

FEDERAL APPEALS PANEL

JO HAYES

Applicant

-and-

(1) MARGARET JOACHIM

(2) MIKE DIXON

(3) JASON HUNTER

Respondents

DECISION ON PERMISSION TO PROCEED

DAVID GRAHAM

Chair of the Federal Appeals Panel

5 March 2021

Case Management ruling

1. I have designated myself Case Manager.
2. Permission to proceed with this application is refused pursuant to paragraph 3.5(a) of the Published Procedures insofar as it is untimely, appears academic, and alternative remedies are available. The application form does not disclose any grounds for finding that rights of the Applicant or of Mr Hunter under the Federal Constitution have been infringed.
3. The Applicant and Respondents shall have until 4pm on Friday 12 March to make submissions if they object to the publication of this ruling in full on the FAP website.

Reasons

Facts and issues

1. The Applicant is the Chair of the East of England Region's Candidates Committee. She complains about e-mail correspondence with the First Respondent to the effect that Mr Hunter is not eligible to be put onto the approved list of candidates for Westminster elections maintained by or on behalf of the English Candidates Committee ('ECC'). She would like him to be selected as the Party's candidate for election as the Essex Police Fire and Crime Commissioner ('PFCC').
2. It appears from the application form that there is another person who may be interested in running to be selected as Essex PFCC, whose initials only have been given,

whom the Applicant does not believe to be as good a candidate. This person has not been named as a Respondent.

3. The application does not disclose why, or pursuant to what procedures, a candidate for PFCC is required to be on an approved Westminster list in the first place. It also does not include all the relevant constitutional framework documents providing for who has authority to decide whether a person is admitted to the approved list, and who then selects the candidates from the eligible pool who are on the list.
4. The relevant facts are that Mr Hunter resigned from the Party in September 2020 having at that time been on the relevant approved list following attendance at an 'assessment day' in March or early April 2019. He re-joined on 9 February 2021.
5. The First Respondent has pointed to an undated document (whose status is unclear to the Applicant) entitled '*Procedure for returning candidates to the approved list after an absence*' (the 'Procedure') which the Applicant says appears to have been drafted in 2018. This states, so far as is material:

'This procedure lays out the process to be used in [sic] the event that a candidate who has been removed from the list wishes to be returned to it.

 1. '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.'

Submissions

6. The Applicant's primary argument (her Form 1B para 27) appears to be that this paragraph of the Procedure conflicts with Article 19(2)(b) of the Federal Party Constitution as amended in 2019 and must be treated as having been 'abolished'. The Applicant submits that Mr Hunter should not have to wait a year to be re-assessed, as he was assessed less than 2 years ago and passed the assessment. She submits that he should be allowed to take 'the additional test for PFCC candidates in time for the Appellant to nominate him as Essex PFCC candidate'.
7. For what it is worth (without having heard full argument), my own preliminary view is that Article 19.2(b) of the Federal Party Constitution in itself is not inconsistent with the impugned paragraph of the Procedure, and the amendment referred to by the Applicant is somewhat of a red herring. Article 19.2 sets out a list of mandatory considerations that the State Candidates Committee must take into account when deciding whether to enter an applicant on a list; paragraph (d) is a catch-all for other relevant considerations. The 2019 amendment to paragraph (b) merely made clear that 'previous participation in other walks of life' could be taken into account such that 'previous participation by the applicant in the work of the Party or a former Party' is a consideration but not a requirement for approval. The real question seems to be whether the scheme of Article 19 to the effect that all relevant considerations in an individual case must be taken into account in deciding whether to enter an applicant on a list precludes a blanket procedural rule that a rejoining member must show 12

months' membership since rejoining before being reassessed at all. This question can be adjudicated on an appeal to the Appeals Panel for England by an applicant refused admission to the list.

8. The Applicant also seeks a ruling that 'she has the power to license a candidate for one election only and that the time for exercising it has arisen'. It is unclear to me precisely what this means, but it appears from her paragraph (4) in section 9 of Form 1B that she would like the FAP to declare that she (in her capacity as Chair of the Regional Candidates Committee) has power to personally select Mr Hunter as the candidate regardless of whether he appears on the approved list. The Applicant has not cited any constitutional document, instrument of delegation, rules or procedures supporting a claim for her having such power, so I am not in a position to determine that this is sufficiently arguable to proceed to a hearing. On the face of it, article 19.1 of the Federal Constitution entrusts the State Candidates Committee with the power to make rules for selection and regulate the procedure for adoption of candidates although it may provide for 'some or all of its functions to be discharged by another unit'. Ms Hayes would presumably have to show that she had authority under the relevant ECC rules, or those made by the proper delegate.

Why this matter is unsuitable for adjudication by the FAP

9. This application appears from the details supplied on the Application Form to be premature if not academic, insofar as no application has been made by Mr Hunter to be added to the approved list, and no decision has been made to refuse such an application. Instead, it sounds from the appeal form that there has been an exchange of views by e-mail between the Applicant herself and Ms Joachim.
10. It is a striking feature of this application that it is not made by Mr Hunter himself. Instead, he is named as a respondent /interested party by the Applicant.
11. The application form does not even state that Mr Hunter wishes to stand for selection as PFCC; rather all we hear in the Applicant's Grounds at paragraphs 9-10 is that he 'was not yet firmly of a mind to stand' when he re-joined the Party, had not applied by 9pm on 12 February 2021, and that the Applicant was replying to an e-mail on 16 February with a conditional reference to his being persuaded to stand.
12. The FAP is composed of a small number of volunteers. It is not constituted to sit as a tribunal of first instance and simply cannot entertain all controversies from every county and region, particularly not academic or premature ones.
13. The FAP exists pursuant to Article 22 of the Federal Party Constitution to resolve 'conflicts'. These include 'any dispute over the interpretation of this Constitution' and any 'claim that the rights under this Constitution of a member...have been infringed'. We are not at this point in time dealing with an existing dispute about the interpretation of the Federal Constitution (it not even having been said that Ms Joachim engaged in a dispute about article 19.2(b)). Even if we were, it must be

implicit that academic disputes are not included. We are not dealing with a case where rights of Mr Hunter have even arguably been infringed at the present point in time.

14. Had Mr Hunter applied to be added to the list of approved candidates and been refused, there could have been potential routes of appeal open to him (as the aggrieved party). Paragraph 7 of the Procedure says:

‘Where an RCC refuses to allow a candidate to return to the list without reassessment, or where the candidate must be reassessed because they lost their approved status through no longer being a member of the party, the candidate may ask the ECC Chair to review the decision to require reassessment. The ECC Chair’s decision will be final.’

There appears at Article 7.6 of the English Party Constitution to be a right of appeal for an ‘applicant whose application [for inclusion in a List of Approved Candidates] is refused...[to] appeal to the [English] Appeals Panel pursuant to Article 9...on the grounds that the proper procedures have not been applied correctly and reasonably’. It must be open to an appellant in such a circumstance to argue that the procedures relied upon were of no effect due to inconsistency with the Federal Party Constitution. There is then a further right of appeal to the FAP pursuant to article 22.3(e) of the Federal Party Constitution, as well as the option for the State Appeals Panel to refer an issue directly to the FAP for speed and finality.

15. I recognise that this decision may come as a disappointment to the Applicant, who has put a considerable amount of effort into her application, and sincerely believes that Mr Hunter would be a good candidate. It may not leave sufficient time for any dispute that might arise to be adjudicated, given that Mr Hunter resigned and re-joined very close to the forthcoming election, and has not yet formally applied for readmission to the list of approved candidates. If such an application were made and refused, it is to be hoped that the Appeals Panel for England would expedite any appeal.