

FEDERAL APPEALS PANEL

IN THE MATTER OF A REQUEST FOR A RULING

BETWEEN:

JOSEPHINE HAYES

Applicant

-AND-

ENGLISH APPEALS PANEL

Respondent

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RULING OF THE FEDERAL APPEALS PANEL

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DAVID GRAHAM  
Case Manager  
17 August 2022

**Ruling**

1. Permission to proceed with this application is refused for lack of jurisdiction under article 22.5 of the Federal Party Constitution and rules 4.2 and 4.5(a)(i) of the Published Procedures.

**Reasons**

1. Ms Hayes ran in an election to be English Candidates Chair, and was unsuccessful. She complained to the Returning Officer within the English Party (ex officio, that person is Chair of the English Appeals Panel ('EAP') who is also appointed ex officio by the English State Party to the Federal Appeals Panel ('FAP')) that a WhatsApp message by the winner Dr Joachim had defamed her, so as to amount to a breach of the relevant English State Party election rule. The Returning Officer dismissed that complaint, interpreting the rule to require serious harm to be caused before there may be a breach. Ms Hayes then appealed to the EAP against that decision, naming Dr Joachim as an interested party. The vice-chair Kian Hearnshaw determined as a matter of case management that the winner did not need to be a respondent in the case because it was simply a question of interpretation. This application purports to be an appeal against that decision. It is alleged (Form 1B paras 9 and 10) that this decision was unfairly made without allowing Ms Hayes to make representations on it; was unfair on Dr Joachim; that Dr Joachim needed to be party to the decision in order to be bound by it; and that Mr Hearnshaw was biased against her or appeared to be so because of his previous activities on the English Party Executive.

2. The FAP only has jurisdiction conferred on it by article 22 of the Federal Party Constitution ('FPC'). In particular, this includes at 22.3B claims of infringements of 'rights under this Constitution', i.e. the FPC; at 22.3E appeals 'relating to an issue under this Constitution [once]...any appropriate appeals procedures established within a relevant State Party have been exhausted'; and at art.22.3F disputes or issues referred to us by a State Appeals Panel for adjudication. The Party is a federation in which State Parties are sovereign insofar as matters are not governed by the FPC (arts.2.1, 2.2 and 2.10C of the FPC).
3. The FAP has repeatedly determined that it does not have jurisdiction to intervene in the conduct of State Party affairs not governed by the FPC (e.g. our decisions in Case 7 *Smith v EAP* at paras 4–6; Case 17B, *Hayes v English Candidates Cttee (2)* at paras 17–18; Case 18A *Sims*, at paras 7–8; Case 22 *Kumar* paras 6–8 and 13)
4. This appeal or application does not engage any rights or issues under the FPC. The conduct of the English State Party election, challenges to the results and appeals from decisions of the returning officer are governed entirely by the State Party's own constitution. The interpretation of the English State Party's rule is therefore a matter for the EAP unless it chooses to refer the question to us pursuant to FPC art.22.3F, which it has not done.
5. Moreover, the complaint is about the handling of a case currently pending before the EAP, before which Ms Hayes may contest the procedure, request recusal of the panellist managing the case, or request that the issue be referred by the EAP to the FAP. Any alleged unfairness or procedural impropriety should at this stage be capable of cure by the EAP itself.