

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 March 2021

Before :

MR JUSTICE CAVANAGH

Between :

Anna Rothery

Claimant

- and -

David Evans

Defendant

**(Sued on behalf of all other members of the Labour
Party except the Claimant)**

David Lemer (instructed by **Howe & Co, Solicitors**) for the **Claimant**
Gavin Millar QC and Tom Gillie (instructed by **Blaser Mills Law**) for the **Defendant**

Hearing date: 8 March 2021

JUDGMENT

Mr Justice Cavanagh:

1. This is my ex tempore judgment.
2. This in application by Ms Anna Rothery for an interim injunction to restrain the Labour Party from proceeding with its candidate selection process for the Liverpool City Region Mayoral Election, which will take place on 6 May 2021.
3. Ms Rothery, along with two others, was originally shortlisted for the Labour nomination, but all three shortlisted candidates have been notified that they will no longer be considered for the candidacy, and that the selection will be made from a new shortlist, consisting of two other people, instead.
4. Ms Rothery contends that this is a breach of express and implied terms the contract that exists between her and the Labour Party, as one of its members, and which is set out in the Party's rule book.
5. She submits that, in all the circumstances, the Court should grant an interim injunction to restrain this breach of contract.
6. Ms Rothery also seeks directions for, and listing of, a very speedy trial of the matter, with a view to a hearing on Wednesday 17 March 2021. That is nine days from now. This means that the interim injunction that she seeks is one that would be in force for 9 days, until the trial of the action.
7. Ms Rothery is represented by Mr David Lemer of counsel, and the Labour Party by Mr Gavin Millar QC and Mr Tom Gillie. I am grateful to all counsel for their helpful submissions, both orally and in writing.

8. I will first summarise the central issues that arise in this case. Next, I will set out the relevant facts as set out in the evidence before me. Then I will consider the test that I should apply when considering whether to grant the interim injunction and I will apply that test to the present case. This will involve consideration as to whether there should be a speedy trial.

The central issues in this case

9. It is common ground that the Labour Party is an unincorporated association whose members are bound to each other by contract. They enjoy rights and owe obligations to each other by reason of the contract that each entered into when she or he became a member of the party.
10. It is also common ground that the terms of that contract are set out in the most recent version of the Labour Party Rule Book, the 2020 Rule Book.
11. It follows that if the Labour Party acts in breach of the express or implied terms of the 2020 Rule Book towards a member, that member will potentially have a cause of action for breach of contract, and may seek relief from the court including, in appropriate cases, injunctive relief.
12. In the present case, it is not suggested by Ms Rothery that the Labour Party has breached any express terms of the Rule Book specifically relating to the selection process to be followed in the selection of the party's candidates for elected mayor posts. I will refer to the relevant express terms in a moment.
13. It not contended, therefore, that it was inevitably and of itself a breach of the Labour Party Rules for the Party to change its mind part-way through the process, after shortlisting had taken place, and to decide to start again with a

different shortlist, on the basis that those in the original shortlist would not be permitted to apply to become part of the new shortlist.

14. However, Ms Rothery submits that the Labour Party needed a good reason to take this course of action and, in this case, there was none. She submits that in the present case it was a breach of contract to abandon the original shortlist and to decline to permit her to seek to be selected for the second shortlist and so to be the Labour Party candidate for the Mayoral election. This is because, Ms Rothery submits, the Labour Party has acted in breach of an express general obligation set out at clause II.7 at Chapter 2 of the Rule Book, to the effect that:

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

15. Moreover, the Ms Rothery submits that the Labour Party has acted in breach of the following implied terms of the Labour Party rules, namely that:
- a. Any decisions concerning selection of candidates in relation to the election should be taken on reasonable grounds;
 - b. Such decisions should be made in good faith, using best endeavours to ensure procedural fairness; and
 - c. In taking any such decisions, the Labour Party should act fairly and in good faith, not acting arbitrarily, capriciously or irrationally.
16. Ms Rothery contends that, in acting as it has towards her, by reinterviewing her and in removing her from the shortlist and refusing to permit her to be

considering for the new shortlist, the Labour Party has acted unfairly and in bad faith towards her and has not acted on reasonable grounds and/or has acted arbitrarily, capriciously and irrationally.

17. The Labour Party denies that it owes the express or implied obligations relied upon by Ms Rothery as a potential Mayoral candidate, and denies in any event that, even if it does owe them, they have been breached.
18. Accordingly, two central issues arise in this case (1) the scope of the relevant express and implied obligations, if any, that are owed by the Labour Party to Ms Rothery in relation to the Mayoral selection process and (2) whether the Labour Party has breached such obligations.

The relevant facts

19. I have been provided with witness statements plus exhibits from Ms Rothery, and from Mr Alexandre Barros-Curtis, the Labour Party's Executive Director of Legal Affairs, and from Ms Wendy Nichols, the chair of the selection panel.
20. Ms Rothery is a Labour Liverpool City Councillor and has been the Lord Mayor of Liverpool since 2019. The responsibilities of the Lord Mayor are largely civic and ceremonial and it is, of course, a different post from the post of Mayor of the Liverpool City Region with which this case is concerned. From now on in this judgment, when I refer to the position of Mayor, I will be referring to the Liverpool City Mayor.
21. The position of Liverpool City Mayor is an important, powerful and influential one. The Mayor holds office for 4 years. The next election for Mayor takes place on 6 May 2021.

22. The Labour Party has won the last two elections for Liverpool Mayor.
23. It was, until recently, expected that the incumbent Mayor, Mr Joe Anderson, would stand again and so that there would be no need for the Labour Party to select another candidate. However, on 4 December 2020, Mr Anderson was arrested as part of a police investigation into allegations of conspiracy to commit bribery and witness intimidation. Mr Anderson remains on police bail. In light of Mr Anderson's (and others') arrests, in December 2020 the Secretary of State for Housing, Communities and Local Government, Robert Jenrick MP, appointed Max Caller CBE to undertake an investigation of Liverpool City Council's compliance with its obligations under section 3 of the Local Government Act 1999 to achieve best value in its procurement of services and in relation to the authority's planning, highways, regeneration and property management functions and the strength of associated audit and governance arrangements. That investigation is underway.
24. In the circumstances, and following his arrest, the Labour Party suspended Mr Anderson from membership of the party. Mr Anderson announced that he would not stand again whilst police enquiries were ongoing. I should make clear that Mr Anderson denies the allegations that have been made against him.
25. It became necessary, therefore, for the Labour Party to undertake a selection process with a view to selecting a different candidate for the forthcoming election. This is taking place in a highly-charged political atmosphere, particularly in light of the circumstances surrounding the arrest and suspension of Mr Anderson and the arrest of others.

26. On behalf of the Labour Party, Mr Barros-Curtis has emphasised the political sensitivity and importance to the party of the forthcoming Mayoral election. As he put it in his witness statement, the arrests of Mr Anderson and others have given rise to a heightened political situation in the Liverpool area. The Labour Party is a powerful political force in the area, for example, having all four of Liverpool's MPs. Mr Barros-Curtis says that the Labour Party regards the Liverpool area as being its geographical and socio-political homeland, and events in Liverpool expose the Labour Party to great scrutiny from the citizens of Liverpool and others.
27. The candidate needs to be selected some time before the election takes place. This is so that the candidate can be registered with the electoral authorities within the time permitted, and so that she or he can be introduced to the public, and the candidate and supporters can campaign on her or his behalf.
28. It is common ground that the Labour Party Rules do not provide detailed guidance as to the procedure the Party should adopt to select Mayoral candidates. The National Executive Committee ("NEC") of the Labour Party has supervised this selection process directly.
29. In January 2021 the NEC issued general guidance for the selection process and a timetable for selection. The NEC created a selection panel to review nominated candidates and delegated to the selection panel the NEC's powers to draw up a short list of candidates. The Chair of the NEC Organisation Sub-Committee, Mrs Wendy Nichols, was appointed by the NEC to chair the selection panel.

30. The other members of the selection panel were also senior party officials. They were, Alice Perry, the Vice Chair of the NEC and Deputy Whip of the Local Government Association Labour Group; Tom Warnett, an NEC member and NEC Co-Convenor of the Joint Policy Committee; Lotte Boumelha, a member of the Labour North West Regional Executive Committee; and Leigh Drennan, Chair of the Labour North West Regional Executive Committee.
31. On 22nd January 2021, applications for self-nominations as a candidate were invited.
32. On 26th January 2021, Ms Rothery, applied to be a candidate.
33. Nominations closed on 29th January 2021 and on that day she received email confirmation that she had been selected for the longlist. The same email requested the provision of a candidate statement, in the event that she was to be selected for the shortlist. Ms Rothery provided her candidate statement to the Defendant on 31st January 2021.
34. A first set of shortlisting interviews took place on 1 February 2021, after which Ms Rothery, Ann O’Byrne and Wendy Simon were identified as the Party’s shortlisted candidates for the Mayoral election.
35. During the course of that interview, reference was made by the Chair of the panel to an historic complaint that Ms Rothery had made in 2011, concerning allegations of racist and misogynistic gender-based behaviour towards her by a Labour councillor in Liverpool (hereafter, “The 2011 Incident”).
36. On 2 February 2021, Ms Rothery and, I assume, the other shortlisted candidates, were contacted by Andy Smith, the Deputy Director of the North

West Regional office of the Labour Party, who notified them that hustings would take place on 4th and 10th February 2021, and that ballots would be distributed on 17th February 2021, with membership voting closing at noon on 5th March 2021.

37. Ms Rothery was also given a code of conduct for candidates.
38. Remote hustings duly took place, via Zoom, on 4 and 10 February 2021.
39. The next step would ordinarily have been a membership vote on the shortlisted candidates.
40. In the event, however, ballot papers were not distributed to members on 17 February as had been originally intended.
41. According to Mr Barros-Curtis's evidence, this was because, following that initial interview with the selection panel, a number of concerns presented themselves, arising from material about which the Labour Party was, in some instances, previously unaware. One significant concern was that the government had instigated an inquiry into corruption in local government in Liverpool more generally (this is the Caller Investigation) and the Party had to be sure that none of its shortlisted candidates for selection, including Ms Rothery, had been or may be involved in that inquiry to the Party's detriment. Further, a number of complaints had been received about the three candidates following the initial shortlisting interviews. Consequently, concerns had been expressed to the NEC as to the vigour of the selection process to that point, and the potential damage to the Party's electoral prospects in Liverpool if its candidates were found to be unsuitable.

42. The NEC decided to modify the selection procedure and to interview the candidates a second time, on 19 February 2021. Mr Barros-Curtis said that a particular driver for this was to ensure a vigorous review of each prospective candidate's probity and integrity.
43. The candidates, including Ms Rothery, were each informed that the ballot was on hold. Members were told by email on 17 February that, due to unforeseen circumstances, the ballot papers for the Mayoral selection exercise had been delayed. On 18 February, Mr Smith emailed Ms Rothery to explain why the reinterviews were to take place, saying,

“[G]iven the recent developments in Liverpool...it is therefore vitally important that all our candidates for the Mayoral Election can withstand scrutiny and account for all their actions, and that the Party can be totally confident that our candidates have an unblemished record.”
44. Each of the shortlisted candidates was duly interviewed a second time on 19 February 2021, by the same selection panel.
45. On 20 February 2021, Ms Rothery's solicitors wrote to the Labour Party, setting out their misgivings about the changes to the selection process, and expressing concern that the Party had breached its obligation towards Ms Rothery to act fairly and in good faith and to act rationally. Concerns were expressed about the approach of the selection panel at the re-interview, especially towards the 2011 incident, and an allegation was made of apparent bias on the part of the chair, Ms Nichols. The Labour Party was put on notice that Ms Rothery was actively considering applying for an injunction.
46. On 20 February 2021, at the panel's request, Ms Rothery also provided the panel with a written statement about the 2011 incident.

47. On 21 February 2021, Mr Barros-Curtis provided an interim response on behalf of the Labour Party, saying that the matter was not urgent as the last date for registering the name of the Labour Party's candidate would be 8 April 2021.
48. On 22 February 2021, the selection panel met. Mr Barros-Curtis was also present. Minutes were kept of this meeting, which I have seen. The selection panel decided that it had lost confidence in the three shortlisted candidates and unanimously agreed that the selection process should be reopened, with all three shortlisted candidates being disentitled from being nominated. The minutes record that:
- “The panel also discussed that their guiding principle and aim was to win elections, and that as part of that, the honesty and integrity of our candidates was of the greatest importance, and a cornerstone of, our democracy.”
49. One of the panel members said that though he was not sure the panel could question the honesty and integrity of all three of the candidates, he felt that across the board there was clear risk of political damage to the party.
50. The minutes said that the candidate's answers in the 19 February re-interviews had left the panel unsettled and unhappy with the responses provided on a number of points.
51. The minutes also recorded in details what the misgivings were in relation to each of the currently shortlisted candidates (though the observations in relation to the candidates apart from Ms Rothery were redacted in the copy of the minutes that were provided to the Court).

52. As this is an important feature of this case, I will set out the record in the minutes of the misgivings relating to Ms Rothery in full. With respect to Ms Rothery, there were seven points. These were:

“1 The panel were unsettled by some of the answers AR gave and the difference between her first interview and her second interview.

2 The panel considered that there was a conflict between answers given on Friday 19 February 2021 and the written answers provided by Ms Rothery in her statement, emailed through on Saturday 20 February 2021.

3 On the issue of the 2011 dinner, there are two completely contrasting version of events. Following the interview, Anna provided a statement from Joe Anderson to verify her version of events. But given the context of the selection process following Joe Anderson’s recent arrest, the panel expressed some concern at this connection.

4 The panel noted that it was suggested that issues were raised informally regarding the behaviour of AR on two separate occasions by two separate unions on behalf of their members in the last two years regarding her behaviour towards staff at Liverpool Town Hall. They were dealt with by the Head of Democratic Services at the Council. Whilst council processes prevent formal disclosure to the panel, the panel discussed their concerns regarding AR’s response to questions about complaints about staff when she highlighted an incident when she was unhappy with a driver (as she had banged her head trying to carry lots of bags and the driver had not helped). She said that she had not made a formal complaint, but that she had complained verbally to a staff member and that the driver had later been moved to another role.

5 Regarding the issues raised on the discrepancies on her answers about the information recorded at Companies House, in the interview on Friday 19 February 2021, AR was clear that she knew nothing about the fact that she was recorded as a director of dissolved company AMR Care and Support services Ltd directorship, having said, “not me, no, what is it?”; and stating that something weird was going on and that suggested that someone could have used her identity. The statement she submitted the following day instead made clear, in a letter from her solicitor that the company was established on her behalf

6 There was also concern about her previous answer on Association of Labour Councillors subscriptions and whether

her contention that she did not owe these in respect of her role of Lord Mayor was accurate.

7 Regarding comments that were made at a recent hustings of the candidates, the panel were told that a complaint had gone to the Whips on 10 February 2021, since sent to the regional office, indicating that the complainant was appalled at hearing AR indicate that there is a current police investigation within Liverpool CC and both of the other candidates served in cabinet during the period being investigated and that any of the other two candidates could be arrested shortly. It was indicated that AR had said that she was the only candidate who is not compromised by the ongoing investigation. The panel noted that to state that in a hustings meeting would be a matter of concern and it was noted that this would be a clear breach of the code of conduct that candidates should abide by, as candidates are not permitted to disparage other candidates.”

53. In her witness statement for this injunction application, Ms Rothery gave detailed responses to each of these seven points:
54. 1/ In relation to unsettling and inconsistent answers in her second interview, Ms Rothery said that she had understood at the time of her first interview that she was prohibited by a legally binding non-disclosure agreement to say nothing about the 2011 incident, but she received legal advice between then and the second interview that she was able to speak about it and she did so. She understood that to be the only significant difference between her answers in the two interviews.
55. 2/ As regards the alleged conflict between her statement of 20 February and her answers in re interview, she said that no detail was provided but that any inconsistency would be explained by the chaotic and hostile setting of the panel meeting on 19 February.
56. 3/ Ms Rothery said that she did not know who provided a contrasting version of events in relation to the 2011 incident. She had complained about it, back

in 2011, at 7.30 the morning after the incident, to Mr Anderson because he was then the Leader of the Labour Group on the council. She said that the panel was quite wrong to think that the fact that he provided a statement for her in February 2021 showed that she had a connection with Mr Anderson. She did not, save that she knew him because of his role as Leader of the council and mayor of Liverpool, and this concern was preposterous.

57. 4/ The panel had not put any complaints on behalf of City Council staff to her at the re-interview, and Ms Rothery was unaware of any complaints, formal or informal, by unions about her conduct. If she had been given details, then she could have responded and refuted the allegations. She has since checked with Democratic Services and the Chief Whip and they are not aware of any such allegations.

58. 5/She said that there was an innocent explanation for not being aware that a company had been set up in her name. This company had been set up by her accountant in relation to a business idea that had never developed. The company had never traded. Ms Rothery had forgotten all about it. She had provided the panel with full particulars of other companies in which she has been involved.

59. 6/ Ms Rothery had overpaid her ALC subscriptions and obtained a refund of £650. She does not understand how this can be of concern to the panel.

60. 7/ The complaint about what Ms Rothery was alleged to have said at hustings was not put to her in the interview or at any time after. The first she knew about it was when she saw the notes of the selection panel meeting of 22 February. She said that in her closing statement at the hustings she did say:

“The situation facing the Labour Party in Liverpool could not be more serious. The other two candidates sat in the cabinet for much of the last 10 years. Both have served as Deputy Mayors in that time. The unfortunate reality is that there are now a number of ongoing police and government investigations into that period at Liverpool City Council. I believe I am the only woman who can lead our Party forwards and say, with absolute certainty, that I am not compromised by the failures of the past. So that we can begin to restore trust in local politics. By electing me, we will be turning the page and starting a new chapter in the history of our wonderful city”.

61. However, Ms Rothery said in her statement to the Court that she did not say, as quoted in the complaint, that “there is currently a police investigation within Liverpool City Council and both of the other candidates served in cabinet during the period being investigate” even though as a statement of fact that would be correct. She did not say the other two candidates could be “arrested shortly” nor did she say she was “the only candidate who is not compromised by the ongoing investigation”.
62. Ms Rothery said that she would have denied this if she had been given an opportunity to comment, and there was no question of her having breached the code of conduct for candidates. Ms Rothery was given the text of the complaint on 5 March, just before she issued proceedings. She pointed out that this did not say that she had said that the other candidates could be arrested shortly.
63. Ms Rothery submits that the Labour Party acted unfairly towards her by not giving her a chance properly to deal with these matters, and/or reached conclusions adverse to her that were irrational or were not based on reasonable grounds.

64. Ms Rothery was notified on 23 February 2021 by Mr Smith of the decision that nominations would re-open with a view to selecting an alternative shortlist and that C, along with the other two originally shortlisted candidates, would not be permitted to apply.

65. Mr Smith's email said:

“The selection panel has given careful consideration to the additional information presented to it, and reflected on the importance of their elected representatives holding the highest standards of honesty and integrity, as well as those same principles applying to the Labour Party as a political party and a wider movement. Taking this all into consideration, the selection panel has determined that nominations for the position should be reopened to allow the Liverpool membership to choose from an alternative shortlist of candidates. As part of that process, you will not be invited to apply again because consideration of some elements of the additional information in relation to you led the selection panel to conclude that there was an unacceptably high risk to the prospect of the Labour Party winning this important election. Accordingly, the Labour Party cannot accept that risk, which might eventuate from your candidature.

I know that this will be disappointing to you. The Labour Party wishes to make clear that this decision in no way reflects on either your dedication or commitment to the Labour Party.”

66. On 23 February 2021, the Labour Party responded substantively to the 20 February 2021 letter from Ms Rothery's solicitors. The Labour Party rejected the claimed contractual breach, contending that the Party had an absolute power to cancel or amend the procedure used to select Mayoral candidates; that given the arrest of the incumbent Mayor, it was particularly important for candidates to have the highest level of integrity and honesty. The letter said that there had been concerns about the shortlisted candidates and the vigour of the previous shortlisting process. It rejected any allegation of apparent bias on the part of the chair.

67. On 25 February 2021 the General Secretary of the Labour Party sent an email to NEC members in the following terms:

“As you will all be aware, the selection panel for the Liverpool Mayoral candidate selection met on Monday evening to discuss the suitability of the shortlisted candidates. They then made the decision to request that new applications were sought and that the current candidates would not be invited to apply again. As I understand, this decision was taken after consideration of additional information presented to the selection panel, as well as the selection panel having met with each of the shortlisted candidates last Friday. It would not be appropriate for me, as General Secretary, to comment further on the panel or the decision they have made. However, I have full confidence in them and their commitment in ensuring high quality candidates are selected to represent the Party so that we have best chance of winning this important election.

I want to assure the NEC that the panel has my full support and that everything is being done to ensure a fair and robust candidate selection contest takes place.”

68. The Labour Party has now selected two other candidates, Joanne Anderson, and Anthony Lavelle, to be shortlisted for the mayoral election. They were selected on 2 March 2021.
69. Ms Rothery’s solicitors wrote again to the Labour Party on 25 February 2021, asking for a delay in the new selection process and seeking disclosure of a number of documents.
70. The Labour Party’s solicitors replied on its behalf on the following day. They provided the minutes of the meeting on 22 February, and email correspondence pertaining to the decision to vary the selection process. They said that the decision not to select Ms Rothery was because of a loss of confidence in the shortlisted candidates. and that the key motivation behind

the decision was a desire to find the candidates who stood the best chances of winning the election. They said that the way in which the change had been made was consistent with the terms of the Labour Party rule book.

71. In her witness statement, the chair of the selection panel, Wendy Nichols, denied that there had been any bias or rudeness in the panel interviews of Ms Rothery on 1 and 19 Feb 2021. She said:

“The interviews were conducted in an entirely professional manner. As one might reasonably expect, the interview process for the position of Liverpool Mayor is rigorous but it is commensurate with the significance of the role. I accept that Ms Rothery was asked questions that she may have felt were difficult or uncomfortable, because they forced her to confront difficult issues from her past and I also accept that she may have felt pressed to provide answers, however, this was all within appropriate bounds given the context. Each of the shortlisted candidates underwent the same interview process and style of questioning, but it is only Ms Rothery who has complained, through solicitors, about the conduct of her interviews.”

72. Ms Nichols also denied that she displayed any actual or apparent bias towards Ms Rothery, either in relation to the 2011 incident or in any other respect. Ms Nichols said that she had never previously met or come across Ms Rothery.
73. On 2 March 2021, Ms Rothery’s solicitors wrote a letter before action to the Labour Party, giving the Party until Noon on 4 March to reconsider her exclusion and to place her name on the ballot papers, due to be distributed on 8 March, ie today, or alternatively to delay distribution of the ballot papers until the substantive issues raised by her had been addressed.
74. The Labour Party rejected this proposal on 4 March 2021.

75. In the claim form that was issued on 5 March 2021, the main substantive relief that is sought by Ms Rothery goes further than the scope of the draft order in the interim injunction application. She seeks a declaration and mandatory injunction requiring the Labour Party to place her on the shortlist of candidates. Ms Rothery's witness statement makes clear that this is the principal objective of the proceedings, as indeed one would expect.

The timetable for selection of candidates

76. Ms Rothery submits that there is time to proceed to trial on 17 March, without jeopardising the timetable for selection of the Labour candidate for the Mayoral election. She points out that the nomination papers do not need to be lodged until 8 April and the election will not take place until 6 May. She says that there is sufficient time to distribute the ballots for shortlisted candidates and then to select a candidate within this timeframe. She says that there is no minimum period that must elapse before ballot papers are returned. She points out that there has already been one delay as a result of the re-run of the shortlisting process.
77. In his witness statement, Mr Barros-Curtis says that the current intention is for the Labour Party's electoral services provider, Civica Election Services, to distribute electronic ballot papers commencing on 8 March, that is today, with the papers to be returned with a deadline of 3 weeks later, on 12 noon on 29 March. There are about 5,850 Labour Party members registered and eligible to vote in the Liverpool mayoral selection process. Some 5,500 will vote electronically, but some 300 will receive their papers by post. They are being

printed and it is expected that they will be sent out by 8 March or by 9 March at the latest.

78. There is, therefore, a 21 day period set aside for voting for most voters, but this period is reduced for the postal voters. Mr Barros-Curtis said that any delay in receiving ballot papers is prejudicial to members' ability to consider candidate statements and cast their votes, and this especially applies to postal voters. This would make it difficult to meet the Electoral Commission deadline.

79. Mr Barros-Curtis said at para 52 of his statement

“Any disaffection in relation to the available voting period could have a harmful effect on party unity and campaigning. The Party is very keen to avoid that eventuality as the campaigning window is short in any event (four weeks), it will be more difficult to mobilise volunteers and generate voter engagement because of the current Covid-19 restrictions and taken in combination this could have a material adverse effect on the success of the Party's campaigning efforts.”

80. Mr Barros-Curtis said that the party would be greatly prejudiced by a delay to mid-March, because of the 8 April deadline to notify the Electoral Commission of the successful candidate. There would also be an unacceptable loss of productive campaigning time, especially given the difficulties caused by the Pandemic, and its impact on mobilising volunteers and canvassing support.

Delay

81. The Labour Party says that Ms Rothery has unreasonably delayed in issuing proceedings. She has known about the decision not to proceed further with her candidacy since 23 February 2021, but her application was not issued until 5 March, 8 working days later. The Labour Party says that she has not proceeded with urgency and contends that she has taken a conscious decision not to issue her claim, in order to try to force her way back onto the ballot paper by threatening to cause chaos in the selection process, and by briefing a national newspaper, on or about 23 February, rather than going straight to court. The Labour Party draws attention to the fact that this hearing is taking place on the day when ballot papers were due to be sent out.
82. Neither of the current shortlisted candidates has been given notice of this application by Ms Rothery, though they have both been made aware of it by the Labour Party, and one, Mr Lavelle, has indicated that he is opposed to it.

The test to be applied when considering whether to grant an interim injunction

83. The test to be applied when a court considers whether or not to grant an interim injunction can often conveniently be divided into four stages, though there is sometimes some overlap between the stages. These are:
- (1) On the basis of the evidence currently before the Court, has the applicant established a sufficiently arguable case? As I will come on to explain, there are a number of considerations which determine the threshold for the standard of arguability in a particular case;

(2) If so, will damages be an adequate remedy for the applicant or the respondent? ;

(3) Does the balance of convenience favour the grant of an injunction?; and

(4) Since an injunction is a discretionary remedy, are there any other considerations, such as delay, which might affect the court's decision whether or not to grant an injunction?

84. It is important to bear in mind at the outset, however, that, as Lord Hoffman made clear in **National Commercial Bank of Jamaica v Olint Corp Ltd** [2009] 1 WLR 1405, these considerations are all subordinate to the basic principle, which is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other. This is an assessment in which, as Lord Diplock said in **American Cyanamid v Ethicon** [1975] AC 396, 408:

‘It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them.’

85. There are no hard and fast rules, therefore, and the Courts must do what will cause the least irremediable prejudice to the parties. Nonetheless, it is convenient to consider the issues in the present case by reference to the four-stage analysis.

Has Ms Rothery established a sufficiently arguable case?

86. This question divides into two. First, how strong must a claimant's case be for this purpose and, second, has Ms Rothery established, on the present state of

the evidence, that she has met the relevant threshold for a sufficiently arguable case? I will deal with them in turn.

How strong must Ms Rothery's case be?

87. The starting point is the famous case of **American Cyanamid v Ethicon**, in which the House of Lords held that, in a normal case, the standard of arguability that the applicant for an interim injunction must demonstrate is that there must be a serious issue to be tried. This does not mean that an applicant has to go so far as to show that she is more likely than not to obtain a final injunction at trial: it is a lower threshold than that.
88. However, the courts have made clear that there are circumstances in which it may or would be appropriate for the court to apply a stricter and more rigorous standard of arguability.
89. In my judgment, this is one such case, for three reasons.

Effectively dispose of the action

90. First, it has been made clear that a different threshold may be appropriate if the grant or refusal of the injunction will effectively dispose of the action: see Lord Diplock in **NWL Ltd v Woods** [1979] 1 W.L.R. 1294 at 1306.
91. In such cases, the Court should take into account the strengths or weaknesses of the respective cases and the likelihood of the applicant's eventual success at trial.

92. As a matter of strict legal theory, this consideration comes in at the third stage, and is part of, or even replaces, the balance of convenience test, but it is convenient to consider it at this stage in the analysis.
93. The Labour Party submits that this is such a case, in which the outcome of the injunction application will in practice determine the matter, and in which the decision whether to grant the negative injunction at this stage can only be determined by consideration of whether the final mandatory injunction should be granted.
94. Ms Rothery submits, on the other hand, that it is not such a case, because today's application is for an interim injunction which is to last only for 9 days, in order to hold the ring until there is a speedy trial. She further submits that there will still be time to select a candidate, if the Labour Party is not able to issue ballots until after a speedy trial on 17 March 2021. Furthermore, Ms Rothery submits that it might be possible to have a speedy trial even sooner than Wednesday week.
95. In order to consider this point, it is necessary at this point in the analysis to consider whether it would be appropriate to order a speedy trial in 9 days' time.
96. Mr Millar QC, for the Labour Party asks whether what is being sought is a final trial or a return date for a further injunction hearing. I think that it is clear that it is for trial, as it is referred to as a "final hearing" in Ms Rothery's draft order, though Mr Millar is right to point out that the accompanying directions only ask for disclosure from one of the parties, the Labour Party,

and they do not seek the full range of pre-trial interlocutory directions that would normally be required.

97. The Court's power to grant a speedy trial is set out in CPR r 3.1(2)(b). It is a matter for judicial discretion.
98. Plainly, from Ms Rothery's point of view, a speedy trial would be preferable, because if the key issues in this case are not resolved very soon it will be too late for her to obtain a remedy that will give her a chance of being the Labour candidate for the election in May.
99. However, a litigant does not have an automatic right to a speedy trial.
100. Guidance was given by Jonathan Parker LJ in **Wembley National Stadium v Wembley** (2000). The judge set out the well-established position that the decision as to whether to grant an expedited trial was a 'a matter essentially for the discretion of the judge' and that the judge should review all aspects of the case and matters in general when exercising their judicial discretion. In particular, relevant considerations include the following:
101. One, the general principle under the CPR that cases should come before the court as soon as reasonably possible in line with the overriding objective.
102. Two, the potential disruption to, other litigants. With regard to the potential expedition of appeals to the Court of Appeal, Parker LJ noted the comments of Sir Thomas Bingham MR in **Unilever plc v Chefaro Ltd (Practice Note)** [1995] 1 WLR 243 that it was necessary to impose 'a high threshold which a party must cross before its application will be granted.'

103. Third, whether or not the applicant could satisfy the court that there is an objective urgency to deciding the claim and the nature of the ‘urgency’ and whether it is justified.
104. Fourth, the Court should take account of the procedural history of the case. Delay in seeking an order for an expedited trial may count against an applicant but will not necessarily be conclusive.
105. Fifth, the impact on the respondent may be relevant but only if they can show ‘some real prejudice to [them]’ at trial.
106. In my judgment, exercising my judicial discretion, I do not accept that I should order a speedy trial on 17 March, or sooner.
107. I do not think that it would be realistic to expect a speedy trial to come on any earlier than Wednesday 17 March. The lists for this week will already have been prepared, and some time would need to be allowed to enable the pleadings to be completed, disclosure to take place and for the remainder of case preparation to take place. It is a very tall order to prepare for a speedy trial within a very few days. I think that the working assumption must be, therefore, that it would not be possible to hold a speedy trial earlier than on wed 17 March.
108. Even if the speedy trial were to take place on that date, whilst I understand that it would be possible to find a judge to hear it, this would disadvantage other litigants who would slip down the lists or whose paper applications would not be dealt on that day with because a judge would be engaged with this matter.
109. This is a factor against ordering a speedy trial.

110. However, there are two other main reasons why I take the view that I should not order a speedy trial to take place on 17 March, despite the fact that there is clearly urgency from Ms Rothery's point of view.
111. The first is that I think that I am as well placed to decide the issue of whether injunctive relief should be granted today as a judge would be at a speedy trial. I return to this point below.
112. The second is because of the real prejudice to the Labour Party that would result from a listing of this case for a speedy trial in a week and half's time.
113. I do not think that it is fair, realistic, or appropriate to postpone final determination of the central issues in the case until a speedy trial on 17 March. In my judgment, though it is not certain, there is a real danger that if the Labour Party has to wait until after 17 March to select its candidate, it may be too late, or at least this would very severely disrupt the Party's preparation for the forthcoming election.
114. The candidate must be selected and registered with the electoral commission by 8 April 2021. If the ballots went out today or tomorrow, that would give only 30 days to conduct the ballot and to ensure that everything was ready for registration with the Electoral Commission by 8 April, and to campaign. If the ballots went out on 18 March, the day after the proposed trial date, that would only be about 21 days before the registration deadline. There might just be time to conduct a ballot during this period, although the need to accommodate postal ballots means that it would be very tight indeed. But I am persuaded by the Labour Party's submission that the political imperative for the Party to get on and select its candidate for an election in a major city is

very high. Not only must it meet the Electoral Commission's deadline, but it must also have sufficient time to introduce its candidate to the electorate before the election on 6 May, and to start campaigning. The Labour Party has determined that the political imperative must be met by commencing the ballot of members on 8 March 2021 and announcing the winner on 29 March 2021. There has already been delay. Any further delay is liable to prejudice its position in the election, by reducing the campaigning window.

115. In other words, it is not safe or practicable to wait another 9 or 10 days before sending the ballots out. I note that in correspondence with Ms Rothery's solicitors on 21 February Mr Barros-Curtis had said that getting on with selection was not urgent, but that was two weeks ago and the position has now changed substantially.
116. Moreover, this assumes that the outcome of the speedy trial would be known on the afternoon of 17 March, but this is by no means certain. The trial judge might want to take a few days to consider her or his decision. This would squeeze the time scale even more.
117. It is also significant, in this regard, that Ms rothery has delayed somewhat in issuing her proceedings. There would have been no reason why she could not have commenced proceedings a week before she did, after 26 February 2021, when she received the minutes of the panel meeting on 22 February, in which case there might, just, have been sufficient time to deal with the case by way of a speedy trial. Whilst I would not be inclined to the view that the delay is so serious as to disqualify Ms Rothery from interim relief, it is a relevant

consideration when considering whether it would be appropriate for the Court to order a speedy trial in this case.

118. In all the circumstances, it would not be fair or just to expect the Labour Party to have to wait until 17 March or even later to know where it stands. It needs and is entitled to know today. There is material that enables the Court to form a view on the central issues in the case. In all of the circumstances, it would not be in the interests of justice or the overriding objective to hold a speedy trial, and so the outcome of today's hearing will, in practice, determine the outcome of the action.

119. It follows that I do not think that it would be right to apply the normal **Cyanamid** standard of scrutiny to the arguability of Ms Rothery's argument on the basis that the purpose of today's hearing is just to hold the ring for a week or so. It is necessary for the Court to take into account the strengths or weaknesses of the respective cases and the likelihood of the claimant's eventual success at trial.

The relief sought is effectively a mandatory order

120. The second point follows on from my conclusion that there is no time for a speedy trial in advance of the final date for selection, and so that today's hearing will in practice determine the outcome of the case.

121. This second point is that, in substance if not in form, Ms Rothery is seeking mandatory relief. It is true that the relief sought in the draft order at the interim stage is an order to restrain the Labour Party from making the final selection in advance of the speedy trial, but real and substantive relief that Ms

Rothery seeks from this litigation is an order requiring the Labour Party to include her amongst the shortlisted candidates.

122. Since the effect of my decision is that there will be no speedy trial, the outcome of today's hearing will in reality be likely to establish whether or not she has to be included as one of the shortlisted candidates. Therefore, in substance, the relief that is being sought is mandatory relief. I accept Mr Millar QC's submission in this regard.

123. The leading guidance on a court's approach to mandatory relief is that which was given by Chadwick J in **Nottingham Building Society v Eurodynamics Systems plc** [1993] FSR 468, in which he said that:

"In considering whether to grant a mandatory injunction, the court must keep in mind that an order which requires a party to take some positive step at an interlocutory stage may well carry a greater risk of injustice if it turns out to have been wrongly made than an order which merely prohibits action, thus preserving the status quo."

"It is legitimate, where a mandatory injunction is sought, to consider whether the court does feel a high degree of assurance that the claimant will be able to establish his right at trial. This is because the greater degree of assurance the claimant will ultimately establish his right, the less will be the risk of injustice if an injunction is granted."

124. However, this was qualified by Chadwick J as follows:

"But even where the court is unable to feel any high degree of assurance that the claimant will establish his right, there may still be circumstances in which it is appropriate to grant a mandatory injunction at an interlocutory stage. Those circumstances will exist where the risk of injustice if this injunction is refused sufficiently outweigh the risk of injustice if it is granted."

I am in as good a position to deal with the issues today as a judge would be at the speedy trial

125. The third reason is a reason which, even if it was the only consideration, would lead me to a to the view that the standard **Cyanamid** threshold is not appropriate in this case. This is that the authorities make clear that the Court should be prepared to take greater account of the strengths and weaknesses of the claimant's case if the Court that is dealing with the interim injunction application is in as good a position as the trial Court would be to resolve the issues in the case.
126. In my judgment, that is the position in the present case. There is a dispute about the impact of one of the express terms of the Labour Party Rule Book and the nature and extent of the relevant implied terms. So far as this is concerned, I have all the material I need before me to decide this issue, and the Court's resolution of these issues will not be significantly assisted by hearing and seeing witnesses. The meaning and effect of the express terms, and the nature and scope of the implied terms, are to be considered by reference to the relevant authorities, set against the factual background of the nature of the relationship between the LP and its members and the significance and political importance of the selection process. None of this factual background is significantly in dispute.
127. The only other factual matters are (a) the extent to which the C was given an opportunity to comment on the misgivings that were expressed at the 23 February selection panel meeting and (b) the extent to which the views that were reached by that panel were unreasonable, or arbitrary, capricious or irrational. Again, the factual background against which these matters must be

considered, in my judgment, is pretty clear. There is very little dispute, if any, about the topics which Ms Rothery was and was not asked about at her second interview, and I am prepared for the purposes of determining this application to accept Ms Rothery's description in her witness statement of what she was and was not asked about in her interviews, and what she said in the hustings. She has now given the explanations/clarifications which she would have given if asked in more detail at the time, and these have not been challenged or contradicted by the Labour Party. There is sufficient material before me to form a view about whether the Labour Party acted unreasonably or irrationally in deciding not to permit Ms Rothery to continue as a shortlisted candidate, and about whether the Labour Party acted fairly or not.

128. I do not think that disclosure is at all likely to strengthen Ms Rothery's case or to affect the relative merits of the parties cases.
129. Since the parties have helpfully supplied me with the evidence and their skeleton arguments over the weekend, I have had the opportunity to read the papers and the key authorities in advance of this afternoon's hearing.

Conclusion on the threshold for arguability

130. Putting all of these reasons together, in my judgment Ms Rothery has to do more than show that there is a serious issue to be tried. Before granting the injunction that she seeks, I will need a high degree of assurance that she will, or would have, established her right at trial, and I must take account of the likelihood (based on the current evidence) that she would have been successful at trial.

I should add that there is a fourth consideration, which is the approach that the court should take when it is being invited effectively to compel a political party to adopt, or put up for election by the membership, a candidate in which it does not have confidence. I will deal with this question when I come on to deal with balance of convenience, but it is worth mentioning here because it arguably overlaps with the “standard of arguability” issue, as it may in practice mean that the Court should only intervene in a particularly strong or clear case of breach of the Party’s rules.

Applying that test, has C established a sufficiently arguable case that the D has acted in breach of contract towards her?

131. As stated above, the Labour Party is an unincorporated association. The relationships between the members are governed by contract. In **Choudhry & Ors v Triesman** [2003] EWHC 1203 (Comm), Stanley Burnton J said, at paragraph 38,

“Its constitution is contained in its rules contained in the rule book, which constitute a contract to which each member adheres when he joins the party”

132. This was echoed by the Court of Appeal in **Evangelou and Others v McNicol** [2016] EWCA Civ 817, at paragraphs 19-23. In **Evangelou**, the Court of Appeal also said that:

(1) The proper approach to 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.

- (2) The intentions of the parties to a contract will be ascertained by reference to what a reasonable person having all the background which would have been available to the parties would have understood the language in the contract to mean, and it does so by focusing on the meaning of the words in the contract in their documentary and factual context.
- (3) The meaning of a rule in the Rule Book has to be assessed in the light of the natural and ordinary meaning of the words, any other relevant provisions of the contract, the overall purpose of the clause in the contract and the facts and circumstances known or assumed by the parties. In this context, this means the members of the unincorporated association, the Labour Party.
- (4) The clearer the natural meaning of the centrally relevant words, the more difficult it is to justify departing from it.
133. The starting point in examining the relevant rules in the present case is that it is common ground that there is nothing in the Labour Party rules which would prohibit the Party, in an appropriate case, from halting a Mayoral selection process part-way through, even after shortlisting, and from selecting a new shortlist, or from deciding that the members of the original shortlist will not be considered for the new shortlist. Mr Lemer does not argue otherwise.
134. The relevant provisions of the Labour Party Rules are as follows:
135. In Chapter 1, clause I, paragraph 3 of the Rules, the objects of the Labour Party are stated include to “promote the election of Labour Party Representatives at all levels of the democratic process.”

136. The NEC is the administrative authority of the Party (Chapter 1, clause II.1).
It is the party's governing body.
137. The key functions of the NEC are set out in Chapter 1, clause VIII.2. These include, at B, to "win elections and maintain the support of voters".
138. The NEC's power to cancel or amend selection procedures whilst they are underway are set out in two places in the Rules.
139. This is clearly stated in Chapter 5.I.1.G.i of the Rules in the context of the possible use of primary elections to select mayoral candidates ('for any mayoral selection the NEC may consider the use of primary elections, subject to the absolute power of the NEC to cancel or amend procedure').
140. The second place in which the position is made clear is at Chapter 5.I.2 of the rules, which covers all selections for public office. This states:

"the NEC has the authority to modify these rules and any procedural rules and guidelines as required to meet particular circumstances or to further the stated objectives and principles of these rules' further the NEC has the power to impose candidates where it deems that this is required by the circumstances."
141. It is clear, therefore, that the NEC has a power to impose candidates if it sees fit, and so, under the Rules, would have had a power to impose a candidate for the Liverpool Mayoral Election. Mr Barros-Curtis said that the NEC prefers not to exercise this power if it can avoid it.
142. It is also clear that the NEC had the power to delegate its powers to Ms Nichols as the Chair of its Organising Committee.

143. Chapter 1.VIII.5. provides that ‘All powers of the NEC may be exercised as the NEC deems appropriate through its elected officers, committees, sub-committees’.
144. In the NEC’s ‘Sub-committee protocol (terms of reference) NEC Organisation Committee’, most recently ratified in January 2020, it is stated, at paragraph 1, ‘The Organisation Committee has delegated authority to take decisions on behalf of the NEC’
145. Under the terms of reference protocol, the Organisation Committee ‘is responsible for elections’, ‘internal elections’, ‘developing political management, organisation and rules’ and ‘has particular remit to ensure the selection of candidates for both local and national elections are executed according to the party’s procedures’ (paragraph 3).
146. In urgent situations, ‘any decision normally the responsibility of this committee may be taken by the Chair (and if possible the Vice Chair), provided that it is then reported to the subsequent meeting of the committee’ (paragraph 3).
147. Similar provisions, in an earlier version of the rules, were considered by the Court in **Choudhry v Treisman**. In that case, at paragraph 63, Stanley Burnton J held that:
- “63. In my judgment, the rules should be given a purposeful and practical interpretation and if necessary I should hold that the rules, and in particular rules 5A.2 and 5B.8, do empower the NEC to intervene in such circumstances if necessary by the deselection and imposition of candidates.”

148. All of this means that the Labour Party had the contractual power to remove shortlisted candidates and to decline to let them form part of a new shortlist. As I have said, none of this is in dispute, though it is an essential part of the legal background. The dispute is concerned with the extent, if at all, to which these powers are subject to express or implied restrictions and limitations.

149. As to that, C relies on the following express terms in the Rules:

150. Chapter 2 Clause II.7, under the heading “Charter of Members Rights”, provides

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

151. In Chapter 5, under the head “selections, right and responsibilities of candidates for public office”, it is said that

“A right of Labour Party membership includes the opportunity to select candidates for public office in an area where the NEC determines that a CLP shall be established, at every level – local, regional, national and European. Core principles shall apply to these selections that will enable members to select Labour Party candidates representative of our society who can uphold the highest standards of probity and integrity in public life.”

152. On behalf of Ms Rothery, Mr Lemer submits that these rules expressly import a duty to act fairly and rationally in relation to selection exercises.

153. In addition, Mr Lemer submits that there is an implied duty to like effect.

154. Mr Lemer pointed out that, in **Evangelou** at paragraph 24, when addressing the general principles to be applied to the construction of the Respondent’s Rules, Beatson LJ concluded that:

“It is, however, relevant to note that a discretion conferred on a party under a contract is subject to control which limits the discretion as a matter of necessary implication by concepts of honesty, good faith and genuineness, and need for absence of arbitrariness, capriciousness, perversity and irrationality: see **Socimer International Bank Ltd v Standard Bank London Ltd** [2008] EWCA Civ 116, [2008] Bus LR 1304 at [66] and **Braganza v BP Shipping** [2015] UKSC 17, [2015] 1 WLR 1661 , and the cases on mutual undertakings and bodies exercising self-regulatory powers mentioned at [48] below.”

155. Also, in **Choudhry** at paragraph 77, Stanley Burnton J expressly accepted the proposition that natural justice implied into the contract between the parties a term that an investigation should be conducted fairly and honestly, including requiring a claimant to be put on notice of any concerns raised, in order to allow them to address such allegations.

156. Also, in **Jones v Iain McNichol** [2016] EWHC 866 (QB). at paragraph 53, Kerr J recognised the need for the Court to exercise restraint before interfering in the candidate selection process, but added that:

“I take into account, of course, that there is a strong interest in the party, and indeed the public, having a pool of candidates for selection whose integrity is and is seen to be untarnished and beyond reproach. I take into account also the strength of the proposition that it is for the party and not the court or anyone else to select its candidates. But it must do so in accordance with the rules, including the obligation to operate its powers within those rules fairly.”

157. Finally, in **Williamson v Formby** [2019] EWHC 2639 (QB), Pepperall J considered the applicability of both express terms within the Rule Book and implied terms. At paragraph 23 he set out the approach to the Respondent’s rules, which was common ground between the parties in the case, noting at 23.5 that:

158.

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

159. On behalf of the D, Mr Millar QC emphasises the Labour Party’s key objective in winning elections, and the very wide general power given to the NEC to intervene in the selection process for the election. He stressed that the decision to abandon the selection process and to refuse to permit Ms Rothery to be interviewed for the new shortlist was not a disciplinary sanction and did not mean that she had been de-selected, as she had never been selected as the Mayoral Candidate. He emphasised too, that the judgment that Ms Nichols and the selection panel had been making was a political judgment about which potential candidates could win the Mayoral election.
160. He submitted that, in these circumstances, the Court should refrain from interfering with political decisions such as who should be the party’s shortlisted candidate for a public office.
161. Mr Millar submitted that the law does not import the public law principles of natural justice to the exercise of discretion in a political party’s selection of candidates. He relies on the judgment of the Court of Appeal in **Brian Green v The Labour Party** (Unreported, 27 March 1991) per Lord Justice Neill; and **Ramsay v Hackett Pain** [2020] EWHC 3655 (Ch) at paragraphs 13 and 15.

My conclusions on the arguability issue

162. None of the cases that were cited to me dealt with exactly the same issue as has arisen in this case. Most of them, such as **Green, Jones v MacNicol**, and **Williamson v Formby** were cases about the suspension of elected party representatives, rather than challenges to the selection process, albeit that this was in cases where the effect of suspension was likely to be to disbar the member from selection for a forthcoming election. **Evangelou v MacNicol** was about eligibility of members to vote in the Labour leadership election. **Ramsay v Hackett Pain** was about the de-selection of a selected candidate (unlike the present case) and was not a Labour Party case. The only case about a selection process relating to the Labour Party was **Choudry v Treisman**, but it is not on all fours with the present case because it concerned an earlier version of the Labour Party rule book which did not give the NEC express power to impose a candidate and which did not have an express term about fairness that is equivalent to the one that was found in the current Chapter 2 Clause II.7. Also, it was decided before the **Braganza** case.
163. Nonetheless, some helpful guidance can be obtained from the cases.
164. In my judgment, in light of the authorities and the express terms of the Rules, it is clear that the Labour Party has a duty to act fairly and rationally in the way that it conducts its selection exercises. This is an aspect of the general power to act fairly towards members that is set out in Chapter 2, Clause II.7. There is no reason to infer that this duty applies to other parts of the relationship between the Party and its members, but not to members when they are putting themselves forward for selection to public office. This is so, even

though this provision is not in the part of the Rules which specifically deals with selection decisions.

165. In **Formby**, at paragraph 24, Pepperall J noted that this term covered the same territory as **Braganza**.
166. I also respectfully agree with the Court of Appeal in **Evangelou**, and with Pepperall J in **Williamson v Formby**, that the contract of membership of Labour Party member is subject to the implied constraint upon the contractual decision-maker that was identified by the SC in **Braganza v. BP Shipping Ltd**, that is the duty to act rationally in a Wednesbury sense.
167. I should make clear that this does not amount to a duty to act reasonably in the colloquial sense. It is a duty to act rationally in the sense of not taking a decision that is so unreasonable that no reasonable person in the decision maker's position, acting reasonably could have made it. There is no basis for a finding in the present case that there is a broader implied contractual duty to act reasonably in the colloquial sense.
168. The question whether, in addition to the duty to act rationally, **Braganza** also imported an obligation akin to the public law obligation to act fairly has not yet been fully worked out in the authorities. It was doubted, for example, by the judge in **Ramsay v Hackett Pain**, and it was conceded in the **Nattrass** case, that I will come to in a moment, that no duty of natural justice arose in circumstances such as these. However, such a duty was recognised by Kerr J in **Jones v MacNicol**. I do not think that it would appropriate to express a firm view on this issue in an ex tempore interim judgment such as this. However, I

will assume in Ms Rothery's favour that the implied duties extend to an implied duty to act fairly in all the circumstances.

169. In any event, Chapter 2, Clause II.7 expressly imports a duty to act fairly, as is appropriate in the circumstances.
170. However, the content of these implied obligations is context-specific. Mr Lemer fairly and correctly accepted this in his oral submissions.
171. In the present case it is important to bear in mind that the NEC, and by extension the panel chaired by Ms Nichol, has been given a very wide discretion to impose candidates. If they can impose candidates, then they can decide who is to go on a shortlist, and they have an equally wide discretion in that regard. Moreover, the Defendant is a political party and a key objective of the Party and of NEC is to select candidates who will reflect well on the party and who have the greatest chance of being elected. This is not an objective test and it is not entirely fair, in the normal sense of the word. A person may be, in many respects, the best candidate and yet they may not be selected for shortlisting because the selection panel has to weigh up a wide range of considerations and make subtle judgments. The NEC and the panel have to do what is best for the Labour Party, not what is best for the individual candidates.
172. I fully accept that the outcome of the selection process matters greatly to Ms Rothery as an individual, but from the NEC's and the panel's perspective, they must act in the best interests of the Labour Party.

173. It is also significant that the selection panel was not conducting a disciplinary, let alone a quasi-judicial, function. This case is different from suspension or disciplinary cases. It may be grossly unfair, on a colloquial level, that certain persons are tainted by association with others, or are even tainted because the public may perceive that they are associated with others, when it is not the case at all, but that does not mean that it would be wrong for the NEC to take it into account.
174. Still further, a political party's selection processes will ordinary be conducted by lay members without legal expertise. It would be wrong to impose standards of procedural rigour on them which they could not reasonably be expected to meet.
175. Moreover, a person does not have a right to be shortlisted. And being shortlisted once did not give Ms Rothery or her colleagues an accrued right or a legitimate expectation to be shortlisted again. I do not accept Mr Lemer's submission that the obligations of reasonableness and fairness owed by the Labour Party to Mr Rothery are greater because she was at one stage shortlisted.
176. Furthermore, 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**, as Mr Millar pointed out, the contractual decision was a binary factual and objective decision about whether the reason for the C's husband death was suicide or not. The current case is concerned with a more subjective and political decision.

177. All of this means, in my judgment, that the selection panel had a very wide discretion to decide whether to abandon the first shortlist and then to decide whether to include those who were on the first shortlist within the category of those who will be considered for the second shortlist. This does not mean that the panel could not exceed the bounds of its discretion. It could not act irrationally and, if it did so, it would place the Party in breach of contract, but there would have to be something exceptional to make the political judgment it was making irrational. Similarly, there could be circumstances in which the panel acted unfairly, but this would have to be unfairness in the context of a political selection process, not a disciplinary, investigative, or punitive process.

178. In **Nattrass v United Kingdom Independence Party** [2013] EWHC 3017 (Ch), in relation to a similar submission that the concerns about a candidate's selection should be put to them, the judge, HHJ Purle QC said, at para 12,

“In political life people form views about other people who are in the public eye based upon their track record, and what they have done and said. It seems to me to be quite impossible to argue that there should be a duty to put to a candidate everything that might conceivably be held against that person at the end of the day.”

179. The importance of adopting a cautious approach in a case such as this has been emphasised in the authorities. Courts should be careful before granting an injunction which might have the effect, directly or indirectly, of requiring a political party to adopt a candidate for public office in whom it does not have confidence. In **Choudry v Treisman**, Stanley Burnton J said, at paragraph 87,

“In my judgment, save possibly the most exceptional circumstances, the court should not compel a registered political party to permit candidates to stand for election in its name if the party has genuine and substantial concerns as to the regularity and honesty of the procedure for their selection. In the present case, the defendant has established that, at the very least, it has such concerns. While the claimants have established a triable issue, they have not established any exceptional circumstances that could justify the granting of a mandatory injunction.”

180. At paragraph 90, Stanley Burnton said that, the Court should not grant an injunction of its effect would be to,

“place pressure on the Labour Party to authorise the claimants in whose selection it has no confidence, on grounds that are genuine and substantial, to stand as candidates in its name.”

181. I accept that the relief that is being sought by Ms Rothery does not go that far, but nonetheless this passage strikes a cautionary note.

182. Similarly, in **Nattrass**, a selection case involving a different political party and different rules, the judge, Judge Purle QC said, at paragraph 15,

‘Again, in the court should require exceptional circumstances before it interferes with the selection processes of a political party’

183. In my judgment it is clear that the selection panel in the present case did not act arbitrarily, capriciously, irrationally or unreasonably (which in this context means the same thing) towards Ms Rothery in deciding that she would no longer be shortlisted for the Mayoral role.

184. The panel was entitled to decide to re-interview the original candidates. It was fully entitled to reconsider its decision and it was not irrational for the selection panel to change its mind. It was not bound to stand by its first decision. The very difficult circumstances which existed in Liverpool and the

further information which had come to the attention of the panel means that its decision was made in good faith and rationally.

185. The panel was entitled to trust its judgment following on from the second interview of the candidates on 19 February, and to decide to proceed to another shortlisting process, without permitting the originally shortlisted candidates to apply again. It was quintessentially a political judgment.
186. It has been particularly important that the selection panel takes care in this selection exercise. As Mr Barros-Curtis said in his witness statement, in particular because of the circumstances surrounding Mr Anderson not seeking re-election as Mayor of Liverpool, it is critical that the Labour Party is at liberty to, and does exercise its political judgment correctly in order to ensure that the Party's candidate for the Mayoral election is the candidate with the best chance of winning that election.
187. As I have said, one of the panel members said on 21 February that, though he was not sure the panel could question the honesty and integrity of all three of the candidates, he felt that across the board there was clear risk of political damage to the party. This was the essence of the dilemma that was facing the panel. Even though there may be no clear evidence of anything untoward in the current candidates, the panel could not take the political risk that they were going to be open to attack and so vulnerable to defeat. This is undoubtedly harsh on the candidates, but it does not make it irrational or render the decision in breach of contract.
188. Put another way, this was unfortunately a circumstance in which the panel was entitled to worry that mud would stick, even if the candidate was in fact

entirely clean. Accordingly, the panel did not act because it was satisfied that Ms Rothery or the other candidates had done something wrong: rather it was because they were vulnerable to attack. It follows that the fact that Ms Rothery might have been able to reassure the panel on some or all of the matters of concern was not the point.

189. As for the seven specific points recorded in the panel's minutes:

(1) The panel did not say that the only reason for Ms Rothery's answers being unsettling and inconsistent was because she had said more about the 2011 incident in her second interview. It is impossible for the court to infer that the impression drawn by the panel from the second interview was irrational.

(2) As regards the alleged conflict between her statement of 20 February 2021 and her answers in re interview the day before, Ms Rothery did not deny that there was some. She said she that any inconsistency would be explained by the chaotic and hostile setting of the panel meeting on 19 February, but would just have reinforced the panel's concern that she would have been vulnerable to tough questioning as a candidate.

(3) As for the concern about a contrasting version of events in relation to the 2011 incident and the panel's unease that Ms Rothery had asked Mr Anderson to give a statement about it in February 2021, this does indeed seem a bit harsh, but that does not make it irrational. The panel was entitled to take the view that a public perception of connections with Mr Anderson would cause a political problem for Ms Rothery as a candidate.

(4) As for complaints on behalf of City Council staff, this was again a political issue. The fact that rumours existed was the problem, and there was no duty of fairness which required the panel to carry out an investigation in to whether they were true or not. I note that the panel's minute of the 22 February meeting says that Ms Rothery was asked about this, whilst her evidence was that the panel did not put any complaints to her, let alone purported informal complaints about her behaviour towards staff at Liverpool town hall. Despite this, Ms Rothery did not deny that she referred in the interview to the incident when she was unhappy with a driver (as she had banged her head trying to carry lots of bags and the driver had not helped). She said that she had not made a formal complaint, but that she had complained verbally to a staff member and that the driver had later been moved to another role. Though this was not a case when it was said a complaint had been made about her, it was an example of an issue between Ms Rothery and a member of staff.

(5) As for the panel's concern that Ms Rothery had forgotten about a company that had been registered in her name, the panel was entitled to be worried that she had forgotten about this.

(6) Once again, the panel was entitled to be concerned about worries about Ms Rothery's subscriptions to the Association of Labour Councillors, regardless of the underlying rights and wrongs.

(7) As for the concern that Mr Rothery had disparaged her fellow candidates at hustings, she does not dispute that she said a form of words in her closing statement which might be thought to have linked the other two

candidates in the members' minds with the previous administration, and hinted that they were tainted by that association.

190. Ms Rothery does not proceed with any allegation of actual or apparent bias and no evidence has been put forward to support such an allegation. But in so far as this was suggested in correspondence, or if it arises as part of the allegation of arbitrary or capricious conduct, I will say that there is no possible arguable basis for the suggestion that Ms Nicol or the panel was actually or apparently biased. Ms Nicol did not know Ms Rothery and had had no contact with her. She had been prepared to shortlist Ms Rothery following the first interview. The view that Ms Rothery should no longer be shortlisted was shared by the other panel members. Even if there was aggressive questioning in the interviews, this could not possibly give rise to the appearance of bias. Neither of the other originally shortlisted candidates has complained of the way that they were treated in the interviews.
191. It follows, in my judgment it is not sufficiently arguable that that the selection panel acted in breach of good faith, or irrationally or unreasonably or unfairly in breach of contract in the way that they treated Ms Rothery. Ms Rothery is not more likely than not to establish this at a full trial, or at a return date, and she has not provided, on the current evidence, a high degree of assurance that the Labour Party has acted in breach of contract towards her.
192. Indeed, even if the arguability standard was the **American Cyanamid** standard of "serious issue to be tried", I would find that she had not succeeded in establishing that there was a serious issue to be tried.

193. For this reason, I decline to grant the interim injunction that has been sought. However, for the sake of completeness, I will briefly address the other stages of the analysis.

Adequacy of damages

194. It is obvious that damages would not be an adequate remedy either for Ms Rothery or for the Labour Party.

Balance of convenience

195. Even if there had been a sufficiently arguable case that the panel had breached Ms Rothery's contract with the Labour Party, I would have been cautious about granting injunctive relief, for broadly the same reasons as give rise to the very wide contractual discretion in cases such as this. The Court should think carefully before intervening in political decisions that are taken by a political party.

196. There is a parallel with **Vertex Data Science v Powergen Retail Ltd** [2006] EWHC 1340, in which Tomlinson J declined to grant an interim injunction in circumstances where the parties had lost trust in each other and the agreement required extensive mutual cooperation to work and where there was scope for real and general disagreement about the nature of the cooperation required.

Other considerations relevant to discretion

197. As I have already said, I would not have refused relief for reasons of delay alone. The delay is relevant only in that contributed to my decision that a speedy trial would not be appropriate.
198. The Labour Party points out that Ms Rothery has not notified the new short listed candidates, Ms Anderson and Mr Lavelle, of this application, and only asked the Labour Party to do so yesterday, Sunday. Once again, if this was the only difficulty, I would not have refused relief on this basis. As Mr Barros-Curtis made clear in his evidence, the Labour Party has been in very close contact with Ms Anderson and Mr Lavelle, and there is no doubt that they are aware of this application. Their interests are aligned exactly with those of the Labour Party, and since they were not themselves party to any of the events in this case, there would be nothing they could have added if they had been separately represented.
199. Ms Rothery has offered a cross-undertaking in damages but this is not in itself, in the circumstances of this case, an important factor weighing in her favour, especially when she has not provided any evidence of her financial means and ability to meet the cross undertaking.

Speedy trial

200. For the reasons I have already given, I decline to order a speedy trial in this case. I also decline Ms Rothery's application for further urgent disclosure. Since I am not ordering a speedy trial, no purpose would be served by urgent disclosure.

201. However, I decline Mr Millar QC's invitation for me to strike out the proceedings altogether. There is no strike-out application before the Court and I think that the parties should have a breathing-space to consider my judgment before deciding what next steps to take.

Conclusion

202. For the reasons I have given, I refuse to grant the injunction sought by the Claimant, and associated relief.