



Our Ref: [REDACTED]

Date: 7 May 2021

The General Secretary and Chair of the Advisory Board on Anti-Semitism
The Labour Party Head Office
Southside
105 Victoria Street
London
SW1E 6QT

By email only: [REDACTED]@labour.org.uk; [REDACTED]@labour.org.uk

Dear General Secretary

1. Introduction

1.1 We write on behalf of (1) Jewish Voice for Labour (“JVL”); (2) Councillor Adam Hirst; (3) a member of the Charedi community; and (4) Ghada Karmi (collectively “our clients”), to express serious concern regarding the process for appointing the Advisory Board on Anti-Semitism, which has resulted in the exclusion of, and potential discrimination against, relevant stakeholders, as well as the inclusion of individuals whose relevance is unclear.

1.2 In particular, our clients are concerned that the Labour Party:

- (a) conducted an unfair and opaque process in selecting the Advisory Board;
- (b) as a result of this unfair process, the Advisory Board is not representative of the spectrum of the Jewish community, and also excludes other relevant stakeholders; and
- (c) such lack of representation amounts to potential discrimination under the Equality Act 2010 and a breach of the Rule Book 2020.

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2. The Advisory Board on Anti-Semitism

- 2.1 On 17 December 2020, the Labour Party (“the Party”) published its Action Plan for Driving out Antisemitism in the Labour Party (“the Action Plan”), in response to the Equality and Human Rights Commission (“EHRC”) report into antisemitism in the Party published on 29 October 2020 (the “EHRC Report”).
- 2.2 The Action Plan set out actions for the Party to address the recommendations made in the EHRC Report along with a timetable for implementation. According to the Action Plan:
- (a) *“Consultation with the Jewish community will be built into all aspects of the Action Plan. With immediate effect, we will establish a high-level Advisory Board and a Reference Group to work closely with the Labour Party and act as a sounding board”;*
 - (b) the Advisory Board is described as a *“high-level Advisory Board including Jewish community stakeholders”;* and
 - (c) the Terms of Reference for the Advisory Board are to be developed *“in consultation with stakeholders”*, but at the least it is intended the Advisory Board will feedback on the implementation of the plan by the Party and be part of *“continuous update and consultation”*, as well as specifically reviewing and discussing the Code of Conduct on antisemitism.
- 2.3 As far as we are aware, the Party did not publicly call for nominations to the Advisory Board and did not provide any public information regarding its selection process or criteria for acceptance to the Advisory Board.
- 2.4 On 31 December 2020, our client, JVL, wrote to the Party to nominate Councillor Adam Hirst to the Advisory Board. They provided the Party with Councillor Hirst’s biography and noted that *“he is an observant, Jew with views representative of a broad swathe of our members and many younger people within the wider Jewish community. He is also a respected Sheffield City Councillor.”*
- 2.5 JVL also stated:
- “1. The Board of Deputies of British Jews may well speak for those it represents, but it is not representative of all Jews*

in Britain, being largely composed of members from affiliated synagogues. In particular, it speaks neither for the substantial and growing proportion of religious Jews who are strictly observant, nor by and large for secular Jews who constitute anything up to half the Jewish population. It is substantially Conservative in its political outlook, like the majority of the Jewish voters since at least 2015 and moving in that direction long before.

2. Of course it should play an important role in any consultations but this cannot be at the exclusion of the diversity of Jewish voices which need to be heard - especially those on the left, particularly those committed to the Labour Party, where there are vibrant debates, engagements and dissent from the views of those expressed by the Board of Deputies of British Jews. The Jewish Labour Movement is based on and only open to those who accept the centrality of Israel to Jewish life. We in Jewish Voice for Labour do not claim to speak for all Jews on the left but, with over a thousand members a third of whom are Jewish Party members, we speak with confidence on behalf of a significant section of Jewish members of the Labour Party. We are one of those stakeholder groups referred to in the EHRC Report, demanding that our voice, too, should be heard.”

2.6 Separately, on 5 January 2021, it is understood that [REDACTED] [REDACTED] wrote to the Party making three further nominations for the Advisory Board. The Party replied to [REDACTED] on the same date to state that the Leadership would be made aware of them.

2.7 On 2 February 2021, the Party responded to JVL, stating:

“Work has been ongoing since the EHRC report was published in October and we are about to finalise the members of the Board. For reasons of necessity and to keep the Board focussed and flexible we are keeping the number of members small and at the moment are not looking for other nominations.”

2.8 On 10 February 2021, it was reported that the Party had unveiled the Advisory Board, comprised of:

- David Evans, General Secretary of the Labour Party (Chair)

- Adrian Cohen, Trustee, Jewish Leadership Council (“JLC”)
- Natascha Engel, Trustee, Antisemitism Policy Trust (“APT”)
- Mark Gardner, CEO, Community Security Trust (“CST”)
- Mike Katz, Chair, Jewish Labour Movement (“JLM”)
- Marie van der Zyl, President, Board of Deputies
- Rt. Hon. Dame Margaret Hodge MP
- Baroness Doreen Lawrence of Clarendon
- Baroness Jan Royall of Blaisdon

2.9 No information was provided as to how or why those individuals had been chosen.

3. Our clients’ concerns

Relevant Legal Principles

3.1 The relationship between an unincorporated association, such as the Labour Party, and its members is governed by contract law. The contract is contained within the Labour Party Rule Book 2020 (“the Rule Book”).¹

3.2 It is settled case law that (emphasis added):

“Where a contract confers a power or discretion upon one party, the law implies a term that such party will exercise it in good faith and that it will not act arbitrarily, capriciously or irrationally. Such implied constraint upon the contractual decision-maker imports public-law principles into the exercise of the contractual power or discretion: Braganza v. BP Shipping Ltd [2015] UKSC 17, [2015] 1 W.L.R. 1661; Socimer International Bank Ltd v. Standard Bank London Ltd [2008] EWCA Civ 116, [2008] Bus L.R. 134; Evangelou, at [24]; Jones v. McNicol [2016] EWHC 866 (QB), at [43].”²

3.3 Establishing the Advisory Board is clearly an exercise of discretion by the National Executive Committee under the Rule Book and

¹ Paragraph 19, *Evangelou v. McNicol* [2016] EWCA Civ 817

² Paragraph 23.5, *Williamson v Formby* [2019] EWHC 2639 (QB)

therefore the implied term identified above applies. If you disagree with this analysis, please confirm under what power the Advisory Board was established.

- 3.4 Moreover, Appendix 9.2 of the Rule Book contains the Code of Conduct on anti-Semitism and other forms of racism. It states, *inter alia* (emphasis added):

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.*

- 3.5 As well as compliance with the Rule Book, the Party must also comply with Part 7 of the Equality Act 2010 (the “EA 2010”). Section 101(2) and (3) prohibit discrimination in the manner in which members of an association are treated. The EHRC also recommends that political parties take steps to avoid discrimination by “*involving equality groups, people with lived experience or people who share one or more of the protected characteristics in any reviews of party policies or practices to identify areas of potential discrimination that need to be addressed*”.³

Our clients’ concerns

- 3.6 In accordance with the above, the Party was obliged to act fairly, and in a non-discriminatory manner when making appointments to Advisory Board. Our clients are concerned they did not do so in light of the following:

- (a) The Party has not published any information regarding the selection process or criteria for eligibility to the Advisory Board, either at the time of selection or since.

³ <https://www.equalityhumanrights.com/sites/default/files/equality-act-2010-guidance-for-political-parties.pdf>

- (b) When our clients proactively suggested nominations, these were turned down, opaquely for “*reasons of necessity*” with no explanation provided as to why any such refusal was necessary. Further, the Party stated that they were not looking for other nominations “*at the moment*”, implying that nominations may have been sought previously. If that is the case, it is unclear from whom such nominations were sought and upon what basis.
- (c) In January 2021, it was reported that the Board of Deputies and the JLM had allegedly been given a veto over appointments to the Advisory Board.⁴ Such reports are particularly concerning given the lack of other information available regarding the selection process and the fact that Mr Katz, Chair of JLM was subsequently appointed to the Advisory Board.
- (d) The Advisory Board is chaired by David Evans, the General Secretary of the Labour Party, who is, as far as we are aware, not Jewish. As a result, Mr Evans will be responsible for implementing the Action Plan whilst simultaneously chairing the group that is meant to be overseeing its implementation.

“Consultation with the Jewish community will be built into all aspects of the Action Plan. With immediate effect, we will establish a high-level Advisory Board and a Reference Group to work closely with the Labour Party and act as a sounding board”;

- (e) A key feature of the Action Plan is “*consultation with the Jewish community*”. However, any such consultation will be ineffective as the membership of the Advisory Board fails to reflect the breadth of the Jewish communities to which its members belong, and the breadth of perspectives and experiences of those members. In the absence of such representation, the Board cannot fulfil one of its key functions, namely re-establishing the trust and confidence of all Jewish people.
- (f) The Advisory Board fails to represent the breadth of Jewish and non-Jewish community stakeholders that are impacted

⁴ <https://morningstaronline.co.uk/article/b/bod-and-jlm-allegedly-given-veto-over-appointments-to-labour-anti-semitism-advisory-board>

by issues surrounding anti-Semitism. In particular, the Advisory Board excludes representation of the following key communities:

- (i) the Charedi community: according to the 2011 census, ultra-orthodox Jews constituted 16% of the Jewish population in the UK. However, reports have suggested that that figure has grown by 4.8% a year since, resulting in children of ultra-orthodox Jews constituting 50% of all Jewish children by 2031.⁵ Amongst the Jewish community in the UK, the Charedis are most likely to experience anti-Semitism, given their identifiably Jewish attire. It is therefore of the utmost importance that this community is represented on a board which has the purpose of tackling anti-Semitism;
 - (ii) JVL: this group has a membership of over a thousand Party members, a third of whom are Jewish. Its stated aims include strengthening the Party's opposition to anti-Semitism and it is a key voice in the fight against anti-Semitism that is currently not being represented by the Advisory Board; and
 - (iii) Non-Jewish British Palestinians: this group has significant and well-founded concern about how the International Holocaust Remembrance Alliance ("IHRA") Working Definition of Anti-Semitism is implemented. The Palestinian cause is an inevitable feature of the debates around anti-Semitism and it is crucial, therefore, that British Palestinians are represented on the Advisory Board for the implementation of an Action Plan intended to overhaul the investigation of complaints of anti-Semitism.
- (g) As a result therefore of the opaque selection process referred to above, the Advisory Board represents only a fraction of Jews and Jewish views in the UK.
- (h) Whilst our clients welcome Baroness Doreen Lawrence's appointment to this position given her commendable efforts to end institutional racism, our clients wonder whether in such an unrepresentative group she is best placed to

⁵<https://www.theguardian.com/uk-news/2015/oct/16/majority-of-british-jews-will-be-ultra-orthodox-by-end-of-century-study-finds>

understand and advise on the complex interrelationship between antisemitism and islamophobia that arises in discussions regarding Israel and Palestine.

- (i) We note also that JVL has attempted to engage with the Party on multiple occasions in respect of the Action Plan's education and training programme to identify and tackle anti-Semitism. Given JVL's track record in providing education, it is well-placed to assist with this aspect of the Action Plan and, indeed, it offered many cogent and thoughtful contributions in its email to [REDACTED] dated 29 April 2021. However, the Party has refused to engage with JVL at all on this issue, simply asserting that JLM is providing the training. The Party's refusal to engage with JVL on this issue is further evidence of a pattern of failure to engage with the wider spectrum of Jewish voices in respect of the Action Plan.

4. Request for action

4.1 In light of the above, our clients invite the Party to confirm the following:

- (a) the process and criteria that was followed to appoint the Advisory Board;
- (b) whether any groups outside the Party were involved in the appointment process. If so, which groups were involved and what was the nature of and reason for their involvement; and
- (c) the basis upon which the Party maintains that this process was appropriate and not discriminatory, and in accordance with the Rule Book, despite the exclusion of core stakeholders as set out above.

4.2 We request your response within 14 days i.e. by 21 May 2021. In the absence of any response, our clients reserve the right to send formal pre-action correspondence in advance of a potential claim.

Yours faithfully

[REDACTED]

Bindmans LLP