

# The shortcomings of the EHRC Report

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### A: The Background to the Report

#### 1. The Terms of Reference

The course and outcome of the investigation flowed from its unsatisfactory Terms of Reference (ToR). We raised this with the Commission on 23 July 2019 and again in our first submission on 30 July 2019 which is [available on our website](#).

Most importantly, the ToR failed to comply with S20 and sch. 2 of the Equality Act 2006 which governs such Inquiries. These require a clear specification of the suspected unlawful acts in order to prevent fishing expeditions and post facto allegations of unlawful behaviour.

Instead, the first paragraph of the ToR refers without further specification to "*unlawful acts in relation to its members and/or applicants for membership and/or associates*". These acts are nowhere further defined. In the remainder

of the ToR the phrase “unlawful acts” is used 4 more times, with no further specification.

The Inquiry was therefore open precisely to being the fishing expedition the 2006 Equality Act had wanted to rule out.

Despite pointing out the flawed legal basis of the ToR, we received no response from the Commission

## 2. **Absence of history and context**

The descriptive material in the report is largely accurate and some is helpful, in particular its highlighting of the injustice of the process. However, it lacks history and context. It may be that the EHRC felt that some of the context was outside its remit but, if so, it should have acknowledged the limitations of excluding this and acknowledged that this would affect the robustness of the conclusions drawn from the account.

### **a) The leaked GLU report**

The report repeatedly notes improvements to the processes in the recent past but fails to highlight that this followed the departure of Iain McNichol and the arrival of Jennie Formby as General Secretary. No credit is given for Jennie Formby’s hard work and steps to implement at least some of the recommendations of the Chakrabarti Inquiry; nor is there mention of the debilitating effect of the civil war that raged within the Party, revealed spectacularly in the leaked report into the workings of GLU (hereafter referred to as the GLU report).

The Commission acknowledges receiving and reading this Report but says it did not seek the underlying data behind that report. Nor does it satisfactorily explain why it was not sought. This is an astonishing admission, since the GLU Report had been prepared precisely as a submission to the EHRC and contains much material evidence bearing precisely on the issues the EHRC was charged with investigating.

Despite this, the EHRC Report frequently relies on the GLU Report at various points when it supports the arguments it advances (on pp. 18, 52, 69, 70, 72, 85 and others) but not where it contradicts them.

It would seem that the vast majority of complaints were raised by third parties and not by individuals who had suffered disadvantage or harassment. These third parties suffered less from the delays and other inadequacies in the

process than the respondents who had their reputations, psychological well-being and in some cases their professional careers at stake. The Report itself acknowledges that those complained against were severely disadvantaged by the poor procedures.

### **b) Political parties are political**

The EHRC Report explores the activities of a political party. Political parties are not only political in relation to the world outside their organisation, they are also highly politicised inside. Groups of varying outlooks compete for authority and different actors contest, or undermine, the actions of others in the light of what they believe to be in the best interests of the Party or for personal advancement or both.

The extent of the rebellion against the then leader of the party has no precedent in the history of the Labour Party, or in any other party to the best of our knowledge, and it framed the context of the EHRC investigation itself. The report needed to have acknowledged this context even if it was outside its remit to explore it. The absence of this narrative prevents the reader from understanding the purpose and intent of actions and leads to a presumption of antisemitism as no other possible explanation is allowed.

## **B: The Report's Legal Findings and their limitations**

The significance of the findings of unlawful acts is that without them the EHRC would have no power to impose the changes in the practices of the Labour party which are set out in the notice. Of course, the Labour Party might wish to make such changes voluntarily but findings of illegal conduct and the imposition of legal obligations carry with them reputational damage, which we argue is undeserved.

The findings of illegality do not sit easily with the Report's conclusions about the sample of cases that were investigated.

The investigation received some 230 complaints from the CAA alone, and an unidentified number from others. It investigated 70 of these complaints of which 59 were of alleged antisemitic references on social media. It is not stated whether all those accused of antisemitism were members of the Party and if so how this was established. But overall the investigation found only

two cases of harassment related to race, and two cases of indirect discrimination.

These few findings, even if correct, do not indicate a high level of antisemitism in the party.

The report summarises In Annex 1 (pp.102-103) the three areas in which it holds the Party to have committed "unlawful acts".

## **1. Agents of the party, acting unlawfully**

The scope of the EHRC's investigation powers is limited to investigating whether a person has committed an unlawful act. The ToR makes it clear that the basis of the investigation is the suspicion that the Labour party may have itself, and/or through employees or agents, committed unlawful acts.

The report finds that the Party "committed unlawful harassment of its members, contrary to section 101(4)(a) of the Equality Act 2010, related to race (Jewish ethnicity), through the acts of its agents Ken Livingstone and Pam Bromley".

One of these was a former local councillor and the other a member of the National Executive Committee. The Labour Party could only be liable for their actions if they were agents of the party acting within the Party's authority. There is no evidence that they had or claimed such authority, nor that the party had given them authority to make statements on the Party's behalf.

The EHRC explains who within the Party are its agents on Page 13 of the Report. . The extensive list of those the Commission deems to be agents, even extending down to Branch committee members, would mean that any voluntary organisation would be liable for the actions of hundreds or even tens of thousands of its members.

But the EHRC states: *The Labour Party accepts that the individuals above are authorised **to act as its agents when they are carrying out the responsibilities given to them by the Labour Party Rule Book, whether stated explicitly or implied.***

There is no evidence that the two people named had or claimed such authority, nor that the party had given them authority to make statements on the Party's behalf.

The alleged acts of harassment consisted of statements asserted to be antisemitic made in one case on social media and in the other in interviews which were subsequently made public. Both of the individuals were disciplined by the Party for making the statements. In one case the member was expelled for making the statements and in the other the member was disciplined but resigned before punishment was determined. The fact that the allegedly antisemitic statements led directly to disciplinary action by the Party contradicts the claim that they were made with the Party's authority. If they were authorised the two members would have had a complete defence to the disciplinary charges.

## **2. Cases of indirect discrimination/political interference**

With regard to the second area of "unlawful acts", the report states:

"the Labour Party operated two separate relevant unlawful practices or policies: first, the overall practice or policy operating from March 2016 to May 2019 in which LOTO or the leadership was involved in 'politically sensitive' complaints; and secondly, the specific and formal practice or policy of referring all antisemitism complaints to LOTO in March–April 2018.

- a) The two findings of indirect discrimination, both relating to political interference, are of doubtful validity. Indirect discrimination, as the report sets out, requires the existence of a policy or practice which, without justification, disadvantages members of a particular protected group. There is no evidence to support the finding that Jews, who clearly are a protected group, are disadvantaged by the two policies or practices identified in the report. There is no evidence that the policies or practices were applied exclusively to Jews. And, secondly, there is no evidence that either policy or practice was detrimental or damaging to those to whom it was applied
  
- b) It may be that the "Party's practice or policy of Political Interference... in antisemitism complaints" was poor practice but to be unlawful it is surely necessary to establish that it is, in this case, harassing of Jews and discriminatory against Jews. The report itself acknowledges that many of the interventions were to speed up the process to the benefit of the Jewish complainant or those complaining on behalf of a wider, but unspecified "Jewish Community".

### **3. Training failures**

The report finds the party's "practice or policy, prior to August 2020, of failing to provide adequate training to those handling complaints of antisemitism amounted to unlawful indirect discrimination against its Jewish members".

We agree that the failure to provide training is a serious one but it applies to all categories of complaints and is probably true of a wide swathe of organisations of all kinds. It is a role of the EHRC to try to improve practice in this arena and more effective work from them would have been welcome.

However, the report shows in many of its examples that the lack of training disadvantaged and harassed the respondents more than the complainant.

The finding is of discrimination but we have been provided with detailed evidence, which should have been equally available to the EHRC, that there is more training on antisemitism than is provided for any other area of equality except for a very different type of training in respect of sexual harassment. That training was mainly about case management issues to prevent complainant and respondent coming into contact, not about the nature of sexual harassment.

In addition, we find the proposals in the Report relating to antisemitism education to be poorly conceived – indeed the heading "Use of education and training as a sanction" (p.81) highlights the narrow conception of education which underpins the discussion. It should not be conceived of as "a sanction" but rather as a central part of what members of the Party are encouraged to participate in during the course of their membership of the organisation. Dialogue and discussion about racism in all its forms needs to become a formative aspect of life as a member of the party.

## **C: The Report's omissions**

While we have many criticisms of what the report says; we have more for what it does not say.

These relate to:

### **1. The specific nature of the hurt that Jews are found to have suffered.**

What is striking is that throughout the report there is no evidence of *Party responsibility* for any Jewish member of the Party, or non-member for that matter, suffering detriment or disadvantage on account of being a Jew; surely an essential requirement for the report's severe conclusions.

### **2. Jeremy Corbyn**

- a) There are just 12 mentions of Jeremy Corbyn in the report, of which only two concern actions taken by him, or alleged to have been taken by him. The setting in which the Inquiry was launched and the publicised presentation of the report led the public and the media to see the report as an indictment of his leadership of the Party and a judgement on his alleged antisemitism. The Commission has taken no action to contradict that interpretation.
- b) In the light of this, it is reprehensible not to distinguish between actions taken by individuals supportive of Corbyn and those taken by people hostile to him – such an omission leads to the impression that all failings were Corbyn's responsibility.

Corbyn and his team undoubtedly struggled to get a just and efficient process to investigate antisemitism off the ground, despite initiating the Chakrabarti Report (which incorporated relevant points from the Royall Inquiry which Corbyn also commissioned). But given the hostile atmosphere they were working in and the constant level of abuse he received from inside and outside the Party, this might be considered understandable if regrettable. The report neither acknowledges the hostile environment nor produces evidence that any action or inaction by the leadership was motivated by antisemitism or indeed resulted in disadvantage to Jews.

### **3 The uncritical use of the term “the Jewish community”**

The hostility of much of what the Report refers to as “**the Jewish community**” to Corbyn is surely linked to sympathy with Israel by many Jews and Jewish bodies and Corbyn’s long-standing advocacy for Palestinian rights. It is striking that the great decline in the traditional support for the Labour Party from British Jews occurred not under Corbyn but some twenty years ago, accelerating under Labour’s only Jewish leader, Ed Miliband, when he led the Party to be more critical of Israel’s actions and to move towards support for a Palestinian state. The whole relationship between Corbyn’s supporters and that large part of British Jewry committed to Israel cannot be understood without this context of international political alignment. The report does not analyse what proportion of the complaints related to comments on Jews as Jews as opposed to comments on Israel and Zionism. Nor does the report attempt to distinguish to what extent comments on Zionism relate to a political ideology no more worthy of protected status than any other and those which are using Zionist as a surrogate for Jew and so very probably unacceptable.

In adopting this unitary view of the ‘Jewish Community’ the report endorses and intensifies the othering of JVL and other Jewish people inside and outside the Labour Party who are highly critical of Zionism and/or Israel’s treatment of the Palestinian people. JVL is systematically abused by a set of highly antagonistic Labour Party members on social media and many other places as being not real Jews and our right to describe ourselves as Jews is regularly challenged. We experience this as a pernicious form of antisemitism and are entitled to protection against it. A number of formal complaints have been submitted to the Party about such incidents but to the best of our knowledge none has been processed and there has been no reference to such complaints within this report.

While many Jewish JVL members would describe themselves as secular, we are no less Jews for that; the religiosity of complainants has never been a criterion, nor should it be. Some JVL members who are observant members of their shuls have also been the subject of complaints to the Party of antisemitism; for them, most likely, an experience even more distressing than it is for others.

#### **4. The nature of the evidence**

The report fails to detail or even list the evidence submitted to it, let alone to publish – redacted as necessary – the submissions it received. Although they acknowledge receiving evidence from JVL it is not clear whether they took it into account at any point, even to dismiss it. As we have mentioned above the evidence from the GLU Report is only made use of to support its narrative and it is not acknowledged where it undermines it.

#### **5. Racism in general**

There is a failure to examine how other forms of racism were dealt with the Party during the same period. The only comparison made is with sexual harassment complaints procedures and we question the weight or appropriateness attached to this comparison in the Report.

We are aware that the Inquiry was into antisemitism but as Caroline Walters makes clear in the Foreword “politicians on all sides have a responsibility to set standards for our public life and to lead the way in *challenging racism in all its forms*”.

A comparison with what the Party did with regard to these other forms of racism is surely essential to understand whether Jewish members were disadvantaged in relation to others who also were investigated (or not) when complaints of other forms of racism were made.

On the more general effects of this omission see our Official Statement: [Who are missing from the EHRC Report](#)

#### **6. An acknowledgment of the role of the media in inflaming Labour’s crisis**

On p.16, the Report notes: “The JLM’s and CAA’s concerns were not isolated. Public concern around the Labour’s handling of antisemitism has been growing since 2015”. However, there is no reference as to why that has been the case, despite repeated scholarly examination of this phenomenon. This, despite research highlighting that Labour members, both before and during Corbyn’s leadership, were almost the least likely of any Party to agree with antisemitic statements. That the media coverage had led to people imagining a grossly inflated estimate of the levels of antisemitism was a key finding reported in *Bad News for Labour* (Philo et al, 2019). It is unacceptable that the Report fails to acknowledge the role of the press and broadcast coverage of this issue, the continual repetition of the same allegations generally ignoring

all published rebuttals and the [detailed rebuttals of the JLM's compilation of cases submitted by JVL](#).

## **D: Conclusions**

Some of the recommendations for improving the procedures should be welcomed; mainly those which were already contained within the Chakrabarti Report. Her framework was that there was a need for clear guidance and procedures that would focus on transparency, natural justice and proportionality. We have published [a commentary of the recommendations](#) separately.

A section by section analysis of the report is in preparation.