

Date: 10 May 2022

National Complaints Team Labour Party

For inclusion as an attachment with online complaint

Dear Sir / Madam

Complaint against the Labour Party

1. We are writing on behalf of Ms. Diana Neslen (**"our client"**), to make a formal complaint against [REDACTED] individuals within the Governance and Legal Unit (**"GLU"**) of the Labour Party (the **"Party"**) on the basis that they have engaged in ongoing discrimination, harassment and bullying against our client in breach of the Party's own policies as well as the Equality Act 2010 (**"EA 2010"**).
2. Attempts have been made to raise this matter previously with [REDACTED] the GLU, but they have failed/refused to properly investigate and/or address our client's complaints under the Party's own policies on bullying and harassment. Our client has therefore had no choice but to await the introduction of the independent process to ensure her complaint receives a fair hearing. We specifically request that this complaint is not investigated by the GLU, but is dealt with completely independently.

Campaign of discrimination, harassment and bullying

3. Over the course of nearly three years, the Party has made a series of unfounded allegations of anti-Semitism against our client. Our client initially received a Reminder of Conduct (without a preceding investigation) dated 4 September 2018. Our client subsequently received a Notice of Investigation on 13 May 2020 (**"the First NOI"**). On 18 August 2021, our client was issued with a second NOI (**"the Second NOI"**). This was withdrawn on 21 December 2021 after our intervention (see paragraph 25 below).

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4. Following the withdrawal of the Second NOI, we have sought, on behalf of our client, both an apology and an explanation for how the Second NOI came to be issued, as well as the basis for the repeated investigations of our client. Both have been refused, and our client has been subject to increasingly aggressive correspondence, including allegations that she has improper motives for pursuing her complaint, as well as attempts to silence her from speaking about her experience and refusals to provide her with relevant information. It should be noted that our client is an over-80-year-old Jewish woman who regularly attends her local Orthodox synagogue and keeps a kosher home. She, and her family, have experienced anti-Semitic slurs and physical attacks. She is a victim of anti-Semitism, including from individuals within the Party who have not been properly investigated. She lived through, and opposed, apartheid in South Africa.
5. Given our client's background, accusations of anti-Semitism are particularly painful and upsetting to her. Yet, despite being aware of this background, the Party has made no apparent attempt to adjust their approach or take this background into account when pursuing investigations against her.
6. We have set out in more detail how the investigations against our client amount to a campaign of discrimination, harassment and bullying below.
7. Further information regarding our client's complaints of discrimination and harassment are set out at Section 3 of our letter to the Party, dated 22 October 2021 (**"the 22 October Letter"**).

Discrimination

8. In summary, it is our client's belief that political Zionism, the ideology that developed in the late 19th century and which propagated the creation, and continues to propagate the maintenance and expansion, of the State of Israel, as implemented in that State to privilege Jewish citizens over other citizens within the historic British Mandate of Palestine (which was and remains a multi-ethnic territory that is home to millions of non-Jews), is a racist endeavour. This is an integral part of her wider belief in the moral imperative of opposing racism in all its forms.
9. In *Grainger plc v Nicholson* [2010] ICR 360, Burton J provided guidance on the meaning and ambit of "*philosophical belief*" for the purposes of the EA 2010. The effect of that guidance is that a belief

can qualify for protection if it (a) is genuinely held, (b) is not simply an opinion or viewpoint based on the present state of information available, (c) concerns a weighty and substantial aspect of human life and behaviour, (d) attains a certain level of cogency, seriousness, cohesion and importance, and (e) is worthy of respect in a democratic society, is not incompatible with human dignity and is not in conflict with the fundamental rights of others.

10. In *Forstater v CGD Europe* [2021] IRLR 706, Choudhury P held that Article 17 of the European Convention on Human Rights (the “ECHR”) provides the appropriate standard against which the fifth limb of Grainger is to be assessed. Accordingly, *“only if the belief involves a very grave violation of the rights of others, tantamount to the destruction of those rights, would it be one that was not worthy of respect in a democratic society”* (at §62).
11. Our client’s belief is a philosophical belief that falls clearly within the definition of protected characteristics under the EA 2010, for the following reasons:
 - a. The belief is genuinely held.
 - b. It is not an opinion or viewpoint based on the present state of information, but rather a belief concerning the fundamental nature of political Zionism (as defined above) as an ideology.
 - c. The opinion concerns a weighty and substantial aspect of human life and behaviour. Zionism is the founding ideology of, and continues to shape and influence the conduct of, the State of Israel and its relationship with Palestine and Palestinians. It is significant and influential for the millions of people who live under Israel’s jurisdiction or control, as well as for (i) the millions of Palestinian refugees whose ability to return to their homes in what is now the State of Israel depends upon laws propagated by that State; and (ii) the Jewish diaspora on whose behalf the State of Israel claims to speak. Our client’s belief that political Zionism is inherently racist is based on her view of the constitutional structure of the State of Israel (as well as the manner of its occupation of the West Bank and Gaza), and her personal experience both as a Jew and a resident of apartheid South Africa.
 - d. Our client’s belief is clearly cogent, cohesive, serious and of importance to our client and many others.

- e. In light of the very high threshold set by Article 17 ECHR, as explained in *Forstater* it is unnecessary for us to set out the large numbers of states, international organisations, jurists, politicians and human rights organisations who share our client's view. It suffices to say, by way of example, that the leading Israeli human rights organisation B'Tselem concluded that Israel oversees a regime of racial supremacy from the Jordan River to the Mediterranean Sea, comprising "laws, practices and state violence designed to cement the supremacy of one group over another". Similarly, a recent report by Human Rights Watch concluded that the Israeli authorities "have dispossessed, confined, forcibly separated and subjugated Palestinians by virtue of their identity to varying degrees of intensity", such conduct amounting to the crimes against humanity of apartheid and persecution.
- 12. In the 22 October Letter, we explained that the Party was in breach of the EA 2010 as it had indirectly discriminated against our client. In accordance with section 101(2) of the EA 2010, the Labour Party is prohibited from discriminating against its members by subjecting them to any detriment by reason of protected characteristic. The issuing of NOIs and conduct of investigations are clearly a detriment to any member given the time they take to respond to them, and the stress they cause, but this detriment is particularly acute for our client for the reasons set out above.
- 13. Indirect discrimination occurs, in short, when a person applies a policy, criterion or practice ("**PCP**") equally, but where the PCP results in a particular disadvantage for persons sharing a protected characteristic. The Labour Party Complaint Handling Handbook incorporates the NEC Codes of Conduct, which include a "Code of Conduct: Antisemitism". The manner in which that Code of Conduct, together with the IHRA Working Definition, has been applied in practice, is more likely to lead to investigations against those who share Ms Neslen's philosophical beliefs than those who do not.
- 14. This is because the application of the Code of Conduct when read together with the IHRA Working Definition, regularly leads to conflation between (i) anti-Semitism and (ii) anti-Zionism or opposition to the State of Israel. This conflation is not only indirectly discriminatory, but is also itself anti-Semitic as it seeks to treat all Jews as a single homogeneous community that must support Zionism and the State of Israel. The conflation also leads, in our client's case

and others, to an effective accusation that the investigated member is a “self-hating Jew”, a common and offensive stereotype.

Harassment

15. Whilst we accept that section 103(2)(a) of the EA 2010 precludes our client from bringing a claim for harassment against the Labour Party in respect of a protected philosophical belief, this does not mean that the actions by the Party against our client do not amount to harassment. Moreover, the EA 2010 does not preclude harassment on the basis of ethnicity. Anti-Zionist (or indeed Zionist) beliefs that are strong enough to justify protection under the EA 2010 are most likely to be held by those of Jewish or Palestinian ethnicities, given it is those ethnicities that are likely to be primarily affected by such beliefs. Accordingly, harassment based on anti-Zionist beliefs equates to harassment based on ethnicity, and it is therefore submitted that the Party has subjected our client to harassment on the basis of ethnicity. Further details of the bullying and harassment in the context of the investigations against her are set out below.

The Reminder of Conduct

16. On 4 September 2018, five months after the sudden death of her husband, and whilst undergoing treatment for breast cancer, our client received a Reminder of Conduct (“RoC”) from the Labour Party [REDACTED]. She has no information whatsoever as to what precipitated this warning, and whether the Party conducted any sort of investigation before it issued the RoC, which referred to comments on her social media causing offence.
17. Several Twitter and Facebook posts dated from between 15 August 2014 and 8 April 2017 were appended to the letter. It is assumed that somebody (although it is not clear who) trawled through our client’s social media. Our client does not consider any of the Twitter or Facebook posts appended to the RoC to be anti-Semitic. It has never been explained to her how or to whom they were said to have caused offence, or how they show hatred of Jews.
18. Our client sought clarification of the concerns regarding her conduct by emails dated 5 September, 13 September and 4 October 2018, so that she could understand what it was that she was meant to stop doing. No clarification was ever provided by the Labour Party.

The First NOI

19. Our client received the First NOI on 13 May 2020. When it arrived, she was self-isolating alone as a result of the pandemic. That letter was copied to the London Labour Party. The NOI explained that her “conduct on social media” was being investigated for a potential breach of rule 2.1.8, but that she was not being administratively suspended. There were seven items of evidence attached, two of which had been included in the RoC and six of which predated that RoC.
20. In response to the First NOI, our client raised specific concerns about safeguarding in a letter dated 21 May 2020, highlighting her vulnerability. No acknowledgment of those concerns was ever made by the Party, which is particularly egregious given that they were alerted to her vulnerability.
21. The First NOI resulted in a “Formal NEC warning dated 19 February 2021 (the “**Formal Warning**”). Three of the seven items were deemed a breach of the Labour Party Rule Book. Our client strongly disagrees with that conclusion, but there was no process to challenge it given the consequence was only a Formal Warning.

The Second NOI

22. The Second NOI includes eight “items of evidence” (not nine as suggested in the charges), namely twitter posts made by our client (not emails as suggested in the questions). Five of those tweets predated Ms Neslen joining the Labour Party as a member in September/October 2015. They are therefore excluded from investigation by the Handbook. These are Items 2, 4, 5, 7 and 8.
23. Moreover, four of the eight items had already been subject to a previous investigation by the Party that resulted in the Formal Warning, namely the First NOI. Items 2, 3, 4 and 6 from the Second NOI also featured in the First NOI (as Items 5, 6, 2 and 4 respectively). They were therefore prohibited from further investigation by Appendix 1 of the Complaints Policy (the “**Policy**”) (version dated 22 July 2021).
24. That left a single item of evidence in respect of the Second NOI: Item 1, specifically a tweet from 9 February 2017 that said “*the existence of the state of Israel is a racist endeavour and I am an antiracist Jew*” (the “**Remaining Item**”). Ms Neslen responded in detail to that single item of evidence in her response to the NOI, but

her primary position was that an investigation in respect of this single tweet is totally unjustified and disproportionate, taking into account that:

- a. the Party had two previous opportunities to investigate the Remaining Item and had not done so.
- b. the tweet reflects a commonly held opinion and belief, as evidenced by recent reports from B'Tselem and Human Rights Watch as referred to in Ms Neslen's response; and
- c. the Remaining Item is similar, if not more restrained, in content and tone to Items 5 and 6 of the First NOI, both of which were found by the NEC Panel not to breach the Labour Party Rule Book.

The response to the Second NOI

25. We wrote to the Party on behalf of Ms Neslen on 22 October 2021 seeking the withdrawal of the Second NOI. We received no response to that letter and so we sent a pre-action letter to the Party on 3 December 2021, in respect of the breaches of the EA 2010 set out above. In its pre-action response dated 23 December 2021, the Party denied our claims but confirmed that the Second NOI was being withdrawn and the Party was taking no further action against our client. No reason was provided for the withdrawal save that the NOI had been "*reviewed*".
26. Following that correspondence, we have attempted to engage the GLU [REDACTED] further in investigating our client's concerns regarding discrimination, bullying and harassment. However, to date, the GLU has consistently refused to accept that anti-Zionism is a protected philosophical belief, that this belief is held by our client or that the Party may have breached the EA 2010 in respect of its NOIs against our client. Moreover, the Party has not provided any explanation, let alone apology, for how the Second NOI came to be issued despite it being in breach of the Party's own policies, save for arguing that it does not need to engage because the Second NOI has been withdrawn (see its letter of 25 January 2022).
27. In addition, the Party has continued to fail to address our client's complaints under its own policy on bullying and harassment when dealing with her case. As explicitly noted in our pre-action letter, that policy requires "prompt investigation and corrective action".

No such investigation would appear to have taken place, and instead the Party has sought to repeatedly dismiss our client's concerns.

28. The Party's response to withdrawal of the Second NOI does not provide our client with any reassurance that she may not be the target of baseless NOIs in future.
29. Moreover, the Party's dismissive and aggressive responses to our correspondence exacerbate rather than reassure our client's concerns and, together with the repeated investigations of her, amount to an attempt to bully and silence our client.
30. For example, the pre-action response [REDACTED] seeks both to silence our client from speaking about her experience by threatening further action against her if she does so and alleges that her motivations are "political" as opposed to a genuine concern about discrimination and harassment.
31. A further letter [REDACTED] dated 25 January 2022 (*inter alia*) criticises our client for seeking to raise concerns regarding the conduct of [REDACTED] at all, describes her as having "*a slender grasp of the truth*", accuses her of undertaking an "*expressly political undertaking*" and describes her allegations of harassment as "*so tendentious as not to merit a response.*" Leaving aside the offensive nature of the response, it would appear to have been made without any apparent independent investigation of [REDACTED] the GLU [REDACTED].
32. Yet a further letter dated 8 April 2022 denies any discrimination or harassment without investigation of those matters and goes so far as to describe our client's insistence on the genuineness of her concerns as "*risible*".

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Failure to investigate Ms Neslen's own complaints of anti-Semitism

36. Finally, aggravating the matters set out above is the fact the Party has failed properly to investigate Ms Neslen's own complaints of anti-Semitism as set out in our letter of 3 February 2022. While the party refers to a backlog of complaints, it has, of course, responded very quickly to other complaints of anti-Semitism. Indeed, in late-2021, it issued NOIs and suspensions within a matter of hours of meetings where allegations of anti-Semitism had been made. It has also presented no evidence of when the complaints against Ms Neslen were made for comparison.

Independent investigation

37. Given the GLU's unwillingness to engage with our client's concerns, she is left with no option but to request an independent investigation of her concerns.
38. Please let us know if any further information is required in order to investigate our client's complaint.

Yours faithfully

[REDACTED]

Bindmans LLP