

FEDERAL APPEALS PANEL

BETWEEN:

GWYN WILLIAMS

Applicant

and

COMPLAINTS PANEL

Respondent

PRELIMINARY RULING

29th September 2022

Catherine Smart - Member & Vice-Chair of the FAP

Case Manager

1. I have been appointed Case Manager for this Appeal.

Background

2. Several complaints against the Appellant for homophobic or bullying conduct were lodged in June 2020. As a result, his membership of the party was suspended on 14th June 2020.
3. On 9th September 2020 an Adjudicator issued a decision notice referring his case to the Expedited Complaints Procedure.
4. After a number of delays, the Complaints Panel heard the case on 14 December 2021 (though their decision was not published till 23rd February 2022). The Panel consisted of Serena Tierney (Convenor), Melvyn Roffe & Bill Morrison. They had to consider whether he had brought or risked bringing the reputation of the party into disrepute and specifically whether his conduct towards the complainants and others in the Party amounted to homophobic or bullying conduct.
5. The Panel upheld the complaint and ruled against the Appellant.

6. Mr Williams appealed to the FAP against this decision on 7th March 2022.

Documents

7. The FAP have been provided with the following Documents for consideration
- (i) The Appeal Form and attachment outlining the Appeal by Mr Williams
 - (ii) The Decision Notice of the Complaints Panel Hearing
 - (iii) A bundle of documents which were before the Panel
 - (iv) A video recording of the Panel Hearing.

I have read all the documentation and watched the video of proceedings.

Test to be applied

8. Under rule 4 of the FAP's Published Procedures, I must consider whether this appeal should be granted permission to proceed to a Case Panel hearing. Rules 4.3 and 4.4 state that the FAP will not grant permission to proceed if the appeal is not properly arguable on the evidence with a realistic prospect of success, or (absent some other compelling reason for the appeal to be heard) it is highly likely that the points taken would not have affected the outcome for the Applicant.

The available grounds of appeal are set out at rule 4.6 and are:

- (a) there was a serious failure of process or reasoning that was likely to render the determination of the complaint unsafe or unsatisfactory in all the circumstances; or,
- (b) relevant evidence, which could not reasonably have been adduced at the time of the determination of the complaint, has since come to light which is likely to render the determination of the complaint unsafe or unsatisfactory in all the circumstances; or,
- (c) the sanction determined was manifestly excessive or manifestly lenient in all the circumstances.

Appraisal

9. The Appellant's case is brought on grounds (a) and (c). The grounds are lengthy; I am only addressing the main arguments in this decision but I have considered all the points made carefully.

10. On ground (a), it is said that what is described as ‘gross and inordinate delay’ deprived the Complaints Panel of jurisdiction or made it prejudicial to determine the charges against the Appellant. It does not appear to me to be realistically arguable that a Complaints Panel is deprived of jurisdiction on account of delay where there is serious misconduct alleged, nor that the delay prevented there being a fair hearing in this case. He says he had unfairly little time to present his defence, but I do not agree this is realistically arguable.

11. It is also alleged that the procedure applied was unfair because certain evidence was contested. However, the Complaints Panel expressly excluded from their consideration the evidence which was disputed.

12. The Appellant says that the Complaints Panel should have treated some of the evidence ‘with caution’ because it amounted to hearsay, or in the case of screenshots could have been doctored. However, the Appellant candidly says he is not in a position to prove that the screenshots were doctored. The Appellant criticises the findings of the Complaints Panel as to whether he had been disingenuous in an e-mail exchange, and as to a number of comments he had made. He also says other people in the Party have said similar or worse things. The FAP appeals process is not a re-hearing of the merits of a case. We do not interfere with reasonable evidence-based inferences or findings nor interfere with reasonable decisions as to the weight given to pieces of evidence (see rule 12.3 of our Published Procedures). He also disputes whether he is remorseful, although this is couched on the basis that *if* he has caused distress to any other member, ‘he remains willing and ready to apologise to that member’. These merits-based arguments against the factual findings do not have a reasonable prospect of success.

13. There is also an appeal on ground (c) – excessiveness of sanction. An appeal to the FAP is not an opportunity to have a second go at arguing the merits as is done at paragraph 23 of the grounds of appeal. Taking a step back, the Complaints Panel had found that the Appellant had consistently engaged in an intentional pattern of behaviour amounting to a social media campaign against a member of Party staff, bullying and using homophobic language, as well as being ready to deny what he had done, justify or excuse his behaviour. It found that he did not perceive or was not interested in the impact of his actions and had no concept of his own responsibility to act in accordance with the Members’ Code of Conduct. See paragraphs 34–35 and 39–43. It found that he was not remorseful and sought to justify or excuse. The Panel also found (paragraph 43) that ‘if he were to remain in the Party, [he] would in future, bring the party’s reputation into disrepute’. There is no proper basis for the FAP, which has not heard the evidence,

to interfere with the findings made. Given the factual findings, it is inconceivable that any panel would have found a lesser sanction to be merited.

Disposal

14. I refuse permission for this appeal to proceed to a Case Panel and dismiss the appeal.