have failed to manage and administer the Party in accordance with the requirements of the Party Constitution Edition 14.2'*.

23. Paragraph 16 states that the Defendants have *'allowed the use and opening of two accounts with the Cumberland Building Society for Party funds, and for the National Treasurer to be a signatory this is contrary to the Constitution'*.

24. Paragraph 17 states that the First and Second defendants have *'caused to be published a Constitution for the Party that is not valid'*. This is a further repeat of the point made in paragraphs 9.2, 11 and 12.

25. Paragraph 18 states that the First Defendant has failed to ensure that there are annual meetings of the Party, known as General Member Meetings.

26. Paragraph 19 states that the First Defendant is required to set agendas for the National Executive, in accordance with paragraph 8.10 of the Constitution; that the National Executive is required to meet at least four times a year; and that *'the required number of meetings has not taken place and agendas have not been set'*.

27. Paragraph 20 states that the First Defendant has *'failed to ensure the publication of the Identity Magazine, and this precludes the regions from meeting their obligation to purchase it, and in turn this denies them rights under the Constitution'*.

28. Paragraph 21 states that the First Defendant has *'wrongly removed'* four identified people (including Mr Sturdy) from the NEC; and that *'these people were all elected to the NEC by Regional Councils and those roles are not within the list of appointments under the control of the Chairman, and so they cannot be removed by the Chairman'*.

29. The next section (paragraphs 22-25) is "Remedies/orders sought".

30. By paragraph 22, the Claimant seeks a declaration that the Constitution of the Party is contained in version numbered 14.2 dated 19 July 2014.

31. Paragraph 24 then sets out a list of 10 mandatory injunctions which are sought. These include proposed orders for the NEC to call a General Members Meeting for the purpose of forming an interim National Executive pending election of a new Chairman and subsequent General Members Meeting; for an election for a new Chairman to be conducted by the Electoral Reform Society (now Civica); for a subsequent General Members Meeting to follow that election; for the finances of the Party to be independently audited and the accounts to be fully disclosed to all members; and for the Claimant and one of two others to be appointed signatories to the Party's accounts at the Building Society and bank.

32. I start with the Defendants' application to strike out and/or dismiss the claim. The application is made pursuant to CPR 3.4(2)(a) and/or (b) on the basis that the Particulars of Claim disclose no reasonable grounds for bringing the claim and/or are an abuse of the court's process; and/or CPR 24.2 on the basis that the Claimant has no real prospect of succeeding on the claim.

33. The application is supported by the witness statement of the First Defendant dated 5 December 2019, the Second Defendant dated 12 December 2019 and the Defendants' solicitor Mr Philip Chapman dated 2 December 2019. In response to this application the Claimant has served his fifth witness statement of 20 May 2020 which in turn relies on his previous witness statements. These in particular include his lengthy first statement dated 17 October 2019 served in support of the application for default judgement. There are also a total of 8 witness statements from undisputed members of the Party to the effect that they support the claim.

34. Insofar as the Defendants' application is under CPR 24.2, Practice Direction 24 at paragraph 2(3)(b) requires that the application notice or the evidence contained or referred to in it or served with it must *'...state that it is made because the applicant believes that on the evidence the respondent has no real prospect of succeeding on the claim… to which the application relates'*. The application notice and supporting witness statements contain no such statement. However Mr Wagner submits that, for the same reasons which support the application under CPR 3.4(2)(a), the claim has no real prospect of success.

35. Mr Wagner starts with the summary of the law, as it relates to political parties which are unincorporated associations, contained in Evangelou & ors v. McNicol [2016] EWCA Civ 817. This reaffirmed that the relationship between an unincorporated association and its individual members is governed by the law of contract and that :

'(a) The contract is found in the rules to which each member adheres when he or she joins the association…

(b) 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…

(c) The constitution and rules of an unincorporated association can only be altered in accordance with the constitution and rules themselves…' [19].

36. Accordingly, the interpretation of the constitution and rules is governed by the legal principles as to the interpretation of contracts, and is a matter of law for the court : [20].

37. Furthermore the authorities demonstrate what Mr Wagner called a "wariness" about intervention in the internal affairs of a political party; in particular as they relate to the selection process of candidates for public office. This reflected constitutional propriety, which included the provisions of Article 11 of the European Convention of Human rights, i.e. freedom of association. He cited in support the decisions in Lewis v Heffer [1978] 1 W.L.R. 1061; Nattrass v UK Independence Party [2013] EWHC 3017 (Ch); Choudhry v Triesman [2003] EWHC 1203; and Asim Khan v Scottish Executive Committee of the Scottish Labour Party [2018] CSOH 68.

38. It would be constitutionally inappropriate for the Court to intervene in the internal affairs of a political party in the manner contended for by the Claimant. The Courts have repeatedly stated that it would be inappropriate to intervene in the selection processes of political parties save in exceptional circumstances. With the exception of Evangelou, the focus of all the cited decisions was on the vindication of the individual

rights of the Claimant member under the Party constitution. As to Article 11, he cites the CJEU decision in United Macedonian Organisation Ilinden-Pirin v Bulgaria (2006) 43 E.H.R.R. 52

39. Mr Wagner submits, first, that the present claim is an abuse of process, in that it seeks to use the Court process as a means of resolving a hard-fought internal dispute by faction within a political party. None of the claims relate directly to the Claimant himself. The action is in essence an attempt at a hostile takeover of the Party by a faction which has recently been unsuccessful in a Party leadership election. At the last internal election in July 2019, the First Defendant was re-elected as chairman with a 66% majority, defeating Mr David Furness. Seven of the eight Party members who had made witness statements in support of the claim had appeared in Mr Furness' election video. In that video, they comment on the same essential issues as are presented in the Particulars of Claim, e.g. the requirement of 4 NEC meetings each year. I add that this material is taken from Counsel's grounds of application exhibited to the First Defendant's witness statement.

40. The abusive nature of the proceedings is further demonstrated by the remedies which are sought, e.g. an order for an election for a new National Chairman and for the appointment of the Claimant and others to be signatories to the Party's building society and bank accounts. In the application for default judgement under CPR 12, the proposed Order goes even further, seeking orders that the First Defendant shall resign as Chairman and that the Second Defendant shall resign as Deputy Chairman and National Treasurer.

41. It is an abuse of process to use the court as a means of settling political rivalries. Thus Geoffrey Lane LJ in Lewis v Heffer : *"The courts exist (one hopes) as a last resort for the members of a party or organisation who feel that the only way they can assert their rights inter se is to ask the court to define what those rights are. They do not exist simply to give the kiss of life to some faction which is otherwise not viable."* Accordingly, the proposed relief goes well beyond anything which a Court has ever ordered in respect of a political party.

42. Secondly, the Claimant fell foul of the requirement of CPR 19.3(1) that *'Where a claimant claims a remedy to which some other person is entitled with him, all persons jointly entitled to the remedy must be parties unless the court orders otherwise'*. None of the remedies relate specifically to the Claimant, nor indeed Mr Sturdy, but are general remedies which relate to the members as a whole. Accordingly and in any event the action could not continue unless it did so as representative proceedings pursuant to CPR 19.6. Furthermore the claim against the Third Defendant, i.e. the Party which is not a legal entity, must be struck out.

43. Thirdly, the Claimant had no right to sue on the contract of membership, as he was no longer a member. In particular his witness statement dated 3 April 2020 acknowledged that he had resigned his membership by email on 13 December 2015 and that this had been accepted by the First Defendant by an email in reply the following day. It was acknowledged that a subsequent email dated 7 December 2018 from the First Defendant to the Claimant stated that his membership had been suspended, but that was a mistake. He had no membership to suspend.

44. The Constitution made clear, in either version, that the only 'permitted means' of being a member was by making an application in the specified written form: clauses 4.1.6 and 4.4. By clause 4.47 resignation had to be submitted in writing to the Chairman, and upon receipt took immediate effect. Contrary to the Claimant's evidence in his witness statement that the resignation had been 'reversed' in early 2016, there was no basis to do so under the Constitution; save by a successful application for membership made in the requisite form. There was no suggestion that this had occurred. Nor did the Constitution provide any relevant power of waiver in respect of compliance with these obligations.

45. Fourthly, the Claimant was in no better position even if his membership was in a state of suspension. As Megarry J observed in John v Rees [1970] 1 Ch 345 at 397D : *'...in essence, suspension is merely expulsion pro tanto. Each is penal, and each deprives the member concerned of his rights of membership or office.'* The Claimant had not exercised his domestic right of appeal against his suspension (clause 9.7.2 in each version); nor did he seek any relief in respect of his suspension in the present claim.

46. Fifthly, there was an appropriate alternative forum for the allegations in so far as they alleged financial mismanagement, namely the Electoral Commission. By Part III of the Political Parties, Elections and Referendums Act 2000 as amended (the 2000 Act), the statute imposed accounting requirements for registered parties. These included the duty to keep accounting records, to prepare an annual statement of accounts and for an annual audit by a qualified auditor where the party's gross income or total expenditure in any financial year exceeded £250,000 (ss.41-43). Section 145 enjoined the Commission to monitor and take all reasonable steps to ensure compliance with those requirements. In addition to the imposition of various criminal offences, the statute by s.147 and Schedule 19C empowered the Commission to impose civil sanctions, including the imposition of fixed monetary penalties, if satisfied beyond reasonable doubt of the contravention of restrictions or requirements imposed by the Act.

47. Sixthly, the Claimant is in any event prohibited from bringing the claim by reason of various provisions of the Constitution. Thus the claim was barred by clauses 5.11 and 5.12 which respectively provide : *'No right of action or claim shall lay or be laid against an Individual Member or any party to our Constitution in relation to or arising out of or in connection with our Constitution including without limitation any breach or non observance of the obligations upon that Individual Member or party to our Constitution under our Constitution or of any other of the terms or conditions of our Constitution by any other Individual Member or by any other party to our Constitution, in any capacity whatsoever, without the prior written consent of the Chairman.'*

and

'Without prejudice to Clause 5.11 no party to our Constitution, no Member of our Party, no Official of our Party (other than the Chairman) and no person acting as trustee under or pursuant to the terms of our Constitution shall be eligible or entitled to enforce the terms and conditions of our Constitution or bring a claim for breach of the terms and conditions of our Constitution whether in a representative capacity or not without the prior written consent of the Chairman.'

48. Furthermore the Claimant was in breach of the contractual duty of confidentiality (clause 11.40) in raising the matters outlined in the claim; and in breach of the duty of good faith (clause 5.2) and the duty to indemnify (clauses 5.9.3 and 5.9.4).

49. I will give my conclusions on these broadly jurisdictional arguments, before turning to Mr Wagner's distinct submissions on the contents of the Particulars of Claim.

50. As to representative proceedings, Mr Tumbridge in the course of his submissions accepted that this was necessary in the present case. This concession was plainly correct and inevitable.

51. I do not accept Mr Wagner's other jurisdictional arguments; and accordingly do not need to set out Mr Tumbridge's detailed response.

52. I am not persuaded that the claim falls to be struck out as an abuse of process. The Particulars of Claim provide a stimulus to such an argument through the mandatory orders which they seek; and which have no presently coherent link to the body of the claim. The terms of the draft order in the application for default judgement are even more striking. However the primary remedy which is sought, i.e. the declaration, reflects a claim in contract – inadequately pleaded as I shall find it to be – as to the validity of amendments to the Constitution.

53. The authorities makes clear that the power of the court to intervene is founded on its jurisdiction to protect rights of contract : see e.g. Lee v. The Showmen's Guild of Great Britain [1952] 2 QB 329 per Denning LJ at pp.341-342. If there is a properly maintainable claim in contract, I see it as no necessary objection that the Claimants and his supporters may be described as a "faction". Furthermore, where the issue concerns an amendment to the Constitution which requires more than majority support, it may be no answer that a claimant faction is (if so) in the minority.

54. I do not accept that the claim must fail on the bases that the Claimant is not a member of the Party, alternatively that his membership has been suspended.

55. First, the Defendants' evidence on the membership issue is limited to the references to the email exchanges of December 2015. Whilst that evidence is not in dispute, it is striking that the First Defendant's witness statement only deals with the issue by the indirect means of exhibiting Counsel's grounds of application which include reliance on the December 2015 exchange. Thus he does not deal with the Claimant's contention that his resignation was 'reversed'; nor with his own letter of 14 November 2018 which described the Claimant as a member; nor with his e-mail of 7 December 2018 which stated that the Claimant was suspended.

56. Secondly, the Claimant provides evidence which includes a photocopy of his membership card expiring April 2019 and of his membership dues paid monthly by direct debit until February 2020. Mr Tumbridge then points to clause 4.15 of the Constitution which provides that the allocation of a membership number shall be conclusive evidence of the individual's admission to membership of the Party. At this summary stage, I am not persuaded that this evidence and that clause are necessarily trumped by the clauses relied on by the Defendants; nor that there is no properly arguable case of waiver.

57. Thirdly, and in any event, in the absence of responsive evidence from the Defendants and/or of the statement of belief required by Practice Direction 24, the focus must be on the application under CPR 3.4(2)(a). Such an application has to proceed on the basis of an assumption that the pleaded facts are true. In paragraph 1 the Claimant avers that he is a member and that the suspension is invalid. That averment stands, no matter the absence of a consequential claim for a declaration to that effect.

58. Fourthly, and in any event, I am not persuaded that it is unarguable that a suspended member can bring proceedings on the contract of membership. In this respect I note that in his suspension e-mail of 7 December 2018 the First Defendant states that the Claimant must comply with the rules of the Party.

59. All in all, the factual and legal position is simply too complex and uncertain to determine on a summary basis that the Claimant has no capacity to sue on the contract of membership.

60. Mr Wagner realistically accepted that, subject of course to all his other arguments on the claim, there could be no objection to joinder of Mr Sturdy as an additional Claimant. However, that would not answer the problem that these do not presently constitute representative proceedings.

61. Next, I reject the Defendants' argument that any claim must fail because of the provisions of clauses 5.11 or 5.12 of either version of the Constitution. In my judgment it is reasonably arguable that, to the extent that those clauses seek to prevent a member or members of the Party from having recourse to the Court for the determination of questions of law relating to the contract between the members without the consent of the Chairman, they are contrary to public policy and void : see Lee per Denning LJ at p.342.

62. I also do not accept the argument that the Claimant is somehow disabled from bringing a claim in contract because (as alleged) he has acted in breach of the contractual provisions relating to confidentiality (11.40) or good faith (5.2). Even if that were so and the Claimant were in consequence liable in damages or pursuant to the contractual indemnity in that respect (5.9.3/5.9.4), that would in itself be no bar to the Claimant bringing his own claim for breach of contract. By contrast, it is not alleged that the Claimant has acted in repudiatory breach of contract which has been accepted so as to bring the contract to an end. In any event, that would be an issue for trial not summary disposal.

63. I further reject the argument that the existence of the Electoral Commission and in particular of its powers under Part III of the 2000 Act renders it an abuse of process for a member of a political party to bring Court proceedings relating to financial mismanagement of the Party. I do not accept that its provisions, and in particular those which provide for the Commission to impose civil sanctions if satisfied beyond reasonable doubt of breach of statutory obligations, have the effect of ousting the jurisdiction of the Court in a private law claim on the contract.

64. I add that on the wider constitutional canvas, the Commission's letter of 20 December 2019 to the Claimant's solicitors states that its regulatory functions are set out in the 2000 Act and continues : *'I confirm that it is not within our remit to adjudicate internal party constitutional disputes'.*

65. I return to Mr Wagner's submissions on the contents of the Particulars of Claim.

66. His essential submissions are that the particularisation of the claim is wholly inadequate; and that the remedies sought by way of injunctions bear no relation to the pleaded claim.

67. As to particularity, the pleading makes its allegations in the broadest terms. Thus, in respect of the issue which founds the claim for a declaration that the Constitution is version 14.2 rather than the subsequent 14.4a, the pleading states no more than that the Constitution *'has been amended without following the valid procedure for such changes'* (para.9.2); that version 14.4a *'was not properly approved by the party members as required by the Constitution'* (paras.11 and 12); and that the First and Second Defendants *'have caused to be published a Constitution for the Party that is not valid'* (para.17). This fails to identify the amendments complained of; the procedure for amendment which is alleged to apply; and the particular breach of that procedure. It is simply an assertion.

68. This absence of particularisation is reflected in the other allegations of procedural error. Thus the allegations that the Defendants have *'failed to manage and administer the Party in accordance with the requirements of the Party Constitution Edition 14.2'* (para.15); have opened the two building society accounts and allowed the National Treasurer to be signatory *'contrary to the* Constitution' (para.16); have failed to call annual General Members Meetings and at least 4 meetings per annum of the NEC (paras.18 and 19); have failed to publish the Identity Magazine with the consequence that this *'precludes the regions from meeting their obligation to purchase it, and in turn this denies them rights under the Constitution'* (para.20); and that they have *'wrongly removed'* from the NEC 4 named people who had been elected by Regional Councils and so could not be removed by the Chairman.

69. As to alleged financial mismanagement, paragraph 7 states that the Party is being mismanaged *'both financially and procedurally'*. The only particulars relate to the opening and operation of the two building society accounts (paras.9.6 and 16) and the averment that *'... the Party has had its funds misused by the First and Second Defendants for private purposes'* (para.10). That latter allegation is of fraud; and cannot properly be made without the most detailed particularisation.

70. None of the remedies sought by way of mandatory injunction has any tenable link to the pleaded case; nor could there be any basis for the Court to make any such orders for the governance - and what he called the "micromanagement" - of the Party.

71. The centrepiece of Mr Tumbridge's resilient defence of the pleading was his submission that the Defendants could have no difficulty in understanding the case which was made against them. This was demonstrated by the evidence set out in the Claimant's witness statements and exhibits and in the correspondence between the parties.

72. Following earlier correspondence between the parties, the claim in respect of constitutional and procedural issues had been set out in detail in the letter before action dated 10 October 2018. The First Defendant had responded by letter of 14 November 2018. The Claimant's response of 19 November had been followed by the First Defendant's reply of 6 January 2019.

73. As to the claim of an invalid change in the Constitution, the letter before action had made clear that the particular complaint was in respect of amendments to what are known as the "Protected Parts" of the Constitution. These include Section 8 headed 'Our Party's National Executive' which contain the provisions concerning the number of meetings to be held by the National Executive (8.10) and the appointment and powers of the National Treasurer (8.16). By clause 17.15 of the Constitution version 14.2, changes to the Protected Parts of the Constitution cannot be made without a two-thirds majority of three constituencies, namely a General Members Meeting, Founders Association and Voting Members Meeting. The letter also detailed the other complaints about procedural mismanagement, including the dual role of the Second Defendant.

74. In answer to the claim that the changes to Section 8 had not been duly approved in accordance with clause 17, the First Defendant had said nothing to demonstrate that the changes had received approval by the requisite two thirds majorities of each constituency. Indeed his letter of 6 January 2019 went no further than to state that *'The clauses of our Constitution… are entirely legal and I reject any allegations to the contrary'*. In respect of the amendment of clause 8.10 which changed the NEC meetings' requirement from *'not less than four times a year'* to *'as and when the business of our Party requires and as far as reasonably practicable not less than 2 a year'*, the letter merely stated that : *'Four meetings was deemed unduly rigid and with the unanimous support of the NEC in meetings held in 2018 and in consultation with attendees at our 2018 Annual Conference, it was decided that for logistical and financial reasons, four meetings was simply not practical or indeed necessary.'*

75. As to allegations of financial improprieties, these were all detailed with supporting exhibits in the Claimant's first witness statement of 17 October 2019. Mr Tumbridge took me through a number of matters which he said demonstrated use of party funds by the First and Second Defendants on purely personal expenses.

76. In any event, if the Defendants were in any way unclear as to what was being alleged, they could and should have sought Further Information pursuant to CPR Part 18.

77. Turning to remedies, if it were established that there had been procedural and financial mismanagement, the Court would have the power to grant mandatory injunctions in the terms identified in the Particulars of Claim and the draft order attached to the application for default judgment. As to the power to remove officers of the Party, and by way of example, he pointed to clause 4.48 of the Constitution which imposes a 'duty to resign' on a party Member who becomes aware that he or she is in breach of the conditions of membership. In the event of failure to do so, the Court could make orders requiring the member to resign.

78. In the alternative, if the Court considered the pleading to be unsatisfactory, Mr Tumbridge requested the opportunity to re-plead the case. He accepted that this would be necessary in any event in order to make the proceedings representative. In support he cited the observations of Tugendhat J in In Soo Kim v. Park & ors [2011] EWHC 1781 (QB) that *'…where the court holds that there is a defect in a pleading, it is normal for the court to refrain from striking out that pleading unless the court has given the party concerned an opportunity of putting right the defect, provided that there is reason to believe that he will be in a position to put the defect right'*. In the subsequent case of Broomhead v. National Westminster Bank plc [2020] EWHC 1005 (Ch), Chief Master

Marsh, citing that authority, struck out particulars of claim but gave the claimant an opportunity to replead the case.

79. Mr Wagner submitted that no such discretion should be exercised in this case, where the inadequacy of the particulars had been pointed out in the draft defence supplied in December 2019 and subsequently filed; and where it would require a complete recasting of the claim, with a different or additional Claimant; the third defendant struck out from the claim; the other defendants sued in a representative capacity; and with different causes of action and remedies.

80. In my judgment the application under CPR 24.2 must fail for the simple reason that neither in the application notice nor in their supporting evidence is there any statement that complies with the requirements of the Practice Direction. This is no technicality. Furthermore the absence of any such statement is matched by the striking caution in the evidence of the First Defendant insofar as it relates to the application generally. The only reference to the application is in the concluding paragraph 12 which simply exhibits version 14.4a of the Constitution, together with Mr Wagner's grounds in support of the application. Those grounds inevitably comprise submissions and references to the provisions of the Constitution. Insofar as they include reference to evidence, this is limited to the uncontroversial exchange of emails on resignation in December 2015; and to background matters concerning the internal election of July 2019 to which I have referred. The Second Defendant's witness statement adds nothing.

81. However I do consider that the Particulars of Claim are seriously defective; and to such an extent that they fail to disclose reasonable grounds for bringing the claim.

82. First, none of the issues which they attempt to raise concern the Claimant alone. They concern all the members. Accordingly, if a claim is to proceed, it has to be on the basis of a representative action. Equally, there is no basis for the Party, which is not a legal entity, to be a Defendant.

83. Secondly, insofar as the claim seeks the remedy of a declaration that the true Constitution of the Party is contained in version 14.2, the supporting pleading is inadequate. A pleading which simply states that the Constitution has been amended 'without following the valid procedure for such changes' and/or 'without being properly approved by the party members' is quite insufficient.

84. In this respect I acknowledge that the Defendants have some considerable knowledge of the allegations from previous correspondence and in particular the letter before action. However that is no substitute for a properly and clearly pleaded case. Both the Defendants and the Court have to know the precise case which is being advanced in support of the claim for relief.

85. Thirdly, insofar as the claim appears to make claims of breaches of the version of the Constitution which the Claimant seeks to uphold, i.e. version 14.2, those are again inadequately and confusingly pleaded. By way of examples only, paragraph 15 is pleaded in the most general terms. As to paragraph 20, Mr Tumbridge, by reference to various provisions of the Constitution, sought to explain what was being alleged. The more he did so, the more it was apparent that the pleading was inadequate. Likewise e.g. the explanations for the reference to 'due process' in paragraph 9.4 and the related terms of paragraph 21.

86. Furthermore, it is entirely unclear how any of these further allegations of breach give rise to any of the remedies which are claimed.

87. Fourthly, the allegation of misuse of funds by the First and Second Defendants for private purposes is no more than an assertion. That appears to be an allegation of fraud. It is elementary that any such allegation must be distinctly and precisely particularised. It is no answer whatsoever that various allegations are referred to in the Claimant's witness statement. Nor is there any direct claim for a consequential remedy.

88. Fifthly, on the present pleaded case I can see no coherent basis for the various mandatory orders which are sought. In particular, I do not see how the grant of a declaration that version 14.2 is the valid Constitution could give rise to any of the mandatory orders sought.

89. Furthermore, given a pleading in these wholly inadequate terms, I consider it no answer to say that the Defendants should have sought Further Information.

90. However I have concluded that the Claimant should be given an opportunity to replead his case. In the light of the Claimant's evidence about the provisions concerning the amendment of Protected Parts of the Constitution, and the absence of any substantive evidence from the Defendants on that issue, I consider it possible that he may be able to plead a coherent claim at least in support of the contention that amendments to those parts have not been validly approved. However I do not confine the opportunity to that one issue.

91. I should emphasise that the observations in this judgment as to the inadequacy of the pleadings should not be regarded by the Claimant and his advisers as an exhaustive checklist. When the matter comes back before me with a draft revised Claim Form and Particulars of Claim, the adequacy of the proposed pleadings will fall to be reviewed entirely afresh.

92. For that purpose, there is also a choice between striking out the claim today and adjourning the application until the next occasion. I conclude that the inadequacy of the pleading is such that the Particulars of Claim (but not the Claim Form) should be struck out.

93. I can deal briefly with the other applications.

94. Pending sight and consideration of a fresh draft pleading, I will adjourn the application to add Mr Sturdy as a Claimant. As to the Claimant's application for judgement in default of defence, it is common ground that this must be dismissed. As to the application to strike out the Defence, this has no merit and must be dismissed.

95. As to the Defendants' application for relief from sanctions in respect of the late service of the Defence, Mr Tumbridge rightly acknowledged that, in the event that I struck out the particulars of claim, this application must fall away alternatively there could be no realistic opposition to the grant of relief. If it is necessary to decide that application, I am satisfied that relief should be granted. In the circumstances I need not set out the details of events and the arguments. As to the first stage of the Denton/Mitchell considerations, the default was serious. However, in the light of the First Defendant's evidence as to the conversation with the Court helpline in March 2019 at the time when

he was unrepresented, there is good explanation for the default. Finally, in all circumstances - including the factors particularly referred to in CPR 3.9(1)(a) and (b) - it would plainly be just to grant relief.