

REQUEST FOR A RULING BETWEEN:

MR JAMES BLISS

Applicant

-and-

FEDERAL CONFERENCE COMMITTEE

Respondents

FINAL RULING OF THE FEDERAL APPEALS PANEL

Bridget Fox

Anthony Fairclough

David Graham (Chair)

12 September 2024

DECISION

1. We declare that the decision dated 2 October 2023 purporting to exclude Mr Bliss from the 2 following Party Conferences is invalid, as is the appeal decision of the Federal Conference Committee on 25 October 2023 upholding that decision, and accordingly set both aside.

REASONS

2. The Applicant complains that his rights as a member of the Party have been infringed (Federal Party Constitution article 22.3B).
3. This application was heard remotely via Zoom videoconference. The F.A.P. sat between approximately 10am and 1pm on 7 September 2024. We heard from Mr Mike Ross, Co-Chief Steward of the Autumn 2023 Party Conference; from Mr Nick Da Costa and Dr Mark Pack on behalf of the Federal Conference Committee ('FCC'), and from Mr Bliss. We gave a summary of our decision orally and the full reasons are set out here.

Evidence

4. This application arises out of events occurring at Autumn Conference 2023, including at the Glee Club. The evidence was that whilst Glee Club is not part of the formal proceedings of Conference, and is organised by a group of members called 'the Liberator Collective', the room hire is paid for by the Party, the Party assists with setup/furniture, the event is listed in the official printed handbook, and the stewards are available if called upon (and may well intervene to call time at the end of the session).
5. On the evening of Monday 25 September 2023, at a meeting of the Glee Club fringe singing event held in the evening in a room at the conference hotel, the Applicant accepts that he 'got far drunker than intended' acted in a 'silly and childish manner' including heckling, and attempted to pull off the shoe of a friend Darryl Smalley seated next to him, with the result that the shoe flew through the air and 'may have' hit a woman seated several seats down. The Applicant's evidence to us was that he went up to the woman to ask how she was. The Applicant said the incident with the shoe was witnessed by Jennie Rigg who had been at the front of the room conducting proceedings. A member of hotel staff had told him that someone had complained, it was best if he leave the Glee Club event, and he then went into the hotel bar after checking that the hotel did not want him to leave the premises altogether.
6. At between 10am and 10.30am the following Tuesday morning, the Applicant says that he went to the conference centre to pick up some items he had left in the hall. At this point, he was apprehended by Mr Ross who asked him to leave Conference on account of his behaviour the previous evening at Glee Club.
7. Mr Ross's evidence to us was that he was not in attendance at Glee Club but had heard from several third parties the following morning that there had been 'a more deliberate incident' involving the throwing of a shoe by the Applicant. Mr Ross stated that had he been present the previous night, he would have excluded the Applicant 'then and there', and considered it appropriate to exclude him from the remainder of the Conference (which would have concluded at around 3pm). He found the Applicant in the foyer and said that he would describe his demeanour as calm and quiet. Msrs

Bliss and Ross both stated that Mr Bliss did not contest the decision and left the premises quietly.

8. In his oral evidence to us, Mr Ross was quite clear that his decision to exclude the Applicant from Conference that Tuesday morning was solely on the basis of the alleged shoe-throwing incident at the Glee Club. However, subsequently he was told about other incidents of alleged misbehaviour. One of these concerned alleged behaviour towards Wendy Chamberlain.

9. Subsequently, on 2 October 2023 at about 16:57hrs Mr Bliss received an email as follows:

‘Dear James,

[...]As you know, on the final day of conference I had to ask you to leave the premises. This followed a series of events on the Monday evening at the conference hotel, including at the Glee club. Each of those were serious in themselves, but the cumulative effect of them all meant I was left with no option but to ask you to leave the conference.

I am aware you have passed on your apologies to both the Chief Exec of the party and the chair of the FCC, which I know are well meant. However, given the seriousness of the actions, they do merit further action and as a result of this it has been decided that you will not be able to attend conference in either Spring or Autumn 2024.

Yours,

Mike Ross

Mike Ross (Co Chief Steward)
Jodie Frapple (Co Chief Steward)
Liberal Democrats Stewarding Team’

10. When pressed on the language used in the email, Mr Ross’s evidence was:
 - (a) It had been inaccurate to say the Tuesday exclusion was determined, at the time, as a cumulative effect of incidents other than at the Glee Club;
 - (b) The decision to impose the 2-conference ban was not made by him (he believed he only had a power to recommend a sanction) but by a group of people including him, the FCC Chair Mr Da Costa, FCC officers Cara Jenkinson and Jon Ball, and Susie Murray who was Head of Conference. The wider stewarding team of volunteers did not take the decision.
11. Within 20 minutes of receiving the e-mail, the Applicant asked if he could appeal the decision. The Applicant appears to have been told that he could appeal, although it is unclear precisely when, and no e-mail to him stating this was provided to us.

12. At 06:36hrs the next morning 3rd October, he sent an email to the stewards' email account, stating: 'I'd just like to expand on this further and give some more information and backstory to some of the events on Monday.... I hope will allow for it to be reconsidered.' Having set out an account of some events on the Monday, he said, 'I don't think that this decision is fair or reasonable ...[and] is absolutely not in line with the principles of natural justice, especially given until now I have not been able to give my side of events [sic], and I would ask that it be reconsidered.'
13. On 25 October 2023, the FCC held a meeting commencing at 18:00hrs. The final item on the agenda was the Applicant's appeal. The minutes show that attendees included Nick Da Costa, Cara Jenkinson, Jon Ball and Darryl Smalley. Jennie Rigg attended part of the meeting, and Wendy Chamberlain who was a member had not attended. Mr Ross was a co-opted member but did not attend the committee meeting. The minutes state: 'FCC agreed with Co-chief stewards ban for next two conferences and dismissed the appeal...FCC to look into putting it into the formal complaints process'.
14. Mr Da Costa told us that the FCC followed its standard appeals procedure which was the same as the one they use for appeals against rejection of conference motions, namely written representations.
15. The FCC had before it the 3rd October e-mail from the Applicant, and a 7-paragraph report from Mr Ross ('the Report'). This read as follows (emphasis added):

'Report on James Bliss at conference
Mike Ross – Co Chief Steward October 2023

1. Issues relating to James Bliss first arose on the Tuesday morning. This followed events that allegedly took place at the conference hotel, particularly in the Glee Club on the Monday evening. This ***first came to my attention via Nick Da Costa, who had himself been made aware by aware by Jennie Rigg.***

2. The allegation was that James had been at the Glee club, where potentially under the influence of alcohol, he took off the shoe of another member and proceeded to throw this shoe at another attendee. The shoe appears to have struck the person, though they were fortunately not injured as a result.

3. ***While James denied, initially, he threw the shoe, others at the event have confirmed the action did take place. This includes the member whose shoe it was.***

4. ***Subsequent to this issue, it also became apparent that James had been allegedly abusive to others at conference. This included a group including Wendy Chamberlain and members of party staff.*** The issue related to the housing debate that had taken place earlier in the day, which James had been heavily involved with.

5. I was able to, with thanks to the conference security team, locate James later on the Tuesday, at which point, following the incidents that had occurred, I informed James he was being excluded from the conference site. James did leave the conference site without challenging the decision, though he did state he did not believe he had thrown the shoe.

6. Given the incidents described, *it was my view that there should be a two conference ban in place for James. Either of the incidents in themselves were serious enough to see him excluded from the conference site. Given there were more than one incident, a subsequent ban, that would cover both 2024 events, seems appropriate.*

7. *Following the conference there have been **further incidents have been reported relating to James and his behaviour on the Monday evening.** These further reports partly backed up the information already received about the Glee club, while also expanded [sic] on other incidents on the evening where had been abusive to other conference attendees.'*

The FCC were not given any more details about the 'further reports' or 'further incidents', nor what if any investigation Mr Ross had carried out to assess the reliability of the informants (such as how much they had to drink, their position to see or hear the alleged events, whether they had any reason to dislike the Applicant etc).

16. The evidence of Dr Pack and Mr Da Costa was that Mr Da Costa introduced the item of business and said that the organisers of Glee Club were unhappy about the Applicant's behaviour. There followed lengthy deliberation with some members advocating alternative sanctions but Mr Da Costa directing them that they could either uphold or reverse the decision but not change it. Dr Pack indicated that so far as he was concerned Mr Ross was a man of integrity and many years' experience as steward, and he had no reason to doubt what was said particularly when the Applicant had admitted being drunk. He also gave weight to the statement that Glee Club organisers, whom he said erred on the permissive side at their events, had thought the behaviour went beyond what was acceptable.
17. The Applicant was not invited to attend the FCC meeting. He was not sent a copy of the Report. He was not given the identity of his accusers (Mr Ross's informants) or a copy or summary of their evidence. He was not told who would be attending the FCC and given an opportunity to object.
18. We were told that the purposes of the FCC in upholding the 2-conference ban were partly to deter future misconduct, partly punitive, partly 'to reform and rehabilitate the person who misbehaved' (Form 2 response para 15b) and to protect visitors to conference. The misbehaviour was considered sufficiently serious to warrant the ban, but not sufficiently serious to warrant a formal complaint via the Party's complaints process.

19. The evidence was that this was an exceptionally rare incident. The evidence of Mr Ross was that he had been stewarding for over 20 years and could recall only 3 other cases where someone had been expelled from Conference. One of those was an occasion when someone did not have a pass, and another was misbehaviour. We were referred to no instance where a prospective ban from attending Conference had been imposed by a steward or by FCC previously.

Arguments

20. We received extensive written representations from the FCC and the Applicant, and we questioned those attending.
21. The FCC submitted that they were entitled to exclude members from Conference by virtue of the Standing Orders for Conference, the terms and conditions accepted when booking a place at Conference, and at common law. They submitted that the Applicant could still attend online and vote remotely on motions. They submitted (Form 2 para 14): 'The powers to exclude members from Conference...do not include a limit on the number of Conferences from which someone can be excluded nor do they explicitly rule out excluding someone in advance from a future conference'. They submit that this is a parallel freestanding jurisdiction separate to the disciplinary complaints process established under the Federal Party Constitution. We went through the Standing Orders and Terms and Conditions provided to us with Mr Da Costa and Dr Pack.
22. The FCC in their written submissions stated, 'FCC considered the report from Mike Ross and also the written submission from James Bliss. Where there was a conflict between the accounts, the committee considered the relative credibility of each, the supporting evidence (such as reference to other witnesses) and the direct first-hand evidence where relevant of Committee members.'
23. The Applicant's case can be summarised as saying he had not had a fair chance to mount a case and was not made aware of the detailed allegations against him, but had to make assumptions. Dr Pack submitted that the e-mail correspondence indicated the Applicant had been aware there were multiple incidents being alleged, and could have addressed those but chose not to do so. The Applicant said at the point he sent the e-mails on 2 and 3 October, he had not been presented with any more information and had not been told these would stand as his appeal representations. The Applicant also alleged 'apparent bias' on the basis that he had been 'speaking against the party leadership' (Form 1b, ground (c)).
24. We heard argument on whether Conference was a standing body, or whether it is only in existence when convened. We did not in the event consider it necessary to rule on that.

Party constitution

25. Article 6.4 of the Federal Party Constitution ('FPC') provides that subject to the provisions of the FPC, the Conference shall be the sovereign representative body of the Party', and at article 6.1, it says, 'The Conference shall consist of party members'.
26. The FCC is established by articles 8.1 and 11.1 of the FPC. Article 8.8 requires each Committee of the Federal Party (including the FCC) to 'make regulations to govern the operation of the Committee and anybody accountable to it'. Article 8.11 FPC gives each Committee the power 'by regulation to establish sub-committees and other groups which shall be accountable to it', which regulations 'shall normally set out terms of reference for that body, including the purpose of that body, its duties and powers...and administrative arrangements' (art.8.12).
27. Article 11.1 sets out the remit of the FCC as follows:

'There shall be a Federal Conference Committee ("FCC") which shall be responsible for organising the Conference. It shall be subject to the control of the Federal Board in matters of financial and other resources. Standing Orders for the Conference shall be made by the Conference Committee subject to the approval of the Conference.'
28. Article FPC provides that '(art.23.1) If a complaint is brought against a member of the Party, it shall be dealt with by the State Party which covers the Local Party they are a member of...(art.23.2) Provided it is done in compliance with procedures made under Article 23.3, each State Party may choose to...delegate the administration of all of its complaints to the Federal Party'.

Conference Standing Orders

29. We were provided with the Standing Orders for Conference as they stood in Autumn 2023. The only relevant standing order was no. 6.2 which states as follows:

'6.2 Appeals against exclusion from conference

Any person excluded from conference by a decision of the Chief Steward shall have the right of appeal to the Committee at the next of its regular meetings. The exclusion shall remain in force pending the appeal.'
30. We were also referred by the FCC representatives to the definition of 'voting member' in the glossary as:

*'A member attending conference **who has satisfied the requirements for attendance** and has paid the registration fee presently in force for party members as agreed by FCC, and who is not a day visitor [or observer].'*

They submitted that Standing Orders contemplate 'requirements' being imposed upon registration, such as terms and conditions which they said included an agreement that participants would behave respectfully towards others.

FCC regulations

31. The FCC has made Standing Orders to govern its own procedure, which we take to be 'regulations' for the purpose of article 8 of the FPC. These do not specifically provide for appeals against exclusion from Conference. By article 1(i) these set up a 'General Purposes Sub-Committee to 'deal with matters concerning...(d) Conference stewards; and (e) Other relevant matters that may arise from time to time.'

Findings on authority of the Stewards

32. At common law, an association's officers are entitled to exclude trespassers from its meetings using reasonable force. They are also entitled, acting in good faith, to exclude a member who would otherwise be entitled to attend where they are disrupting the proceedings, actually threaten or seem likely to do so.
33. Assuming without deciding that Glee Club forms part of Conference, we are satisfied that the Applicant could have been properly removed for drunk and disorderly behaviour on the Monday night. It is more arguable whether, after his having sobered up and presenting as calm and quiet the next day, there was a reasonable basis for Mr Ross apprehending further disorderly behaviour and excluding him on the basis of hearsay allegations about the previous night's behaviour, but the Applicant did not dispute that on-the-spot exclusion and it is not contested before us.
34. Conference Standing Orders assume (at s.o.6.2) that the Chief Steward may exclude persons from Conference. The question is the ambit of this power, and whether Conference is to be taken as having intended that they have an unlimited power to ban Party Members prospectively from future Conferences to be held in months or years' time, for reasons not confined to maintaining safety and order, but including punishment, deterrence and their own reform and rehabilitation, as the FCC submit.
35. It is notable that Mr Ross's instinctive belief was that he did not have the power to unilaterally impose such a sanction in his capacity as steward, and he believed he was making a recommendation to FCC officers for them to confirm.
36. The FPC provides for Conference to consist of Party members. It also provides that any complaints brought against a member 'shall' be dealt with by the State Party under article 23.1 (or by the Federal Party as their delegate, as now happens in practice), in mandatory language.

37. In our view, in the absence of any express language conferring such jurisdiction, or any necessary implication, the Federal Conference Standing Orders cannot be read as creating a broad general disciplinary power to ban members from Conference, for any reason and for any period of time into the future. Rather than conferring such a wide-ranging new power on the Chief Steward(s), standing order 6.2 is imposing a *check* on their freestanding common law power by granting a right of appeal for ejected persons (albeit that this does not suspend the exclusion).
38. For this reason, we find that the decision on 2 October was unauthorised and invalid, and so we set it and the appeal decision aside.

Findings on inadequacy of the process

39. Even if the Chief Steward's powers had extended to a punitive disciplinary jurisdiction, we find that the procedure operated was wholly inadequate and unfair.
40. The Conference Standing Orders implicitly expect exclusions to be decided only by the Chief Steward; it would negate the right of appeal for these decisions to be made by others such as FCC officers, whose decisions carried no right of appeal.
41. The actual procedure adopted was that the Chief Steward did not believe he had the power to impose a prospective ban alone, and that the decision was taken by an *ad hoc* group of himself, Ms Murray, Mr Da Costa, Ms Jenkinson and Mr Ball. This body of people was not provided for by the FCC's Regulations or by the Conference Standing Orders and had no power to impose exclusions.
42. The decision-making body did not, prior to taking the decision, particularise to the Applicant the allegations that had been made against him, nor disclose the identities of the informants, nor give him a fair opportunity to make representations before imposing their sanction. This was unfair.
43. The unfairness was not cured on appeal, for the FCC followed a highly unfair appeals process.
44. In the first place, the FCC was constituted by numerous persons who had either been alleged victims or witnesses of the alleged misbehaviour (e.g. Darryl Smalley, Jennie Rigg), or informants (Nick Da Costa), or had actually made the very decision under appeal (Mssrs Da Costa, Ball, Ross and Ms Jenkinson). Ms Chamberlain whilst not present was both an alleged victim of another incident and a committee colleague of those deciding the appeal. In the circumstances, a reasonable fair-minded person would be entitled to believe that there was a real possibility that the appellate committee was biased in the sense of being a judge in their own cause, or having already decided the outcome of the 2nd October banning decision was correct. The persons involved did not recuse themselves and nor did they raise their previous

involvement and give the Applicant an opportunity to request that they recuse themselves.

45. Secondly, the Applicant was not provided with all the evidence against him in order to mount an effective appeal. In particular, he was not told of the allegation about Ms Chamberlain, he was not given a copy of the Report, and was not given the details of the information received by Mr Ross. Nor was he able to tell what information was being relied upon against him by the members of the FCC with previous involvement as witnesses or decision-makers.
46. Thirdly, the uninvolved members of the FCC were not provided with sufficient evidence on which to judge the credibility of the different accounts. The Report referred to unspecified 'further incidents' and 'others' who had made reports to Mr Ross. There was no detail given, nor even the names of informants, let alone copies or notes of reports. It was the barest hearsay. Mr Ross had not seen any of the alleged incidents himself, so it was not just his personal integrity that mattered. Witnesses were not called to give evidence and no-one could be questioned to establish the reliability of their reports. It was not fair to make findings about the credibility or integrity of the Applicant and the others involved in those circumstances.
47. For those reasons, had the FCC enjoyed the wide-ranging disciplinary function it contended for, we would nevertheless have set the appeal decision aside.

Recommendations

48. In practice, Chief Stewards may have to delegate exclusions to stewards 'on the spot' because they cannot be everywhere at once. It does not arise here but we suggest it is likely to be necessarily implicit that exclusions by junior stewards answering to the Chief Steward are to be treated as carrying the right of appeal, in order to ensure that it is effective. We recommend that the Conference standing orders should expressly make clear that these delegated decisions are appealable.
49. In future, we recommend that:
 - (a) Chief Stewards receive training to the effect that the ultimate decision-making responsibility for stewards' exclusion of Members from Conference lies with them, and is limited to instances:
 - (i) where attending members have not met the requirements of registration, fee payment etc; or
 - (ii) of actual or reasonably contemplated disruption, threats to health or safety, harassment, disorder etc; and
 - (iii) where interim measures or final disciplinary sanctions entailing loss of rights to attending Conference (e.g. suspension of membership or any duly imposed ban) have been properly imposed by the article 23 procedure;

- (b) the FCC establish a swift but fair procedure for hearing appeals from Chief Stewards' decisions, which ensures appellants know the case against them, and is adequate for resolving issues of contested fact and scrutinising evidence properly;
- (c) if they consider disciplinary sanction such as punitive bans from future Conference attendance to be warranted, Chief Stewards and/or FCC officers should make complaints under the Article 23 process.