

SUMMARY OF JUDGMENT OF THE QUEEN'S BENCH DIVISION

Neutral citation: [2016] EWHC 1966 (QB)

Case No: HQ16X02502

Before:

Mr JUSTICE FOSKETT

MICHAEL FOSTER - Claimant

-v-

IAIN McNICOL (1)

**(sued on behalf of all other members of the Labour Party
except the Claimant and the Second Defendant)**

and

THE RT HON JEREMY CORBYN MP (2) – Defendants

28 July 2016

This summary summarises the judgment handed down in this case. It forms no part of the judgment which should be read in full for a complete understanding of the reasons for the decision

References below in square brackets are to paragraph numbers in the judgment

1. The expedited claim is brought by Mr Michael Foster, as a member of the Labour Party ('the LP'), which in law is an unincorporated association. He seeks to enforce the contract of membership that the legal status of the Labour Party confers on its individual members. It was not in dispute that he has the right in principle to bring the claim. [1 and 3].

2. He seeks to challenge the decision of the National Executive Committee of the Labour Party ('the NEC'), reached by a majority of 18-14 at a meeting on 12 July 2016, that Mr Jeremy Corbyn MP, the current Leader of Labour Party and ex-officio the Leader of the Parliamentary Labour Party ('the PLP') and Leader of HM Opposition, should be entitled to take part in the forthcoming leadership ballot "automatically" without the need to obtain nominations from the combined membership of the PLP and the European Parliamentary

Labour Party ('the EPLP'). His case is that the relevant rules of the LP require Mr Corbyn to obtain the same minimum number of nominations from the combined membership of the PLP and the EPLP as any other MP wishing to take part in the ballot. [1 and 4]. The case for the LP and Mr Corbyn is that as the current Leader he is entitled to take part in the ballot without the need to obtain nominations.

3. The arguments concerned the legal interpretation of Clause II.2B of Chapter 4 of the 2016 Rule Book of the LP, the two material provisions being as follows:

“B. Nomination

i. In the case of a vacancy for leader or deputy leader, each nomination must be supported by 15 per cent of the combined Commons members of the PLP and members of the EPLP. Nominations not attaining this threshold shall be null and void.

ii. Where there is no vacancy, nominations may be sought by potential challengers each year prior to the annual session of Party conference. In this case any nomination must be supported by 20 per cent of the combined Commons members of the PLP and members of the EPLP. Nominations not attaining this threshold shall be null and void” [20]

4. It is common ground that there is no “vacancy” within the meaning of the rules because Mr Corbyn has not resigned from his position as Leader. Accordingly, the provision that governs the question of whether there is to be an election for Leader and, if so, the basis of the involvement of the candidates is Clause II.2B(ii).

5. Mr Foster’s argument is that, properly interpreted, the natural and ordinary meaning of Clause II.2B(ii) is that the incumbent Leader needs to obtain the same level of nominations (20% of the combined Commons members of the LP and members of the EDLP) as does any other challenger for the leadership. In summary, his argument is that the expression “any nomination” in the second sentence (with emphasis on the word “any”) means that any person wanting to take part in the election must obtain the 20% level of support by way of nomination.

6. In summary, the argument of the NEC and Mr Corbyn is that the expression “any nomination” in the second sentence refers to “potential challengers” in the first sentence and not to the Leader.

7. The Judge sets out the competing arguments at [37-45] for Mr Foster and at [46-49] for the NEC and Mr Corbyn.

8. The Judge’s decision on the meaning of Clause II.2B(i) and (ii) is set out at [50] in these terms:

“(a) where there is a vacancy for Leader, anyone who wishes to be considered for the position would require nominations from 15% of the

combined Commons members of the PLP and EPLP in order to be a candidate in the election;

(b) where there is no vacancy (because the Leader is still in place), anyone who wishes to challenge the Leader's right to continue as Leader would need nominations from 20% of the combined Commons members of the PLP and EPLP in order to mount such a challenge;

(c) the Leader would not in that situation (where there is no vacancy) be someone who was a "challenger" for the leadership and, accordingly, would require no nominations in order to compete in the ballot to retain his/her position as Leader."

9. The Judge said that he believed "that this would be the natural impression that [the words of the rule] would make on the ordinary, objective member of the LP to whom ... the rules are in effect addressed". [52]

10. Accordingly, the Judge accepted that the decision of the NEC was correct and that Mr Corbyn was entitled to be a candidate in the forthcoming election without the need for nominations.

11. The Judge emphasised that the court's decision was a narrow point of law and was wholly unaffected by political considerations. [10, 11, 59 and 72]

12. The judgment also deals with an argument concerning the effect of Clause 1.X.5 of the Rules, which purports to give the NEC the final word on the interpretation of the Rules ([55-59]) and with the argument that the history of the Rules suggests that the Claimant's suggested interpretation was correct ([60-68]), but neither was of direct relevance to the decision.