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Date: 23 December 2020

The General Secretary
The Labour Party Head Office
Southside
105 Victoria Street
London
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By email only:

Dear General Secretary,

Instructions to CLPs and associated suspensions

1. Introduction

1.1 We act for Marion Roberts, Vice Chair (Membership) of Camberwell and Peckham CLP, and Louise Regan, Chair of Nottingham East CLP, who have been administratively suspended from the Party, together with Jewish Voice for Labour, in their representative capacity for Jewish and non-Jewish members of the Labour Party. We write in respect of their concerns in relation to certain instructions - provided by David Evans in his capacity as the General Secretary of the Labour Party (“the Party”) and/or others seemingly acting under his authority - to Constituency Labour Party (“CLP”) officers.

1.2 Over recent weeks Mr Evans has informed CLP officers that they must rule ‘out of order’ motions proposed by members for discussion on certain topics (“the Instructions”). Specifically, CLP chairs have been instructed to prevent any discussion amongst party members gathering for CLP meetings of:

SENIOR CONSULTANTS
Sir Geoffrey Bindman QC*
Stephen Grosz QC*
Saimo Chahal QC*
Lynn Knowles

PARTNERS
Tayab Ali
Tamsin Allen
Liz Barratt
Jules Carey
Jon Crocker
Yagmur Ekici
Kate Goold
John Halford
Charlotte HaworthHird
Alison Leivesley
Siobhan Kelly
Elizabeth McGlone
Alla Murphy
Olivia Piercy
Jamie Potter
Paul Ridge
Amrit Rana
Amy Rowe
Alison Stanley
Anna Thwaites
Katie Wheatley

ASSOCIATES
Salima Budhani
Emma Cohen
Maud Davis
Neil Emery
Ashley-Jayne Fleming
Roberta Haslam
Laura Hobey-Hamsher
Catherine Jackson
Pauline Lam
Jude Lanchin
Alison Mackintosh
Karen May
Jessica Skinns
Sheetul Sowdagur

SOLICITORS
Karan Ahluwalia
Sumaiyah Anwar
Clara Barry Born
Joanna Bennett
Nasbin Begum
Jessie Brennan
Elizabeth Cleaver
Samuel Cronin
Alice Davis
Rachael Davis
Emily-Jade Defriend
Abigail Evans
Christian Hansen
Rachel Harger
Ella Jefferson
Robert Maddox
Hannah Marshall
Carla Mirallas
Joseph Morgan
Oliver Oldman
Patrick Ormerod
Shelly Pastakia
Jen Parker
Farhana Patel
Caroline Robinson
Basmah Sahib
Emma Varley
William Whitaker
Rosaleen Wyllie
Louisa Zangina
Daniel Zona

LAWYER
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- (a) the suspension and the case for reinstatement of Jeremy Corbyn, the former leader of the Party;
- (b) a report by the Equality and Human Rights Commission (“EHRC”) concerning antisemitism within the Party;
- (c) the International Holocaust Remembrance Alliance’s *Working Definition of Antisemitism* (“the IHRA Working Definition”);
- (d) the Party’s decision to settle claims brought by various claims brought by ‘whistleblowers’ against the Party.

1.3 In summary, for the reasons set out more fully below:

- (a) Mr Evans does not have the power to impose such wide ranging and censorious restrictions on members, meeting to discuss topics of the day and conduct CLP business; and
- (b) The linking of breaches of the Instructions by the members of CLPs to automatic suspensions of the individual who chaired the relevant meeting is a breach of the Labour Party Rules and a further example of the disproportionate approach of the General Secretary; and
- (c) The administrative suspensions of Dr Roberts and Ms Regan (and we expect many others) is, in any event, contrary to the Rule Book and therefore unlawful.

2. Background

2.1 On 13 August 2020, Mr Evans wrote to all Party CLP chairs stating that:

“Panorama settlement

The Labour Party recently agreed a settlement with seven former members of staff who appeared on an edition of the BBC’s Panorama programme, as well as with the journalist who hosted that programme. Those settlements included an unreserved apology and a withdrawal of the allegations previously made by the Party about those individuals. The withdrawal and apology are binding on the Party and any motions which seek to undermine or contradict them will create a risk of further legal proceedings for both the national party

and local parties. As such, motions relating to these settlements and the circumstances behind them are not competent business for discussion by local parties.

CLP officers have an important responsibility to ensure that they and other members conduct themselves in a respectful and comradely manner. We therefore take this opportunity to reiterate to local Labour Parties and officers that they should be aware of the potential liabilities to them should the allegations that have now been withdrawn by the national Party be repeated.

Equality and Human Rights Commission (EHRC) report

On Monday 13 July 2020 the Party announced that it had received the EHRC's draft report into allegations of antisemitism in the Labour Party. This draft report has been provided to the Party by the EHRC on a confidential basis as part of its investigation.

When we are able to provide more information about the EHRC's report we will do so. Until that time speculation as to the contents of the report is not helpful. It is therefore not competent business for CLPs to discuss.

IHRA definition of antisemitism

We are aware that some CLPs and branches have had motions tabled to "repudiate" the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism. The IHRA definition of antisemitism and its examples was properly adopted by the Labour Party in September 2018. CLPs and branches have no powers to overturn this decision. Furthermore, such motions undermine the Labour Party's ability to tackle racism. Any such motions are therefore not competent business for CLPs or branches.

As per the previous General Secretary's instruction, any discussion about ongoing disciplinary cases remains prohibited." (emphases added)

- 2.2 As will be apparent this letter, noted that the withdrawal and apology were binding on the Party but went on to assert that any discussion of them - whether supportive, seeking further information or otherwise - might give rise to a risk of further legal proceedings against a local party. This is plainly much too wide a prohibition and contains a number of insupportable legal assertions: for example, there is no prospect that a motion in support of the settlement could possibly give rise to legal liability.
- 2.3 As to the EHRC Report, and indeed the other matters that fell within the prescription, Mr Evans stated that they were not “*competent business.*” We do not understand on what basis Mr Evans has the power to determine what topics individual CLPs are ‘competent’ to discuss at all. The framing of this letter - and his subsequent injunctions - seem to indicate that the powers of the CLP are limited to what the national party tells them that they may discuss. This finds no basis in the Rule Book and none has properly been identified in the correspondence.
- 2.4 As to the IHRA Working Definition, the statement is particularly baffling. Our clients do not understand how a discussion on the subject could be declared - *ex ante* before the subject or content of the discussion had been determined - to hinder the fight against racism. For the avoidance of doubt, it appears to be Mr Evans’ position that talking about racism is itself the same thing as racism. Questioning the context and content of the IHRA Working Definition often involves the victims of that racism talking about their own lived experience. The Party’s position is embarrassing, appears to have been dictated by a Labour Party administration comprised largely of non-Jewish and white individuals, and flies in the face of all reputable current approaches to tackling racism.
- 2.5 On 25 November 2020, Mr Evans wrote again to CLP chairs as follows:
- “It remains the case that motions which seek to repudiate the findings of the EHRC or question its competency to conduct the investigation remain not competent business for branches or CLPs. Motions relating to ongoing disciplinary cases are also not in order, in line with the instructions of my predecessor.*”

I am aware that other motions (including expressions of solidarity, and matters relating to the internal processes of the PLP) are providing a flashpoint for the expression of views that undermine the Labour Party's ability to provide a safe and welcoming space for all members, in particular our Jewish members. Therefore, all motions which touch on these issues will also be ruled out of order.

...

Please rest assured that when I took up post as General Secretary, I had no desire at all to hamper discussion by our local parties, but until we can improve our culture such restrictions may be required to stay in place."

- 2.6 On this occasion, Mr Evans explained his concern that such motions might “*provide a flashpoint for the expression of views that undermine the Labour Party's ability to provide a safe and welcoming space for all members, in particular our Jewish members.*” In essence, this appears to mean that the risk of some members making comments that might make Jewish members feel unsafe or unwelcome is a proper reason to prevent *all* discussion of *all* of the above topics, even by Jewish members discussing their own experience of antisemitism. If that is Mr Evans' real concern, then the obvious and proper route for him to take is to inform and assist CLP Chairs in the preparation and chairing of events. Certain comments might well be out of order; but whole swathes of subject matter that are of lively concern to the membership of the party are not. In much the same way, CLP Chairs were not precluded from discussing the Black Lives Matter movement this summer, but would have been expected vigorously to resist and rule out of order any comments of a racist nature. There is no proper reason for not treating debates regarding antisemitism in the same manner.
- 2.7 Mr Evans wrote again on 30 November 2020 to similar effect, specifically in relation to the disciplinary case against Mr Corbyn:

“... it has become clear that motions around this issue (including expressions of solidarity, views around the ongoing process in relation to the Parliamentary whip, and/or the power of the General Secretary or the NEC to issue guidance in relation to

discussion of this issue) are providing a flashpoint for the expression of views that undermine the Labour Party's ability to provide a safe and welcoming space for all members, in particular our Jewish members. Therefore all motions which touch on these issues must be ruled out of order."

2.8 It is notable that on this occasion Mr Evans has gone so far as to preclude discussion within the Labour Party even of the powers of the NEC and its ability to take certain procedural steps. In simple terms, Mr Evans is passing injunctions that he has no power to pass and simultaneously precluding discussion of the powers of the NEC and whether he has acted within them. This amounts to a dictatorial state of affairs.

2.9 Mr Evans then wrote again on 3 December 2020 to provide "*updated guidance*":

"It remains the case that motions which seek to repudiate the findings of the EHRC or question its competency to conduct the investigation remain not competent business for branches or CLPs. Motions relating to ongoing disciplinary cases are also not in order, in line with the instructions of my predecessor.

I am aware that other motions (including expressions of solidarity, and matters relating to the internal processes of the PLP) are providing a flashpoint for the expression of views that undermine the Labour Party's ability to provide a safe and welcoming space for all members, in particular our Jewish members. Therefore, all motions which touch on these issues will also be ruled out of order." (emphasis added)

2.10 Mr Evans wrote for a fifth time on this topic on 9 December 2020:

*"I can understand the desire of people to discuss contentious and controversial issues that they feel deeply about. But to be clear, the Labour Party was found guilty of breaking the law on anti-Semitism. We are now **not trusted to run our own affairs until we satisfy the EHRC that we have fully addressed the issues that meant our Party is not a safe space for Jewish members.** Just as we should have zero tolerance for all forms of racism, homophobia, sexual harassment and other*

prejudicial behaviour, our responsibility to double down on anything that may cause members to continue to feel unwelcome and unsafe must take precedence over our rights at this time.

I also wanted to confirm that the effect of my guidance was to rule motions on the topics mentioned out of order. This means they should not appear on the agenda or any other meeting papers, and that there is no requirement for Chairs of meetings to make rulings (nor should there be any resulting challenges to such rulings). I hope this clarification will help avoid any further unnecessary confrontation.” (emphasis in original)

2.11 We note two things about this latest correspondence. First, Mr Evans has now set the bar at precluding discussion of anything that may cause offence presumably to anyone (an exceptionally low bar); and secondly that Mr Evans recognises that this is an interference with the rights of party members, albeit that the justification for it is wholly inadequate. We return to this below.

3. The extent of Mr Evans’ powers

3.1 Clause 2.1.8 of the Party’s Rule Book provides as follows:

“No member of the Party shall engage in conduct which in the opinion of the NEC is prejudicial, or in any act which in the opinion of the NEC is grossly detrimental to the Party. The NEC and NCC shall take account of any codes of conduct currently in force and shall regard any incident which in their view might reasonably be seen to demonstrate hostility or prejudice based on ... race; ... as conduct prejudicial to the Party: these shall include but not be limited to incidents involving racism, antisemitism, Islamophobia or otherwise racist language, sentiments, stereotypes or actions, sexual harassment, bullying or any form of intimidation towards another person on the basis of a protected characteristic as determined by the NEC, wherever it occurs, as conduct prejudicial to the Party.”

3.2 Clause 2.1.9 provides:

“Any dispute as to whether a member is in breach of the provisions of sub-clause 8 shall be determined by the NCC in accordance with Chapter 1 Clause IX above and the disciplinary rules and guidelines in Chapter 6 below ... The NCC shall not have regard to the mere holding or expression of beliefs and opinions except in any instance inconsistent with the Party’s aims and values, agreed codes of conduct, or involving prejudice towards any protected characteristic.” (emphasis added)

3.3 Appendix 9 to the Rule Book contains a Code of Conduct: Antisemitism and other forms of racism (“**the Code**”):

“The Labour Party is an anti-racist party, committed to combating and campaigning against all forms of racism, including antisemitism and Islamophobia. Labour will not tolerate racism in any form inside or outside the party.

The Labour Party will ensure that the party is a welcoming home to members of all communities, with no place for any prejudice or discrimination based on race, ethnicity or religion.

The Labour Party welcomes all who share our aims and values, and encourages political debate and campaigns around the vital issues, policies and injustices of our time.

Any behaviour or use of language which targets or intimidates members of ethnic or religious communities, or incites racism, including antisemitism and Islamophobia, or undermines Labour’s ability to campaign against any form of racism, is unacceptable conduct within the Labour Party.”

3.4 The NEC has also produced a Code of Conduct on Antisemitism (the “**Unpublished Code**”), which it has never formally published, but which we understand is in use and is relied upon by the NEC when making decisions. It begins by referring to Clause 2.1.8 set out above. It clarifies that “*To assist in understanding what constitutes antisemitism*” the NEC has endorsed the IHRA Working Definition. It then notes that:

“The IHRA text is not a legal definition, and on its own does not provide clear guidance about the circumstances in which particular conduct should or should not be regarded as anti-Semitic. The publication of the IHRA definition was accompanied by a series of examples to guide IHRA in its intergovernmental work.”

- 3.5 The Unpublished Code then draws attention to criticism of the state of Israel as an “*area of particular difficulty*” in which the expression of opinions may offend or upset. It goes on to state that:

“In general terms, the expression of even contentious views in this area will not be treated as antisemitism unless accompanied by specific antisemitic content (such as the use of antisemitic tropes) or by other evidence of antisemitic intent. In short, the Party will encourage considered and respectful debate on these difficult topics, but will not tolerate name-calling and abuse.” (emphasis added)

- 3.6 The Code then states that discussion of the circumstances of the foundation of the Israeli state forms a legitimate part of modern political discourse, but that care is required on these topics. It states that it is not anti-Semitic to refer to Zionism or Zionists but that they should be used “*advisedly, carefully and never euphemistically or as part of personal abuse*” (quoting from an earlier report by Shami Chakrabarti, Labour’s former Shadow Attorney General).

- 3.7 Chapter 7 of the Rule Book establishes the framework within which CLPs are to operate. The aims of values of CLPS include:

“To provide the opportunity for all individual members of the Party within the constituency to contribute to the development of the aims and policies by ensuring that a full range of Party activities are available to them, including local policy forums, and that they may participate fully in discussion to broaden the political education of members of the Party and to increase their influence over the formulation of the Party programme.” (Clause 7.11.2.D, emphasis added)

- 3.8 The Instructions are directly contrary to such an aim.

- 3.9 Pursuant to Rule 7.VII, the management of a CLP is in the hands of the General Meeting, whose decisions are put into effect by an Executive Committee. The officers of the CLP - including the Executive Committee - are elected at the annual general meeting of the CLP (Clause 7.VIII).
- 3.10 The General Meeting of the CLP is responsible for “*establishing objectives for this CLP in the constituency through political debate and policy discussion...*” (Clause 7.9). Chapter 17 Model Procedural rules, Clause 1 Model Standing orders for Party units includes the following:

“2 G.(i) The prime function of Party meetings is to provide delegates and members with the opportunity to participate in Party activities through social contact, political debate and policy discussion; and to establish objectives for the Party in the area for campaigning, the development of Party organisation and the promotion of links with sympathetic individuals and bodies within the wider community.”

4. The absence of power supporting Mr Evans’ letters

- 4.1 Mr Evans has asserted that he has the power - pursuant to Rule 2.1.8 - to establish a list of topics that CLPs are not competent to discuss. As to that we make the following five points.
- 4.2 First, the power in clause 2.1.8 is not sufficiently broad as to provide a basis for the General Secretary of the Party to unilaterally rule a wide range of matters of contemporary political concern out of order. In particular:
- (a) It makes no reference to such a power: it contains no reference to precluding discussion of certain topics at all.
 - (b) It is concerned with the “*conduct*” of a “*member of the Party*”. Accordingly, it does not provide any basis for regulating the content or discussions of a collection of Party members on an *ex ante* basis.
 - (c) The rule is targeted at acts that might reasonably be seen to demonstrate hostility based on (amongst other things) race. It cannot be right that the mere discussion of a topic can be

anticipated - in advance and without knowledge of the content of the discussion - to demonstrate hostility on grounds of race.

- (d) Mr Evans has predetermined that all motions on certain topics involve conduct that is prejudicial or grossly detrimental to the party. This makes no sense. It might well be - by way of example - that a CLP wished to endorse or adopt a particular decision of the Party. It can hardly be right that the all discussions on these subjects, of whatever kind, are inherently prejudicial.

- 4.3 Second, to the extent that Mr Evans is concerned that the discussions might involve statements that are out of order, or even motions that are out of order, the proper approach in a modern democratic party is to provide guidance and assistance to CLP chairs to facilitate the discussion of such topics. In this case, fortunately, the Labour Party has produced both the Code and also the much longer and fuller Unpublished Code. The Code of Conduct is a carefully crafted document that recognises the importance of clause 2.1.8 and explains - in some detail - how discussions are to be conducted. Rule 2.1.8 expressly provides that the General Secretary will have regard to those Codes. The publication of the Unpublished Code would therefore no doubt be of great assistance to those engaging in such discussions.
- 4.4 It is immediately obvious that the Instructions are not consistent with the Unpublished Code, which provides a full and detailed account of how discussions in this area might be conducted in an appropriate manner. In short, Mr Evans has clearly not had proper regard to Rule 2.1.8 and related Codes when making the Instructions.
- 4.5 Third, were there any doubt on this question, Rule 2.1.9 provides that the NCC will not sanction “*the mere holding or expression of beliefs and opinions except in any instance inconsistent with the Party’s aims and values, agreed codes of conduct or involving any prejudice towards any protected characteristic.*” This affirms that Mr Evans has acted outside his powers by ruling that (in the absence of any evidence in support), no Party CLP was competent to discuss any of the above topics without creating an environment in which antisemitic views are highly likely to be expressed. This supposedly precautionary approach, unsurprisingly, finds no expression in the

Rules; it runs entirely contrary to the democratic essence of the Labour Party; and its implications are deeply concerning.

- 4.6 Fourth, as Mr Evans himself recognised - and as is made clear in the Code of Conduct on antisemitism - questions of this nature involve a careful balancing exercise in relation to the freedom of expression. The Party has invoked and relies upon Article 10 as the framework by which it will consider and assess these questions (quite appropriately). The Code of Conduct states that:

“The expression of opinions on this topic can easily offend or upset people holding an opposite opinion. The European Court of Human Rights has long recognised that the principle of freedom of expression protects views which “offend, shock or disturb” society or a section of it. But the Court has also emphasised that the principle does not protect the expression of racist views or “hate speech”. Nor, as Chakrabarti made clear, should the party tolerate the expression of views in a manner simply intended to upset or offend. A “civility of discourse” is essential.”

- 4.7 Any restriction on the freedom of the members to discuss matters - whether at a CLP meeting or otherwise - must be proportionate, consistent with the spirit of Article 10 and guided by its wording. The Instructions go well beyond the limits of reasonable proportionality for the following reasons:

- (a) IHRA Working Definition: this is a complex document that itself rests on certain illustrative examples, as it must be, given that the proper evaluation of any statement as antisemitic or otherwise would require a careful consideration of the relevant context. It is also fair to say that the document itself has been the subject of considerable controversy and trenchant criticism from eminent legal authorities. While the General Secretary might have reminded Chairs to familiarise themselves with the guidelines in relation to discussing such topics, it was clearly disproportionate (as well as outwith the powers of the General Secretary) to impose a blanket ban as he did.
- (b) The EHRC Report: The prohibition on discussing the outcomes of the EHRC Report is peculiar. It prevents members from

reflecting on and engaging with the issues that are raised by the report, which are important and affect the Party's membership at every level. It is accepted that the GS has a legitimate concern to ensure that any debate is conducted in a manner that is constructive and ultimately beneficial to the party, while permitting members of a democratic political party to consider these issues. However, to ban discussion altogether is disproportionate and unreasonable.

- (c) Panorama: the Party's position appears to be that the expression of a view by a particular member in the course of discussion in one CLP might open up fresh liability for the Party as a whole. We consider that to be a wholly unrealistic position to take. In any event, as with the topics above, CLPs should at the very least be entitled to ask for a statement of reasons for the decision - for example - rather than being precluded from discussing the matter altogether.
- (d) Jeremy Corbyn's suspension: If any prohibition can be justified, it can only be in relation to anything that might compromise the independence of the disciplinary process. Taking into account that there has already been significant critical comment from senior members of the Party regarding Mr Corbyn, it simply cannot be the case that it is not possible for members to discuss such matters without breaking the Rules (unless, for example, Mr Starmer and others are under investigation for commenting on the process as well). That any such discussion "might provide a flashpoint" for inappropriate anti-Semitic statements is purely speculative. Any such concerns should be dealt with via the means set out above.

4.8 Finally, the Instructions themselves are creating an unwelcoming environment for some members.

4.9 Many Palestinian members of the Party (and those that support Palestinian rights) consider that the lack of freedom to discuss their experiences (often as refugees) and their concerns in relation to events in their countries of origin leads to the result that the Labour Party is no longer a welcoming or accepting environment for them. In short, the Instructions themselves discriminate on grounds of a

protected characteristic. By way of example, an equivalent effect might be felt by Ethiopian members who were precluded from discussing - in Labour party meetings - the current violence in their country of origin. This is a serious problem and it illustrates the unlawful and disproportionate nature of the Instructions.

4.10 Moreover, the Instructions make a number of statements asserting that they are intended to:

“adopt a genuinely zero tolerance approach which will ensure all members, and in particular our Jewish members, feel safe and welcome within the Labour Party.”

4.11 All Jewish members, like all members, must be protected from harassment, while also being free to express their views on contentious topics without fear of victimisation. Freedom from harassment is not the same as being protected from hearing views individuals may find disagreeable. What seems to have been completely overlooked is that there is no one Jewish view. The Instructions are therefore having a negative impact on the freedom of speech of some Jewish as well as non Jewish members. Such Jewish members must not be prevented from expressing their opinions simply because they do not accord with what the General Secretary has decided on this occasion it is acceptable for Jews to say, whether about anti-Semitism, Jeremy Corbyn or otherwise.

4.12 Some Jews are finding themselves subject to disciplinary procedures simply for expressing views that reflect their understanding of the meaning of Jewish experience and traditions. Others are leaving the Party because they find the restrictions on their ability to describe their experience without fear of retribution means the Party is a hostile environment for them as Jews. The General Secretary appears to believe the EHRC Report has given it a mandate to adjudicate on which understandings of Jewish identity are permissible and those that are not. It should be patently apparent it is neither competent nor empowered to do this and, by attempting this, it is further discriminating against, harassing and or victimising a section of its Jewish membership, in breach of the Equality Act 2010.

5. Automatic suspensions

- 5.1 Finally, we note that the Party's approach has been to automatically suspend Chairs - and Vice Chairs - who have failed to prevent CLP meetings from discussing motions. We consider that this is - once again - outwith the powers of the NEC and General Secretary.
- 5.2 The automatic linkage of the debating of a motion - whether passed or not - with suspension of the meeting chair is a further example of the disproportionate and unlawful approach by the General Secretary:
- (a) It fails to take any account of the actual conduct of the meeting, any attempts by the Chair or Vice Chair to prevent discussion of a topic, the content of a motion and the content of the discussion itself; and
 - (b) It presupposes that the Chair has themselves brought the Party into disrepute by the mere activity of allowing - or failing to prevent - a discussion.
- 5.3 It would appear that this has been the basis for the administrative suspension of Dr Roberts and Ms Regan, whose circumstances we address below.

Dr Roberts

- 5.4 Dr Roberts is Vice-Chair (Membership) of Camberwell & Peckham CLP. The CLP has been without a Chair since October. The EC decided to continue business with two Vice-Chairs until the AGM in February 2021 as there were only three GC meetings scheduled before then, with Dr Roberts chairing the GC meetings.
- 5.5 In November 2020, five branches of the CLP passed four motions (one was adopted by two branches) protesting against Jeremy Corbyn's suspension. These were scheduled for debate at the GC on 19 November 2020. Before that debate, Mr Corbyn's suspension from the Party was withdrawn, but the whip was subsequently withheld, subject to further investigation by the Parliamentary Labour Party. We understand the lawfulness of the withholding of the whip is being challenged by Mr Corbyn and has been the subject of public comment by the Party.

- 5.6 Two delegates to the GC meeting proposed two separate emergency motions protesting about the withdrawal of the whip from Mr Corbyn. The first of these included a clause about free speech within the Party. In addition, a motion protesting Mr Corbyn's suspension had been submitted by the local Unite Community branch. These motions were circulated to delegates by the CLP Secretary about three hours before the meeting. Following that the Secretary and the Vice Chair received a notice from London Region instructing the CLP not to discuss the two emergency motions relating to Mr Corbyn, together with the four previously tabled motions about Mr Corbyn's suspension, which by then had been superseded.
- 5.7 About 90 delegates attended the meeting out of a possible 150. Dr Roberts explained that she would allow the motions regarding the suspension of the whip, as she considered this to be within her powers if this was the wish of the meeting. This decision was challenged by 24 delegates and the challenge fell, while a procedural vote to allow an emergency motion to proceed was passed by an overwhelming majority. The substantive motion was passed 62 for, 1 against, 2 abstentions. The 24 people who had opposed the debate asked to have their names recorded as not having participated. Dr Roberts agreed. Even if they had voted, the motion clearly still would have been passed. The other emergency motion on the same topic was withdrawn by the proposer.
- 5.8 Dr Roberts allowed the debate of a further motion about the EHRC Report. Dr Roberts voted against welcoming the report, along with eleven others.
- 5.9 On 17 December 2020, Dr Roberts received notification she had been administratively suspended from the Labour Party and would be investigated. The only reasons given for such administrative suspension and investigation:

“Allegations that you may have been involved in a breach of Labour Party rules have been brought to the attention of national officers of the Party. These allegations relate to your conduct in your capacity as Vice Chair of Camberwell and Peckham CLP, which may be in breach of Chapter 2, Clause 1.8 of the Labour Party Rule Book. It is important that these

allegations are investigated and the NEC will be asked to authorise a full report to be drawn up with recommendations for disciplinary action if appropriate.

We write to give you formal notice that it has been determined that the powers given to the NEC under Chapter 6 Clause 1.1.A of the Party's rules should be invoked to suspend you from membership of the Party, pending the outcome of an internal Party investigation.”*

5.10 No further correspondence has been received from the Party.

Ms Regan

5.11 Ms Regan is chair of Nottingham East CLP. On 27 November 2020, a CLP meeting was held. We are instructed that two members submitted an emergency motion to the CLP Secretary on that day. The Secretary copied Ms Regan in to an email saying that it could not be circulated as it was contrary to the Instructions.

5.12 At the start of the meeting, Ms Regan welcomed people. Before she moved to the agenda, one of the members who had submitted the motion raised a point of order about the motion. Ms Regan opened the meeting for discussion and all members who indicated they wished to do so spoke - some in favour and some against. One member spoke about his personal view about what he had experienced in meetings during his time in the CLP. At this point another member started shouting at him about antisemitism. Ms Regan asked the member to stop shouting and the member then said: *“I don't feel safe I am leaving the meeting.”* Ms Regan sent the member a message immediately saying she was sorry he felt unsafe.

5.13 The meeting went on to vote to hear and consider the motion. Ms Regan continued with the agenda and the motion later was heard in the meeting, with the motion being carried by a majority.

5.14 Ms Regan found the meeting extremely stressful and after the meeting had finished around 9.45pm she went out for a walk. As she arrived home around 10.30pm she received a text from someone saying they were sorry she had been suspended, as her suspension had been reported on social media. She responded to say that she had not been

suspended, but then opened her emails to find a letter had been sent at about 10.15pm. The only justification for the suspension and investigation provided by the Party was:

“Allegations that you may have been involved in a breach of Labour Party rules have been brought to the attention of national officers of the Party. These allegations relate to your conduct as chair of Nottingham East CLP, which may be in breach of rule 2.1.8. It is important that these allegations are investigated and the NEC will be asked to authorise a full report to be drawn up with recommendations for disciplinary action if appropriate.

We write to give you formal notice that it has been determined that the powers given to the NEC under Chapter 6 Clause 1.1.A of the Party’s rules should be invoked to suspend you from membership of the Party, pending the outcome of an internal Party investigation.”*

- 5.15 On the Saturday morning, Ms Regan was contacted by the BBC to ask for a comment. Ms Regan issued a statement on the Sunday following other media coverage. Members in attendance at the meeting have confirmed the inaccuracy of the press reporting of the meeting.
- 5.16 Ms Regan has written to the Party on multiple occasions to seek further information as to the allegations against her, how she can respond to them and the process for the investigation, as well as to express concern regarding the leaking of her suspension. The Party has not replied.

Conclusion on Administrative suspensions

- 5.17 In both cases, no explanation has been given as to what conduct is alleged to have breached Clause 2.1.8 of the Rule Book, nor why an administrative suspension was considered to be necessary and proportionate in the circumstances. No reference is made to Clause 2.1.9, which clearly excludes from Clause 2.1.8 “*expressions of opinion or belief*”. There is no evidence that anything Dr Roberts or Ms Regan did, or allowed, at the meeting went beyond “*expressions of opinion or belief*”. Indeed, no evidence is provided whatsoever. No timetable is given for when further information will be provided

and how long the investigation will take to complete. Such failures perpetuate the serious failings identified in the EHRC Report on anti-Semitism, which the Party has confirmed it will rectify. Clearly such rectification is yet to happen and the Party continues to perpetuate fundamental unfairness contrary to its Rules.

- 5.18 Dr Roberts and Ms Regan are left in a state of limbo. The Party considers what they have done is so egregious as to justify an administrative suspension, but is unable, or unwilling, to say what that is, despite three to four weeks passing since the relevant meetings that we presume are the cause of the suspensions. Dr Roberts and Ms Regan cannot therefore even question the basis for the administrative suspensions. Even leaving aside the lawfulness of the Instructions, this is an extraordinary and unlawful state of affairs.
- 5.19 Fairness dictates that the Party must inform a suspended member of how the investigation will proceed, afford them an opportunity to respond to the disciplinary proceedings, and provide details of any applicable appeals process for challenging any sanction that has been imposed (including administrative suspension) and the allegations made. Where the Party has collected sufficient evidence, and undertaken sufficient analysis, to justify the imposition of a administrative suspension, there can be no proper basis for not presenting that analysis to the suspended member.
- 5.20 The suspensions of Dr Roberts and Ms Regan are clearly in breach of the implied duty of fairness within the Labour Party Rules.

6. Conclusion

- 6.1 In conclusion we invite you to:
- (a) rescind the existing Instructions to Party members;
 - (b) agree not to make any further wide ranging and acontextual requirements of this kind; and
 - (c) bring to an end the suspensions of any officers of CLPs who have been suspended as a result of alleged breaches of the Instructions, including Dr Roberts and Ms Regan.

- 6.2 If you refuse to take this step, please set out, in detail:
- (a) the purported legal basis for each of the Instructions;
 - (b) the purported legal basis for the suspension of Officers of CLPs that act contrary to the Instructions; and
 - (c) the specific factual and legal basis for the suspension of Dr Roberts and Ms Regan.
- 6.3 We look forward to hearing from you within 14 days, that is, **by 6 January 2021**. In the absence of a satisfactory response our clients will have no option but to consider all legal and other options available to them.

Yours faithfully

Bindmans LLP

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