

Annex 5

The Labour Party Advisory Board

Introduction

1. On its website, JVL describes its mission as to *"contribute to making the Labour Party an open, democratic and inclusive party, encouraging all ethnic groups and cultures to join and participate freely"* and aiming to *"strengthen the party in its opposition to all forms of racism including antisemitism"*.¹
2. In summary, JVL has made clear that the Labour Party (The Party) has adopted an unfair and opaque process for appointing the Advisory Board on Anti-Semitism, which has resulted in the exclusion of JVL and others as relevant stakeholders as well as the inclusion of individuals whose relevance is unclear.

Background

3. On 17 December 2020, 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**").
4. 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."* To that end, the Party proposed to establish *"a high-level Advisory Board and a Reference Group to work closely with the Labour Party and act as a sounding board"*;

1 <https://www.jewishvoiceforlabour.org.uk/about/>

- (b) the Advisory Board was described as a "*high-level Advisory Board including Jewish community stakeholders*" and composed of "*members from the Jewish community*"; and
 - (c) the Terms of Reference for the Advisory Board were to be developed "*in consultation with stakeholders*", but at the least it was intended that the Advisory Board would feedback on the implementation of the plan by the Party and be part of "*continuous update and consultation*", as well as specifically review and discuss the Code of Conduct on antisemitism.
5. As far as JVL is 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.
6. On 31 December 2020, JVL wrote to the Party to nominate Councillor Adam Hurst to the Advisory Board. JVL provided the Party with Councillor Hurst'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.*"
7. 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.”

8. Separately, on 5 January 2021, it is understood that John McDonnell MP wrote to the Party making the following three further nominations for the Advisory Board:
 - a. Brian Klug, an Oxford University senior research fellow and tutor in Philosophy at Oxford University. He is also an honorary fellow of the Parkes Institute for the Study of Jewish/non-Jewish Relations at the University of Southampton, fellow of the College, Saint Xavier University, Chicago, Associate Editor of *Patterns of Prejudice*, a peer-reviewed journal examining social exclusion and stigmatization and a founder member of the *Jewish Forum for Justice and Human Rights*, a UK-based group that addresses racism and antisemitism, the Israeli–Palestinian conflict, immigration, and the treatment of asylum seekers;
 - b. Antony Lerman, a British writer who specialises in the study of antisemitism, the Israeli–Palestinian conflict, multiculturalism and the place of religion in society. He is a

former Director of the Institute for Jewish Policy Research, a founding member of the Jewish Forum for Justice and Human Rights and a former editor of Patterns of Prejudice. He served on the Runnymede Trust's Commission on Antisemitism sits on the advisory committee of the Imperial War Museum's Holocaust exhibition; and

- c. Rabbi Danny Rich, a Labour Councillor and former Chief of Rabbi of Liberal Judaism in the UK.

9. The Party replied to Mr McDonnell on the same date to state that the Leadership would be made aware of them.

10. 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."

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

- a. David Evans, General Secretary of the Labour Party (Chair)
- b. Adrian Cohen, Trustee, Jewish Leadership Council ("**JLC**")
- c. Natascha Engel, Trustee, Antisemitism Policy Trust ("**APT**")
- d. Mark Gardner, CEO, Community Security Trust ("**CST**")
- e. Mike Katz, Chair, Jewish Labour Movement ("**JLM**")
- f. Marie van der Zyl, President, Board of Deputies of British Jews ("**the Board of Deputies**")
- g. Rt. Hon. Dame Margaret Hodge MP

h. Baroness Doreen Lawrence of Clarendon

i. Baroness Jan Royall of Blaisdon

12. No information was provided as to how or why those individuals had been chosen, or why JVL had been excluded.

13. On 12 March 2021, the Party wrote to Labour MPs to inform them of an "antisemitism complaints handling survey" that the Party had produced in conjunction with a specialist public service consultancy called The PSC. The stated purpose of the survey was "*to complement the extensive work the Party is doing to implement the EHRC's recommendations, in line with its commitment to implement the Action Plan*". Labour MPs were asked to provide their views on the Party's complaints process.

14. On 29 March 2021, John McDonnell MP replied, stating:

"As you can appreciate I am extremely concerned that the procedure for handling complaints of antisemitism is the best and most effective we can make it.

For that reason I am concerned that the party builds upon the experience of a comprehensive range of Jewish stakeholders.

Could I ask whether the survey has been sent for comments to Jewish Voice for Labour or David Rosenberg at JSC or any organisations or individuals representing the Haredi community or the three individuals that I proposed as members of the party's advisory board on antisemitism?

Is there a list of the Jewish Stakeholders that the party is consulting?"

15. On 1 April 2021, the Party responded that they had asked their "*Jewish communal stakeholders for suggestions on who the survey should be sent to*" but that the Party did not see who was recommended as the suggestions were sent directly to The PSC. It was confirmed that the survey had closed on the previous day and that the results would be made available later in Spring 2021.

Legal framework

16. 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**").²

17. 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]."*³

18. Establishing the Advisory Board is clearly an exercise of discretion by the National Executive Committee under the Rule Book and therefore the implied term identified above applies.

19. 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):

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

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

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.*

- 20.** 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"*.⁴

JVL's concerns

- 21.** In accordance with paragraphs 16 - 20 above, the Party was obliged to act fairly, and in compliance with the EA 2010, when making appointments to the Advisory Board.

⁴ <https://www.equalityhumanrights.com/sites/default/files/equality-act-2010-guidance-for-political-parties.pdf>

22. JVL is concerned the Party has failed to act in accordance with those obligations, for the following reasons:

- 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.

- b. When JVL 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 JLM had allegedly been given a veto over appointments to the Advisory Board.⁵ The Board of Deputies is a board estimated to represent only a third of UK Jews and with no affiliation to the Labour Party. JVL is concerned by this information, particularly given that (1) the Board of Deputies has an explicit constitutional commitment to Israel and an entrenched position on antisemitism in the Labour Party that far exceeds the EHRC report findings; (2) there is a lack of other information available regarding the selection process; and (3) Mr Katz, Chair of JLM, was subsequently appointed to the Advisory Board.

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

- d. The Advisory Board is chaired by David Evans, the General Secretary of the Labour Party, who, as far as JVL is aware, is 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.
- e. JVL was not included as a "Jewish stakeholder" for the purpose of receiving the antisemitism complaints handling survey and was therefore precluded from offering valuable insight that could assist in informing and bettering the complaints procedure.
- f. 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.
- g. The Advisory Board fails to represent the breadth of Jewish and non-Jewish community stakeholders that are impacted by issues surrounding anti-Semitism. In particular, the Advisory Board excludes representation of the following key communities:
 - i. 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;
 - ii. 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 2031.⁶ 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; 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.
- h. As a result of the opaque selection process referred to above, the Advisory Board represents only a fraction of Jews and Jewish views in the UK.
- i. Whilst JVL welcomes Baroness Doreen Lawrence’s appointment to this position given her commendable efforts to end institutional racism, it is unclear whether in such an unrepresentative group she is best placed to understand and advise on the complex interrelationship between antisemitism and islamophobia that arises in discussions regarding Israel and Palestine.

⁶<https://www.theguardian.com/uk-news/2015/oct/16/majority-of-british-jews-will-be-ultra-orthodox-by-end-of-century-study-finds>

23. 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 Jane Ramsey 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.

Concerns raised with the Party

24. On 8 June 2021, JVL instructed solicitors to write to the Party to set out its concerns and request that the Party confirm:

- 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.

25. Despite various chasers from JVL's legal representatives, the Party did not respond for over six weeks. When the Party did finally respond, on 21 July 2021, it provided a blanket rejection of all of JVL's concerns and refused to answer the questions raised concerning the process. The Party likewise refused to engage with JVL's concerns regarding whether JVL's exclusion from the Advisory Board amounted to a potential breach of the EA 2010, appearing to deny that the EA 2010 or other equality considerations applied to the appointment of the Advisory Board at all:

"The establishment of the Advisory Board is plainly a matter for the Labour Party to manage, and the implication in your letter that the Labour Party has somehow acted arbitrarily, capriciously or irrationally in the establishment of the Advisory Board, or otherwise in a manner contrary to its rules, is entirely lacking in substance and is completely refuted."

26. JVL is extremely concerned that the Party would appear to be failing to engage properly with its equality duties in order to pursue factional political objectives.