

REQUEST FOR A RULING BETWEEN:

MR MARK JOHNSTON

Applicant

-and-

(1) HELENA COLE

(2) FEDERAL AUDIT AND SCRUTINY COMMITTEE

(3) FEDERAL BOARD

Respondents

FINAL RULING OF THE FEDERAL APPEALS PANEL

David Graham
Thomas Hood
Harry Samuels (Case Panel chair)

12 March 2024

Decision

1. Although we find that the FASC failed to publish reports of its meetings as required by the Federal Party Constitution, we dismiss the application because the case had become academic by the time of the hearing, the Applicant had alternative remedies that were not exhausted, and had brought the application outside the time limit in respect of most of the meetings concerned.

Full reasons

Introduction

2. The Applicant alleged in this case, brought at the end of January 2023, a failure by Ms Cole in her capacity as former Chair of the Federal Audit and Scrutiny Committee ('FASC') and the Party Chief Executive to make reports of its meetings held in 2021 and 2022 available to party members.
3. This case was heard by Zoom videoconference which occupied the Panel for about one hour and twenty-five minutes on 12 March 2024. We heard from Mr Johnston on his own behalf. He clarified that he was not asking for reports to now be published for meetings as far back as 202, but for the FAP to require the FASC to publish reports in future. He stated that he had found it to be unclear what alternative route was available to complain about the absence of reports. We heard from Dr Mark Pack on behalf of the Board, as well as from Ms Cole who dialled into the Zoom meeting to explain what she had and had not done, and from the current FASC Chair Dave Radcliffe. The Federal Board's position was that it had been unnecessary and inappropriate to make a formal application to the FAP about this matter, and that the FAP should decline to exercise its jurisdiction. They also argued that taking minutes was adequate to discharge the requirements to produce reports. We delivered an *ex tempore* decision, and this is the written record of our reasons.

Constitutional provisions and regulations of relevance

4. Article 8.8B of the Federal Party Constitution ('FPC') provides that each committee of the Federal Party must make regulations which must include 'provisions for reports to be made to party members after the completion of each full meeting of the Committee...in a manner deemed practical by

the Federal Chief Executive within 14 days of the conclusion of the said meeting’.

5. The FASC is established by article 16.1 of the FPC which provides, ‘There shall be a Federal Audit and Scrutiny Committee which shall be responsible to the Federal Board and shall report regularly to it’.
6. In the autumn of 2022 a new body called the Federal Council was established under what is now Article 9.15 of the FPC. This provides, ‘The Council shall be responsible for scrutinising the work of the Federal Board...and may require a response on any issue from the Board’. The first Federal Council was elected in November 2022.
7. The FASC has maintained its own standing orders (‘regulations’ for the purpose of Article 8.8 FPC) which by standing order 9(iii) thereof mirrored this provision in the Federal Constitution requiring a ‘brief report for Party Members within 14 days of the conclusion of each ordinary meeting, to be published in a manner deemed practical by the Federal Chief Executive’.

Evidence

8. The evidence we heard was that the Chair of the FASC had received advice from the then-Company Secretary of the Federal Party to the effect that this obligation could be discharged by the minuting of the meetings and the publication of those minutes. Minutes had therefore been prepared in a manner that did not provide a full account of the proceedings in order to protect confidentiality. They had not in fact been published timeously on the Party website and the Chair of the FASC had not been responsible for updating the website. The practice had therefore been that no separate

reports to members had been prepared by the Chair or routinely published within 14 days.

9. Mr Johnston had written e-mails to the Chief Executive in September 2022 requesting FASC reports. Two days after an initial response offering to check with FASC, Mr Johnston submitted a complaint under the complaints procedure. The member of staff responsible for complaints had written back stating that this matter was not within the scope of the disciplinary complaints process. In January 2023, the Applicant made his application to the FAP.
10. The evidence of Mr Radcliffe and Mr Johnston was that by the time of the FAP hearing, the complaint had become academic since reports of relevant meetings had in fact now been uploaded to the Party website since March 2023, which the Applicant did accept were compliant with the FPC.

Decision

11. We consider for Mr Johnston to proceed by way of an application to the Federal Appeals Panel was inappropriate for these reasons:
 - (a) He was complaining about meetings that had occurred many months and in some cases years previously, long out of time to apply to the Panel (our normal deadline being 6 weeks under rule 2.2 of our Published Procedures).
 - (b) He had not exhausted alternative remedies because the FASC was at all times accountable to the Federal Board under art.16(1) of the Constitution, and latterly the Board was subject to scrutiny by the Federal Council (art.9.15). He should have asked the Federal Board to ensure that the required reports were published.

(c) The case is also academic now, because reports had been published. We therefore dismiss the application.

12. However, as we have heard argument on the requirements of article 8.8B of the Federal Party Constitution, we shall give our interpretation of it so that all Federal Committees are aware of what is required. We are satisfied that the constitutional requirement on the FASC was not discharged merely by keeping minutes, but required at least a brief freestanding report to be published for the benefit of party members and digestible as such (whether or not that extends to the sort of detail one would find in verbatim minutes being a matter for them).
13. The FASC's standing orders referred to 'minutes' in standing order no.6 and the drafters should be interpreted as having advisedly intended a different kind of document when they referred to 'reports' in standing order 9, paragraphs (i) and (ii).
14. We also note that it may be desirable for fuller minutes to be kept that would remain confidential to a Federal committee, and that the level of detail in minutes should not be compromised for fear of publication disclosing confidential details, but confidential items or details could be kept out of published reports.