

FEDERAL APPEALS PANEL

JO HAYES

Applicant

-and-

(1) MARGARET JOACHIM (on behalf of the English Candidates Committee)

(2) MIKE DIXON

(3) JASON HUNTER

(4) ALISON ROUSE (on behalf of the English Council Executive)

Respondents

RULING OF THE FEDERAL APPEALS PANEL

Introduction

1. This is the ruling of the Case Panel, comprising David Graham (Chair), Paul Tilsley CBE and Harry Samuels.
2. By this application, Ms Hayes who is the Chair of the Regional Candidates Committee within the English State Party, requested a ruling on the interpretation of article 19 of the Federal Party Constitution, as well as a ruling that she is empowered to decide to select Mr Hunter as the Liberal Democrat candidate in the forthcoming election for the public office of Essex Police, Fire and Crime Commissioner ('PFCC') and to waive any requirement for him to be on the approved list of prospective candidates.
3. The background facts are that Mr Hunter resigned from the Party in September 2020 having at that time been on the approved list for parliamentary candidates operated by the English Candidates Committee ('ECC'), and subsequently rejoined the Party on 9 February 2021. The English State Party operates its own set of rules ('Selection Rules for Large Single Seats') whereby it requires candidates for election as PFCC to be on the approved list. Rev. Joachim had informed Ms Hayes that the ECC would not consider any application by Mr Hunter to be re-entered onto the approved list because another set of rules made by the ECC precluded this. This is entitled 'Procedure for

returning candidates to the approved list after an absence' ('the Procedure'). The Procedure states:

'Candidates who lost their approved status through lapsing (more than 3 month gap in their membership) or resigning from the party must on rejoining wait until they have completed a year's membership before being re-assessed.'

Mr Hunter has confirmed that he would like to submit an application and for this to be considered without having to wait until February 2022.

4. We note that other provisions in the Procedure impose mandatory waiting periods in particular cases, which in the case of previous removal from the list for disciplinary reasons, is 5 years.
5. The Federal Appeals Panel considered submissions on the following issues at its hearing on 1 April 2021:
 - a. whether article 19 of the Federal Party Constitution ('Parliamentary Candidates') is of any application in relation to the election of a Police, Fire and Crime Commissioner ('PFCC') in an English county;
 - b. if article 19 is applicable, whether it precludes a procedural rule that imposes a 12 month waiting period before the English Candidates Committee may determine an application by a recently rejoined member for entry onto the approved list for Westminster candidates;
 - c. whether they have jurisdiction to determine the other matters on which the Applicant requests a ruling and if so, who has power to select the PFCC candidate for Essex.

The first issue

6. As to the first issue, the Panel unanimously considers that it does have jurisdiction insofar as the English State Party has in its selection rules required prospective PFCC candidates to be on the approved Parliamentary list, article 19.2 of the Federal Party Constitution governs how applications for entry onto the approved list are to be determined, and the Procedure impinges on such decisions.

The Second issue

7. As to the second issue, the Panel unanimously considers that article 19 precludes the 12 month rule in issue in this case. As this rule in the Procedure conflicts with the Federal Party Constitution, it must be disapplied.
8. The members of the Panel have reached the same conclusion by different routes.
9. Article 19.2 is in these terms:

‘19.2 In deciding whether to enter an applicant on a list, each State Candidates Committee shall take into account:

 - (a) the support shown by the applicant for the fundamental values and objectives of the Party;
 - (b) the previous participation by the applicant in the work of the Party or a former Party, both generally and within the relevant State; new members of the Party may apply to be entered on the list, and if their application otherwise satisfies the States Candidates Committee their previous participation in other walks of life can be taken into account;
 - (c) the need to ensure that the list contains a reasonable balance between both sexes and different age groups, and includes representatives of different social and economic groups and of ethnic minorities; and
 - (d) such other considerations as may be relevant in the circumstances.’
10. A rule such as that in issue in this case effectively predetermines that the ECC will refuse to enter those applicants caught by it onto the approved list for the duration of the relevant waiting period, irrespective of points (a) to (d).
11. Mr Tilsley is of the view that a rejoining member such as Mr Hunter is a ‘new member’ for the purpose of article 19.2(b), such that the 12-month rule conflicts with this provision which expressly states in terms: ‘new members of the Party may apply to be entered on the list’, and the phrase ‘if their application otherwise satisfies the States Candidates Committee’ implicitly requires a consideration of their application.
12. The other members of the Panel consider that he is not a ‘new’ member insofar as he has ‘previous participation...in the work of the Party’, but even if he is not a ‘new

member', it is clear from the scheme of article 19 that all applications to be admitted onto the approved list must be considered on their merits.

13. Article 19(1)(c) empowers State Candidates Committees to publish 'criteria for the assessment of candidates'. It is implicit that an 'assessment' requires consideration of the candidates on their merits.
14. Article 19.2 requires, in all cases, the considerations enumerated there to be taken into account. These include the support shown by the applicant for the Party's fundamental objectives and values, any 'previous participation by the applicant in the work of the Party', and 'such other considerations as may be relevant in the circumstances'. A State Party rule that prevents these relevant considerations being taken into account, individually considered and weighed in the balance, whether through application of a blanket time-limit or otherwise, would frustrate article 19.2.
15. It is likely in many cases that the circumstances surrounding an applicant's previous resignation from the Party would be considered relevant considerations for the purpose of article 19(2)(d). So too may be any historic disciplinary decision to remove someone from the approved list. However, operating a blanket rule that prevents these matters being individually considered alongside other relevant considerations and evaluated, with any demerits of a prospective candidate set against their merits, would be unfair and contrary to the scheme of article 19.

The third issue

16. The Panel unanimously considers that it has no jurisdiction to determine the other matters, which are not provided for by the Federal Party Constitution.
17. The Federal Party is a confederation of the State Parties (article 2.1 of the Federal Party Constitution). The Federal Party Constitution provides at article 2.2 that whilst it and any rules made thereunder bind the State Parties, in all other regards a State Party shall be sovereign and entitled to exercise any power not reserved to the Federal

Party (which are set out at article 2.3). Although the Federal Party has as one of its general objects (article 1.2(c)) the election of Liberal Democrats to public office, and article 2.9 requires any candidate standing for election to public office as a candidate of the Party to be a member of the Party, the Federal Party Constitution does not otherwise govern selections for Police, Fire and Crime Commissioner elections.

18. The FAP's jurisdiction is conferred by article 22.3 of the Federal Party Constitution. It does not have any express jurisdiction to definitively rule on the interpretation of a State Party Constitution or rules made under it, and has no such necessarily implied jurisdiction where that is not necessary to determine a dispute within its own jurisdiction under article 22.3. As State Parties are sovereign, any dispute about the internal distribution of powers within the English Party, or the rights of English members in relation to the English State Party, which does not engage provisions of the Federal Party Constitution, is not for us unless it has been referred by a State Appeals Panel pursuant to art.22.3(f).

19. Before concluding, I wish to place on record our thanks and appreciation for the work of our colleague Paul Tilsley CBE who is stepping down from the Federal Appeals Panel.

David Graham

1 April 2021