FEDERAL APPEALS PANEL

APPLICATION BY ZOE HOLLOWOOD AND OTHERS

PERMISSION DECISION

Decision

Permission to proceed with this application is refused for the reasons set out below.

Reasons

1. In my capacity as Chair, I appointed Harry Samuels to case-manage this matter but, for reasons of availability and in the interests of expedition, am issuing the decision myself today. I have discussed the management of this matter and an earlier draft of this decision with Mr Samuels, and we are agreed that this matter should not proceed.

2. The Applicants ask, in an application form dated 17 July 2025, for a ruling that the Federal Returning Officer must 'modify their [sic] application of Article 2.5 of the Constitution in forthcoming [internal] elections, and the description of that process in candidate nomination forms, in order to address the clear conflict [with]…the Equality Act 2010…and thus ensure that there is no danger of any outcomes of the elections unlawfully disadvantaging one or more candidates on the basis of the protected characteristic of sex'. The complaint implies that women may be unlawfully disadvantaged. It is requested that this be adjudicated before the Notice of Elections is issued on 11 August 2025, or that we direct the elections be postponed until the application is adjudicated.

FAP remit

3. At the first stage of the FAP's Published procedures, the Case Manager shall consider whether an application is within jurisdiction and should be granted permission to proceed (rule 4.1). The FAP will not grant permission to proceed where an application is untimely, not properly arguable with a realistic prospect of success, is academic, or alternative remedies have not been exhausted (r.4.3). It will also not grant permission if it is highly likely that the outcome for the Applicant would have been the same, without a compelling reason to do so (r.4.4).

4. It is not the role of the Federal Appeals Panel to rule on controversies as to compliance of the Party's rules with the law of the land, except insofar as necessary to discharge our functions under the Federal Party Constitution ('FPC'), which include resolving disputes over the *interpretation* of the FPC (art.22.3A). The FAP is not a court of law.

5. Still less is it our role to rewrite the Constitution or other rules, which is a matter for Conference, or for the elected party office-holders. It is unfortunate that these abstract points about the constitutional election rules are being raised so close to the opening of nominations. They could have been raised at any time, and amendments considered by Conference. I note in this regard that the Supreme Court judgment referred to in the application notice — *For Women Scotland v Scottish Ministers* [2025] 2 WLR 879 — was handed down in April. For the avoidance of doubt, both that judgment and the relevant provisions of the Equality Act 2010 have been considered, for the purposes of determining this application.

Relevant constitutional provisions

6. The relevant provisions of the FPC appear to be these:

> '[2.4] The provisions of this Constitution shall be implemented with regard to the principle that men and women shall have an equal opportunity of participating at every level of the Party, subject to the provisions of the Equality Act 2010
>
> [2.5] Whenever this Constitution provides for the election by party members to a Federal Committee, not less than 40% or, if 40% is not a whole number, the whole number nearest to but not exceeding 40% of those elected shall self-identify as men or non-binary people, and self-identify as women or non-binary people respectively.
>
> [2.6] Whenever this Constitution provides for the election by party members of ten or more persons to any Federal Committee or other Federal body:
>
> […]
>
> C. not less than 10% or, if 10% is not a whole number, the whole number nearest to but not exceeding 10% shall be people from under-represented sexual orientations and gender identities, including trans and non-binary identities.
>
> [2.7] The provisions of this article shall not prevent places being filled if diversity requirements are not met due to insufficient candidates with the stated characteristic being nominated. Such elections shall take place from a common list and in accordance with the election rules made by the Federal Board as from time to time in force. Where this Constitution or any Standing

Orders made thereunder appear to conflict with the Equality Act 2010, the provisions of the Equality Act 2010 shall prevail.

[…]

[19.4] The rules for the selection of Westminster candidates shall comply with the following requirements:

[…]

G.a system will be put in place to secure adequate representation of groups having protected characteristics within the meaning of the Equality Act 2010'

Article 19.8, now a dead letter, was in the same terms as art.19.4 and applied to European elections.

Findings

7. We consider that this application is premature and may be academic.

(a) It is not alleged that the relevant provisions in the FPC do necessarily or intrinsically amount to a policy, criterion or practice discriminating against a group with a protected characteristic of sex; on the contrary, it is said that on a proper interpretation, it is possible for the Returning Officer to disapply the quotas so as to comply with the Equality Act 2010. The implication of this argument advanced by the Applicant is that the FPC *does* on its face contain sufficient provision as to comply with the Equality Act 2010.

(b) The quota provisions are drafted neutrally so as to affect persons of both sexes (including on the basis of self-identification), such that one is in the realms of indirect rather than direct discrimination (which is in principle capable of justification by evidence), and application of the quotas may just as well disadvantage (biological) men as (biological) women, depending on how many members of each sex nominate themselves, and depending upon how many votes each candidate receives. This cuts against the argument that any provision, on its face, directly discriminates as a matter of necessity. Furthermore, the Applicants refer to section 158 of the Equality Act 2010, and it is perhaps notable that the quota provisions in the FPC are not expressed as being made in accordance with this section.

(c) No candidates have nominated themselves or been elected and until they do, it is premature to argue whether any have been disadvantaged by the rules, or such disadvantage is disproportionate. It may well be that, on the specific outcome of this specific election, the self-identification provisions do not become engaged at all. If that is right, this application will have been academic. As the FAP has repeatedly stressed, it will not intervene in hypothetical or academic disputes.

(d) There is no allegation that the applicants are personally affected by the rules.

(e) There is also an alternative remedy for persons aggrieved at the conduct of the elections. Regulation 22 of the Election Regulations stipulates that the Returning Officer shall have the power to make all necessary decisions concerning the conduct of elections including where the Regulations themselves are silent. Appeals against decisions of the Returning Officer may be made to the FAP under regulation 24. That provision reinforces the impression that this application is premature and inappropriate at this juncture.

8. It might well be possible that article 2.5 as currently worded could intrinsically disproportionately privilege *persons who self-identify as non-binary*, who may thereby be guaranteed at least 40% of the places on any committee even though their proportion of the population is far lower than 40%, and thereby disadvantage persons of other gender identities, of both sexes. But that is not alleged in the application form (so I note the argument without deciding that point of interpretation here), and may not in fact affect the outcome if non-binary persons do not nominate themselves. Article 2.7 in any case requires the Act to prevail in the event of conflict, and there is an appeals procedure to rectify any irregularities as explained above. Furthermore, it has to be re-emphasised that, if the rules lead on their proper analysis to unexpected or absurd consequences, that is not a matter for the FAP (absent there being a problem of interpretation or conflict with members' constitutional rights) but rather something for the elected rule making bodies or Federal Conference to consider and respond to as they see fit.

9. Finally, we noted that §6 of the Applicants' Form 1B alleges that *"the term "non-binary" and the concept of self-identification do not describe protected characteristics that are provided for in law"*. This is raised as a criticism of the current provision in the FPC. Given our conclusion that this application is currently academic, I observe merely in passing (and expressly without deciding the point) that the Applicants have not sought to identify (i) why, as a matter of law or principle, the FPC is obliged to limit its provision for representation on committees only to the categories of protected characteristics within the Equality Act 2010, or (ii) on what basis the definitions of protected characteristics contained within the Equality Act 2010 prevent the Federal Party (and the freedom of its members at Federal Conference) from making other constitutional provision for other groups. To put it another way, the Applicants have not yet identified why the Equality Act 2010 — or the Supreme Court's recent interpretation of the provisions of that Act — make it positively <u>unlawful</u> for private organisations to make provision in their governing documents on the basis of 'gender self-identification' or for non-binary people. If this application were to be brought again in the future, these are points the Applicants (or others) may need to deal with in full.

DAVID GRAHAM

Case Manager

12 August 2025