FAP case no. 10/2021
(CP Cases 580-595)

FEDERAL APPEALS PANEL

IN THE MATTER OF AN APPEAL BETWEEN:
MS GEETA SIDHU-ROBB
Appellant

-and-
MR LAURENCE BRASS (on behalf of the Complaints Panel)
Respondent

RULING ON PERMISSION TO APPEAL

DAVID GRAHAM

Chair of the Federal Appeals Panel

Ruling on permission to proceed to a Case Panel

Introduction

1. I have designated myself as Case Manager in respect of this matter.

2. The Appellant challenges a Decision Notice dated 19 November 2020 in which, following a Zoom hearing on Monday 16 November 2020 under the expedited procedure, the Complaints Panel determined that her membership of the Liberal Democrats should be revoked.

3. I have been provided with the Appellant's appeal form and her evidence placed before the Complaints Panel, as well as e-mail correspondence between the Standards Office and the Appellant and those assisting her. I have also viewed the video that formed the subject of the complaints in this case.

4. The preliminary question I have to consider under paragraph 3.6 of the Federal Appeals Panel's published procedures when considering whether to grant permission for this case to proceed to a Case Panel is whether it is arguable that (i) there was a serious failure of process or reasoning that was likely to render the determination unsafe or unsatisfactory in all the circumstances; or (ii) subsequent evidence not available at the time of the determination has come to light which was likely to render the determination unsafe or unsatisfactory in all the circumstances; or (iii) that the sanction was manifestly excessive in all the circumstances.

5. Arguability is a low threshold. I am conscious that there is no appeal from a refusal of permission to proceed (FAP published procedures at paragraph 3.6(e)).

6. Nevertheless, in all the circumstances I have reached the judgment that the grounds of appeal set out in the Appellant's appeal form dated 11 December 2020 – which all relate to alleged failure of process – are not properly arguable for reasons addressed under each ground, and that no other properly arguable ground is disclosed by the appeal form.

7. I have also made some other observations which may be of relevance in future appeals.

Ground 1

8. Ground 1 is that the Panel did not base their finding that the Appellant 'would behave the same way as [she] did 23 years ago…[on] evidence'.

9. The Complaints Panel did not find that the Appellant 'would' behave the same way in future; it found (at paragraph 25) that it was *not satisfied that* if provoked in the future she *might not* resort to such behaviour again' [my Italics].

10. The Complaints Panel had before them a statement from the Appellant, character references in her support, and a video excerpted from a television programme which aired on the BBC at the end of 1997, and was posted to the YouTube website in May 2017.

11. The video showed the Appellant announcing to camera that the Labour Party had been 'going around with a microphone [sic] saying she's against Islam, she's not a Muslim, she's not one of us…don't vote for her'. She continued: 'this is making it racist, it's making it personal…So, we're just going to pull the gloves off, I'm going to get a car and walk round, drive through town telling everybody that Jack Straw's a Jew. How's a Muslim going to vote for someone who's Jewish? That's it, that's what happened and that's what we're going to do about it.' We then see a car driving around with a female voice shouting through a loudhailer in Urdu (according to subtitles whose accuracy as a translation was not disputed):

> 'Don't vote for a Jew. Jack Straw is a Jew. If you vote for him, you're voting for a Jew. Jews are the enemies of Muslims. Mark the 7th box on the ballot paper.'

We then see the Appellant say to camera, 'I didn't want racism and bigotry to play a part in anything that I had anything to do with. I object strenuously to

it. I did it because I was furious, um…[long pause] so, I must admit, I wish I hadn't done it.'

12. The video recording showed that the Appellant had made a premeditated plan to get into a car and take a loudhailer, and then deliberately driven around making the statements she had planned to make. It showed that she knew personal attacks and racism were wrong and yet proceeded to act in a racist way for her own electoral gain. She urged electors not to vote for a candidate on grounds of his putative ethnicity or belief as a Jew, which was directly racially discriminatory. She moreover claimed that Jews were 'enemies' of Muslims. This either amounted to a prejudicial assumption that Muslims would generally tend to themselves discriminate against Jews, or to incitement for them so to do.

13. The contents of the video amounted to evidence of a propensity to act in such a manner, and the contrary is unarguable.

14. That being so, if the Appellant wished to persuade the Complaints Panel that she could safely be trusted not to engage in rash and race-baiting behaviour, there was an evidential burden (as opposed to a probative one) on her to counter that evidence. The weight that the Complaints Panel gave to any evidence she chose to produce, as against the video, in determining whether there was such propensity, was then a matter for its own judgment. The Federal Appeals Panel would not interfere with that judgment unless it were manifestly outside reasonable bounds.

Ground 2

15. By Ground 2 the Appellant argues that the Panel 'did not follow procedure' insofar as it did not speak to any witnesses whose e-mail and telephone details she had provided.

16. The Complaints Procedure and Guidance (dated 14/09/2019) provides at paragraph 4.3 for the Adjudicator to determine which of 4 courses of action to follow. One of these is referral to an Investigator. Another is the Expedited Complaints Procedure (paragraph 4.3.4) which must be chosen 'if the Adjudicator decides that the Complaint has been submitted with sufficient evidence to make a determination without a separate investigation'. Paragraph 5.3 then provides that the Senior Adjudicators' Team then decides whether there is sufficient evidence and if so, a Complaints Panel must be convened 'as soon as practicable, and always within 21 days of the decision of the Senior Adjudicators' Team'.

17. The expedited process does not entail an investigatory phase. Instead, the case proceeds on the (potentially limited) initial evidence that was considered to support a 'case to answer'.

18. The initial Adjudicator was Mr Andrew Wood, who determined to follow the expedited process by a Decision Notice dated 26 September 2020. Crucially, he did so in reliance on the existence of the video (at his paragraph 14). It is unarguable that proceeding to the panel based on the video was within a reasonable range of judgments open to the initial Adjudicator and subsequently to the Senior Adjudicators' Team.

19. The Complaints Panel's role is thereafter adjudicatory but not investigatory. It is for the subject of a complaint to put forward their own defence to counter the evidence from the complainants. It was not for the Complaints Panel to investigate and contact the Appellant's own witnesses. Ground 2 is therefore unarguable.

20. Where a Complaints Panel is operating an expedited procedure, that procedure must ensure that an Appellant is given a fair chance to respond and present his or her own defence at the hearing. The Appellant has not in her appeal form alleged that she was denied a reasonable opportunity to present her own evidence. She did not at any point after being sent the initial Adjudicator's decision referring to the video on 28 September 2020 and told by e-mail on 30 September 2020, 'Your chance to call evidence will be at the Expedited Panel Hearing', allege that she had been prejudiced by insufficient time to adduce evidence in her defence, object to being asked to submit witness statements in writing, or request an adjournment or postponement of the eventual hearing.

<u>Ground 3</u>

21. Ground 3 is that 'The panel did not have any behaviour I exhibited after this event and during the last 23 years as evidence to make this decision. And I have spent a great deal of time in extremely stressful public campaigns, for example the Peoples Vote campaign. All of which are freely available through recorded TV interviews and radio interviews over the last 15 years at least.'

22. This ground proceeds under the same misapprehensions as Grounds 1 and 2, namely that the Complaints Panel had no evidence on which to base its decision, and an investigatory role of its own to seek out exculpatory evidence supporting the defence. It was for the Appellant herself to adduce any evidence of her recent behaviour on which to found a submission that she had reformed and atoned for her behaviour, and would not again bring the Party into disrepute. It was not for the Complaints Panel to go searching itself for

'recorded TV interviews and radio interviews'; to the contrary it would have been improper to base its decisions on anything other than the evidence placed before it.

Ground 4

23. I set out Ground 4 verbatim:

> 'I did not bring the party into disrepute by forgetting to flag an incident that took place over 20 years ago. I was the subject of a coordinated attack over several days by specific members of the Liberal Democrat party which brought this incident into the public eye and pushed it across social media channels. Those actions brought this into the public eye. Whoever found the video could and should have come directly to the candidates officer with the information to be dealt with internally. I could have stepped down without affecting the party publicly.'

24. Ground 4 does not disclose any arguable case within any of limbs (i) to (iii) set out in my paragraph 4 above.

25. As regards failing to highlight the incident to the Mayoral Selection Committee, it was reasonable for the Complaints Panel to have considered that this was likely to substantially lower the Party's reputation in the eyes of a fair, objective and right-thinking observer. The context of the gravity of the misconduct is critical. It fell squarely within limb (f) of the definition at paragraph 1.3 of the glossary to the Complaints Procedures. If, as the Appellant asserted in her statement, she 'didn't even remember it as a problem' and 'had no reason to believe that if it came up again it would be an issue', this amounted to a serious lack of political judgment and ignoring the behaviour or putting it out of her mind itself amounted at least to prima facie conduct evidencing disagreement with the fundamental values of the Party which was liable to give the impression that such conduct was not being taken seriously and directly confronted.

26. It is important to make clear as a matter of principle that it is not the dissemination of information about serious misconduct by a member of the Liberal Democrats which 'brings the party into disrepute', but the misconduct itself. It ill behoves a wrongdoer to complain that their actions have been brought to light. This should go without saying in any political party, let alone one whose fundamental values include freedom of information, individual justice, responsibility of individual citizens; and open, accountable governance. In any event, on the facts here the video in question was already in the public domain and had been for many years.

5. Relief sought /was the sanction manifestly excessive?

27. The Appellant asks that Federal Appeals Panel 'remove the phrases [sic] "unfit for public office" from the decision…reverse the decision to expel me and offer training and rehabilitation'.

28. Appellants are reminded that the only remedy on an appeal to the FAP from a Complaints Panel is remission to a fresh panel for a re-hearing, with any directions required as to interpretation of the Constitution or subordinate instruments (see paragraph 3.6(c) of the FAP's published procedures). It does not hear the evidence for itself and so is not in a position to re-make factual findings.

29. In this regard, the parties should note for the avoidance of confusion that those parts of section 6 of the Article 23 Complaints Procedure purporting to prescribe a procedure for the Federal Appeals Panel and stating that we may substitute our own sanctions are inconsistent with Article 22.6 of the Constitution which entrusts the Federal Appeals Panel with determining its own procedures.

30. I have, in the Appellant's favour, treated this part of the appeal form as an appeal on the basis that the sanction imposed was manifestly excessive, and on the particular facts of this case I do not consider this to be properly arguable. The misconduct was grave and to be 'manifestly excessive', a sanction would have to fall outside the range reasonably open to a reasonable panel on all the evidence.

31. The evidence of the Appellant was that it was a momentary aberration, she had not engaged in another such incident, and her character witnesses had not heard her make antisemitic remarks. The Appellant's statement had contained an assertion, not corroborated or substantiated with concrete examples that 'I have spent my time fighting this kind of behaviour', stated that she had written an article in the *Jewish News* (not before the Panel) and was 'continuing rehabilitation efforts privately' (see paragraph 18 of the Decision Notice). The evidence of Mr Hand was that she had held a weekly meeting to support colleagues at Open Britain at the end of 2019. This in itself did not mean it was unreasonable to impose the sanction of revoking membership, particularly when the statement submitted also demonstrated even at that stage a lack of insight into the gravity of the incident and failed to evidence that she had taken it seriously. In her submitted statement, the appellant took exception to being called 'antisemitic', asserted that 'anti-semitism or racism would and should correspond to a pattern of behaviour, repeated regularly', asserted that her behaviour throughout the selection process had been 'exemplary', complained that those who publicised the incident 'should be charged with bringing the

party into disrepute not l'. The Panel referred to some of this evidence at paragraphs 17, 18, 20 and 21 of its Decision Notice.

32. The only alternative proposed is 'training and rehabilitation'. As to this:
    (a) Training would not have been a reasonable response here as it would not have addressed the kind of misfeasance and misjudgement in issue. The racial discrimination in this case was egregious, deliberate and clear-cut; we are not dealing with a case where inadvertent offence was caused through a misunderstanding of some nuanced or difficult issue.
    (b) 'Rehabilitation' is not a sanction. Rehabilitation of the Appellant's reputation is a desirable outcome that would have to be earned through proper atonement for this incident, evidenced by conduct such as (by way of example) working with Jewish community organisations actively campaigning against antisemitism.

33. Accordingly, I make the following directions:

Directions

1. This appeal is refused permission to proceed to a Case Panel.

2. The Senior Adjudicators' Team, the Appellant and the Respondent shall have until 4pm on Friday 29 January to make any submissions on the form of publication of this ruling and in particular whether it should be shared in full with the many complainants and the public.

The Federal Appeals Panel will apply a presumption in favour of transparency unless it is persuaded that there is good reason for withholding information from Members and the wider public. Submissions should address the fact that the video and the decision of the Complaints Panel have already been in the public domain.

21 January 2021