

**IN THE COUNTY COURT AT MAYOR'S AND CITY OF LONDON COURT**

Claim No: J00CL858

Courtroom No. 2

Mayor's and City of London Court  
Basinghall Street  
London EC2V 5AR

Date: 9<sup>th</sup> February 2024

**Before:**  
**HIS HONOUR JUDGE HELLMAN**  
**Sitting with Ms Lucy Moreton as an assessor**

**BETWEEN:-**

**DR SHAHRAR ALI**

**Claimant**

**-and-**

**(1) MS ELIZABETH REASON**  
**(2) MR JON NOTT**

**Defendants**

**Mr Jeffrey Jupp** appeared for the Claimant  
**Ms Catherine Casserley** appeared for the Defendants

Hearing dates: 21<sup>st</sup> – 25<sup>th</sup> August and 21<sup>st</sup> November 2023

**JUDGMENT**

In Court

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## **Introduction**

1. The Claimant, Dr Shahrar Ali, is a member of the Green Party of England and Wales (“the Green Party”). He was the Party’s Home Affairs spokesperson from February 2016 to June 2021 and the spokesperson for Policing and Domestic Safety from 7<sup>th</sup> June 2021 until 5<sup>th</sup> February 2022.
2. The Defendants, Elizabeth Reason and John Nott, are sued as representatives of all members of the Green Party except Dr Ali. When this claim was brought, Mr Nott was the treasurer of the Green Party Executive Committee (“GPEX”) and Ms Reason was the Chair. They no longer hold those positions, although GPEX is now chaired by Mr Nott. It is common ground that the Green Party is an unincorporated association within the meaning of section 107 of the Equality Act 2010 (“the EA”).
3. Dr Ali’s case is that he holds a philosophical belief or bundle of beliefs, generally referred to as “gender critical”, within the meaning of section 10 of the EA. I will use the singular term “belief” for ease of reference. He claims that because of this belief he has been subjected to a number of detriments by various members of GPEX, other executives, and elected officials from June 2021 to February 2022. The detriments include allegations of failing to provide support to him, failing to take action against those who were harassing him, publicly criticising him, and failing to act on complaints or representations. Most importantly, and this is the nub of his complaints, the detriments involved collaborating to remove him as spokesperson, and successfully accomplishing his removal, despite objection by himself and others. Dr Ali brings claims of direct discrimination because of his belief. He also brings a claim of victimisation, alleging he was subject to detrimental treatment as a result of doing a protected act by raising complaints of mistreatment in respect of his protected belief.
4. The Green Party denies the claim. It does not admit that Dr Ali has the belief he claims. It denies that he has been subjected to the treatment he has alleged. Its case is that Dr Ali acted in breach of the Party’s policies; expressed views that were contrary to party policy; did not work for party unity and created division. He was removed from his role because of these breaches and this conduct. If there was any less favourable treatment because of a protected belief any treatment was because of the inappropriate manifestation of such belief. Further, the Green Party is not liable for the actions of party members not authorised to act on behalf of the Party. In addition, it is said that some claims are brought outside the statutory time limit.
5. The Green Party has found the clash between advocates for, respectively, gender critical belief and trans rights difficult to manage. An EDI [Equality, Diversity and Inclusion] Audit Report prepared for the Party by an external provider in May 2022 recorded at para 1.3:

*“The Audit has been conducted with a current backdrop of conflict regarding trans-gender and feminist philosophies. Every participant interviewed or who took part in a focus group made comments about the negative impact of the conflict on the Party. Some were evidently traumatised and were at a loss as to how the Party would recover from the dispute.”* [Emphasis in the original.]

6. I have had the real benefit of sitting with an assessor, Lucy Moreton. She was appointed under section 63(1) of the County Courts Act 1984 as a person of skill and experience in the matter to which the proceedings relate to assist me on the following issues: whether Dr Ali holds the belief he asserts and, insofar as he establishes any detrimental treatment, the reason for such treatment. That is, whether the belief he relies on, or the manifestation of the belief, materially influenced his treatment.

7. As this judgment is quite lengthy, a table of contents may assist the reader.

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### **Green Party structure and organisation**

8. The Green Party has a Constitution which sets out its objects and aims, and deals with membership and other governance matters. The Constitution has been amended from time to time, most recently following the Spring 2021 and Autumn 2021 party conferences.
9. Clause 3 of the Constitution provides that the Party’s object is to promote its aims, which are: (a) to develop and implement ecological policies, consistent with the philosophical basis of the Party as expressed in the document “Policies for a Sustainable Society”; (b) to that end, to win seats at all levels of government; and (c) to organise any non-violent activity which will publicise and further the first two aims.
10. The Constitution provides for different bodies with responsibility for various aspects of the Green Party’s governance. All such bodies are accountable to party conference which is held twice a year and can be attended by any member.
11. Clause 1(i) provides that the Party shall comprise Local Parties. Clause 5(i) provides that Local Parties may be formed by groups of members of the Green Party who shall determine their own constitution, in accordance with bye-laws to be approved from time to time by the Annual Conference. The clause states that the general practice of the Party shall be to encourage the greatest possible autonomy of each Local Party in its pursuit of the object of the Party. The bye-laws provide that all Local Party constitutions shall include a statement that the Local Party is a constituent part of the Green Party. Clause 5 provides various other organisational requirements for Local Parties, e.g. they must register various officers with the Green Party office. These include one or more Nominating Officers, with the task of accepting authorisations from the Green Party’s National Agent to nominate candidates in the local party area for elections to any level of government; and a Treasurer who must record all donations received and submit to the Green Party Treasurer quarterly reports of donations, copies

of annual accounts and any other information required to comply with legislation. To this extent, the Local Parties are subject to supervision by the national Party.

12. Clause 5(xii) provides that members with interests in common may form a group subject to bye-laws approved from time to time by the Party's Conference. Such groups may be accorded some or all of the rights of a Local Party, subject to reference to the Dispute Resolution Committee in the event of any unresolved dispute. These groups include what are known within the Party as "liberation groups", e.g. the Jewish Greens, which is mentioned here because it features in one of Dr Ali's complaints.
13. Under clause 7(i), GPEX is responsible for the overall and day to day direction of the Green Party. Clause 7(ii) provides that GPEX shall consist of the Green Party Leader plus Deputy Leader(s) or Co-Leaders; Wales Green Party Leader; Chair; Co-Chairs of the Young Greens as a job share; Trade Union Liaison Officer; and 11 Co-ordinators. Clause 7(x) provides that GPEX may from time to time create such committees as it considers necessary for the efficient conduct of its business. It shall determine their terms of reference, powers, duration and composition, but retains responsibility for their conduct. Clause 7(xi) provides that GPEX shall appoint a panel of speakers, who shall each be responsible for covering a designated area of policy. Clause 7(xiv) provides that if 20 per cent of Local Parties petition to recall the GPEX Chair or a Co-ordinator post holder, such a member shall be suspended until a new ballot has been held for that post.
14. There are Standing Orders for Party Discipline ("SOPD"), which were amended in Spring 2019. Article 1.1 of the SOPD provides that the Green Party shall have a Disciplinary Committee. Article 1.2 provides that the Disciplinary Committee will handle all complaints of a disciplinary nature which have not been resolved at Regional, Local Party or other party group level and which have been brought on one of the following grounds: (i) that there has been a contravention of the Constitution of the Party as interpreted by the Standing Orders Committee; (ii) that there has been a breach of one or more of the Standards in the Party's Code of Conduct; or (iii) that the Party has been brought into disrepute. I take the Party's Code of Conduct to be the same document as the Member's Code of Conduct, which is mentioned in more detail below.
15. The Young Greens have a separate Constitution, which was adopted in October 2011 and amended in autumn 2014. Article 4.1 of the Young Greens' Constitution provides that the Young Greens consists of: (i) all members of the Green Party aged 29 years or less; and (ii) all members of the Green Party who are full- or part-time students regardless of age. Article 7 provides that the Young Greens will be run by a national Executive Committee. The Young Greens are funded by a direct grant from the Green Party.

## **Green Party policies and codes of conduct**

16. The Green Party has a number of policy documents and codes of conduct for members and spokespeople. They are relevant to an assessment of whether Dr Ali was discriminated against because of the way in which he manifested a protected belief.

### ***Rights and Responsibilities***

17. This is one of a number of policy documents produced by the party. The section headed “*Principles*” states at RR207 that people have responsibility for ensuring the absence of discrimination on the basis of, amongst other grounds, sex, gender, gender reassignment, or sexual orientation. The section headed “*Human Rights and Civil Liberties*” states at RR400 that the Green Party is committed to the principles of the Universal Declaration of Human Rights and the European Convention on Human Rights (“the Convention”).
18. The section headed “*Trans Rights*” was added in Spring 2015 and RR530 was added in autumn 2016. The section includes, amongst others, the following provisions:

*“RR530 The Green Party recognises that there are many gender identities that are within, and outside of, the traditional gender binary of man and woman. The Green Party recognises that trans men are men, trans women are women, and that non-binary identities exist and are valid. We shall respect transgender and non-binary people’s identities as real. The Green Party shall include, and push for further acceptance of, transgender and non-binary people within all areas of society.*

*RR531 The Green Party believes that trans, non-binary, genderqueer, third gender, and intersex people should have their gender legally recognised and be empowered to update their birth certificate and any other official documents, without medical or state encumbrance. We support the right for individuals to update their legally recognised gender by self-determination, the only requirement being a statutory declaration, to how they would describe their gender, including having the option to change their name on all documents.*

*RR532 The process of transitioning through the NHS should empower rather than demean trans people. Gender Identity Clinics should consult service users on how to better recognise trans people’s own expertise and experience in service provision.*

*RR533 The NHS should better recognise the increasing need for Gender Identity Clinics and increase service provision, across the country*

*RR534 The NHS should remove barriers to accessing services for trans people, with thorough review of access to services for Children and Young People and for those who have self prescribed or self funded gender treatment in the UK or abroad*

*RR535 The Green Party would push for root and branch efforts to address transphobia in society, initiating public education programs both in schools and wider society. Current anti-*

*discrimination legislation should be reviewed so as to provide protection to all trans individuals. Current exemptions to anti-discrimination legislation should be scrapped*

*RR536 A Green Government would review the Gender Recognition Act 2004, the Equalities Act 2010 and the Marriage (Same Sex Couples) Act 2013 as they contain significant flaws that discriminate against some Trans people and thus they are not fit-for-purpose.”*

## **Health**

19. This is another policy document. The section headed “*Pathways of Care*” includes the following provisions:

### **“AIMS**

*To ensure that health care services are delivered with compassion, taking into consideration patients full range of needs, health care will be delivered in an environment that promotes healing and care. This includes single sex wards in hospitals, ensuring that maternity care is of the highest quality, ensuring that care reflects people’s needs and that care promotes the dignity of all patients.*

### **MATERNITY SERVICES**

*HE501 All women should be entitled to the highest standards of care during pregnancy and birth, and post-natally. These standards will be maintained for all regardless of sexual orientation, gender identity, level of income, black and ethnic minority background, age or disability. We will ensure that women are given the information they need to make appropriate choices about how they wish to give birth, and that a full range of options, including home birth and a range of styles of hospital delivery, is made available to all women. ...*

### **ABORTION**

*HE700 The Green Party recognises that currently-available methods of contraception cannot prevent all unintended pregnancies, that not all intercourse is consensual and that pregnant people have the right to be treated with dignity and respect, regardless of their life situations and choices. The Green Party views the safeguarding of individual freedom and moral autonomy in making reproductive choices as fundamental for a progressive society.”*

## **Crime and Justice**

20. This is a policy document which covers some of the areas for which Dr Ali was elected spokesperson. It includes the following provisions:

### **“DOMESTIC ABUSE**

*CJ352 ... The Green Party recognises that domestic abuse takes places in a range of circumstances, in all types of relationships, and that the victims can be women or men, children*

*or vulnerable adults, including disabled adults, older adults, trans people and people in same sex relationships. Nonetheless, it is acknowledged that a large majority of cases involve abuse by men against women, with research indicating that one in four women will experience domestic abuse during their lifetime. On average more than two women a week in Britain are killed by current or former domestic partners. ...*

#### *IMMEDIATE PRISON REFORMS ...*

*CJ381 Recognising the nature of the female prison population, with high levels of mental illness, experience of being a victim of crimes such as sexual assault and domestic violence, and caring responsibilities for children, the only women who should be in custody are those very few that commit serious and violent crimes and who present a threat to the public.*

*CJ382 For the vast majority of women in the criminal justice system, solutions in the community are more appropriate. Community sentences must be designed to take account of women's particular vulnerabilities and domestic and childcare commitments. The restrictions placed on sentencers around breaches of community orders must be made more flexible.*

*CJ383 Existing women's prisons should be replaced with suitable geographically dispersed, small, multi-functional custodial centres. More supported accommodation should be provided for women on release to break the cycle of repeat offending and custody.*

*CJ384 Pregnant women in prison are particularly vulnerable and the scheme provided by the charity Birth Companions, which visits pregnant prisoners once a week, stays with them through birth and gives them support afterwards, should be extended to all women who wish to use it, with government funding.”*

#### ***Members Code of Conduct***

21. The Members Code of Conduct (“the MCC”) was passed by the Green Party Spring Conference in 2019. Clause 1.1 states that the MCC is binding on all members of the Party. Clause 1.2 states that other party documents set out that a breach of the MCC constitutes grounds for disciplinary action.

22. Clause 8 of the MCC is headed “*Freedom of expression*” and provides:

*“8.1 Members’ right to freedom of thought, conscience and belief should be respected.*

*8.2 Members who dissent from a decision or an official policy must ensure they make it clear that they are expressing disagreement as an individual and not as a representative of the Party or any part of it. However they must take care to maintain civilised standards of conduct and to not bring the Party into disrepute while doing so.*

*8.3 When formally representing the Party, members must ensure that their communications about Green Party political policies do not conflict with Green Party policy before these are communicated to members or non-members. If there is dissent from political policy, members*



*should state the Green Party policy as well as their personal view. They should also take care not to add to formal Green Party communications their personal opinions and criticisms of others.*

*8.4 Unless an authorised communication is being made on behalf of the Party, members should make it clear their views are their own and not necessarily those of the Party. Members who use social media or online platforms and mention their membership of, or role in, the Green Party (or it is known to those viewing the member's online activity) should post an adequately prominent online disclaimer to this effect.*

*8.5 Members who express opinions in a situation in which their membership of the Green Party is known must take care to not bring the party into disrepute."*

23. Clause 9 of the MCC is headed "Safe space & civility" and provides:

*"9.1 The Green Party should be an organisation in which people can feel comfortable, feel welcome and enjoy being a member and taking part in its activities. Members' behaviour towards each other and non-members should therefore be: tolerant, considerate, respectful and civil.*

*9.2 The Green Party should also be a space that is as safe or safer than society as a whole. Therefore discriminatory, oppressive or abusive behaviour should be prevented and stopped when it occurs. The aim is to provide an environment free of this. Any form of such behaviour is a breach of this Code, as is failure by a person in a role with responsibility, such as a Chair, Moderator or similar to take appropriate action to prevent or stop it. Members should also be aware of risks and act to mitigate them.*

*9.3 Members should in all their interactions with colleagues, assume the best of them.*

*9.4 Members should not: shout at someone; be aggressive in their manner; make belittling, derogatory or disparaging remarks about another member; insult a member or disrupt a meeting or discussion."*

24. Clause 11 of the MCC is headed "Diversity" and provides in material part:

*"11.3 Members must not behave in a discriminatory manner towards someone on the basis of any protected characteristic that person may have."*

25. Clause 13 of the MCC is headed "Infighting & cliques" and provides:

*"13.1 Members should not use criticism to hurt, humiliate or belittle, undermine or otherwise attack someone. 'Attack the argument, not the person' is an approach that should be followed in debating situations.*

*13.2 Members are entitled to disagree but should not treat others adversely or with discourtesy or open hostility due to political opposition.*

*13.3 Members should refrain from criticising other Party members publicly, including any situations where non-members may be present. If criticism is felt to be necessary, it should be*

*done sensitively and constructively by those given that responsibility. Criticism should be of actions and behaviour or statements etc., not of the person. Avoid labels, name calling and stigmatising a person.”*

26. Clause 14 of the MCC is headed “*Vexatious or malicious complaints*” and provides:

*“Making a clearly vexatious or malicious complaint; using a complaint as part of a pattern of harassment; clearly abusing the complaint system to attack a personal enemy or political opponent or another person within the Green Party are all forms of unacceptable behaviour.”*

### ***Spokespeople Guidelines and Code of Conduct***

27. As a spokesperson for the Green Party, Dr Ali was required to sign the Spokespeople Guidelines and Code of Conduct (“SGCC”). He did so on 8<sup>th</sup> March 2021. The SGCC included the following provisions:

#### ***“OVERVIEW***

*The role of spokespeople for the Green Party of England and Wales is to promote the party’s principles, values and strategic priorities, through media interviews and other platforms and channels that are relevant and important to the public, in line with the Party’s political and messaging strategies and subject to the time constraints of national media staff.*

#### ***CODE OF CONDUCT***

*GPEW spokespeople are public representatives of the party and its values of fairness, tolerance, equality, diversity and inclusiveness. Therefore the highest standards of behaviour are required from spokespeople, particularly when communicating in the name of the party and when using GPEW media and social media platforms and channels.*

*Specifically this means that spokespeople will: ...*

- Ensure that all comments, quotes, written materials and other communication activities are in line with GPEW policies and strategic priorities, and have been agreed with the national media team. ...*

#### ***TERM OF OFFICE***

*Spokespeople are appointed for a period of two years.*

#### ***TERMINATION OF APPOINTMENT***

*GPEW reserves the right to terminate the appointment of spokespeople before the end of their term, subject to the needs and reputation of the party.”*

28. Dr Ali signed an updated version of the SGCC on 4<sup>th</sup> October 2021. Under the heading “*Code of Conduct*”, this contained additional requirements for spokespeople:

*“• In using social media, speakers are reminded of their responsibility to work for party unity rather than division. When you are tweeting in your role as a party spokesperson, your social media output should also be in line with GPEW policies and strategic priorities but does not need to be pre-approved by the national media team.*

*• When publishing a written article relating to policy in your role as a spokesperson you should seek approval from the leaders and comms team.*

*• When you are seeking to publish views in the area covered by your spokesperson role that extend beyond existing party policy, you are advised to seek approval from the GPRC rapid policy approval process in consultation with the Head of Communications or GPEX External Communications Coordinator.*

*• You are expected to follow the guidelines drawn up by the Spokesperson Monitoring and Support Committee, including on which media and political outlets to work with. Persistent refusal to follow these guidelines may be considered to be bringing the party into disrepute.”*

## **Legislation**

29. The claim involves the EA and the Human Rights Act 1998 (“the HRA”).
30. Section 4 of the EA provides that religion or belief, among other characteristics, are protected characteristics. Section 10 provides that “belief” means any religious or philosophical belief, and that in relation to the protected characteristic of religion or belief, a reference to a person who has a protected characteristic is a reference to a person of a particular religion or belief.
31. Section 13 of the EA deals with direct discrimination. It provides that a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
32. Section 23 provides that on a comparison of cases for the purposes of, amongst others, section 13, there must be no material difference between the circumstances relating to each case.
33. Section 26 of the EA deals with harassment. It provides that a person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of violating B’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
34. Section 27 of the EA deals with victimisation. It provides that a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act, e.g. bringing proceedings under the EA.

35. Section 101 of the EA deals with discrimination by an association. It provides that an association (A) must not discriminate against, harass, or victimise a member (B) in any one of several itemised ways, none of which apply in the present case, or by subjecting B to any other detriment.
36. Section 101 prohibits both direct and indirect discrimination by associations. Thus a member (B) would be subjected to a detriment if an association (A) discriminated against B directly by treating B less favourably than it treats or would treat other members. Direct discrimination is itself a detriment: there is no need to establish that it has given rise to any additional detriment.
37. Section 103 of the EA provides in material part that in the application of section 26 for the purposes of section 101, religion or belief is not a relevant protected characteristic. Thus harassment of someone because of their religion or belief cannot give rise to a claim under the EA.
38. Section 107 of the EA provides that an “association” is an association of persons which has at least 25 members, and admission to membership of which is regulated by the association’s rules and involves a process of selection.
39. Section 109 of the EA provides in material part that anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal. It does not matter if that thing is done with the principal’s knowledge or approval.
40. Section 110 of the EA provides in material part that a person (A) contravenes this section if A is an agent, A does something which, by virtue of section 109, is treated as having been done by A’s principal, and the doing of that thing by A amounts to a contravention of the EA by the principal.
41. Section 111 of the EA provides in material part that a person (A) must not instruct another (B) to do in relation to a third person (C) anything which contravenes, among other provisions, Part 7 (ie sections 100 – 107) or section 112(1).
42. Section 112(1) of the EA provides in material part that a person (A) must not knowingly help another (B) to do anything which contravenes, among other provisions, Part 7 or section 111.
43. Section 114 of the EA confers jurisdiction on the County Court to determine a claim relating to a contravention of the EA in relation to associations.
44. Section 118 of the EA provides in material part that proceedings on a claim within section 114 may not be brought after the end of 6 months starting with the date of the act to which the claim relates, or such other period as the County Court thinks just and equitable. Conduct extending over a period is to be treated as done at the end of the

period. Failure to do something is to be treated as occurring when the person in question decided on it.

45. Section 119 of the EA applies if the County Court finds that there has been a contravention of section 114. The County Court has power to grant any remedy which could be granted by the High Court in proceedings in tort or on a claim for judicial review. An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis). The County Court must not make an award of damages unless it first considers whether to make any other disposal.
46. Section 136 of the EA, which deals with the burden of proof, applies to any proceedings relating to a contravention of the EA. If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred unless A shows that A did not contravene the provision.
47. Section 14 of the Equality Act 2006 provides that the Equality and Human Rights Commission (“the EHRC”) may issue a Code of Practice in connection with any matter addressed by the EA.
48. One such code is the Services, public functions and associations Statutory Code of Practice (“the SCP”).
49. Para 1.5 of the SCP acknowledges that the SCP does not impose legal obligations and is not an authoritative statement of the law. However, it can be used in evidence in legal proceedings brought under the EA.
50. Chapter 12 of the SCP covers discrimination by associations within the meaning of the EA. Paras 9.7 – 9.9 address the meaning of “*detriment*” in the context of victimisation.
51. Para 9.7 notes that “*detriment*” in this context is not defined by the EA. It states that generally, a detriment is anything which the service user [and so, by parity of reasoning, association member] concerned might reasonably consider changed their position for the worse or put them at a disadvantage.
52. Para 9.8 states that any denial of a reasonably valued choice can be a detriment.
53. Para 9.9 states that a detriment might also include a threat made to the service user [and so, by parity of reasoning, association member] which they take seriously and it is reasonable for them to take seriously. However, any unjustified sense of grievance alone would not be enough to establish detriment.
54. Section 1 of the HRA provides in material part that in the HRA “*the Convention rights*” includes the rights and fundamental freedoms set in Articles 2 to 12 and 14 of the

Convention as read with Articles 16 to 18 of the Convention. The section notes that those Articles are set out in Schedule 1 to the HRA.

55. Section 3 of the HRA provides in material part that so far as it is possible to do so, legislation must be read and given effect in a way which is compatible with Convention rights.
56. Section 6 of the HRA provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. A public authority includes a court or tribunal.
57. Section 12 of the HRA applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression. It provides that the court must have particular regard to the importance of the Convention right to freedom of expression.
58. Section 21 of the HRA is an interpretation section and provides that “the Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom.
59. Article 9 of the Convention guarantees freedom of thought, conscience and religion. Article 9(1) provides in material part that everyone has the right to freedom of thought, conscience and religion. Article 9(2) provides that freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society for, amongst other things, the protection of the rights and freedoms of others.
60. Article 10 of the Convention guarantees freedom of expression. Article 10(1) provides in material part that everyone has the right to freedom of expression. This right shall include freedom to receive and impart information and ideas without interference by public authority. Article 10(2) provides that the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of, amongst other things, the protection of the reputations or rights of others.
61. Article 11 of the Convention guarantees freedom of assembly and association. Article 11(1) provides in material part that everyone has the right to freedom of peaceful assembly and to freedom of association with others. Article 11(2) provides that no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of, amongst other things, the protection of the rights and freedoms of others.

62. Article 14 of the Convention prohibits discrimination. It provides that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as, among other grounds, race, colour, or political or other opinion.

### **Protected belief**

63. Dr Ali contends that he holds the gender critical belief that:
- (1) Biological sex is real and immutable and is not to be conflated with gender identity.
  - (2) A woman is commonly defined as an adult human female and genetically typified by two XX chromosomes.
  - (3) Women and girls, because of their sex, suffer disproportionately from a number of social and institutional harms such as domestic violence and gender pay discrimination and, internationally, from abhorrent practices such as infanticide and Female Genital Mutilation.
  - (4) Terminology matters: that conflating biological sex with gender identity and erasing references to women when promoting and advertising services, for example, in the sphere of health and social care and in the reporting of crime, has the potential to cause real harm to women and the loss of rights for women which have been hard fought over many years.
64. At trial, the Green Party did not dispute that Dr Ali holds this belief, and indeed he was cross-examined on the basis that he did. It is common ground that, applying the decision of the EAT in Forstater v CGD Europe [2022] ICR 1, this is, if genuinely held, a protected belief within the meaning of section 10 of the EA. That is to say, it satisfies the criteria laid down by the EAT in Grainger v Nicholson [2010] ICR 360, as stated by Burton J (President) at para 24:
- “(i) The belief must be genuinely held. (ii) It must be a belief and not, as in McClintock v Department of Constitutional Affairs [2008] IRLR 29, an opinion or viewpoint based on the present state of information available. (iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour. (iv) It must attain a certain level of cogency, seriousness, cohesion and importance. (v) It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others.”*
65. I am satisfied that at all material times Dr Ali did hold a gender critical belief and that it is and was at all material times a protected belief within the meaning of section 10 of the EA.

## **Burden of proof**

66. Dr Ali contends that in breach of section 101 of the EA, the Green Party subjected him to direct discrimination and victimisation. Applying section 136 of the EA, he has the burden of proving, on the balance of probabilities, facts from which the Court could conclude, in the absence of an adequate explanation, that unlawful discrimination or victimisation has taken place. If that burden is not discharged, then the claim fails. If it is discharged, then the burden moves to the Green Party to explain the reasons for the alleged unlawful behaviour and satisfy the court that the protected characteristic played no part in those reasons. Unless the Green Party discharges that burden, the claim will succeed. See the judgment of the Supreme Court, given by Lord Leggatt JSC, in Efobi v Royal Mail Group Ltd [2021] ICR 1263 at [5] – [6] and [14].

## **Direct discrimination**

67. Dr Ali submits that the Green Party directly discriminated against him within the meaning of section 13 of the EA because of a protected characteristic, namely his gender critical belief, in that it treated him less favourably than it treats or would treat others. Initially, he relied upon 20 specific incidents of less favourable treatment, although the second incident is no longer relied upon. He relies on each incident as a separate detriment. However, he submits, correctly, that when considering whether discrimination has taken place, the court should base its decision on all the facts as found rather than considering each allegation of discrimination in isolation. See the judgment of Holland J in Driskel v Peninsula Business Services Ltd [2000] IRLR 151 at [12]. The case concerned discrimination under the Sex Discrimination Act 1975 (“the 1975 Act”), which was one of the Acts which the EA replaced, but the Tribunal’s reasoning on this point is equally applicable to discrimination cases under the EA.
68. A number of these detriments involve accusations of transphobia against Dr Ali. He rejects these allegations. His stated position is as follows. He is not transphobic and does not discriminate against trans people. He has consistently fought for the equality of all across society and strongly advocated for mature, respectful debate where conflicts in the accommodation of rights may be thought to reasonably exist and would require negotiation. He has spoken in favour of improving trans people’s lives, too. He believes that trans people often do experience discrimination and that meeting their claims or interests may require due regard for protection of the rights of women, or indeed men, as a sex class. He believes strong safeguards must also exist for children and young people seeking diagnosis or treatment for gender dysphoria, particularly, in relation to access to medical treatment which may be described as experimental.
69. The 20 detriments are as follows. They are Dr Ali’s allegations. There is little dispute as to what events occurred, but the Green Party do not accept all the motivations which he imputes to various members of the party or that any discrimination took place.



70. First detriment: When the new list of spokespeople was announced in early June 2021, the then Co-Leader, Jonathan Bartley, made a speech on video which was intended to promote the new group of spokespeople and group photographs were taken to publicise them. In the event, neither the video nor the photographs were circulated. Dr Ali submits that this was because Mr Bartley discriminated against him by refusing to support him or promote him as a spokesperson because of his protected belief. The Green Party's External Communications Co-ordinator, Professor Molly Scott Cato, allegedly went along with this. Either she discriminated against Dr Ali directly or she knowingly aided Mr Bartley to do so. Mr Bartley and Prof. Scott Cato were both acting as agents of the Green Party.
71. Second detriment: Upon Dr Ali's reappointment as spokesperson, numerous Green Party members, albeit a small minority of the party, criticised him on social media, in particular on Twitter. Dr Ali contends that the criticism amounted to abuse. The reason for the abuse was his protected belief. For example, an email submitted to the enquiries section of the Green Party website on 7 June 2021 complained:

*"If the greens had an ounce of credibility and sincerity he would be sacked from his position and booted from the party for his transphobia and misinformation about trans people."*

72. The abuse continued through to March 2022. Although Dr Ali contends that the abuse was discriminatory, he no longer relies on this example as giving rise to a cause of action. This is, in part at least, because it would be difficult to establish that the Green Party was liable for the acts of its members when they were not acting on behalf of the Party.
73. Third detriment: The alleged abuse in the second detriment allegedly went on for so long because of the continued failure of GPEX to support Dr Ali and stamp it out. Dr Ali alleges that he was thereby discriminated against by the majority of GPEX, acting as agents of the Green Party, who did not agree with his gender critical stance. When cross-examined, Dr Ali said that he would not expect a member of GPEX to make a formal complaint on his behalf, but that GPEX could have put out a statement in support of him.
74. Fourth detriment: The Warrington & Halton Green Party ("WHGP") published an open letter dated 12<sup>th</sup> June 2021 (two days after the EAT's decision in Forstater) regarding Dr Ali's recent appointment as spokesperson. The letter stated that his appointment had caused outrage from members across the country. The outrage centred on transphobia, which, the letter noted, was defined by the Merriam-Webster online dictionary as: the "*irrational fear, or aversion to, or discrimination against transgender people*". The letter alleged:

*"Mr (sic) Ali has a proven history of making transphobic remarks and proposing trans-discriminatory motions at GPEW conferences, and as such we feel that his appointment to such a public role in the Party is harmful towards LGBTQIA+ persons, even traumatic for some who*

*have faced severe discrimination due to their gender identity who may see his elevation as rewarding his transphobic rhetoric. ....*

*Mr (sic) Ali has repeatedly made statements on Twitter and in hustings (notably when he stood for Leader of the GPEW in 2020) that would be deemed transphobic and, likely, discriminatory under the Equality Act 2010, and as such he has demonstrated that he does not align with the Party's inclusivity and diversity agenda. Behaviour such as this brings the GPEW into disrepute, is against the Code of Conduct, and ... he should be deselected and removed from his position with immediate effect.*

*In summary, the Green Party Spokesperson for Policing and Domestic Security has a history of transphobia and discriminatory behaviour towards minority groups. Sharar (sic) Ali should be removed from the position with immediate effect ...”*

75. Dr Ali alleges that the letter was detrimental to him in two respects. First, the public allegations of transphobia and trans-discriminatory behaviour were false and abusive. Second, the letter called for his removal as spokesperson. He says that it would have been detrimental if it had described his conduct and beliefs as “*gender-critical*” rather than “*transphobic*” but had called for his removal anyway. Dr Ali therefore submits that the signatories, by signing the letter, discriminated against him, and that they did so because of his protected belief; that the Green Party is liable for the signatories’ discriminatory conduct because the signatories were acting as its agents; and that GPEX knowingly aided their conduct by failing to challenge the letter.
76. Fifth detriment: Dr Ali drew the WHGP letter to the attention of the Green Party Regional Council (“GPRC”) Co-Chairs, Martha James and Adrian Spurrell, and Elizabeth Reason, Chair of GPEX (“the Addressees”), and requested them to take action. One member of GPEX, Peter Barnett made a formal complaint about the letter, but in his capacity as a member of the Green Party, not as a member of GPEX. He withdrew his complaint when WHGP made a counter complaint against him. No-one else did anything about the WHGP letter. Dr Ali alleges that the Addressees were agents of the Green Party and that their failure was discriminatory conduct by the party on account of his protected belief. Moreover, by failing to challenge the WHGP letter the Addressees knowingly aided the signatories’ discriminatory act.
77. Sixth detriment: Between June 2021 and February 2022, Baroness Jenny Jones, Green Party Member of the House of Lords; Rebecca Johnson, a former parliamentary candidate; Rebecca Smith-Lyte, Suffolk Green Party Councillor; Elinor Ni Chathain, Green Party Member from Bristol; Elizabeth Mansfield and Steve Trafford, members from Lewes Green Party all raised concerns directly with GPEX about what they saw as harassment of Dr Ali by members of the Green Party and in particular the labelling of him as transphobic. For example, in an email to GPEX sent on 21<sup>st</sup> June 2021, Baroness Jones stated:

*“During my 30+ years in the GP I have on occasion been attacked, but nothing of the scale of the abuse that Shahrar is receiving now. It's staggering that we have allowed this vile intolerance to build and it's time that all GP members understood that having divergent views on issues is normal in a political party.*

*I urge you, as Exec members, to start the healing that the GP needs, to expel the hate that has festered.”*

78. At no point did GPEX, despite being fully aware of this behaviour, either issue a statement in Dr Ali's support or initiate disciplinary action against the members concerned. The members of GPEX were agents of the Party. Dr Ali alleges that by failing to act, the Green Party, through GPEX, was itself discriminating against him. He further alleges that, by doing nothing to support him, GPEX was knowingly aiding members to discriminate against him. Had Dr Ali not held his protected belief he would have been fully supported and the Green Party would have acted to stamp out the discrimination.
79. Seventh detriment: Senior members collaborated, allegedly to lay the groundwork for removing Dr Ali as speaker, by establishing a Spokespeople Support and Monitoring Group (“SSMG”) and a new SGCC. Dr Ali contends that his removal was the point of these measures. They flowed from two papers which were presented at a GPEX meeting which took place on 24<sup>th</sup> June 2021.
80. Prof. Scott Cato and Ms Reason prepared a paper dated 17<sup>th</sup> August 2021 proposing terms of reference for a Spokespeople Monitoring and Support Sub-Committee.
81. Matt Browne, Florence Pollock, Siân Berry, Mr Bartley, Amelia Womack, Rosie Rawle, Kai Taylor and Claire Stephenson put their names to a paper dated 21<sup>st</sup> June 2021 titled “*Mitigating risks arising from spokesperson process*” (“the Browne paper”). It arose from discussions between Mr Browne, Ms Berry and Mr Bartley. Mr Browne prepared the first draft of the paper, which he amended to include changes suggested by Ms Berry and Mr Bartley. At Ms Berry's suggestion, made in an email dated 20 June 2021, Mr Browne appeared as first named author on the paper and he was the first to speak to it at the GPEX meeting.
82. The paper:
  - (1) Noted that the spokespersons had been appointed by a subcommittee of GPEX not the full committee, and that there were several important respects in which this process was procedurally defective. For example, GPEX had not voted on the proposal to delegate the appointment process to a subcommittee and had not set up terms of reference for the subcommittee.
  - (2) Reported:

*“Significant concerns about the public statements made by two people on the announced list have been raised and constitute an ongoing and serious communications risk. Given the lack of proper vetting and candidate analysis, we cannot be confident that further communications risks will not emerge from other people included on the list.”*

- (3) Recommended that rather than rerunning the process, GPEX set up a Spokesperson Probationary Review panel, which would provide GPEX with a final report in September. Informed by the report, GPEX would then vote as a whole on each role in the spokesperson list, to confirm each appointment.
83. Mr Browne was not supportive of Dr Ali’s appointment as spokesperson. This was not only because of concerns about the procedure involved. For example, on 6<sup>th</sup> June 2021, he emailed Prof. Scott Cato to complain that: *“Shahrar Ali has caused repeated, gratuitous distress to members of the LGBTQIA+ and Jewish communities and received a formal warning for his conduct last year”*. On 11<sup>th</sup> through 15<sup>th</sup> June 2021, Mr Browne posted messages on Loomio, a communications computer programme and online service used by members of GPEX, expressing concern that Dr Ali had spoken at an event hosted by the Institute of Ideas, which Mr Browne dismissed as an *“entryist campaigning body, actively seeking to undermine climate messaging”*.
84. The minutes of the GPEX meeting on 24<sup>th</sup> June 2021 record that issues with the spokesperson selection process were discussed in great depth and a variety of perspectives shared. Mr Browne spoke to the paper which he had prepared. Ms Berry expressed concern at the lack of due diligence in the appointment process and asked GPEX members to vote for the Browne paper. Mr Bartley stated that one of his concerns about due diligence was that a spokesperson (not Dr Ali) had advocated military intervention in Syria, which he (i.e. Mr Bartley) would have found difficult to defend.
85. Several members of GPEX expressed concern at the treatment of Dr Ali. For example, Rashid Nix, Equality and Diversity Co-ordinator, spoke to his extensive experience of discrimination and emphasised his concerns about the veiled campaign to target a spokesperson. Julia Lagoutte, Deputy Chair and Publications Co-ordinator, stated her concern at the treatment of a Green Party member of colour, expressing her belief that there was a racist element to it which GPEX could not ignore. She also expressed the view that the Browne paper was an attempt to hide behind process in order to make an ideological point of removing someone that Mr Browne and Mr Bartley disagreed with. Concerns that that Dr Ali was being targeted by the Browne paper were also expressed by Peter Barnett, Internal Communications Coordinator, and Claudine Letsae, International Coordinator.
86. Ms Letsae proposed that GPEX put out a statement of support for Dr Ali. However, Rosie Rawle, a Young Green Co-Chair, proposed a procedural motion which would prevent this proposal being voted upon and Ms Rawle’s motion was carried.

87. Mr Browne had sought a ruling from the Standing Orders Committee about whether the spokesperson appointment process had complied with the necessary formal requirements. The ruling, which was read out by Ms Reason, stated that almost no element of what would be required by the procedures set out in the constitution and the Standing orders of GPEX had been followed during the process of selecting a panel of speakers for the Party. This failure of governance was something that GPEX should address with urgency.
88. Motions to approve both papers were defeated. Instead, the meeting resolved that Prof. Scott Cato and Mr Browne would work on a combined proposal to manage the spokespeople selection process. A GPRC Co-Chair would facilitate this collaboration.
89. As a result, an interim working group (“IWG”) was set up consisting of Ms Reason, Prof. Scott Cato, Gemma Walker (a member of staff, Head of Communications), Mr Bartley and Mr Browne. Ms James was in attendance as a facilitator.
90. On 5<sup>th</sup> – 7<sup>th</sup> July 2021, an email exchange took place between Mr Browne, Mr Bartley and Ms Berry about whether to approve the list of spokespeople. On 5<sup>th</sup> July 2021, Mr Browne emailed Mr Bartley to say:
- “I am prepared to lead a vote to remove SA and CR at the meeting, in the knowledge it will probably fail, but in order to give those who wish to the chance to vote with their conscience.”*
91. On 9<sup>th</sup> July 2021, Mr Browne emailed members of the IWG with what he described as a “*tweaked*” SSMG. He said this was following a discussion with Mr Bartley. The changes had been proposed: “*to build robust diligence, monitoring and sanctions into the spokesperson system*”.
92. On 10<sup>th</sup> July 2021, Prof. Scott Cato emailed a reply in which she took issue with the proposed changes to the SSMG, including what she described as a “*heavy-handed disciplinary process*”. She stated:
- “This is another example of where a process designed to remove Sharar (sic) as speaker is spilling over into general processes that is not in the best interests of the party.”*
93. Ms James prepared a report to GPEX dated 21<sup>st</sup> July 2021, which included the following information. The IWG was tasked with looking at the SGCC, terms of reference for a SSMG, and how to facilitate the GPEX decision making. The group met three times: the first meeting was to discuss feelings following the GPEX meeting; the second was to discuss an edited SGCC; and the third was to discuss the edited SSMG. The IWG proposed that there should be due diligence undertaken retrospectively for existing spokespeople and clear support, monitoring and review of spokespeople in the future. If any spokesperson stepped outside of the SGCC, the SSMG would be able to recommend to GPEX that they needed to be removed as spokesperson.

94. The IWG put forward two proposals to GPEX. (1) GPEX was asked to vote to confirm the current spokesperson list, on the basis that a review of the list would be held in six months, with GPEX voting on any proposed changes to the list. (2) GPEX was asked to approve the terms of reference for the SSMG and the revisions to the SGCC. These proposals were approved by GPEX at a meeting on 31<sup>st</sup> July 2021, having been presented jointly by Prof. Scott Cato and Mr Browne.
95. Dr Ali submits that Mr Browne steered this process to set up the SSMG and revise the SGCC with the intention of using them to remove him as spokesperson because of his protected belief. This was discriminatory. The majority of GPEX went along with this process rather than simply ratifying the list of spokespersons. They did so because of the controversy caused by Dr Ali's appointment. This was discriminatory as the appointment was controversial because of his protected belief. It was also discriminatory because they were knowingly aiding Mr Browne to discriminate against him. The members of GPEX were acting on behalf of the Green Party as its agents. So was Mr Browne, who held the position of Management Co-ordinator.
96. Eighth detriment: On 14<sup>th</sup> July 2021, Ms Berry issued a statement saying that she did not intend to stand as a candidate in the forthcoming leadership by-election, although she would stay on through the by-election as Acting Leader. She held that position because Mr Bartley had resigned as Co-Leader on 4<sup>th</sup> July 2021. The statement was on Ms Berry's letterhead as a Green member of the London Assembly and concluded by saying that she would continue in that role. It included the following passage:
- “Green leaders rightly do not exert control over all our party's actions, and our principles of internal democracy are very important to me. These mean accepting that decisions can sometimes be made by our governing bodies that leaders do not agree with, but which we are bound to represent. However, I must also stand by our policies and my pledges made to Londoners in the recent election, and there is now an inconsistency between the sincere promise to fight for trans rights and inclusion in my work and the message sent by the party's choice of front bench representatives.*
- This inconsistency has left me in a very difficult position. I can no longer make the claim that the party speaks unequivocally, with one voice, on this issue. And my conscience simply cannot agree with the argument that there is anything positive in sending these mixed messages, especially when the inclusive attitudes of our membership and wider society are clear. Failing to win the confidence of a majority of my colleagues to reflect these is also a failure of leadership. Green leaders do not hold power but we do have a duty to influence, so I must apologise to you all for this failure and hold myself to account.”* [Underlining added.]
97. Dr Ali complains that the underlined passage was an attack on him as being transphobic. Even though he was not named, party members would have understood that it was his appointment that was said to be inconsistent with the Party's promise to fight for trans rights and inclusion. Ms Berry's statement was picked up by the mainstream media

and Dr Ali was linked by name with Ms Berry's comments in reports appearing in "*The Independent*" and on the ITV news website.

98. At 10.31 am on 14<sup>th</sup> July 2021, Ms Walker sent out an email advising recipients that Ms Berry would be issuing a statement that morning announcing that she did not intend to stand for re-election. Although the recipients are not identified on the email it would appear to be addressing Party spokespeople. Attached to the email was a statement about Ms Berry's announcement and a sheet of anticipated questions to spokespeople about the announcement with suggested answers. The questions included: "*Is the party transphobic?*" "*Are there people on the list who you would consider to be transphobic?*" and "*Is the issue of trans rights tearing the party apart?*"
99. Dr Ali submits that it is obvious from the questions and answers that the Green Party anticipated that the statement would attack him. He complains that no attempt was made by Prof. Scott Cato, Ms Walker or anyone else to prevent Ms Berry from issuing the statement or to persuade her to couch it in more neutral terms.
100. Dr Ali complains that Ms Berry's allegation of transphobia was discriminatory in that it was abuse targeted at him because of his protected belief. He says that the Green Party are liable for her conduct because as Acting Leader she was an agent of the Party. He further complains that her allegation, together with the Green Party's failure to take any steps to support him or to prevent or dissuade her from making the allegation, was discriminatory in that it aided the ongoing discrimination against him on social media by party members.
101. Ninth detriment: Ms Berry gave an interview to Open Democracy, which describes itself as an independent international media platform which produces high-quality journalism which challenges power, inspires change and builds leadership among groups underrepresented in the media. An article based on the interview was posted on the Open Democracy website on 17<sup>th</sup> July 2021, together with a recording of the interview. The interview was conducted by Adam Ramsay, who is described on his write-up of the interview as a member of the Green Party who has collaborated with Ms Berry in various ways over the years.
102. The article was headed "*Siân Berry on transphobia in the Green Party: 'We have a problem to solve'*". It gave Ms Berry an unchallenged platform from which to express her concerns on the issue and criticise Dr Ali. The article stated:
- "And, she says, to have someone appointed who is part of 'organised campaigning within the Green Party to reduce our commitment to trans rights, I don't think is compatible with what I promised to Londoners, and with the party's policies in general, and the party's values. ...'*
- Those campaigning against trans rights are, she says, 'picking on and singling out a very small minority group who are vulnerable and demonisable and doing that in a way that is so unfair to my mind ...'*

*...when things are wrong, we have to be against them [...] And that involves being negative,' she says.*

*'We have no problem being negative against road-building. We have no problem being negative against racism. And so we should be the same with people who are campaigning to roll back rights, and to demonise and stereotype. And trying to turn society against trans people. It just seems so obvious to me. ...*

*It's important that we acknowledge that we have a problem to solve, ...'."*

103. Mr Ramsay provided some explanatory context, albeit expressed in contentious terms:

*"Berry doesn't name names. But for those of us who have been kicking around the party for a while, it's no secret who she's talking about.*

*The controversy began with the party's former deputy leader, Shahrar Ali, the most prominent member of a faction organising within the Greens to push the party away from its current stance of supporting an expansion of trans rights."*

104. The article concluded by noting that Ms Berry would continue to be a Green member of the London Assembly.

105. Dr Ali submits that, like Ms Berry's 14<sup>th</sup> July 2021 statement only more so, the interview was discriminatory in that it was abuse targeted at him because of his protected belief. He says that, as with the 14<sup>th</sup> July 2021 statement, the Green Party are liable for her conduct as she was ex officio acting as their agent. Her allegations, together with the Green Party's failure to take any public steps to rebut them and support Dr Ali, were discriminatory in that they aided the ongoing discrimination against him on social media by party members.

106. Tenth detriment: On 18<sup>th</sup> July 2021 at their 2021 Convention, the Young Greens passed a motion calling on GPEx to consider terminating the appointment of the Policing and Domestic Safety Spokesman, ie Dr Ali. The motion was carried by 21 votes to one with one abstention.

107. The motion was prefaced by the following summary, which explains why the motion was brought.

*"According to the Code of Conduct for Spokespeople 'The Green Party of England and Wales reserves the right to terminate the appointment of spokespeople before the end of their term, subject to the needs and reputation of the party.' We, as the Young Green Convention, call for the Green Party Executive to consider terminating the appointment of the Policing and Domestic Safety Spokesperson, Shahrar Ali. We ask for this consideration to be taken once guidance has been given by GPRC to GPEx which establishes a clear process for terminating a spokesperson's appointment. We would also advise that there be consultation with all of the GPEW liberation groups with this process. This motion focuses on two instances of where we believe the values of the Young Greens and the policies of the GPEW are in conflict with*



*Shahrar Ali's online statements. The first instance is Shahrar's claim that it is unprofessional to wear a badge advertising your sexuality in a 'patient setting'. The second instance is Shahrar's public statements related to his motion to prohibit GenderGP from operating in the UK."*

108. GenderGP describes itself (on the Crowdfunder website) as a Singapore based company which is the world's leading private provider of gender affirming healthcare. Dr Ali's motion about GenderGP was an emergency motion for the Green Party's 2021 Spring Conference which expressed concern about the clinical practice of GenderGP in its treatment of patients reporting gender dysphoria. The motion referred to an investigation by the "*The Telegraph*" Investigations Team and an open letter by the General Pharmaceutical Council, which explained their enforcement actions against two of GenderGP's partner pharmacies in the UK.
109. The Young Greens motion stated that it was not concerned with Dr Ali's membership of the Green Party and that it did not seek to determine any qualities about his character. The motion set out the evidence of: (i) Dr Ali's claim that it was unprofessional to wear a badge advertising your sexuality in a "patient setting" and (ii) his public statements related to his motion to prohibit GenderGP from operating in the UK; the Green Party policies which this claim and these statements were said to have contradicted; and the reasons why the motion therefore called on GPEX to consider terminating his appointment as spokesperson.
110. Dr Ali submits that the Young Greens (or at least the 21 members who passed the motion) discriminated against him by passing a motion which invited GPEX to remove him as spokesperson in that they sought to penalise him for the manifestation of a protected belief. He further submits that the Green Party is liable for the actions of the Young Greens in passing the motion as the Young Greens were acting for the common purpose of the Green Party.
111. Eleventh detriment: On 20<sup>th</sup> July 2021, Dr Ali emailed a letter to Ms Reason; Mary Clegg, who was the Chief Executive of the Green Party; Mr Barnett and Prof. Scott Cato ("the Addressees") complaining about the action of the Young Greens, as a body within the Green Party, in creating a hostile environment towards him. He anticipated that the required steps would include the Young Greens ceasing to publish and promote damaging statements about him online and the Green Party and the Young Greens organising a statement in conjunction with him to remedy or repair some of the reputational damage that had been inflicted upon him. Disciplinary action might be necessary against those who had orchestrated this "*campaign*" against him and to facilitate his protection from harassment. At a minimum, the Green Party should take charge of and/or monitor Young Greens communications about him.
112. Dr Ali did not receive a substantive response and GPEX took no action in relation to his letter. On 20<sup>th</sup> July 2021, Ms Clegg sent a WhatsApp message to Prof. Scott Cato in

which she stated that the Young Greens were a wholly autonomous body. She added: “*I think we must not adopt responsibility for them whilst also agreeing their behaviour is reprehensible*”. Dr Ali does not accept that the Young Greens are wholly autonomous. For example, as noted earlier in this judgment, under the Green Party Constitution the Co-Chairs of the Young Greens are ex officio members of GPEX.

113. Dr Ali submits that the Green Party, through its agents the Addressees (although his complaint is not levelled against Mr Barnett), failed to prevent what was said to be ongoing discrimination by the Young Greens and that by doing nothing they aided that discrimination.
114. Twelfth detriment: A by-election for the leadership of the Green Party took place in summer 2021 following the resignations of Mr Bartley and Ms Berry as Co-Leaders. Dr Ali decided to stand and on 17<sup>th</sup> August 2021 he announced his candidacy. As part of his campaign, he advanced the protection of sex-based rights. He was active on social media and in particular on Twitter. In relation to tweets posted in the period of the leadership election, Dr Ali changed his Twitter profile to make it clear that he was not speaking in an official capacity (i.e. in his spokesperson role). He posted identical disclaimers on his Facebook page and on his campaign website, in accordance with Green Party election campaign regulations. Dr Ali submits that as a candidate he was free to address matters that fell outside his remit as spokesperson and to advocate policies that were not necessarily official party policy at the time. Always provided that he made clear that he was not doing so in his capacity as spokesperson.
115. During the course of his leadership campaign, in August and September 2021, Dr Ali alleges that he was subjected to discrimination by a number of Green Party members, including leading figures, for reasons related to his protected beliefs. For example:
  - (1) (A) On or about 30<sup>th</sup> August 2021 (the precise date is not clear), Ms Berry, who was still Acting Leader of the Green Party, posted a video on Twitter suggesting that members should vote to re-open nominations (“RON”) rather than vote for three of the five candidate groups. The candidates not considered worthy of support included Dr Ali. The video was posted with the Green Party logo on it. Some of the candidates drew this to the attention of the Acting Election Returning Officer (“Acting ERO”), who asked Ms Berry to take it down. She did so, by which time the video had been viewed around 11,000 times by her Twitter followers, but reinstated it without the Green Party logo. Ms Berry’s suggestion was reported in an article posted to the website of Bright Green on 31<sup>st</sup> August 2021. Bright Green’s website describes Bright Green as independent media for radical, democratic green movements. The Acting ERO noted: “*The creation of a #12RON Hash Tag promulgating the strategy being strongly promoted by SB followers*”.

(B) The Acting ERO and Deputy Returning Officer (“DRO”) were so concerned by Ms Berry’s actions that on 2<sup>nd</sup> September 2021 they submitted a motion to the GPRC seeking her immediate recall as Acting Leader for publicly acting to influence the result of the by-election by promoting particular candidates over others. Dr Ali says that he was targeted by Ms Berry because of his protected belief.

(C) Also on 2<sup>nd</sup> September 2021, Ms Berry tweeted: *“These are my personal views. The views of the Green Party of England and Wales will of course be determined via the result of the election”*. She said she had been told that voting could not take place until she had made this clear and that she had been instructed to remove all her earlier messages. Shortly afterwards she emailed an apology to the Acting ERO and the candidates, stating: *“I am writing to apologise for sharing my views on the election without giving everyone concerned complete clarity about my role”*.

- (2) On 2<sup>nd</sup> September 2021, Benali Hamdache, who was the spokesperson for Migration and Refugee Support, posted on Twitter using his Green Party social media account:

*“If @sianberry isn’t allowed to say it, I will loudly and clearly!*

*#RON. Only two candidates teams are worth preferencing.*

*Please RT and share the message!”*

Mr Hamdache then identified the two teams he considered worthy of support. They did not include Dr Ali, who says that he was targeted by Mr Hamdache because of his protected belief.

- (3) (A) On 2<sup>nd</sup> September 2021, Dr Ali took part in a leadership hustings on LBC. He was involved in an exchange with another candidate, Ms Womack, on the subject of trans rights.

(B) On 4<sup>th</sup> September 2021, Tamsin Omond, Ms Womack’s running mate, posted a tweet with a video clip from the hustings. (By way of context, the Womack/Omond team was one of the two teams which Ms Berry and Mr Hamdache mentioned as worthy of support). Tamsin Omond tweeted:

*“We are at a crucial time. Our trans and non-binary siblings are under threat in our party and our processes are failing to protect them. @Amelia\_Womack’s passionate defence of trans rights here deeply moves me – if you feel able, have a watch.*

*CW – Sexism, Transphobia.”*

(C) Dr Ali submits that, in the context of the video clip, the tweet implied that trans and non-binary people in the Green Party were under threat from him and that in the hustings he had made transphobic statements. Tamsin Omond made these false allegations because of his protected belief.

116. Ms Berry was Acting Leader of the Green Party and initially posted using the Green Party logo; Mr Hamdache was a spokesperson; and Ms Omond was a candidate for electoral office. Dr Ali submits that they all posted while carrying out functions which they were authorised to do by the Party and were therefore acting as its agents.
117. Thirteenth detriment: In September 2021, Dr Ali was the subject of two complaints, both of which called for his removal as spokesperson. He submits that the complaints and the calls for his removal were discriminatory because they were in significant part based on his protected belief.
118. The first complaint was made by Mr Browne in a paper dated 21<sup>st</sup> September 2021, which he prepared for the SSMG, alleging a number of breaches of the SGCC on the part of Dr Ali (“the Browne Complaint”). The paper identifies its author as “GPEX Management Co-ordinator (Job Share)”.
119. The paper, which runs to 14 pages, alleges that Dr Ali breached both the old and the new versions of the SGCC. In the case of each alleged breach the paper identifies to which provision of which version of the SGCC the breach relates. All the alleged breaches took place during the leadership election.
120. There are five sets of alleged breaches.
  - (1) Set A: Dr Ali’s advocacy of sex-based rights during the leadership election were inconsistent with Green Party policy and strategic priorities;
  - (2) Set B: Dr Ali’s responses to what he has characterised as the attacks on him by Ms Berry, Mr Hamdache and Tamsin Omond constituting the Twelfth Detriment were insufficiently respectful;
  - (3) Set C: During the leadership campaign, Dr Ali publicly questioned the Green party’s guidelines that spokespeople ought not to appear on “*Russia Today*”;
  - (4) Set D: Dr Ali had brought the Green Party into disrepute by tweeting about a live court case; tweeting “*we should have done more to support*” the funding of a women’s refuge in Brighton which had now closed, thereby allegedly criticising Green Party councillors in Brighton; and retweeting a recent article from “*The Times*” by Janice Turner headed “*Starmer must respect women or lose them*” because it anticipated that if Dr Ali won there would be an exodus to the Greens from grassroots Labour women but which contained comments

about the Green Party which Mr Browne thought inaccurate and inappropriately mocking; and

- (5) Set E: In light of the tweets mentioned in Sets A – D, Dr Ali had failed to adopt a voice that was positive and inclusive and had devoted a third to half of his tweets between 17<sup>th</sup> August 2021 and 21<sup>st</sup> September 2021 to opposing various rights asked for by trans people.
121. The second complaint, dated 5<sup>th</sup> October 2021, was made by Joshua Alston on behalf of the Jewish Greens, of which he was Chair (“the Alston Complaint”). It will be recalled that the Young Greens’ motion said to constitute the Tenth Detriment mentioned liberation groups within the Green Party. The Jewish Greens were one such group.
  122. Mr Alston introduced the Complaint, which ran to 4½ pages in a covering email. He identified four areas of concern: (i) Dr Ali’s “*outbursts*” regarding trans people which had “*escalated in frequency and extremism*” over the past month; (ii) longstanding concerns surrounding his refusal to meet with Jewish Greens; (iii) his knowledge and understanding of his brief (an alleged misunderstanding of the issues involved in tackling hate crime); and his “*careless rhetoric*” on issues relating to antisemitism (he allegedly minimised it as a political issue).
  123. Neither Complaint is based exclusively on the manifestation of Dr Ali’s protected belief. But this forms the core of the Browne Complaint and a substantial part of the Alston Complaint.
  124. Dr Ali submits that the Green Party is liable for the actions of both complainants. Mr Browne was an agent of the Party in that he was Management Co-ordinator and a member of GPEx and submitted his Complaint in his capacity as Management Co-ordinator. Mr Alston was an agent of the Party as he was acting in a leadership capacity as Chair of the Jewish Greens.
  125. Fourteenth detriment: Dr Ali contends that the SSMG did not deal with the Browne Complaint and the Alston Complaint in a procedurally correct and fair way. Specifically, he submits that:
    - (1) The Complaints should have been dealt with under the complaints procedure set out in the SOPD. It is Dr Ali’s case that under the Standing Orders the SSMG should have declined to hear the Complaints as it had no jurisdiction to do so unless they were referred to it as “*another appropriate body*” by the Complaints Referral Group (“the RG”) under SOPD 3.3.
    - (2) The complaints fell within the definition of unreasonable, persistent, abusive, malicious and vexatious complaints (“UPAMV”) contained in the UPVAM Guidance and Procedure. This provides that, as UPAMV, they should have

been referred to the RG and summarily dismissed under clause 1.6 of the SOPDs. For example, Dr Ali submits that his advocacy of sex-based rights was not contrary to party policy; and that in any event all, or almost all, the complaints relate to the period of the election, when he was entitled to express positions contrary to party policy provided that he made clear that he was speaking in a personal capacity.

- (3) (A) Dr Ali was not given sufficient time to address the complaints when the SSMG met on 27<sup>th</sup> October 2021 to consider them. The relevant communications in the lead up to the meeting were as follows.

(B) On 8<sup>th</sup> October 2021, the SSMG met and, amongst other business, discussed complaints which they had received about Dr Ali as spokesperson. They had received copies of the Browne Complaint and the Alston Complaint, and also a written complaint from one Chris Williams (“the Williams Complaint”) to which I was not referred at trial. It was decided to email Dr Ali, sending him the three written complaints, and asking him to respond either in writing or at their next meeting.

(C) On 12<sup>th</sup> October 2021, Prof. Scott Cato emailed Dr Ali to inform him that the SSMG had received a large number of complaints from party members about his communications activity. The most detailed Complaints were attached (i.e. the Browne Complaint and the Alston Complaint. It is not clear whether the Williams Complaint was attached). Dr Ali was offered the chance to respond about his communications in general or these specific documents, either in writing or in person, and was asked for his availability between 27<sup>th</sup> and 29<sup>th</sup> October. He replied the same day, giving his availability and saying that he would prefer to address the group in person. There were further email exchanges, which established a convenient time and date and that the meeting would take place via Zoom.

(D) On 17<sup>th</sup> October 2021, Dr Ali emailed Prof. Scott Cato and requested the opportunity to make a 15 – 20-minute presentation near the start of the meeting. This would enable him to put in context the Complaints as part of a politically motivated campaign of harassment towards him. He would then address some of the complainants’ criticisms, but not all, for reasons of time, and would answer questions.

(E) On 21<sup>st</sup> October 2021, Prof. Scott Cato emailed Dr Ali to let him know the format for the meeting, which would last one hour. She would lay out the parameters for the session. Dr Ali would have 20 minutes to make his case and counter the allegations in the documents. Members of the group would raise questions and Dr Ali would have a chance to respond. He would have a right of reply.

(F) On 26<sup>th</sup> October 2021, Dr Ali emailed Prof. Scott Cato to say that he would need at least 30 minutes to complete his presentation. He prepared a 23-slide PowerPoint response to the Complaints.

(G) Dr Ali found the meeting on 27<sup>th</sup> October to be rushed. He wasn't able to develop all his points to the extent he wanted and was reminded about time by Prof. Scott Cato more than once. He was unable to give enough time to the comments from members of the SSMG when they went round the room afterwards.

(4) In her email of 12<sup>th</sup> October 2021, Prof. Scott Cato had invited Dr Ali to respond to the complaints which she had sent him. She did so pursuant to the decision of the SSMG at their meeting on 8<sup>th</sup> October 2021. But at the start of the meeting on 27<sup>th</sup> October 2021, Prof. Scott Cato told him that they didn't want to focus too heavily on the complaints. She stated in a follow-up email to Dr Ali on 30<sup>th</sup> October 2021: *“Although I sought to stress at the beginning of the meeting that the issue of complaints made to and by you fall outside our remit, you did focus on those quite heavily”*. This left Dr Ali in the invidious position that he had prepared to meet the allegations of which he had been notified, only to find that they were no longer considered relevant and that therefore neither was his response.

(5) To compound the procedural unfairness, Dr Ali was not notified of the case which he was required to meet. In her 30<sup>th</sup> October 2021 email, Prof. Scott Cato stated:

*“However, we do take on board that you thought the meeting would be focused exclusively on the detailed complaints rather than the wider question of whether it is in the best interests of the party for you to continue as a spokesperson.”*

This was very nebulous. A fair hearing was not possible if he didn't know what he was defending himself against.

126. The SSMG allegedly discriminated against Dr Ali in that their procedurally incorrect and unfair actions were motivated by disapproval of the manifestation of his protected belief raised in the Complaints. These actions exposed him to the risk of removal as spokesperson while denying him the opportunity adequately to defend himself. The members of the SSMG were acting as agents of the Green Party in that they were carrying out functions which it had authorised them to do.

127. Fifteenth detriment: Dr Ali alleges that the minutes of the 27<sup>th</sup> October 2021 meeting, which were prepared by Prof. Scott Cato, contained material inaccuracies. For example, the minutes stated that Prof. Scot Cato:

*“... acknowledged and validated his wish to express himself freely and dissent from party positions, but made it clear that this freedom has to be traded off against the authority accorded to those who speak on behalf of the party.”*

128. Dr Ali submits that the minutes were inaccurate in that he had not expressed the desire to dissent from party positions. On 30<sup>th</sup> October 2021 he emailed Prof. Scott Cato to express his concerns about the minutes and asked whether she would like him to propose changes so that they could agree the minutes.
129. On 1<sup>st</sup> November 2021 Prof. Scott Cato emailed a reply. She respected his right to take his own view of what happened during the meeting but the notes were her view, as chair of the committee, and shared by other committee members. They were not open to negotiation. However, if he summarised his alternative views of what was said at the meeting she would add that at the end.
130. Dr Ali does not regard this as an acceptable response. He submits that the minutes deliberately misrepresented his position rather than face the fact that manifestations of his gender critical belief were protected by the freedom of self-expression provisions in clause 8 of the MCC and were generally measured and consistent with Green Party policy. The misrepresentation was discriminatory in that it was motivated by disapproval of such manifestations. In preparing the minutes, Prof. Scott Cato was acting as an agent of the Green Party in that she was carrying out a function which it had authorised her to do.
131. Sixteenth detriment: On 10<sup>th</sup> January 2022, the Green Party issued a press release announcing that Green parliamentarians Caroline Lucas, Baroness Jones and Baroness Natalie Bennett, and London Assembly member Zack Polanski, would be joining a socially-distanced protest in Parliament Square on 12<sup>th</sup> January 2022 to defend the right to protest. This was to oppose the Police, Crime, Sentencing and Courts Bill as it reached the House of Lords. Although Dr Ali was spokesperson for Policing and Domestic Safety, he was not invited to the protest. He submits it is a reasonable inference that he was excluded because of his protected belief or its manifestation and that his exclusion was therefore discriminatory. The decision to exclude him was made by one or more persons acting as agents of the Green Party in that they were carrying out functions which it had authorised them to do. The decision undermined his position as spokesperson. For example, on the same day as the press release was issued, Ms Reason sent a WhatsApp message to other members of the SSMG asking:
- “Is Shahrar doing his job? I can’t see that he is. We’ve got the Policing Bill going through and he’s nowhere to be seen.”*
132. Seventeenth Detriment: In January 2022 the SSMG prepared “A Review of the Activity of GP Spokespeople” (“the SSMG Review”) for consideration by GPEx at their next meeting on 5<sup>th</sup> February 2022. This document evaluated spokespeople’s activity during



the first six months of their appointment. Evaluations were based both on their performance and their compliance with the SGCC.

133. The SSMG Review noted the various activities which Dr Ali had undertaken as spokesperson subsequent to the leadership election. However it went on to say:

*“The SSMG has received a number of criticisms from party members about Shahrar’s performance. Most members of the SSMG believe that his decision to champion a highly controversial position in the trans rights debate is not compatible with him acting as a spokesperson for the party. However, given that the job-share Equalities and Diversity role on SSMG supports Shahrar’s view that these criticisms cannot be divorced from accusations of institutional racism in the party, we do not feel able to recommend GPEX to vote to remove him as a spokesperson at this stage. Rather, we recommend that he be suspended from his role while the Party conducts a review of the allegations of institutional racism.”*

134. The SSMG Review recommended that all the other spokepeople continue in post with two exceptions: Carla Denyer, as she had been elected Co-Leader of the party, and Caroline Russell, as she had decided to move on from the role.

135. Dr Ali submits that the decision to recommend his suspension was discriminatory in that it was taken expressly because of the manifestation of his protected belief. The decision gave rise to a real probability that he would be suspended as spokesperson, quite possibly as a prelude to his removal from that role. The members of the SSMG who voted for Dr Ali’s suspension were acting as agents for the Green Party in that they were carrying out a function which it had authorised them to do.

136. Eighteenth detriment: On 5<sup>th</sup> February 2022, GPEX met to consider the SSMG Review. Prior to the meeting, on 3<sup>rd</sup> February 2022 in a Loomio thread between members of GPEX, one of the members posted a proposal, said to be made on behalf of “*a number of GPEX colleagues*”, that GPEX hold one vote to agree two motions: (1) that Dr Ali be removed as spokesperson and (2) that claims of institutional racism be considered separately as part of a broader exercise that was already ongoing within the Party. The proposal was put forward as a “*clarification*” of the proposal in the SSMG Review although in fact it was an amendment. The identity of the proposer was not stated in the papers before the court, as the account from which the proposal was made has been deactivated, but I draw the reasonable conclusion that the proposer was most likely Mr Browne.

137. The minutes of the GPEX meeting record:

*“GPEX debated the conclusions in the paper and specifically the recommendation to suspend Shahrar Ali, Policing and Domestic Safety Spokesperson. GPEX considered the information regarding his performance in the role and the issues raised during SSMG meetings regarding racism and protected beliefs.*

*The discussion focused on Shahrar’s performance in his role as spokesperson on Policing and Domestic Safety and his use of his platform as a spokesperson to champion a position counter to party policy. A great deal of concern was expressed regarding this decision being seen as dismissing the issues of racism and institutionalised racism within the party, particularly when raised by people of colour. ...*

*GPEX voted on whether Shahrar Ali should remain a spokesperson whilst the claims raised in his letter before action are investigated. This motion was defeated by a majority with one abstention.*

*GPEX voted on whether Shahrar Ali should be suspended from his role as spokesperson whilst the raised in his letter before action are investigated. This motion was defeated by a majority with three abstentions.*

*GPEX voted on whether Shahrar Ali should be removed from his role as spokesperson whilst the claims raised in his letter before action are investigated. This motion was carried with a majority and 1 abstention.”*

138. One of the attendees, Ms Lagoutte, who voted against the removal of Dr Ali, dictated a Voice Note record of the meeting immediately after it finished. This was later transcribed. The transcript includes the following passage:

*“I raised, during the discussion, - and [then Deputy Leader] agreed with me - that even though the discussion we were having and [External Comms Coordinator] and [then Chair] were saying was about a breach of the [Spokespeople] Code of Conduct, what we were presented with in the speaker review was just ‘Shahrar has said some highly controversial things on social media’. And we pointed out that that’s not really any evidence - that’s not only not evidence of breaches of the Code of Conduct but it doesn’t even mention the Code of Conduct and breaches of it. And that that would not be good legally, and also it’s just bizarre. And I asked [then External Comms Coordinator], why did you put this if you’re actually talking about something else, and also this is highly subjective. And [then Deputy Leader] agreed with me that that is not a process to judge someone - by subjective ideas of what controversial is. But nonetheless [then External Comms Coordinator] was like, ‘there’s loads, there’s a 20-page report, but we don’t have time to see this, to show this’, and that was pretty much it really.”*

139. Dr Ali submits that his removal was discriminatory because he was expressly removed because of the manifestation of his protected belief. The members of GPEX who voted for his removal were acting as agents for the Green Party in that they were carrying out a function which it had authorised them to do.
140. At 2.02 pm that day, Prof. Scott Cato tried to call Dr Ali to inform him of his removal. Dr Ali suspected what the call was about but did not answer as he was waiting for what he describes as “*formal communication*” of the GPEX decision. At 2.09 pm, Prof. Scott Cato sent Dr Ali a WhatsApp message informing him of his removal. Dr Ali didn’t read it right away as he was still waiting for a formal communication about his removal.
141. At 5.23 pm that day, Ms Reason tweeted:

*“The Green Party Executive has removed Shahrar Ali from his role as party spokesperson for breaches of the Speakers’ Code of Conduct. This decision has no impact on Dr Ali’s membership of the party.”*

142. Dr Ali takes exception to the fact that the Green Party did not send him a formal communication informing him of his removal before that tweet was sent.
143. Nineteenth detriment: On 5<sup>th</sup> February 2022 at 8.38 pm, Ms Berry tweeted:
- “I am glad to see a wise decision made today by the party executive. And again to apologise to members and allies that I was not able to ensure our actions matched our values at a much earlier stage in what I know has been a personally painful process for many of you.”*
144. Dr Ali submits that the tweet was discriminatory in that it celebrated his removal as spokesperson because of his protected belief and its manifestation and apologised for not having been able to ensure that the Green Party secured this discriminatory outcome earlier.
145. Twentieth detriment: Dr Ali submits that the majority of GPEX and the SSMG, who did not agree with his position on sex-based rights, failed to comply with the MCC or enforce it against other members of the Green Party who discriminated against him. Dr Ali was therefore subjected to discriminatory behaviour from which the MCC would, had it been enforced, have provided him with some protection.
146. Specifically, it is alleged that members of GPEX and the SSMG:
- (1) Failed to respect Dr Ali’s right to freedom of expression, in breach of clause 8.1;
  - (2) Failed to provide Dr Ali with a safe space and failed to prevent discriminatory behaviour, in breach of clause 9.2;
  - (3) Failed to prevent members behaving in a discriminatory manner towards Dr Ali on the basis of a protected characteristic, in breach of clause 11.3; and
  - (4) Aided or induced a clique of vocal opponents who were opposed to Dr Ali because of, among other things, his protected beliefs, to belittle, undermine, and otherwise attack him, in breach of clause 13.1.
147. Dr Ali complains that no action was taken against any of these members.

### **Case law on agency**

148. Dr Ali alleges that the Green Party is liable for the acts of the perpetrators against whom his complaints are directed. He identifies them as Leaders and Co-Leaders; members

of GPEx (including when sitting in the SSMG); spokespeople; elected representatives; and employees.

149. Dr Ali submits that they were all agents of the Green Party within the meaning of section 109 of the EA as the acts and omissions complained of were done or not done with the authority of the Green Party. In Unite the Union v Nailard [2019] ICR 28, the Court of Appeal held that the principal will be liable whenever the agent discriminates in the course of carrying out the functions he is authorised to do. See the judgment of the Court given by Underhill LJ at [42], applying the judgment of Elias J in Ministry of Defence v Kemeh [2014] ICR 625 CA at [11].

### **Case law on direct discrimination**

150. In Page v NHS Development Authority [2021] ICR 941, Underhill LJ, giving the judgment of the Court of Appeal, stated at [68]:

*“In a direct discrimination claim the essential question is whether the act complained of was done because of the protected characteristic, or, to put the same thing another way, whether the protected characteristic was the reason for it ... It is thus necessary in every case properly to characterise the putative discriminator's reason for acting. In the context of the protected characteristic of religion or belief the Employment Appeal Tribunal case law has recognised a distinction between (1) the case where the reason is the fact that the claimant holds and/or manifests the protected belief, and (2) the case where the reason is that the claimant had manifested that belief in some particular way to which objection could justifiably be taken. In the latter case it is the objectionable manifestation of the belief, and not the belief itself, which is treated as the reason for the act complained of. Of course, if the consequences are not such as to justify the act complained of, they cannot sensibly be treated as separate from an objection to the belief itself.”*

151. In Higgs v Farmor's School [2023] ICR 1072, Eady J (President), giving the judgment of the EAT, stated at [41] that for the claimant's actions to be understood as a manifestation of a religion or belief, they must have a sufficiently close and direct nexus to that belief.
152. In Unite the Union v Nailard [2019] ICR 28, Underhill LJ, giving the judgment of the Court of Appeal, held at [89] – [90] that where an employer fails to protect an employee from unlawful discrimination by a third party, the employer will not be liable under section 13 of the EA unless their failure to protect the employee was because of a protected characteristic of the employee. By parity of reasoning, I find that the same principles would apply where an unincorporated association fails to protect a member whose position is analogous to that of an employee. Dr Ali would have fallen into that category when acting in his capacity as spokesperson.

153. By reason of sections 3 and 6 of the HRA, the court must determine a claim under the EA compatibly, so far as possible, with the claimant’s Convention rights. See Page at [37]. In the present case, it is not only Dr Ali’s Convention rights that are potentially engaged, but also those of the Green Party and its members. Dr Ali and the Green Party rely on article 9 (freedom of thought, conscience and religion) and article 10 (freedom of expression). The Green Party also relies on article 11 (freedom of association). When assessing whether any interference with those rights is justified, the court must balance the interference with the fundamental right in question against the legitimate interests recognised by paragraph 2 of these articles. See Page at [52].
154. The European Court of Human Rights (“ECHR”) has described the rights in article 9 and 10 as among the foundations of a democratic society. See e.g. Sahin v Turkey (2005) 44 EHRR 5 at [104] (article 9) and Handyside v United Kingdom (1976) 1 EHRR 737 at [49] (article 10), cited in Higgs at [38] and [43] respectively.
155. As to article 9, Underhill LJ stated in Page at [59]:
- “The extent to which it is legitimate to expect a person holding a senior role in a public body to refrain from expressing views which may upset a section of the public is a delicate question which can only be decided by reference to the facts of each particular case.”*
156. I shall bear that observation in mind when considering the extent to which it was legitimate to expect Dr Ali, who held a senior role in a political party, to refrain from expressing views which might upset a section of the membership.
157. As to article 10, there are numerous judicial pronouncements on the importance of free speech. For example, Collins Rice J recently made a powerful statement in Miller and Power v Turner [2023] EWHC 2799 (KB) at [113]:
- “Debating art and ideas, contesting the nature of the New Right milieu and its critics or opponents, arguing about free speech itself – about protest and counterprotest, about cancel culture and no-platforming, about calling out and smearing – all this is of the essence of the exercise of the fundamental right to freedom of expression which is protected by law. The law rightly hesitates long before trying to regulate the register of such debates ... None of this has to be done well to earn the law’s protection. None of it has by law to be done moderately, civilly, fairly, respectfully or kindly. On Twitter, it rarely is.”*
158. Debates about trans rights would fit comfortably within these principles. In R (Miller) v College of Policing [2022] 1 WLR 4987, Dame Victoria Sharp P, giving the judgment of the Court of Appeal, agreed at [70] with the judge at first instance, Knowles J, reported at [2020] 4 All ER 31, that the expression of gender critical views by the claimant on Twitter was protected by article 10. This was notwithstanding that, as Knowles J found at [251], *“the tweets were, for the most part, either opaque, profane, or unsophisticated”*.

159. By parity of reasoning, article 10 would also protect expressions of support for trans rights, even when expressed in opaque, profane or unsophisticated terms. To put that in more concrete terms, Knowles J stated at [250]:

*“... there is a vigorous ongoing debate about trans rights. Professor Stock’s evidence shows that some involved in the debate are readily willing to label those with different viewpoints as ‘transphobic’ or as displaying ‘hatred’ when they are not.”*

160. Subject to any clearly defined exceptions laid down by common law or statute, article 10 would protect these expressions of opinion even if they are wrong. As Hoffmann LJ (as he then was) stated in R v Central Television plc [1994] Fam 192 CA at 203 A – B in the context of press freedom:

*“Freedom means the right to publish things which government and judges, however well motivated, think should not be published. It means the right to say things which ‘right-thinking people’ regard as dangerous or irresponsible.”*

161. This principle applies with particular force in the context of political speech on questions of public interest. Returning to Miller, Knowles J noted at [252] that:

*“... in the Article 10 context, special protection is afforded to political speech and debate on questions of public interest: see eg Vajnai v Hungary (No. 33629/06, judgment of 8 July 2008), [47], where the Court emphasised that there is: ‘... little scope under Article 10(2) of the Convention for restrictions on political speech or on the debate of questions of public interest’.”*

162. In Lee v Ashers Baking Co Ltd [2020] AC 413 SC, Lady Hale noted at [50] that obliging a person to manifest a belief that he does not hold has been held to be a limitation of his article 9(1) rights; and at [52] that although the right to freedom of expression does not in terms include the right not to express an opinion, it has long been held that it does.

163. As noted in “*Law of the European Convention on Human Rights*”, Harris, O’Boyle and Warbrick, Fifth Edition at 679: “*The consistent policy of the Court is that the permissible pale of criticism of politicians’ deeds and words must be construed much more broadly than it is for private individuals*”. For example, in Gorelishvili v Georgia No 12979/04 (2007) the Court stated at [35]:

*“As to Mr Lominadze, the Court observes that he was an exiled parliamentarian from the Abkhazian legislature at the material time. It is to be recalled, in this regard, that the limits of acceptable criticism are wider as regards a politician, than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself or herself open to close scrutiny of every word and deed by journalists and the public at large. Therefore, such persons must display a greater degree of tolerance (see, for example, Incal v Turkey, judgment of 9 June 1998, Reports 1998-IV, p. 1567, § 54).”*

164. As to article 11, the ECHR stated in United Communist Party of Turkey v Turkey [1998] 26 EHRR 121 at [25] that: “*political parties are a form of association essential to the proper functioning of democracy*”. For present purposes, this finding had two important consequences. First, there could therefore be no doubt that political parties came within the scope of article 11. Secondly, as stated at [46]:
- “... the exceptions set out in Article 11 are, where political parties are concerned, to be construed strictly; only convincing and compelling reasons can justify restrictions on such parties’ freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the Contracting States have only a limited margin of appreciation ...”
165. The ECHR noted at [33] that the European Commission on Human Rights took the view that: “*freedom of association not only concerned the right to form a political party but also guaranteed the right of such a party, once formed, to carry on its political activities freely*”. The Court did not demur, stating that the protection afforded by article 11 lasts for an association’s entire life.
166. In Refah Partisi (the Welfare Party) v Turkey Nos 41340/98 (2003), a political party brought complaints under, among others, articles 9, 10 and 11. The ECHR dismissed the claim under article 11. It held that it was unnecessary to examine the other complaints as they derived from the same facts as those examined under the article 11 complaint. However, the Court did not suggest that the applicant had no standing to bring those other complaints.
167. In ASLEF v United Kingdom (2007) 45 EHRR 34, the ECHR stated at 46 with respect to article 11: “*it is uncontroversial that ... political parties can generally regulate their membership to include only those who share their beliefs and ideals*”.
168. The rights under articles 9, 10 and 11 are qualified. In Higgs, Eady J stated at [51] in a passage about articles 9 and 10, but which would by parity of reasoning apply equally to article 11:
- “*There are clear similarities between the approach to be taken in relation to complaints of infringement of rights protected by articles 9 and 10 ECHR. Both require first that the essential nature of those rights must be recognised. Both rights are, however, then qualified, with articles 9(2) and 10(2) setting out the circumstances under which the right to religion or belief, or to freedom of expression, can be limited or restricted: (i) it must be prescribed by law; (ii) it must be in pursuit of one of the legitimate aims identified; and (iii) it must be necessary in a democratic society.*”
169. Eady J then explained the qualifications at (i) – (iii). As to “*prescribed by law*”, as interpreted in ECHR and domestic case law this meant that the impugned measure should have some basis in domestic law and be accessible to the person concerned, who must be able to foresee its consequences, and compatible with the rule of law. See [52]. As to “*legitimate aim*”, this was generally identified as being concerned with the

protection of “*the rights and freedoms*” (article 9(2)) [and also article 11(2)] or “*reputations or rights*” (article 10(2)) of others. See [53]. As to “*necessary in a democratic society*”, as stated by Lord Bingham in R v Shayler [2003] 1 AC 247 HL at [23], one must consider whether the interference corresponded to a pressing social need; whether it was proportionate to the legitimate aim pursued and whether the reasons given to justify it were relevant and sufficient. See [53].

170. When considering proportionality, Eady J stated at [54], the decision maker was required to answer the four questions identified by Lord Reed JSC in Bank Mellat v HM Treasury (No 2) [2014] AC 700 SC at [74]:

*“(i) is the objective of the measure sufficiently important to justify the limitation of a protected right; (ii) is the measure rationally connected to the objective; (iii) could a less intrusive measure have been used without unacceptably compromising the achievement of the objective, and (iv) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.”*

#### **Case law on less favourable treatment**

171. One way in which a claimant can establish discrimination is by reference to a comparator. I.e. by showing that, because of a protected characteristic, they have been treated less favourably than the defendant has treated someone who does not have that characteristic (i.e. by reference to an actual comparator), or than the defendant would hypothetically treat someone who does not have that characteristic (i.e. by reference to a hypothetical comparator).
172. Shamoon v Chief Constable of the RUC [2003] ICR 337 HL concerned unlawful discrimination on grounds of sex contrary to the Sex Discrimination (Northern Ireland) Order 1976. The definition of direct discrimination in the Order was in all material respects the same as the definition of direct discrimination in the EA. Lord Nicholls noted at [7] that tribunals normally considered first whether the claimant received less favourable treatment than the appropriate comparator (the “less favourable treatment” issue) and then, secondly, whether the less favourable treatment was on the relevant proscribed ground (the “reason why” issue).
173. However, this was not always the best course, especially where the identity of the appropriate comparator was a matter of dispute. Lord Nicholls stated at [8]

*“This analysis seems to me to point to the conclusion that employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the*



*application fails. If the former, there will be usually be no difficulty in deciding whether the treatment, afforded to the claimant on the proscribed ground, was less favourable than was or would have been afforded to others.”*

174. In Page at [79], the Court of Appeal applied this reasoning to a case of direct discrimination under the EA.
175. In Chief Constable of Yorkshire v Vento [2001] IRLR 124 EAT, Lindsay J, giving the judgment of the EAT, stated at [7] that when constructing a hypothetical comparator, it is permissible to see how unidentical but not wholly dissimilar cases had been treated in relation to other individual cases.
176. Dr Ali relies on two actual comparators: Mr Hamdache, for the tweet complained of under the twelfth detriment, as to which the Green Party took no action, and Professor Catherine Rowett, who was spokesperson for Work, Employment and Social Security. They were said to be actual comparators because they were both spokespersons.
177. On 22<sup>nd</sup> January 2022, Prof. Rowett tweeted a message of congratulations to Ani Stafford-Townsend, stating “*Proud to be in a party that has fewer than 260 transphobes among its hundreds and thousands of women members and supporters*”. Dr Ali states that “*260 transphobes*” was a reference to those who voted for another candidate. Prof. Rowett removed the tweet on 28<sup>th</sup> February 2022 when asked to do so by Prof. Scott Cato. It is not clear whether she had been asked to do so previously. On 11<sup>th</sup> March 2022, Prof. Rowett tweeted about: “*a right wing extremist reactionary faction, opposed to the party’s progressive policies*”, which was a reference to the majority of those voting at a recent Green Party conference.
178. On 31<sup>st</sup> March 2022, Prof. Scott Cato emailed Prof. Rowett to inform her that these tweets had been discussed at a recent meeting of SSMG and concluded that they were counter to the commitments that she had made when she signed the SGCC for spokespeople to “*adopt a tone that is positive and inclusive*” and also undermined confidence in the Party’s internal democratic processes in a way that was damaging to its public standing. The email concluded that the SSMG would appreciate Prof. Rowett’s assurance that she would take account of their concerns about her divisive tweets and adopt a more unifying tone in future.
179. On 16<sup>th</sup> June 2022, Prof. Scott Cato, having received no reply, sent Prof. Rowett a chasing email. Prof. Rowett replied the same day. She had not responded to the original email as the issues raised and the terms in which they were expressed made her angry. She had however taken the spirit of the message on board, and proceeded in a more measured manner, avoiding commenting on subjects “*which had effectively been rendered taboo due to the behaviour of a certain clique in the party*”. If there had been any further breaches of the SGCC, please would Prof. Scott Cato let her know.

180. Alternatively, Dr Ali invites the court to construct a hypothetical comparator, drawing on the treatment of other prominent figures in the Green Party whom he alleges behaved in a discriminatory manner but were not sanctioned. He relies specifically on the lack of sanction against Tamsin Omond (twelfth alleged detriment); Ms Berry (eighth, ninth, twelfth and nineteenth alleged detriments); and Mr Browne (seventh and thirteenth alleged detriments).
181. Dr Ali also relies on remarks said to have been made by Ms Denyer on 15<sup>th</sup> September 2021 at the LGBTIQ+ Greens hustings. He states that in response to a question about Stonewall, Ms Denyer used divisive, stigmatizing language to describe the LGB Alliance, stating: “*Behind the LGB Alliance’s innocuous sounding name they peddle outright transphobia ... The absence of ‘T’ in the name is the point ... the sole reason they were set up which, to my mind, makes them a hate group*”. Ms Denyer was Housing and Communities spokesperson at the time. She was standing for leadership of the Green Party on a joint ticket with Mr Ramsay. They were successful and were elected Co-Leaders. Ms Denyer was not sanctioned for her remarks.
182. The Green Party submits that neither Mr Hamdache nor Prof. Rowett was in the same material circumstances as Dr Ali, although Prof. Scott Cato made the point that Prof. Rowett, unlike Dr Ali, did agree to moderate her communications when requested by the SSMG. They say that the correct comparator would be a spokesperson who does not hold a gender critical belief but who was otherwise in the same material circumstances, including having behaved in the same way as Dr Ali.
183. The Green Party finds support for this approach in Page v NHS Trust. The claimant was a non-executive director of an NHS trust. He was suspended and later dismissed because in numerous media interviews he had expressed views that homosexual activity was wrong and that same sex adoption was never in the best interests of the child. He was the subject of media interest because he had sat as a magistrate and on account of these views he had refused to agree to the adoption of a child by a same sex couple. This led to his suspension from the magistracy, from which he was later dismissed. The claimant brought an action claiming direct discrimination by the trust on account of his Christian faith, which underpinned his beliefs about homosexuality and adoption. The claim failed. Underhill LJ, who gave the judgment of the Court, held at [79] that on the facts of the case it was not necessary to construct a hypothetical comparator. But if it had been necessary, and this is the point on which the Green Party relies, the comparator would have been someone who acted exactly as the claimant had done but without his religious beliefs. The judge stated:

*“(It may not be a very likely hypothesis that a director of the Trust would have expressed himself as the appellant did unless he had held the same beliefs; but it is precisely because the exercise of constructing a hypothetical comparator is frequently so artificial that Lord Nicholls said what he did in Shamoon.)”*

## **Victimisation**

184. On 4<sup>th</sup> February 2022, Dr Ali's then solicitors Cole Khan emailed a letter before action to Ms Clegg and Ms Reason in their capacity as, respectively, Chief Executive of the Green Party and Chair of GPEX. It stated:

*“For the reasons set out in this letter we require GPEW to immediately confirm:*

- that Dr Ali will not be suspended or removed from his post as NSPDS by GPEX in response to the recommendation from SSMG or otherwise;*
- that his complaints of institutionalised race discrimination dated 11 and 27 May 2021 will now be subject to a proper and meaningful investigation by way of agreed terms of reference and the commissioning of an external investigator;*
- that it will commit to taking specified reparative and corrective actions to mitigate against the on-going impact of the unlawful discrimination and harassment our client has been subject to, actions to be agreed.*

*Should GPEW fail to take swift and decisive action in response to this letter, our client will regrettably be left with no alternative but to commence legal proceedings to enforce his rights through the Courts before a public hearing.”*

185. Dr Ali contends that the detriments which occurred after 4<sup>th</sup> February 2022, i.e. the eighteenth to twentieth detriments, were instances of victimisation within the meaning of section 27 of the EA as one of the reasons why he was subjected to them was that he caused the letter to be sent. It is common ground that the sending of the letter was a protected act within the meaning of section 27 of the EA.

## **Limitation**

186. I must consider whether the claim has been brought in time with respect to all the alleged detriments. Section 118(1) of the EA provides that a claim may not be brought: (a) after the period of six months starting with the date of the act to which the claim relates, or (b) any such other period as the court thinks just and equitable.
187. The claim form was issued on 18<sup>th</sup> March 2022, concluding a six-month period which began on 19<sup>th</sup> September 2021. Insofar as it relates to any alleged detriment falling within that period, the claim was brought in time.
188. Section 118(6) provides that conduct extending over a period is to be treated as done at the end of the period. Dr Ali submits that all the alleged detriments formed a single act and are therefore to be treated as done on 5<sup>th</sup> February 2022, the date of the most recent detriments. He relies on Comr of Police of the Metropolis v Hendricks [2003] ICR 530 CA, in which the court considered the meaning of section 76(6)(b) of the 1975 Act.

The wording of that section, though not identical to the wording of section 118(6), is not materially different. Mummery LJ, giving the judgment of the court, stated at [48] that what the claimant was required to prove was that: “*the numerous alleged incidents of discrimination are linked to one another and that they are evidence of a continuing discriminatory state of affairs covered by the concept of ‘an act extending over a period’*”. The wording of section 118(6) is “*conduct extending over a period*”. I am satisfied that both phrases mean the same thing. Dr Ali submits that all the alleged detriments in the present case are linked in that way.

189. Alternatively, Dr Ali submits, pursuant to section 118(1)(b) of the EA, that it would be just and equitable to permit him to bring a claim in respect of any alleged detriment that falls outside the six-month period. He relies upon: the seriousness of the allegations; the fact that he was busy with the leadership contest in August and September 2021; and that prior to 19<sup>th</sup> September 2021 the attempts to remove him as a spokesperson were at an early stage and it was not clear that they would succeed.
190. In Adedeji v University Hospitals Birmingham NHS Trust [2021] EWCA Civ 23, the Court addressed the approach that a tribunal should take when considering whether it was just and equitable to permit a claim to be brought outside the statutory limitation period under section 123(1)(b) of the EA. The section is analogous to section 118(1)(b) of the EA but applies to claims for contraventions of the EA brought in the Employment Tribunal. Underhill LJ, who gave the judgment of the Court, stated at [37]:
- “The best approach ... is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) [in British Coal Corporation v Keeble [1997] IRLR 336 at [8]] ‘the length of, and the reasons for, the delay’.”*
191. Complaints about the following alleged detriments are potentially time-barred: first, third (in part), fourth – fifth, sixth (in part), seventh (in part), eighth – twelfth, and twentieth (in part). Of these, the seventh alleged detriment set in motion the chain of actions which led to Dr Ali’s removal as spokesperson. Whether it was part of a plan to achieve that objective will be relevant when deciding whether, taken together with the other actions in the chain, it formed a single act extending over a period. I shall consider that question in due course. Even if it did not, the seventh alleged detriment would still form relevant contextual material when considering whether Dr Ali’s removal was discriminatory.
192. The third, sixth and twentieth alleged detriments each form part of separate courses of conduct which began before 19<sup>th</sup> September 2021 and finished afterwards. The complaints about them are not time-barred.
193. The first, fourth – fifth and eighth – twelfth alleged detriments do not form part of a course of conduct which began before 19<sup>th</sup> September 2021 and finished afterward.

Section 136 of the EA is not engaged when deciding whether separate contraventions constitute a single act. Although all these alleged detriments were no doubt motivated by Dr Ali's appointment as spokesperson, the evidence does not give rise to the inference that they were part of a co-ordinated campaign (and would not do so even if section 136 were engaged). They might have been, but there is no material from which I can properly conclude that they were.

194. It would not be just and equitable to extend time. The length of the delay varied from almost four months to just before the end of the limitation period. The Green Party submits that Dr Ali is a resourceful and intelligent man who had ample opportunity to seek legal advice and to bring his claim earlier but chose not to do so. I agree. All breaches of the EA are serious, but these alleged breaches are not so serious that I should extend the limitation period. Had Dr Ali not been removed as spokesperson, I doubt that they would have been the subject of litigation. Considering them would not help me decide whether he was removed because of his protected belief. Nonetheless, I shall briefly consider them.

#### **The time-barred complaints**

195. As to the first alleged detriment, and by way of context, on Friday 4<sup>th</sup> June 2021, James Rush, the Green Party's press manager, emailed a "*Diary Note*" to various media outlets informing them that on Monday 7<sup>th</sup> June 2021 the Green Party would unveil its new team of spokespeople, who would be introduced by Mr Bartley. The email mentioned that this would be a photo op and that interview time with Mr Bartley and the spokespeople would be available. Mr Rush also emailed the home affairs and security correspondent of "*The Independent*" newspaper and suggested that she speak to Dr Ali, either on the day or at a subsequent introduction.
196. On 7<sup>th</sup> June 2021, following the launch, the Green Party issued a press release, also posted on their website, which included remarks attributed to Mr Bartley promoting the new spokespeople as "*megaphones for a movement*" and biographical details for each of them. The press release mentioned that pictures would be available from the launch and gave an email address to contact for more information (including, presumably, the pictures) and to arrange interviews.
197. The same day, under the heading "*Meet Our New Spokespeople*", the Green Party tweeted bullet point details of all the spokespeople, including Dr Ali, together with a photograph of each spokesperson. Mr Bartley retweeted that tweet from his own Twitter account to his 50,000 or so followers.
198. In the circumstances, Dr Ali received ample, supportive, publicity from the launch for his new role as spokesperson. He suffered no detriment from the fact that the launch video and group photographs were not circulated. It did not change his position for the

worse or put him at a disadvantage. Neither could it reasonably be considered to have done so.

199. Mr Bartley and Prof. Scott Cato gave evidence, which I accept, that they had no involvement in the decision whether to post, as this was a staff matter. Specifically, Mr Bartley said, it was an internal comms responsibility. However, the sting of the allegation relates to the reason why the launch video and group photos were not circulated, not to who authorised this. Mr Bartley accepted it was surprising that they were not circulated, but put this down to administrative oversight, stating that the internal Co-ordinators for GPEx “*weren’t particularly on the ball*”. I was referred to some WhatsApp messages between members of the core comms team. One message says, “*Updated spokesperson video*” and included a hyperlink. The conversation then turns to correcting a typo in Dr Ali’s name in the Twitter graphic. The messages display no hostility towards him.
200. In the above circumstances, I find that much the most plausible explanation for why the launch video and group photos were not circulated is “cock-up” rather than “conspiracy”.
201. As to the fourth alleged detriment, the WHGP did not write the open letter as an agent for the Green Party as the letter was written on behalf of the WHGP, not on behalf of the Green Party as a whole. It was not approved in advance by GPEx and GPEx did not put WHGP up to writing it. That would have been sufficient to dispose of this particular limb of the claim.
202. However, the fourth alleged detriment merits further consideration because it raises an issue which runs through many of the alleged detriments. Namely, how Parliament intended to balance, in the context of a political party, the prohibition against direct discrimination by an unincorporated association under the EA with the rights to freedom of thought, conscience and religion under article 9, freedom of expression under article 10 and freedom of assembly under article 11 of the Convention.
203. To recap, under section 3 of the HRA, the EA must in so far as possible be read in a way which is compatible with the Convention rights. Section 12 of the HRA provides that when considering whether to grant any relief which might affect the exercise of the Convention right to freedom of expression, the court must have particular regard to the importance of that right. However, the rights guaranteed by articles 9, 10 and 11 may be limited in the ways set out in those articles.
204. One approach would be to interpret section 13 of the EA as prohibiting any less favourable treatment whatsoever by one person of another on grounds of belief, and hence section 101 of the EA as prohibiting any less favourable treatment whatsoever by an association of a member on grounds of belief. However, such an absolutist interpretation would be inconsistent both with the practice of democracy in the United

Kingdom and the provisions of articles 9, 10 and 11 of the Convention, as well as with the numerous statutes and regulations governing the conduct of elections.

205. For example, once every five years, throughout the United Kingdom, voters engage in an act of mass direct discrimination against other persons on grounds of the protected characteristic of belief by casting their votes in a general election. People may cast their votes for many reasons, but these include voting for a candidate because of the beliefs of that candidate or their political party, or voting to prevent a particular candidate from getting elected, e.g. by voting tactically, because of the beliefs of that candidate or their political party. Both cases will involve the voter treating other candidates less favourably because of the beliefs of those candidates or their political parties. Candidates, party workers, and commentators in the mainstream media and the blogosphere will publicly encourage the electorate to support the candidates and parties whose protected beliefs best fit their own and reject the candidates and parties whose protected beliefs do not. That, in the United Kingdom at any rate, is how democracy works. I am satisfied that Parliament did not intend the EA to prohibit direct discrimination of that kind, as to do so would interfere with the foundations of a democratic society.
206. However, the present case is concerned with the interaction of the EA and the HRA in the context of associations, and in particular, political parties. In my judgment, articles 9, 10 and 11, when read together, guarantee (amongst others) the rights of members of a political party to advocate for or against policies and positions adopted or proposed to be adopted by their party; criticise the beliefs or conduct of other members insofar as they are inconsistent with the policies and positions thus advocated, even using language which their opponents might find offensive; and to advocate and organise within the party to promote members who support the said policies and positions and against members who do not. I shall refer to these as “fundamental party rights”.
207. The question is whether these rights are subject to section 101 of the EA. Applying the criteria in Higgs, the rights conferred by the EA are prescribed by law and pursue a legitimate aim, which in the case of section 101 includes prohibiting direct discrimination by an association on the grounds of religion or belief. I must consider whether, by enacting section 101, Parliament thought it necessary in a democratic society to interfere with articles 9, 10 and 11 so as to curtail fundamental party rights.
- (1) Section 101 corresponds to a pressing social need, namely to protect members from discrimination. It is plausible that Parliament thought that objective sufficiently important to justify the limitation of the rights protected by articles 9, 10 and 11.
  - (2) Section 101 is rationally connected to that objective.

- (3) However, the objective could be largely achieved without interfering with the fundamental party rights guaranteed by articles 9, 10 and 11 as there are many other areas to which section 101 applies.
- (4) Therefore, balancing the severity of the effects of section 101 on the rights of a political party and its members to exercise the fundamental party rights guaranteed by articles 9, 10 and 11 against the importance of preventing discrimination, I draw the reasonable inference that Parliament did not intend to erode those fundamental rights as it was not satisfied that this was necessary in a democratic society. Accordingly, “*detriment*” in section 101 should be construed so as to exclude the fundamental party rights.
208. Clause 11.3 of the MCC, which provides that members must not behave in a discriminatory manner towards someone on the basis of any protected characteristic that person may have, is to be construed accordingly.
209. I accept that by joining the Green Party members agree to abide by the MCC which contractually limits their right to freedom of expression under article 10. The WHGP letter may well have breached clauses 9 (“*Safe space and civility*”) and 13 (“*Infighting and cliques*”) of the MCC. But although a breach of the MCC might found an action for breach of contract, in my judgment it is not relevant to the question of whether Parliament intended the EA to interfere with fundamental party rights.
210. It is relevant that the WHGP letter complains about Dr Ali’s public conduct in his capacity as a prominent political activist within the Green Party, not about what he has said or done in his private life. As stated earlier in this judgment, the scope of permissible criticism of public figures under article 10 is greater than for private figures.
211. In democracy as practised in the United Kingdom, being subjected to the invective and manoeuvrings of political opponents are part of the price one risks having to pay for active participation in the life of a political party. For the court to step in and try to stop this would be to rebalance the relationship between the courts and the polity in a manner which I am satisfied was not within the contemplation of Parliament when it enacted the EA. Analogous considerations would apply with respect to the courts’ approach under the EA and the HRA to doctrinal disputes within religious organisations.
212. Dr Ali made two specific complaints about the WHGP letter. First, that it accused him of transphobia. Thus the letter stated that in summary, Dr Ali “*has a history of transphobia and discriminatory behaviour towards minority groups*”. These allegations are not abusive in the sense that, e.g., a racial slur is abusive: they are not merely alleging that Dr Ali’s manifestation of his gender critical belief is worthy of hatred and contempt. Rather, like terms such as “racist”, “sexist” and “fascist”, they are factual allegations about words or actions of which reasonable people would disapprove, made in language which would be appropriate if the allegations were true.



Dr Ali contends that the allegations are untrue and are for that reason abusive. This is very close to an allegation of defamation.

213. The County Court has no jurisdiction to hear defamation claims, and I doubt that Parliament intended through the EA to give it an analogous jurisdiction by the back door. For example, there are a number of defences to a claim for defamation under the Defamation Act 2013 which do not apply to a claim under the EA. There are no obvious policy reasons why it should be easier to establish in the County Court what is in effect a claim for defamation than it would be to establish an actual claim for defamation in the High Court.
214. Dr Ali's second complaint is that the WHGP letter called for his removal as spokesperson. Promotion and demotion in political parties often depends, among other factors, on the political beliefs of the candidate. The decision maker may appoint or demote a candidate because the candidate shares their beliefs or alternatively because the candidate comes from a wing of the party with different beliefs. Factions within a party may lobby for or against the appointment of a candidate based on the candidate's political beliefs. To suggest that the manifestation of a candidate's political beliefs, provided that it is not unreasonable, should play no role in their appointment, which is the logical consequence of saying that a candidate should not be treated less favourably because of the manifestation of their political beliefs, rather defeats the point of democratic politics. Yet that is the logic of Dr Ali's position. I am quite satisfied that this is not what Parliament intended and that the activity comprising the second complaint is not prohibited by the EA.
215. As to the fifth alleged detriment, if Dr Ali believed that the signatories to the WHGP letter breached the MCC then his remedy was to bring a complaint under the Party's internal complaints procedure or, possibly, an action for breach of contract. I cannot see that members of GPEx or anyone else in the Green Party were obliged to make a complaint on his behalf or that they discriminated against him by not doing so. Indeed, in relation to the third alleged detriment, Dr Ali said that he did not expect them to.
216. Dr Ali complains that GPEx did not take any other action to defend him, e.g. put out a supportive statement. As to that, in February 2021 a statement by the leadership of the Green Party (Co-Leaders, Deputy Leader, GPRC co-chairs, GPEx Chair) was posted on the members' section of the Green Party website which reminded members that they had all agreed to abide by the MCC and outlined some suggestions to ensure that members communicated in ways that were consistent with it. There is no evidence before the court as to whether the statement was still in place while Dr Ali was spokesperson. No further statement along those lines was posted on the Green Party website during his incumbency. The statement did not refer to named individuals or specific controversial issues. When re-examined, Prof. Scott Cato said that a statement about one person would not have been appropriate and that she had not done one in 30 years.

217. I am not satisfied that there are facts from which the court could decide, in the absence of explanation, that the Green Party discriminated against Dr Ali by not putting out a statement, or taking other measures, to support him, and in light of Prof. Scott Cato's evidence I am satisfied that they did not.
218. I shall take the eighth and ninth alleged detriments together. I am satisfied that, with respect to both allegations, Ms Berry was speaking in her capacity as Acting Leader and a Green member of the London Assembly. She had not resigned as the former, although she did not intend to stand for re-election, and did not intend to resign as the latter. However, for the reasons given in relation to the WHGP letter, her words were not discriminatory within the meaning of the EA.
219. I shall take the tenth and eleventh alleged detriments together. I reject the allegations for much the same reasons as I have rejected the fourth and fifth allegations relating to the WHGP letter. The Young Greens are a separate organisation within the Green Party with their own Constitution and Executive Committee. Although they have strong institutional links with the Green Party they are not an agent of the Green Party and do not speak for it.
220. The Young Greens' motion about which Dr Ali complains made two specific criticisms of him. The first criticism, that he had claimed it was unprofessional for a medical professional to wear a badge advertising their sexuality in a patient setting, did not involve his protected belief. The second criticism, which concerned his public statements related to his motion to prohibit GenderGP from operating in the UK, did. The motion did not accuse Dr Ali of transphobia or employ other inflammatory terms. Dr Ali's complaint is that the motion called for his removal as spokesperson. For the reasons given in relation to the WHGP letter, this call was not discriminatory within the meaning of the EA.
221. GPEX did not discriminate against Dr Ali by not taking action against the Young Greens as I am satisfied that it would not have taken action had the Young Greens passed a motion calling for the removal of a spokesperson for having previously advocated some other controversial position.
222. As to the twelfth alleged detriment, I accept that Ms Berry and Mr Hamdache were acting as agents of the Green Party when they made the communications complained of because they appeared to be speaking with the authority of the positions which they held. Although they did not speak with the actual authority of the Party they were speaking with its ostensible authority. However, for the reasons given in relation to the fourth alleged detriment, the EA does not prohibit members of the Green Party from calling for the electorate to vote for those members' preferred candidates and reject the other candidates, or for nominations to be reopened. The communications complained of were therefore not discriminatory within the meaning of the EA.

223. I note that the Acting ERO and the Deputy Returning Officer, who were acting as actual agents of the Green Party, acted promptly to address the video posted by Ms Berry, and that within a matter of days she issued a tweet saying that the views which she had expressed in the video were her personal views. That was in my judgment sufficient to cure any unfairness which her video might have caused to Dr Ali and the other candidates she did not consider worthy of support.
224. As to Tamsin Omond, they were tweeting in their capacity as a candidate running for office and not as an agent of the Green Party.

### **The non-time-barred complaints**

225. I shall take the third, sixth and twentieth alleged detriments together. I reject these complaints for the reasons given in relation to the fifth alleged detriment. Moreover, as to the third alleged detriment, what Dr Ali is really complaining about is that GPEX failed to intervene to protect him from online harassment. However, for purposes of harassment, religion or belief is not a protected characteristic.
226. The seventh, thirteenth to fifteenth and seventeenth to eighteenth alleged detriments form the core of Dr Ali's claim. They are really one complaint. Namely, that he was dismissed as spokesperson because of the manifestation of his gender critical belief. I do not propose to consider each of these alleged detriments in detail, but I shall make some general observations.
227. GPEX concluded that the procedure to appoint Dr Ali and others as spokespersons was procedurally defective for the reasons identified in Mr Browne's 21<sup>st</sup> June 2021 paper. This is a conclusion that GPEX could reasonably have reached although I acknowledge that Prof. Scott Cato does not accept that the procedure was defective. GPEX took reasonable steps to remedy any procedural defects by setting up the SSMG and the IWG and by revising the SGCC. On the face of it, there was nothing discriminatory about these proposals, which applied to all spokespeople equally and did not mandate a particular outcome. Mr Bartley gave oral evidence, which I accept, that as Acting Leader he was very concerned about the process for selection because he would have to explain what the spokespeople said, e.g. about Syria, and was worried about what other skeletons there might be in spokespersons' closets. He was emphatic that the Browne Paper would have been written irrespective of any concerns about Dr Ali.
228. However, even though I did not have the benefit of witness evidence from Mr Browne, it is obvious from the contemporaneous documents summarised above that in drafting the Browne Paper and throughout the subsequent process he was motivated in substantial part by a desire to have Dr Ali removed as spokesperson because of the manifestation of Dr Ali's protected belief. Although the SSMG and the new SGCC were ostensibly neutral, he intended them to lay the groundwork for his subsequent

complaint against Dr Ali. This may have been “dirty politics”, but for the reasons given in relation to the fourth alleged detriment it was not discriminatory behaviour within the meaning of the EA.

229. Prof. Scott Cato gave oral evidence that at the 27<sup>th</sup> October 2021 SSMG meeting the focus was not on how Dr Ali had behaved in the past but on how he would behave in the future. She stated that he was backwards looking whereas the SSMG were forward looking. On 29<sup>th</sup> October 2021, consistent with this approach, Prof. Scott Cato sent a follow-up email to other members of the SSMG in which she stated: “*I guess our decision is about whether we think Shahrar will respect authority and/or listen to advice.*” She added that Dr Ali: “*thought he was merely responding to the direct allegations, not to the question of whether he should continue as a spokesperson*”.
230. That Dr Ali should think so was hardly surprising given that at para 54(c) of her witness statement Prof. Scott Cato stated: “*in advance of the meeting he [i.e. Dr Ali] had received the document compiled by Matt Browne which focused very clearly on breaches of the Code of Conduct and I had made it clear to him that this would be the focus of our discussions*”.
231. Although I have adopted Dr Ali’s terminology in referring to the Browne Complaint and the Alston Complaint, neither Complaint adopts that language. The Browne Complaint refers to breaches of the SGCC and was expressly prepared for the SSMG. The Alston Complaint, which was emailed to Prof. Scott Cato, was expressed to be “*a letter formally expressing our concern*”. Although the Browne Complaint included an allegation of bringing the Green Party into disrepute and the Alston Complaint included an allegation of breach of the MCC, the focus of both Complaints was on breaches of the SGCC. They were not intended as complaints of a disciplinary nature within the meaning of the SOPD, and the SSMG could reasonably have concluded that it should consider them.
232. The Browne Complaint focused on events during the leadership election in August and September 2021, although not all the conduct complained of was referable to the election. However Prof. Scott Cato stated at para 45 of her witness statement that when considering the breaches of the SGCC and Dr Ali’s performance as spokesperson, communications he made during the election period were intentionally not considered by the SSMG. She explained this was because during an election period candidates can post points contrary to party policy so long as they make it clear where it differs and that they are not speaking on behalf of the Green Party. If that was indeed the case, it is not clear why Dr Ali was ever sent a copy of the Browne Complaint and invited to comment.
233. Prof. Scott Cato was responsible for taking the minutes of the 27<sup>th</sup> October 2021 meeting. She sent Dr Ali an email on 1<sup>st</sup> November 2021 stating that she respected his right to take his own view of what happened during the meeting, but that the minutes

were her view, as chair, which was shared by the other members of the SSMG. They were not open to negotiation. As she said in oral evidence, Dr Ali could not correct the minutes as he was not a committee member. However, Prof. Scott Cato stated in the email that she was prepared to add his comments to the end of the minutes so that his dissent was recorded. That was a reasonable position for her to take. Dr Ali did not take her up on her offer. He criticised the minutes as inaccurately recording that he had expressed a desire to dissent from party positions. But the criticism is misplaced because the passage to which he refers records what Prof. Scott Cato said at the meeting. The fact that he disagreed with her remarks is irrelevant. The allegation that the minutes were discriminatory is not well founded.

234. The minutes record that some of the members of the SSMG were concerned about how Dr Ali would behave going forward. Prof. Scott Cato:

*“acknowledged and validated his wish to express himself freely and dissent from party positions, but made it clear that this freedom has to be traded off against the authority accorded to those who speak on behalf of the party”.*

Ms Reason:

*“raised a question to explore how Shahrar might respond to the SSMG holding him closely to his brief and requiring him to no longer comment on gender critical issues. She asked whether, when asked or advised not to do something like attend an Institute of Ideas event, he would be willing to comply.”*

235. On 30<sup>th</sup> October 2021, Prof. Scott Cato emailed Dr Ali proposing a follow up meeting to discuss whether it was in the best interests of the Green Party for him to continue as spokesperson. He replied setting various pre-conditions for a meeting. There was further correspondence between them on the issue, including an offer by Prof. Scott Cato of mediation, but no meeting or mediation took place. I am satisfied that if Dr Ali had decided to attend such a meeting, he could have done so. Incidentally, in her 30<sup>th</sup> October 2021 email Prof. Scott Cato appeared to have changed her mind about whether the SSMG had jurisdiction to consider the Browne and Alston Complaints, stating: *“the issue of complaints made against ... you fall outside our remit”.*

236. The SSMG met on 17<sup>th</sup> December 2021. The minutes record:

*“Molly [i.e. Prof. Scott Cato] said that she felt Shahrar is failing to respect the authority of SSMG and of herself as External Communications Coordinator. It is difficult for him to continue as spokesperson when his relationship with her, as ECC, and the SSMG has so seriously broken down.”*

237. Ms Clegg states at para 60 of her witness statement that at the GPEx meeting on 5<sup>th</sup> February 2022 there was a strong feeling that all reasonable steps had been taken to enable Dr Ali to fulfil his role as spokesperson in line with the requirements of the SGCC. This may carry a suggestion that consideration was given to whether, given more time, Dr Ali would reconcile himself to work within the party’s requirements.

238. However, I am satisfied that GPEX dismissed Dr Ali as spokesperson because of the past manifestation of his protected belief. As Ms Reason, who was chair of GPEX at the time, tweeted later that day, GPEX removed Dr Ali from his role as party spokesperson “*for breaches of the Speakers’ Code of Conduct*”. On a fair reading of the tweet, this is a reference to historic breaches of the SGCC, not anticipated breaches in the future. She stated in her witness statement that the final vote reflected “*the clear finding that he had breached the Code of Conduct*”. I am satisfied that the breaches related to Dr Ali’s protected belief. Thus the minutes of the GPEX meeting refer to “*his use of his platform as a spokesperson to champion a position counter to party policy*”. This is consistent with the Green Party’s pleaded case that Dr Ali acted in breach of the SGCC because he expressed views that were contrary to the Party’s policies whilst acting as spokesperson and that he did not work for party unity rather than division; and that he was removed from his role because of those breaches.
239. Ms Lagoutte’s voice note of the GPEX meeting, dictated immediately after it finished, stated: “*But nonetheless [then External Comms Coordinator] was like, ‘there’s loads, there’s a 20-page report, but we don’t have time to see this, to show this’, and that was pretty much it really.*” This suggests that the breaches referred to by Ms Reason were those mentioned in the Browne Complaint (14 pages) and possibly also the Alston Complaint (4 ½ pages). There is no suggestion that GPEX took into account a short, updated complaint from Mr Browne dated 19<sup>th</sup> January 2022.
240. The parties join issue as to whether the manifestations of Dr Ali’s protected belief were contrary to party policy as contained in its policy documents. The issue arises in part because some of the Green Party’s earlier policies have not been rewritten to take account of its policies on trans rights. The Green Party has defended this claim on the basis that Dr Ali’s gender critical belief is contrary to Party policy. That is a matter for the Green Party, not the court, to determine, and provided that the Party’s determination is reasonable, which it was, the court will not interfere.
241. For example, on 5<sup>th</sup> September 2021, Dr Ali re-tweeted a tweet which he had first tweeted on 20<sup>th</sup> July 2020: “*A woman is commonly defined as an adult human female and, genetically, typified by two XX chromosomes. These facts are not in dispute nor should they be in any political party.*” This might reasonably be construed (and probably would have been by many of its readers) as a challenge to the statement in Green Party Policy RR530 that: “*The Green Party recognises that trans men are men, trans women are women, and that non-binary identities exist and are valid.*” The Browne Complaint contains a number of other examples of statements by Dr Ali which might reasonably be considered to be inconsistent with the “*Trans Rights*” section of the policy document “*Rights and Responsibilities*”.
242. Dr Ali was at pains to stress that he advanced his protected belief in a moderate and reasonable fashion. But he could sometimes be deliberately provocative. For example, the Alston Complaint mentions a poll (and includes a hyperlink to it) which Dr Ali

tweeted after the leadership election had concluded which asked whether: “*belief in immutability of sex should be precondition of entry into a political party?*” This poll provided some evidence for Mr Bartley’s observation when cross-examined that: “*Dr Ali thrives on conflict. It’s how he operates and has done for years.*” Mr Bartley was no friend of Dr Ali, but he impressed me as a shrewd and candid witness.

243. GPEX were entitled to dismiss Dr Ali as spokesperson because of the past manifestation of his gender critical belief. For the reasons given in relation to the fourth alleged detriment, this would not without more breach section 101 of the EA. If GPEX had decided not to dismiss Dr Ali as spokesperson on this occasion, they could have done so in the future, even if (which I have found it would not) section 101 would otherwise have protected him from removal for his protected belief, for manifestations of that belief which were objectionable in that they breached Party policy. The Green Party could not, in any event, have been compelled to maintain Dr Ali as a spokesperson if (outside of a party election period) he expressed beliefs that were inconsistent with Party policy, or if they reasonably concluded that he would do so, as this would infringe their article 9(1) rights by obliging them to manifest a belief which they did not hold.
244. However, Dr Ali’s removal was procedurally unfair. Prof. Scott Cato told Dr Ali at the SSMG meeting on 27<sup>th</sup> October 2021 that they did not want to focus too heavily on the complaints. The SSMG report did not make any findings that Dr Ali had breached the SGCC, but merely stated: “*Most members of the SSMG believe that his decision to champion a highly controversial position in the trans rights debate is not compatible with him acting as a spokesperson for the party*”. Yet GPEX dismissed Dr Ali for breaches of the SGCC. Although the minutes refer to “*his use of his platform as a spokesperson to champion a position counter to party policy*”, they do not record any findings that he has breached the SGCC, or identify any specific breaches or the provisions breached. Ms Lagoutte’s voice note suggests that the breaches were those alleged in the Browne Complaint, and possibly also the Alston Complaint, but that GPEX did not actually read those Complaints (“*we don’t have time to see this, to show this*”). Neither the Browne Complaint nor the Alston Complaint had been adjudicated upon by the SSMG. It appears that GPEX simply assumed that the former, and possibly the latter, was well founded.
245. There is no contemporaneous evidence to suggest that Dr Ali’s removal as spokesperson was based on some other allegations. There was some attempt at trial to suggest that he was dismissed in part because, irrespective of any manifestation of his gender critical belief, he wasn’t doing his job as spokesperson properly. For example, Ms Reason stated at para 62 of her witness statement that he did not fulfil the role of raising the party’s “*role*” (profile?) on policing and security, the issues covered by his portfolio – a contention which Dr Ali disputed. However that is not how the defence was pleaded, and I am satisfied that it did not form part of the reason why he was dismissed. If it had done, the defence would have said so.

246. Dr Ali's removal was, in summary, procedurally unfair in that he was dismissed for breaches of the SGCC although GPEX failed to identify, consider, or make findings in relation to any such breaches. They could not have relied upon findings of the SSMG, because the SSMG had not made any findings of breach. If, as appears probable, GPEX relied upon the Browne Complaint, there was a further element of procedural unfairness in that that the acts of which it complained fell within the Party's election period, when candidates were permitted to post points contrary to party policy, and should therefore not have been held against him.
247. I must consider whether this procedural unfairness was discriminatory. Article 11 would not prevent me from holding that it was. Protection from discrimination is a pressing social need and, applying the Bank Mellat test, I am satisfied that imposing a requirement of procedural fairness on the Green Party's process for the removal of spokespersons would be proportionate to the legitimate aim pursued by section 101 and that this would give effect to the legislative intent behind the EA. This is not an onerous requirement, and I anticipate that in the case of a political party the courts would give the decision maker a wide margin of discretion.
248. The appropriate comparator is a hypothetical one: a spokesperson whose removal or suspension was recommended by the SSMG on the ground that the spokesperson's decision to champion some other highly controversial topic was not compatible with their continuing to act in that role. For example, advocating western military intervention in Syria.
249. Would the procedure adopted in relation to the comparator have been substantially the same? I have wrestled with this question but have been compelled to conclude that I really don't know. On the one hand, it might be that the procedural shortcomings in Dr Ali's removal merely reflect an imperfect grasp of the requirements of a fair hearing and were unrelated to the particular controversial topic which he had championed. On the other hand, I cannot exclude as a reasonable possibility that GPEX cut procedural corners specifically because a majority of its members disapproved of Dr Ali's protected belief.
250. In short, there are facts from which the court could decide, in the absence of any other explanation, that the Green Party contravened section 101 of the EA. Under section 136 of the EA, I must hold that the contravention occurred unless the Green Party shows that it did not. The Green Party has failed to discharge that burden. Accordingly, I find that by removing him as spokesperson in a procedurally unfair way, GPEX discriminated against Dr Ali because of his protected belief contrary to section 101 of the EA. To that extent, his claim succeeds.
251. The Green Party took reasonable steps to notify Dr Ali promptly of the decision to remove him a spokesperson. If and insofar as he complains that the manner of the



notification and public announcement of the decision was discriminatory, his complaint is without merit.

252. Turning to the sixteenth alleged detriment, Ms Reason gave evidence that a spokesperson does not have exclusive rights to speak on their particular brief, and that where a controversial and high profile issue, such as the Policing Bill, was garnering parliamentary and press attention, elected representatives and/or parliamentarians would speak on the issue. They would be most likely to attract press attention. Ms Clegg gave evidence to like effect and stated that all four attendees had expertise on the contents of the Bill.
253. On 13<sup>th</sup> January 2022, Mr Nix emailed Prof. Scott Cato to ask why Mr Polanski rather than Dr Ali was quoted in an email announcing the Green Party's opposition to the Police Bill to inquire about the process behind that decision. Prof. Scott Cato emailed a reply the following day which stated that the demonstration was focused on the threat to democratic rights and civil liberties through the amendments to the Policing Bill undermining the right to protest, hence the decision to quote Mr Polanski as the spokesperson for Democracy and Citizen Engagement. She stated that the decision about who it was most appropriate to quote in a press release was made by the Party's media staff.
254. When Prof. Scott Cato was cross-examined about the decision making process, she said that she wasn't clear about that but guessed that it began in Baroness Jones' office. This was a reasonable inference as Baroness Jones, who had deep experience of policing issues, was leading the Party's opposition to the Bill. This was relevant as Baroness Jones was a staunch supporter of Dr Ali.
255. I accept the Green Party's explanation for their choice of representatives to attend the protest. The decision about who to invite was pro-elected representatives and parliamentarians not anti-Dr Ali. I am satisfied that it did not discriminate against Dr Ali on grounds of his protected belief as that belief did not play a part in the decision. The fact that the decision most likely came from the office of Baroness Jones reinforces my finding that it was not targeted at Dr Ali.
256. Turning finally to the nineteenth alleged detriment, for reasons given in relation to the fourth alleged detriment, Ms Berry's tweet of 5<sup>th</sup> February 2022 did not breach section 101 of the EA.

### **Victimisation**

257. It is common ground that the sending of Cole Khan's letter before action of 4<sup>th</sup> February 2022 was a protected act within the meaning of section 27 of the EA. I accept that if the letter caused GPEX to treat Dr Ali less favourably when deciding whether to confirm

or remove him as spokesperson, that would have been a detriment and that consequently he would have been unlawfully victimised by GPEX.

258. Ms Clegg gave evidence that she briefed the GPEX meeting on the letter before action. This was recorded in the minutes to the meeting. Ms Reason stated in her evidence that the letter did not lead to a wide discussion and was “*not unexpected*”. I am satisfied that it did not cause GPEX to treat Dr Ali less favourably. There is no evidence that it did, and in light of the recommendation in the SSMG Review that Dr Ali should be suspended I am satisfied that he would have been removed irrespective of the letter.
259. The proposal to remove rather than suspend Dr Ali was first raised on 3<sup>rd</sup> February 2022, i.e. prior to the letter before action, in a Loomio thread between members of GPEX. It was accepted by GPEX and I have no doubt that it would have been accepted irrespective of the letter before action.
260. I am satisfied that the Cole Khan letter did not influence Ms Berry’s tweet of 5<sup>th</sup> February 2022 or the Green Party’s not taking action against members who allegedly breached the MCC. The reason for Ms Berry’s tweet was the decision to remove Dr Ali as spokesperson. For the reasons given in relation to the fifth alleged detriment, GPEX never had any intention of bringing a complaint against individual members in relation to their treatment of Dr Ali, and Dr Ali gave evidence that he did not expect them to, or of issuing a statement in his support. The Cole Khan letter made no difference one way or the other.
261. I am bound to say that the allegation of victimisation struck me as something of a makeweight.

## **Remedy**

262. I have upheld in part Dr Ali’s claim that he was unlawfully discriminated against. He claims damages for injury to feelings caused by that discrimination. I have considered whether there is any other disposal of his claim which would obviate the need for damages but I am satisfied that there is not.
263. The leading case on damages for injury to feelings in the context of discrimination claims is Vento v Chief Constable of West Yorkshire Police [2003] ICR 318 CA. Mummery LJ gave the judgment of the Court. At [53] he approved the summary of general principles given by Smith J in Prison Service v Johnson [1997] ICR 275:

*“(i) Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor’s conduct should not be allowed to inflate the award. (ii) Awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other*

hand, awards should be restrained, as excessive awards could, to use the phrase of Sir Thomas Bingham MR [in *John v MGN Ltd* [1997] QB 586, 611], be seen as the way to ‘untaxed riches’.

(iii) Awards should bear some broad general similarity to the range of awards in personal injury cases. We do not think that this should be done by reference to any particular type of personal injury award, rather to the whole range of such awards. (iv) In exercising that discretion in assessing a sum, tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings. (v) Finally, tribunals should bear in mind Sir Thomas Bingham’s reference to the need for public respect for the level of awards made.”

264. Guidance is to be found at the end of the judgment in Vento at [65] – [66]:

“65. Employment tribunals and those who practise in them might find it helpful if this court were to identify three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury. (i) The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000. (ii) The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band. (iii) Awards of between £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings.

66. There is, of course, within each band considerable flexibility, allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case.”

265. The Vento figures have been updated periodically in line with inflation. The Fourth Addendum to Presidential Guidance, issued on 26<sup>th</sup> March 2021, provides:

“In respect of claims presented on or after 6 April 2021, the Vento bands shall be as follows: a lower band of £900 to £9,100 (less serious cases); a middle band of £9,100 to £27,400 (cases that do not merit an award in the upper band); and an upper band of £27,400 to £45,600 (the most serious cases), with the most exceptional cases capable of exceeding £45,600.”

266. The Fifth Addendum to Presidential Guidance, issued on 28<sup>th</sup> March 2022, provides:

“In respect of claims presented on or after 6 April 2022, the Vento bands shall be as follows: a lower band of £990 to £9,900 (less serious cases); a middle band of £9,900 to £29,600 (cases that do not merit an award in the upper band); and an upper band of £29,600 to £49,300 (the most serious cases), with the most exceptional cases capable of exceeding £49,300.”

267. The Sixth Addendum to Presidential Guidance, issued on 24<sup>th</sup> March 2023, provides:

“In respect of claims presented on or after 6 April 2023, the ‘Vento bands’ shall be as follows: a lower band of £1,100 to £11,200 (less serious cases); a middle band of £11,200 to £33,700

*(cases that do not merit an award in the upper band); and an upper band of £33,700 to £56,200 (the most serious cases), with the most exceptional cases capable of exceeding £56,200.”*

268. The claim form was issued on 18<sup>th</sup> March 2022, within (but right at the end of) the period covered by the Fourth Addendum.

269. I have found two further cases to be of assistance. They are both mentioned in McGregor on Damages 21<sup>st</sup> Edition. In Saunders v Edwards [1987] 1 WLR 1116 CA (McGregor [43-009]), the court considered an award of general damages to compensate the plaintiffs for disappointment and inconvenience during their occupation of a flat up to the date of trial. Bingham LJ (as he then was) stated at 1135 D – F:

*“The intervention of statute has made general damages for pain and suffering and loss of amenity in personal injuries actions a special case. The damages awarded here for inconvenience and disappointment have no special features. The judge's award was clearly intended to compensate the plaintiffs for the inconvenience they had suffered throughout their occupation of the flat up to the date of trial and for disappointment during the same period. It was a single global award, modest in amount but intended to cover the past and the future. It is somewhat analogous to an award of general damages to a defamation plaintiff for mental distress and suffering, which have never, as I think, been augmented by interest up to the date of the trial. I consider this approach to be correct in principle, because in neither case can the damages be realistically seen as having accrued due to the plaintiff at a certain time in the past and as having thereafter been wrongly withheld from him.”*

270. In Bullimore v Potheary Witham Weld Solicitors [2011] IRLR 18 (McGregor [43-006]), Underhill J, giving the judgment of the EAT, stated at [31]:

*“As a matter of principle, employment tribunals ought to assess the quantum of compensation for non-pecuniary loss in ‘today’s money’; and it follows that an award in 2009 should – on the basis that there has been significant inflation in the meantime – be higher than it would have been had the case been decided in 2002. But this point of principle does not require tribunals explicitly to perform an uprating exercise when referring to previous decided cases or to guidelines such as those enunciated in Vento. The assessment of compensation for non-pecuniary loss is simply too subjective (which is not a dirty word in this context) and too imprecise for any such exercise to be worthwhile. Guideline cases do no more than give guidance, and any figures or brackets recommended are necessarily soft-edged.”*

271. In my judgment the right approach is as follows. I should assess damages for injury to feelings as at the date of trial. The various Addenda to Presidential Guidance provide that the range of figures which the court may award is governed by the date of presentation of the claim. However, once the court has allocated the claim to the appropriate band within the Vento guidance, it may take into account the effect of inflation when positioning the claim within that band.

272. The assessment of damages is not altogether straightforward. Although the procedural unfairness involved in GPEX’s decision to dismiss Dr Ali was a one-off instance of

discrimination, its consequences for his standing in the Green Party and his political career were significant. However, had GPEX acted in a procedurally fair manner, it is highly likely that they would have removed him as spokesperson anyway. They did not have to find a breach of the SGCC to do so, and, as documented in the SSMG minutes for 17<sup>th</sup> December 2021, there was a complete breakdown of trust and confidence between them and Dr Ali which would have made his continuation as spokesperson problematic.

273. In my judgment, the appropriate figure should lie towards the top of the lower band or bottom of the middle band. I award damages of £9,100. Dr Ali does not claim pre-judgment interest on that sum.
274. Dr Ali also seeks a declaration that he has been subjected to unlawful discrimination. I grant the declaration sought, although it does not obviate the need for damages.

### **Summary**

275. Dr Ali's core complaint was that his removal as spokesperson discriminated against him on the ground of his protected belief. I agree, but on the narrow ground that GPEX discriminated against him by removing him as spokesperson in a way that was procedurally unfair.
276. Dr Ali's remaining allegations of discrimination are dismissed. Without prejudice to the generality of this judgment, this was for one or more of the following reasons: the factual basis of the alleged discrimination was not made out; the alleged discriminators were not agents of the Green Party; and/or one or more of articles 9, 10 and 11 of the Convention provided a complete defence to the allegations.
277. A number of allegations are time-barred. I am satisfied that it would not be just and equitable to extend the time for bringing them, but if I had extended time, I would have dismissed them on the merits.
278. The claim of victimisation is dismissed as I am satisfied that the Cole Khan letter of 4<sup>th</sup> February 2022 did not influence the Green Party to act adversely towards Dr Ali.
279. Applying the Vento guidance, I award Dr Ali damages for injured feelings of £9,100. I also grant a declaration that he has been subject to unlawful discrimination.
280. I shall hear the parties as to costs and any consequential directions.