

**FEDERAL APPEALS PANEL**

**BETWEEN:**

**LUCAS NORTH**

**Applicant**

**-and-**

**RETURNING OFFICER'S TEAM**

**Respondents**

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**RULING OF THE FEDERAL APPEALS PANEL**

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Catherine Smart

Daniel Jones

David Graham

11 November 2025

**DECISION**

1. We allow the application and declare invalid the decision of the Returning Officer on 27 October 2025 in respect of the quotas in articles 2.5 and 2.6 of the Federal Party Constitution ('FPC') as being outside his powers under the FPC.
2. We find and declare as follows:
  - (i) The Returning Officer had no power to issue the statement published on the Party's website on 27 October 2025 purporting to 'reinterpret' and reword the 'positive action' quotas contained in articles 2.5 and 2.6 of the FPC so as, in his words, to make a 'reasonable...set of drafting changes' which were 'a reasonable interpretation of the constitution's intent'.
  - (ii) The objective meaning of the language of the relevant constitutional provisions was not that which the Returning Officer expressed in the statement.
  - (iii) The Constitution may only be amended under the procedure provided for at article 2.10 thereof, by two-thirds of members voting in Party Conference.

(iv) As a matter of contract law and constitutional governance, the Returning Officer is bound to apply the Constitution as adopted by Party Conference unless to do so would infringe the law of the land.

(v) If and to the extent that applying the quotas in those articles would *constitute, promote or provide for* actionable discrimination against individual candidates with a protected characteristic for the purposes of the Equality Act 2010 ('EqA'), they will as a matter of law be unenforceable against them or party staff and officers by operation of s.142(1) of that Act, and the Returning Officer must disapply them in apparent such cases under article 2.7 of the FPC and to comply with the EqA. The Returning Officer must act in good faith on his own legal advice (if any), on a case-by-case basis or, if he is advised that they intrinsically 'promote or provide for' unlawful discrimination, as a matter of principle.

(vi) The wording in article 2.5 referring to self-identification and non-binary people cannot be severed so as to leave that clause making grammatical sense applying the 'blue pencil test' established in case law, and so the entire clause must be applied or (where unenforceable) disapplied as a whole.

(vii) If severance would both be required by the operation of s.142 the Equality Act 2010 and would operate to save the remainder of article 2.6(c) – which will be a matter for the Returning Officer to determine for himself in light of any legal advice– then short of total disapplication, the following words in that clause could be deleted under the 'blue pencil test' whilst still making grammatical sense:

- the words following 'orientations' up to the full-stop, or
- the words from 'be' to the end of that clause excepting the word 'trans' (interpreting that term to mean solely those with the protected characteristic of gender reassignment for the purpose of s.7(1) of the EqA applying the objective definition set out therein).

(viii) In applying constitutional quotas, and in determining whether candidates have 'protected characteristics' for the purposes of avoiding prohibited discrimination for the purpose of arts 2.4 and 2.7 of the FPC and EqA, the Returning Officer must in good faith request and act upon reasonably relevant, accurate and adequate information precisely addressing the specific constitutional criteria and legislatively protected characteristics concerned, and give all candidates a fair opportunity to avail of quotas for which they are eligible. For instance, in considering a characteristic defined as sex at birth or sexual orientation, he must in good faith request and (if information is volunteered by the candidate or discrimination is otherwise apparent to him) apply data about those characteristics as defined in the legislation, and not 'gender identity'.

## **REASONS**

1. This is the final ruling of the Federal Appeals Panel.

### **Background and procedure**

2. The Applicant is a candidate for election to the Federal Conference Committee. By an application on 28 October 2025, they challenged the decision of the Respondent ('the Decision') to issue a statement which was published on the Party website on 27 October 2025 purporting to affect the 'positive action' quotas set out in articles 2.5 and 2.6 of the FPC for the Internal Elections. Polling opened on 28 October and closes on 11 November.

### *The Decision*

3. In material part, the Respondent's statement read as follows [emboldened added]:  
'...the Federal Party has taken legal advice about the interpretation of rules 2.5 and 2.6 in the constitution, insofar as they apply to groups with protected characteristics. It is important to say that the constitution asserts the primacy of the Equality Act 2010 in interpreting any rules, and gives authority to the Returning Officer to make reasonable interpretations of the rules in situations where there appears to be a conflict between the constitution and the Equality Act 2010.

Our legal advice is that the Party needs to follow three basic principles:

[1] Positive action is permitted up to the point at which a group that shares a protected characteristic is appropriately represented in the Party's governance. The relevant benchmark for a political party representing the country as a whole is the proportion of people in the country who share that characteristic: i.e. if 10% of the population share the characteristic, then the Party can take positive action until 10% of its governance also shares that characteristic.

[2] The Party must treat each protected characteristic as a separate category for the purposes of assessing the relevant benchmark, and mechanisms to take positive action. For the avoidance of doubt, the advice is that the party must treat groups with the protected characteristics of sex and gender reassignment as separate groups.

[3] It is reasonable to 'round up' to whole numbers in taking positive action. So for a group who share a protected characteristic with a low prevalence in the population as a whole, it is reasonable to specify that one place on a larger committee is reserved for that group.

In practice this means that two clauses of the constitution need to be reinterpreted by the Returning Officer to make them compliant with the Equality Act 2010, in the context of the Supreme Court judgement. In doing so, the Returning Officer needs to be reasonable and follow as closely as possible the apparent intention of the original drafting.

Taking clause 2.5 first, with relevant parts underlined:<sup>1</sup>

*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*

The **apparent intention behind this clause** is for the party to take positive action for both the protected characteristics of Sex and Gender Reassignment. However it merges benchmarks for these groups, which the Party is legally required to treat separately.

In terms of Sex, the Party's legal advice is that it is reasonable to treat the rule as saying:

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 be men and women respectively**.

**The party must interpret 'men' here as meaning 'cis men', and 'women' as meaning 'cis women'.**

In terms of Gender Reassignment, **it is reasonable** for the purposes of these elections **to make an adjustment to rule 2.6 that meets the intention of the constitutional drafting**.

Taking clause 2.6, with relevant parts underlined:<sup>2</sup>

*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:  
[...]*

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<sup>1</sup> In fact, the version published on the website had no underlining.

<sup>2</sup> Again, there was no underlining in the original.

*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.*

The intention behind this clause is for the party to take positive action on larger committees for both the protected characteristics of Sexual Orientation and Gender Reassignment. However, it merges benchmarks for these groups, which the party is legally required to treat separately, and sets a benchmark higher than the combined Census recorded prevalence in the population for both groups (of 3.2% and 0.5% respectively).

The party's legal advice concludes that it is reasonable for the purposes of these elections to treat the rule as saying:

*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 5% or, if 5% is not a whole number, the positive whole number nearest to 5% shall be people from under-represented sexual orientations; and  
d. not less than 5% or, if 5% is not a whole number, the positive whole number nearest to 5% shall be people with the protected characteristic of gender reassignment.*

This interpretation of the rules as a whole provides a reasonable interpretation of the constitution's intent, in the light of the Supreme Court ruling; **and is in the Party's legal advisor's view the smallest set of drafting changes that is consistent with the ruling.** This interpretation will stand for this election, and it is up to the party as a whole whether they wish to change the constitution at any future date.

No constitutional change is required here; the constitution is drafted in such a way to permit the Returning Officer to interpret the rules reasonably in the light of court judgments, and to take the Equality Act 2010 in this area as the underlying foundation.'

#### *Representations received*

4. We received 17 written applications from Members to intervene in the case, as well as submissions from both parties, and a late request to intervene on the morning of Monday 10 November from the Party President. We wish to place on record our thanks to the Standards Office staff for working long hours into the evenings and on Sunday to correspond with all concerned, upload documents, and communicate with

the parties and members of the FAP to set an expedited hearing date in advance of the close of polling.

5. The written submissions received were lengthy, wide-ranging and alleged breaches of the FPC and Election Regulations, as well as arguments about the legal and policy merits of 'positive action' quotas, alleged infringements of the EqA by arts 2.5-2.6 as written and as 're-interpreted', data protection law, and the Human Rights Act. These were all considered by the Case Manager and informed the points raised with the parties. We greatly appreciated the time, care and engagement with the issues.

#### *Jurisdiction and issues for determination*

6. The jurisdiction of the FAP is provided for and limited by article 22 of the FPC. So far as is relevant, we are mandated to rule on '(a) any dispute over the interpretation of this Constitution', '(b) any claim that the rights under this Constitution of a member...have been infringed', and '(d) any matter expressly so provided by this Constitution or by rules made thereunder'. Its remit is confined to interpreting and establishing the effect of the Party's rules, and ensuring that they are followed where lawful to do so. It is certainly not our role to rewrite these. The FAP is independent from the Party's executive and is not constituted to give it legal advice. Nor is it a general arbitrator of controversies about the law of the land or alleged breaches of the law by the Party or its members, that do not directly impinge on our constitutional remit.
7. The Panel was satisfied that it had jurisdiction to hear this application insofar as it involved a dispute about the meaning of the Constitution and rights arising under it. Following careful consideration of all representations received, the Case Manager determined not to add parties to the case, and to limit the issues strictly to matters of constitutional interpretation, effect and enforceability. This was to avoid straying into matters beyond the Panel's remit, ensure that matter could be manageably adjudicated prior to the close of poll, and that the parties could fairly address us in the available time.
8. The FAP accordingly has not made any ruling whether the Party would or would not be in actionable breach of the Equality Act 2010 or other legislation.
9. A Case Panel comprising Catherine Smart, David Graham and Daniel Jones sat on Monday 10 November at 2pm for approximately two and a half hours. We were grateful to hear from the Applicant in person, as well as the Chief Executive Mike Dixon and Rachel Minshull for the Returning Officer's Team as a whole.

10. The Party President attended and limited his intervention to a general warning to avoid making any ruling that would require the Party to act contrary to the Equality Act (without waiving privilege in the legal advice received.). We gave a summary of the decision following deliberation at the close of the hearing, and indicated that the full written decision would follow.

### **Arguments of the parties**

11. The Applicant argued that the Returning Officer had no constitutional mandate to, in effect, rewrite the FPC. Their submission was that as a matter of contract law, Members had a right to expect the FPC to be operated in accordance with its terms unless that would be unlawful under the general law of the land, and to the extent the EqA conflicted with the constitutional quotas in arts 2.5 and 2.6(c), they should be disapplied entirely or, where possible applying basic principles of contract law, unenforceable passages severed and the remainder applied.
12. The Respondents initially contended that they had no other lawful option but to take the action they did to, in their words, 'read down' the Constitution, in order for the Party to comply with the EqA. The gist of their argument was that Part 7 of the EqA applied, and that these clauses conflated multiple categories of persons with protected characteristics (including women with female sex and non-binary persons of either sex; and persons of different sexual orientations with persons of self-defined gender identities some of whom would have the protected characteristic of gender reassignment) so as to be liable to give rise to unjustifiable discrimination on ground of sex or sexual orientation (having regard to the proportions of persons with those characteristics in the general population).
13. However, during the course of argument the Respondents acknowledged the following:
  - (a) The amended quotas set out by the Returning Officer went beyond mere interpretation of the words used in the Constitution, because the legal advice was that they could not lawfully be operated unamended.
  - (b) The amendments were designed to effect the smallest change possible to the contract between Members comprised in the Constitution, in order to reflect what was variously described as the 'spirit', 'purpose' or 'intent' of Conference in enacting clauses 2.5–2.6 in a 'reasonable' way.
  - (c) It would have been lawful for Conference to make other amendments to article 2 of the FPC which were compliant with the EqA, because this statute permitted

(by s.158) but did not require any 'positive action' measures and did not dictate their scope or design so long as they were proportionate.

- (d) Whether or not the operation of the quotas amounted to discrimination prohibited by the EqA in practice would be fact-sensitive as it would depend on the specific factual conjuncture as to the protected characteristics of candidates running for places on a particular committee, the numbers of such candidates and available places, and how many votes in which priority of preferences each received.

14. The Respondents nevertheless argued that notwithstanding such concessions, regulations 20 and/or 21 of the Election Regulations were a part of the Constitution and contract between Members, and authorised the Returning Officer to undertake the Decision even though it went beyond interpreting articles 2.5-2.6 of the FPC.

### **Background legal principles**

15. The Federal Party is an unincorporated association headquartered in London. The FPC and other rules operate as a mutually enforceable binding contract between its Members.<sup>3</sup>
16. The legal principles governing interpretation of contracts are straightforward and well-settled at the highest level. We must apply them. The following is a short précis.
17. The meaning of a contract is a question of law.<sup>4</sup> There is only one objectively 'right' answer as to what a contract means; it cannot mean whatever one particular party unilaterally says it might reasonably mean.<sup>5</sup>
18. The tribunal asks itself, as an objective exercise, what a reasonable reader would understand the words to mean. 'The starting-point, and usually the end point,' is to find the 'natural and ordinary meaning' of the particular words used, viewed in their particular context (statutory or otherwise) and in the light of common sense.<sup>6</sup> This means the natural and ordinary meaning of language as it would be understood by an ordinary reasonable person having all the background knowledge that would reasonably have been available at the time of the contract. One does not easily accept that people must have made linguistic mistakes in formal documents. However, occasionally context shows that the parties must be objectively understood to have intended to give words some unusual meaning, or that their intention was obvious but

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<sup>3</sup> See, in particular, *Evangelou v McNicol* [2016] EWCA Civ 817 at [19]– [20] per Beatson LJ; *Hayes v Pack (sued on behalf of all members of the Liberal Democrats except the Claimant)* [2025] EWHC 402 (KB) at [6] and [16]– [25] per Foxton J.

<sup>4</sup> *Evangelou v McNicol* [2016] EWCA Civ 817 at [20], Beatson LJ.

<sup>5</sup> See by analogy *Tesco Stores v Dundee City Council* [2012] UKSC 13 at paras [17] to [23] by Lord Reed JSC.

<sup>6</sup> *Lambeth LBC v Secretary of State for Housing, Communities and Local Government* [2019] UKSC 33 at [15] – [19], Lord Carnwath JSC.

used the wrong language or syntax in the document.<sup>7</sup> When construing the rules of a mass membership political party, it is important to bear in mind that the readership or audience will be ordinary members, and that many or most members will not have been aware of all background documents or conference debates underlying any historic amendments, which cannot be permitted to override the clear language of the instrument.<sup>8</sup>

19. The subjective intent or subsequent behaviour of parties is inadmissible when construing a document.<sup>9</sup>
20. If the words used have one objective meaning, but the parties had a different subjective intent which they did not properly write down, the contractual document cannot be 'corrected' unilaterally so as to have a different legal effect; rather a party must make an evidenced application to a court for 'rectification'.<sup>10</sup>
21. It is not permissible when construing a document 'to improve upon the instrument', however reasonable or desirable the improvement might be. One cannot rewrite it to make it conform to perceived common-sense if it is not ambiguous, even if it seems to give rise to an absurd result.<sup>11</sup>
22. Where there is real ambiguity, there are presumptions when choosing between plausible interpretations that (i) if one interpretation would render the contract or clause invalid and the other not, that would tend to favour the valid interpretation; and (ii) one would tend to favour the interpretation with the least absurd consequences.<sup>12</sup>
23. There is no statutory provision within the EqA 2010 requiring, nor even permitting, a contract to be 'read down' or modified unilaterally by one party outside the scope of the above principles where it would otherwise be unenforceable. On the contrary, the EqA contains a power at s.143 for an application to be made to a county court (or in Scotland, a sheriff court) on notice to all other parties for *the court* to remove or modify an unenforceable contract term.

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<sup>7</sup> See *Investors' Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896, H.L. at pp.912-913 by Lord Hoffmann, his points (1) to (5).

<sup>8</sup> *Evangelou v McNicol* [2016] EWCA Civ 817 at [41]-[42]. That case was about the Labour Party.

<sup>9</sup> *Investors' Compensation Scheme v West Bromwich Building Society*, [1998] 1 WLR 896, H.L, Lord Hoffmann's point (3)); *L. Schuler AG v Wickman Machine Tools Sales Ltd* [1974] AC 235, Lords Reid (p.252C-F; Lord Morris at p.260F-G; Lord Wilberforce at 261A-262B; Lord Simon at 265E-269D; Lord Kilbrandon at 272E).

<sup>10</sup> See *FSHC Group Holdings Ltd v Glas Trust Corporation Ltd* [2019] EWCA Civ 136.

<sup>11</sup> *Rainy Sky v Kookmin Bank* [2011] UKSC 50 at [16] and [23] by Lord Clarke JSC; *Attorney-General of Belize v Belize Telecom* [2009] UKPC 10, Lord Hoffmann for the whole Board at [16].

<sup>12</sup> See *Enka Insaat ve Sanayi AS v OOO Insurance Company Chubb* [2020] UKSC 38 at [95], Lords Hamblen and Leggatt JSC and *Tillman v Egon Zehnder Ltd* [2019] UKSC 32 at [38]-[42] by Lord Carnwath; *Rainy Sky v Kookmin Bank* [2011] UKSC 50 at [30] by Lord Clarke.

24. Where a contract confers a discretionary power upon an officer of the association, unless the contrary appears in the express words used, it will be an implied term that the power be exercised reasonably; for a proper purpose; in good faith; with regard only to relevant and not to irrelevant considerations; and not illogically, irrationally, arbitrarily or capriciously.<sup>13</sup> It is a cardinal rule that no term may be implied which would contradict the express terms used, or would not go without saying or be necessary to render them effective.<sup>14</sup>
25. Section 142(1) of the EqA provides that a ‘term of a contract is unenforceable against a person in so far as it constitutes, promotes or provides for treatment of that or another person that is of a description prohibited by this Act’.
26. Where a contract term is pure nonsense and has no ascertainable meaning at all, or is unenforceable as a matter of law (e.g. by operation of statute), in some cases the law allows the unenforceable bit to be ‘severed’ so that the remainder may be enforced. There is a 3-part test, which is known as the ‘blue pencil test’. This has 3 cumulative requirements:
- (a) that discrete words that are unenforceable can notionally be cleanly struck through in blue pencil, so that the remainder makes sense on its own terms without further additions or modifications;
  - (b) that this leaves a valid and enforceable contract; and
  - (c) this does not generate a major change in the overall effect of the contract such that it would become a contract of a wholly different sort.<sup>15</sup>

### **Appraisal of the Panel**

27. We accept that the Returning Officer has to interpret and apply the FPC in order to do his job of conducting the election count in accordance with the quotas. He also has to form a view whether a contract term such as a particular quota is unenforceable because it ‘promotes’ unlawful discrimination or would actually give rise to this in a given instance.
28. The EqA states at s.142(1) that any contract term is unenforceable if it constitutes, promotes or provides for prohibited treatment of another person.

### **Was the Returning Officer merely interpreting the Constitution?**

29. It was clear to the Panel that, as the Decision stated, the purported ‘reinterpretation’ by the Returning Officer went well beyond ascertaining the objective meaning of the

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<sup>13</sup> See *Hayes v Pack* [2025] EWHC 402 (KB) at [7]–[9] per Foxton J; *Evangelou v McNicol* [2016] EWCA Civ 817 at [24] and [47] per Beatson LJ.

<sup>14</sup> *Marks and Spencer plc v BNP Paribas* [2015] UKSC 72 at [22]–[29], Lord Neuberger JSC.

<sup>15</sup> *Tillman v Egon Zehnder Ltd* [2019] UKSC 32 at [85]–[87], Lord Carnwath JSC (concurring in by all his colleagues).

words actually used in articles 2.5 and 2.6 of the FPC and entailed, in its own words, 'drafting changes' that the Returning Officer considered 'reasonable' and to give effect to his interpretation of the 'apparent intention' behind the original drafting (see emboldened quoted text at paragraph 3 above). It is absolutely clear from the case law that this is not a permitted exercise in interpretation, but amounts to a rewriting exercise.

#### Did the Returning Officer have power to amend the Constitution?

30. The EqA does not mandate a creative 'reinterpretation', nor operate itself to modify unenforceable terms, nor authorise the parties to a contract to unilaterally modify them to remove conflicts with the EqA. What it does is provide by s.143 for applications to a court to ask a judge or sheriff to modify them.
31. It was conceded in argument that the EqA itself does not compel the introduction of positive action quotas for any particular protected characteristic, either in the terms written by the Returning Officer or at all.
32. The question, then, is whether there is any authority conferred by or under the Constitution itself for the Returning Officer to engage in the amendment that he purported to undertake. The Constitution must be construed as a whole.
33. We find that nothing in the wording of articles 2.4 and 2.7 of the FPC compels or authorises an exercise in rewording articles 2.5 or 2.6(c) in order to 'cure' the perceived non-compliance with the EqA. Assuming without deciding that they generally 'promote' discrimination as the Respondents contended, article 2.7 would operate as a contractual 'saving' provision, making clear that the EqA must prevail and clauses 2.5 and 2.6(c) should not be given effect.
34. Article 2.10 FPC stipulates in material part as follows [emphasis added]:
  - 'This Constitution may **only** be altered:
  - a. by a two-thirds majority of members present and voting at the Federal Conference;
  - b. where any such alteration has been submitted in accordance with the Standing Orders of that Conference by the Federal Board or any other persons or bodies entitled to submit motions or amendments under Article 7.6 and notified to Local Parties at least six weeks in advance...'

Article 2.10 FPC therefore sets out an exclusive procedure for the amendment of the FPC (as we see from the word 'only').

35. Insofar as the submissions of the Respondents referred to regulation 21 of the Election Regulations as being part of the Constitution, they were clearly in error. The Election Regulations are subordinate ‘rules as to...party elections’, made by the Federal Board pursuant to article 9.9(c) of the FPC. Any subordinate instrument which conflicted with the Constitution would be invalid.
36. Article 9.9 was clearly not intended to allow the Federal Board to make amendments to the FPC without following the exclusive procedure in article 2.10, still less to authorise the Federal Board to provide in such rules for individual officers such as a Returning Officer to do so. In addition to the use of the word ‘only’ in article 2.10, we can see this from the final catch-all power at 9.9(e), to make rules as to ‘such other matters as it may consider necessary or desirable **to give effect to or supplement** the provisions of this Constitution’ [embolden added]. The rule-making power cannot be exercised to amend or conflict with other provisions of the FPC so as to circumvent article 2.10.
37. We can anyway see that the Federal Board did not intend the Election Regulations to be used to reword articles 2.5–2.6 of the FPC, but rather to see them faithfully implemented in conjunction with art.2.7. Specifically, regulation 6 makes clear (embolden added):
- ‘At least one month before the count in an election for federal committees or Federal Council as defined in paragraph 1, **the Returning Officer shall** publish a written description of the counting method to be used to **ensure that results are compliant with Articles 2.5, 2.6 and 2.7 of the constitution** and that the provisions of paragraph 54 regarding casual vacancies are met.’
38. Looking at the detailed wording of regulations 20 and 21 of the Election Regulations, they do not expressly or by necessary implication purport to authorise the Returning Officer to amend the FPC. Regulation 20 says, ‘The Returning Officer shall have the power to make rulings to facilitate the count’. This will allow him, for instance, to decide if ballots are spoilt or should be counted in favour of a particular candidate applying the rules. It does not say he can imaginatively reinterpret the FPC. Regulation 21 states (emphasis added), ‘*In **interpreting and applying these regulations**, and in any case in which these regulations are silent*, the Returning Officer shall have the power to make all *necessary* decisions concerning the conduct of these elections, following the aims and principles of public election law’. This regulation cannot sensibly be read to allow rules about elections contained in the higher-level document, the FPC, rather than the Election Regulations, to be treated as optional or subject to amendment unilaterally by the Returning Officer. All it does is allow him to interpret the Regulations where necessary – in the sense permitted by the cases referred to

above, and apply them, and make other necessary decisions. Writing new quotas is not strictly necessary as explained above.

39. For the above reasons, we allow the application and rule that the Returning Officer had no authority to change the constitutional quotas (as opposed to disapplying them as reasonably appeared necessary).

#### Blue-pencil test

40. The Panel canvassed the 'blue-pencil test' with the parties.
41. Article 2.5 clearly and expressly provides for the 40% quotas to include persons self-defining as men, women or 'non-binary'. Leaving aside the EqA, it was infelicitously drafted since while we presume it was subjectively intended to assist women and non-binary people, the ordinary and natural meaning of its words is that it may be complied with notwithstanding that at least 80% of the committee places are occupied by persons self-defining as 'non-binary', and by no women at all; or by 40% of self-defined women (whether or not biologically female) and no non-binary people whatsoever. We conclude that it is impossible to cleanly strike through references to self-identification and non-binary people and for the clause to still make grammatical sense without the addition of a verb such as 'be'. This means it fails the 'blue pencil' test and must be applied or disappplied in its entirety.
42. It is possible as a matter of language to strike through words about self-identification so as to convert article 2.6(c) into a 10% quota for either minority sexual orientations, or for 'trans' people, such that the clause would make grammatical sense as a freestanding provision and pass the 'blue pencil test'. The Respondents considered that this would, however, disproportionately over-represent persons of minority sexual orientations so as to unjustifiably discriminate against heterosexual candidates (having regard to the proportions of each orientation in the general population), or potentially give rise to unjustified indirect sex discrimination to candidates of one or other sex owing to over-representation of trans people. That is why the Returning Officer had sought to create two separate quotas of 5%.

#### Data collection must be reasonably and faithfully undertaken, to collect adequate, relevant and accurate information

43. In the submissions before us, it was stated that the Returning Officer was proposing to knowingly operate the newly amended quotas we have found to be unauthorised, with

their provision for criteria as to (biological) sex and sexual orientation, utilising data as to 'gender identity' gathered for the purpose of the original constitutional quotas. The Respondents stated, 'the RO has chosen not to use gender reassignment data to assign people to a different sex to the one they have given the party' on the basis of self-identification. It appeared that trans candidates who had self-identified in their current gender would be deemed to have the sex they identified as, rather than their sex at birth, and candidates would not be asked for further information to clarify sex at birth. The published statement also said that the 'male' and 'female' categories 'must' only be applied to 'cis' persons, i.e. would *not* apply to biologically male and female people who had indicated a different gender identity and the protected characteristic of gender reassignment (even if they might have wished to avail of the new quotas).

44. This approach was taken with the best of intentions because the Returning Officer said they 'strongly want[...] to avoid' anyone 'being misgendered', so had 'chosen not to use gender reassignment data to assign people to a different sex to the one they have given the Party'. They argued that it would be unfair, illegitimate and potentially discriminatory to 'investigate the veracity of information given', and said (although this does not follow from that premise) that they were advised it was reasonable in good faith to rely on self-identification as accurately reflecting birth sex rather than asking a specific question to all candidates. The corollary was that they were prepared (on their own interpretation of the Equality Act 2010) to discriminate on grounds of gender reassignment against transgender candidates and operate a new 'interpretation' or practice that was itself unenforceable and at odds with article 2.7 FPC. That would not have been constitutionally defensible.
45. The Panel's jurisdiction includes allegations that the rights of members under the Constitution are being infringed, and it appears that the requirements of the Constitution require some elucidation.
46. The members of the Party have a contractual right to have the Party's officers and staff faithfully apply the Constitution as adopted by Conference, consistently with the law of the land. The same Constitution both includes the quotas in articles 2.5 and 2.6(c) and also makes clear at article 2.7 that the Act '**shall** prevail', so that in the case of conflict, those quotas are unenforceable and are to be disapplied. The duty of the Returning Officer pursuant to regulation 6 of the Election Regulations is to **ensure** that the results are compliant with these Constitutional provisions. They are also under a duty pursuant to regulation 15 to, so far as possible, give equal opportunities and fair balance to all candidates. It is essential that officers and staff do not feel inhibited in the proper discharge of their duties, which are owed to all Members under the Constitution.

47. As set out above at paragraph 24, it is an implied term of a contractual function in the absence of express contrary provision that it be exercised rationally, logically, in good faith, for the purpose it was conferred, reasonably and with regard to relevant considerations and not irrelevancies. It follows that the Returning Officer is under a duty to make reasonable, good-faith efforts to acquire and apply the data reasonably necessary to discharge his obligations under arts 2.5–2.7 of the FPC both to see that the constitutional quotas are implemented where enforceable, to properly and reasonably determine whether they are unenforceable, and to see that the Equality Act prevails when they *are* unenforceable.<sup>16</sup>
48. This means where a criterion is to be applied, or a decision made as to discrimination under the EqA, the relevant data must be considered and not data which are known or understood to be inaccurate or inapposite. For instance, if a quota criterion of sex or sexual orientation is to be applied, or potential discrimination against candidates with those characteristics is being assessed, it will be a wilful breach of the express and implied terms of the contract to knowingly have regard to data such as ‘gender identity’ which address a different criterion or definition, or were gathered for a different purpose, so as to operate in a wilfully blind manner as to whether the EqA is being complied with.
49. It would have been illogical to set up a new system of quotas said to be required to comply with equality law, but then wilfully fail to operate them as understood to be required by relying on inappropriate ‘self-identification’ data.
50. No Party member or member of Party staff is entitled to wilfully procure or induce a breach of contract or of the Equality Act 2010 by the Party’s other officers or staff, which may be actionable both against them personally and the Party, regardless of that member’s personal feelings or beliefs.
51. There is no need for any candidate to be compelled to take advantage of a ‘positive action’ quota established for persons of a given protected characteristic, if they feel uncomfortable about stating their birth sex, or any other characteristic such as race, sexual orientation or disability. However, all candidates must be fairly afforded the opportunity to avail of any lawful constitutional quota for which they are eligible (should they so choose), and reasonable efforts must be made to advise them of the definitions applying to define the quota or characteristic, and to impress upon them not to actively mislead the Party as to their protected characteristics or eligibility.

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<sup>16</sup> In the context of public corporations, the implied duty of reasonable inquiry to discharge a statutory function is known as the ‘Tameside duty’ after the case of *Secretary of State for Education and Science v Metropolitan Borough of Tameside* [1976] 3 All ER 665. An analogous principle will apply to a duty under a private contractual constitution because it is necessary to implement and give business efficacy to the contract.

## Summary

52. The wording of the Party's rulebook, and the applicable contractual principles, are all clear. The Returning Officer cannot rewrite the Constitution, however desirable that may be.
53. The task of the Returning Officer is to ensure that the Constitution is faithfully applied, which by art.2.7 includes ensuring compliance with the Equality Act 2010 where that conflicts with and requires disapplication of quotas in arts 2.5 and 2.6. This responsibility must be discharged in good faith on the basis of reasonable inquiry and relevant data, to ensure that all candidates are treated fairly in line with the Constitution and the law of the land.
54. The Panel is conscious that if the Returning Officer applies this ruling in line with his submissions as to the legal advice he says was received, then the effect may be that there is no lawful operative 'positive action' quota for biologically female candidates, for candidates with minority sexual orientations, or for candidates with the protected characteristic of gender reassignment.
55. That will be a matter for the Federal Board and Party Conference to address as they see fit. Neither the Returning Officer nor this Panel are empowered to redraft the Constitution outside the procedure provided for in article 2.10.