

FEDERAL APPEALS PANEL

IN THE MATTER OF AN APPEAL BETWEEN

MR S JONES

Appellant

– and –

COMPLAINTS PANEL

Respondent

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RULING

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DAVID GRAHAM  
Case Manager  
12 August 2022

**Ruling**

1. The appeal is allowed pursuant to rule 7.4 and the decision of the Complaints Panel dated 17 May 2021 is set aside in respect of case 650 and insofar as it imposed a sanction on the Appellant. The Appeal is otherwise dismissed under rule 7.4.
2. This decision will be published on the Party website unless representations are received within 7 days, in which case a ruling will be made as to publication.

**Reasons**

1. This appeal arises out of a number of linked disciplinary cases concerning the Appellant as complainant or subject of complaint.

*Background and decision below*

2. The Appellant made a number of complaints and the most serious was that he was discriminated against by his local party in failing to select him as candidate for a target seat, on account of his Islamic faith. The complaints made against him concerned comments he expressed in relation to the topic of sex education in schools. It appears that he was against sex education being mandatory for young children.
3. The Appellant's complaints were dismissed by the Complaints Panel and one of the cross-complaints against him was dismissed. However, the remaining complaint was upheld. He was found to have made 3 comments to the selection panel of 3 people on 31 August 2019, in response to a question soliciting his views. The comments were to the effect that (i) that when homosexuality [sic] was legalised it was understood that it would take place in private; (ii) 'LGBT+ should not be "paraded" in front of

young children; and (iii) 'elements of LGBT+ are unwise'. He was apparently not asked to elaborate further as to what he meant by the third comment. He has explained that the latter oblique comment related to his concerns about safety in women's sport, and medical treatment of dysphoric children.

4. The Complaints Panel considered (paras 34–35 and 37) that the comments 'undermine[d] the dignity and/or create[d] a hostile environment for LGBTQ+ individuals'. They found that there was 'harassment...not directed at anyone in particular' (para 37). The Panel concluded that 'there has been a breach of the Equality Act 2010' namely 'discrimination against another person based on a protected characteristic', that there was 'material disagreement, evidenced by conduct, with the fundamental values and objectives of the Party'.
5. The Complaints Panel determined as follows (paras 51–53) under the heading 'Recommendations':

[to] make SJ's continued membership of the party conditional upon successfully completing mandatory training on LGBTQ+ rights and awareness. We hope that the Liberal Democrat central administration can help SJ to find and organise such training and someone can be identified to 'sign off' on it.

Our view, also, is that SJ should not be permitted to hold any office or be on any approved list of candidates until such training is successfully completed.

Our conclusion, therefore, is that SJ's party membership should be suspended until such time as the training set out above is successfully completed.'

6. The Appellant's membership has been suspended ever since. The Party Standards Office do not conduct any specific course of training on 'LGBTQ+ rights and awareness', although they can arrange bespoke training.

#### *Case 650*

7. I find that there is no real prospect that the Complaints Panel decision would be successfully upheld at a hearing, because there was a misdirection in the reasoning and the sanction is manifestly excessive.
8. The first point to make is that the context of the comments made by the Appellant is critical. They were expressed precisely in order to honestly respond to questioning about his beliefs. They were not made with intent to cause harassment or distress to a third party.
9. Secondly, the definition of 'discrimination' under ss13 and 19 of the Equality Act 2010 is A treating B less favourably than A treats or would treat others because of a protected characteristic ('direct discrimination'); or applying a provision, criterion or practice which is discriminatory in relation to a relevant characteristic of B's where not justified as a proportionate means of achieving a legitimate aim ('indirect

discrimination'), and the conduct concerned is not within a legislative exception. Answering a question so as to express one's views simply does not fall within this definition. Accordingly, the reasons given by the Complaints Panel indicate that it made an error of law.

10. The Complaints Panel may have had in mind the definition of 'harassment' at s.26(1) of the Equality Act 2010. This provides that A harasses B if A engages in unwanted conduct related to a relevant protected characteristic and the conduct has the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. As one would expect, harassment is defined in terms of a victim, B. Whilst one can create a degrading environment for a group without singling any one particular victim out, one cannot harass nobody in particular. In this case, it is difficult to see how a selection candidate answering a question put to him by the panel can be said to have engaged in 'unwanted' conduct towards the members of that panel, and there also appears to have been no express complaint or finding that any of the panellists were personally violated in their dignity in the manner contemplated by s.26 of the Act.
11. It is in fact unclear whether the 'recommendations' were intended to amount to a formal sanction, but they are too vague to be enforceable as such. No specific course such as is contemplated is in fact offered by the Party, and the content or criteria for 'successful completion' are not specified.
12. The above issues are sufficient reason to set aside the decision in Case 650.
13. This appeal also raises the broader question as to the circumstances in which persons should have their Party membership revoked for expressing heterodox views, and how far the Party should get into an inquisitorial inquiry into members' views. There is no right not to be offended by someone else's speech, and isolated offensive comments are not necessarily harassment. It is also conceptually consistent with Liberalism both to believe for religious reasons that certain behaviour is immoral or sinful; and also to treat other persons partaking in such behaviour with equal dignity and respect. It is only where an intimidatory, degrading, hostile or offensive environment is being created, or views expressed that are clearly at odds with equal treatment, that disciplinary action/revocation of membership is likely to be warranted.
14. The Appellant apparently believes erroneously that sexual orientation or attraction is a question of choice, rather than a physiological trait. This belief in itself is not a disciplinary matter unless the Appellant manifests it in a manner contrary to fundamental Liberal values. In this case it is unclear whether any discriminatory policy was being advocated by the Appellant in respect of gay sex (as opposed to opposition to mandatory sex education of any kind at a particular age or at all) but there was no such finding by the Complaints Panel. In all the circumstances of this case, on the findings made and where the views were expressed in response to questions by a selection panel, I find as the Complaints Panel did that revocation of membership would be a manifestly excessive sanction.

15. The question arises whether the matter should be remitted for reconsideration by the Complaints Panel. On balance, I consider that since the Appellant's membership has already been suspended for more than a year, there would be little purpose served in remitting the matter as the Appellant has effectively suffered the sanction already.

*Other findings*

16. There is no error of reasoning or procedure disclosed by the Complaints Panel's decision and grounds of appeal in relation to the dismissal of the Appellant's complaints against third parties.
17. The manner in which the Appellant expressed himself at the selection panel in relation to the above issues and in a previous Facebook post was considered by the selection panel, including using the verb 'parading', to be potentially offensive to the electorate and he was, at the very least, imprecise in his comments. They also noted that his views on sex education did not correspond to current Party policy. The Case Panel was entitled on the evidence to find that the selection panel would have found this to have been the case regardless of whether the Appellant's views were informed by his particular religious beliefs, whether he had held a different religion or no religion. It is the prerogative of a local selection panel to choose candidates whom they agree with on political matters, including sex education, and/or whom they consider presents most clearly and agreeably to voters. The evaluation of the evidence is a matter for the Complaints Panel so long as they act reasonably. There is no basis to interfere with the decisions of the Complaints Panel on these complaints.