



Neutral Citation Number: [2016] EWHC 2058 (QB)

Case No: HQ16X02575

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 08/08/16

**Before:**

**MR JUSTICE HICKINBOTTOM**

-----

**Between:**

- (1) CHRISTINE EVANGELOU
- (2) THE REV. EDWARD MUNGO LEIR
- (3) HANNAH FORDHAM
- (4) CHRIS GRANGER
- (5) FM (a child by his Litigation Friend HW)

**Claimants**

- and -

**IAIN McNICOL**  
**(sued as a representative of all members of**  
**the Labour Party except the Claimants)**

**Defendant**

-----  
-----

**Stephen Cragg QC, Nikolaus Grubeck and Imogen Proud** (on judgment)  
(instructed by **Harrison Grant**) for the **Claimants**

**Peter Oldham QC, Julian Milford and Edward Capewell** (on judgment)  
(instructed by **William Sturges LLP**) for the **Defendant**

Hearing date: 4 August 2016

-----

**Approved Judgment**

**Mr Justice Hickinbottom:**

**Introduction**

1. On 28 June 2016, Jeremy Corbyn MP, the Leader of the Labour Party (“the Party”), lost a vote of no confidence by the members of the Parliamentary Labour Party of which he is, *ex officio*, also Leader; and, on 11 July, Angela Eagle MP formally announced her intention to challenge Mr Corbyn’s leadership of the Party, having obtained the support of 20% of Parliamentary Labour Party and the European Parliamentary Labour Party. Under the Party’s rules, that triggered a leadership election.
2. The following day, the National Executive Committee of the Labour Party (“the NEC”) met to agree the procedure and timetable for that election, for which it was responsible. It resolved that those allowed to vote would be:
  - i) members of the Party who had held six months’ continuous Party membership as at that day (i.e. who had been members since 12 January 2016);
  - ii) affiliated supporters; and
  - iii) registered supporters of the Party of over 18 years of age, who were on the electoral role, whose applications for registration were received between 18 and 20 July 2016, and who had paid a fee of £25.
3. The Claimants each became members of the Party between 12 January and 12 July 2016. As such, because of the six month membership requirement, they cannot vote in the leadership election as members; although the NEC has confirmed that those who are adults can vote as registered supporters if, in addition to being members, they also applied to be registered supporters (with the appropriate fee) in the window of 18 to 20 July 2016.
4. In this action, the Claimants’ primary claim is that the six month membership condition imposed by the NEC was in breach of the Labour Party’s constitution as set out in its 2016 Rule Book (“the Rule Book”), and thus in breach of the contract that mutually binds members of the Party. They seek an order for specific performance of that contract, to enable them (and others in their position) to vote as members in the leadership contest. Alternatively, they say that statements made on behalf of the Party that, if they became members, they would be allowed to vote in the leadership election, resulted in an additional contract term, outside the Rule Book, to that effect; or amounted to a material misrepresentation.
5. The Fifth Claimant, FM, is a minor; and, in the further alternative, he challenges the age restriction on registered supporters on the ground that it is discriminatory. That restriction means that, in practice, he cannot vote in the leadership contest at all, either as a member or as a registered supporter.
6. The Party is an unincorporated association. The Defendant, Iain McNicol, is the General Secretary of the Party, sued as a representative of the members of the Party.

7. Before me, Stephen Cragg QC and Nikolaus Grubeck have appeared for the Claimants, and Peter Oldham QC and Julian Milford for the Defendant. I thank them all for their submissions, and their commendable efforts in ensuring that this claim was prepared in good time and in good order.

**The Labour Party Rule Book: The Law**

8. As recognised by this court in Choudhry v Treisman [2003] EWHC 1203 (Ch) (“Choudhry”), the Labour Party is an unincorporated association with rules, currently set out in the Rule Book, which constitute a contract to which each member adheres when he joins the Party.
9. It is well-established that:
- i) A person who joins an unincorporated association does so on the basis that he will be bound by its constitution and rules, if accessible, whether or not he has seen them and irrespective of whether he is actually aware of particular provisions (John v Rees [1970] 1 Ch 345 at page 388D-E).
  - ii) The constitution and rules of an unincorporated association are generally regarded as intended to be comprehensive, and further terms will not readily be implied (Dawkins v Antrobus (1881) 17 Ch D 615 at page 621 (“Dawkins”) per Sir George Jessel MR, without demur from the Court of Appeal on appeal).
  - iii) The constitution and rules of an unincorporated association can only be altered in accordance with the constitution and rules themselves (Dawkins at page 621, Harrington v Sendall [1903] Ch 921 at page 926 and Re Tobacco Trade Benevolent Society (Sinclair v Finlay) [1958] 3 All ER 353 at page 355B-C).
  - iv) The proper interpretation of the constitution and rules of an unincorporated association, like any other contract, is generally a matter of law for the court. The court focuses on the wording of the contract as it stands. If the words are clear and unambiguous, then there is no need to look outside them. However, if the natural and ordinary meaning of the words is unclear or ambiguous, then the court will consider the relevant context, being concerned to identify the intention of the parties by reference to “what a reasonable person having all background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean” (Chartbrook Limited v Persimmon Homes Limited [2009] UKHL 38 at [14] per Lord Hoffmann; recently approved in Arnold v Britton [2015] UKSC 36 at [15] per Lord Neuberger of Abbotsbury PSC). I consider this proposition, uncontroversial so far as it goes, in the context of the specific provisions of the Rule Book below (see paragraphs 14-16).
10. In this case, the Rule Book thus generally sets out the rights and obligations of each Party member in relation to other Party members, including the scope of powers the organs of the Party such as the NEC.

## **The Labour Party Rule Book: The Provisions**

11. Chapter 1 of the Rule Book sets out “Constitutional rules”. Clause IV(1) and (2)(C), and Appendix 1 to the Rule Book (see paragraph 23 below), emphasise the commitment of the Party to open democratic values.
12. Clause VI(1) establishes the Labour Party Conference, in which power within the Party ultimately resides. That clause provides that:

“The work of the Party shall be under the direction and control of Party conference.... Party conference shall meet regularly once in every year and also at such other times as it may be convened by the NEC.”

Clause I(4) provides that:

“The Party shall give effect, as far as may be practicable, to the principles from time to time approved by Party conference.”

13. Still within Chapter 1, Clause II(1) establishes the NEC, “which shall, subject to the control and directions of Party conference, be the administrative authority of the Party”. The NEC is therefore the executive administrator of the Party, exercising powers as prescribed in the Rule Book. It has an express obligation “to uphold and enforce the constitution, rules and standing orders of the Party...” (Chapter 1 Clause VII(3)(A)); and it particularly bears the obligation to give effect to the principles approved by party conference.
14. Although the Rule Book may be amended only by Party conference (Chapter 1 Clause X(4)), Clause X(5) provides:

“For the avoidance of doubt, any dispute as to the meaning, interpretation or general application of the constitution, standing orders and rules of the Party or any unit of the Party shall be referred to the NEC for determination, and the decision of the NEC thereupon shall be final and conclusive for all purposes. The decision of the NEC subject to any modification by Party conference as to the meaning and effect of any rule or any part of this constitution and rules shall be final.”
15. That clause was considered by Stanley Burnton J in Choudhry, where he said (at [68]):

“The members of the Party have agreed by [this clause] that it is the NEC who shall determine disputes as to the interpretation of the rules. The effect of the provision is that the NEC can adopt and apply any honest and reasonable interpretation of the rules.”
16. Mr Oldham relied upon that passage, and urged me to take a similar approach in this case. However, whilst of course those observations of Stanley Burnton J are worthy of considerable respect:

- i) They were made in an *ex tempore* judgment on an application for interim relief. They were also *obiter*: the judge concluded that the interpretation of the rules adopted by the NEC in that case was not only honest and reasonable, but “correct” (see Choudhry at [70]).
- ii) As Stanley Burnton J accepted, in considering the rules, there is a “correct” interpretation, i.e. one that is right as a matter of law. Other interpretations are wrong as a matter of law. I have the same misgivings as Foskett J (see Foster v McNicol [2016] EWHC 1966 (QB) (“Foster”), a judgment arising out of a different decision made by the NEC at that same 12 July 2016 meeting, at [57]): it is difficult to see how a court could conclude that an erroneous interpretation of the rules was reasonable.
- iii) It is not clear whether Stanley Burnton J’s observations on Clause X(5) were made purely on the basis of the words used in that clause, or whether he had in mind past authorities. He does not refer to Dawkins in his judgment – it is not clear whether he was even referred to that authority – but the concepts to which he alludes are considered there. The case concerned the expulsion of a member from the Travellers’ Club. In the Court of Appeal, Cotton LJ said this (at page 634):

“We are not here to sit as a Court of Appeal from the decision of the committee or of the general meeting [of the club]. We are not here to say whether we should have arrived at such a conclusion or not, and the question whether the decision was erroneous or not can only be taken into consideration in determining whether that decision is so absurd or evidently wrong as to afford evidence that the action was not *bona fide*, but was malicious or capricious, or proceeding from something other than a fair and honest exercise of the powers given by the rule.”

However, Cotton LJ had earlier identified two questions with which the court was concerned, namely (i) whether the actions of the committee and general meeting were “within the terms of the rule”, and (ii) if so, whether the exercise of those powers had been proper, i.e. that the proceedings under the relevant rule had been carried out with “irregularity or unfairness” (page 635). That distinction is important. The passage which I have quoted was concerned with the latter question, not the former.

- iv) In my view, the proper interpretation of the Rule Book, as a contract between Party members *inter se*, is a matter of law for the courts. Clause X(5) does not – indeed, cannot – oust that jurisdiction. However, it is clear that the Rule Book (and thus each Party member) gives the NEC a substantial discretion – “area of judgment” would be a better term – in how the rules are *applied*, which is a very different thing. The breadth of that area of judgment is emphasised in several places within the Rule Book, although sometimes phrased in terms of the NEC having the power to determine interpretation or “adjudicate” upon disputes as between members (see, in addition to Chapter 1

Clause X(5), Chapter 1 Clause VIII(4) (quoted at paragraph 19 below) and Chapter 2 Clauses II(2) (quoted at paragraph 18 below)).

- v) Therefore, for example, in a soft-edged obligation such as Chapter I Clause 1(4), the NEC has a considerable leeway in how principles approved by Party conference are given effect; and the NEC has a considerable area of judgment over procedure, timetable and the general of conduct the election of a national officer (including Party Leader) under Chapter 4 (see paragraphs 20-21 below).

17. Chapter 2 of the Rule Book sets out the rules governing membership of the Party. Clause I, under the heading “Conditions of membership”, provides:

“1. There shall be individual members of the Labour Party who shall pay a subscription in accordance with these rules, subject to a minimum as laid down in Clause III below.

2. The term ‘individual members of the Party’ shall encompass all grades of membership laid down in Clause III below; all such members shall have equivalent rights within all units of the Party except as prescribed in these rules.”

The rest of Clause I sets out various other conditions, such as a requirement to be not less than 14 years of age (Clause I(3)(A)). Clause III(1) requires payment of the relevant subscription; and Clause III(4)(B) provides that, to participate in selection of candidates “at any level”, a member must be fully paid up “by the notified relevant date”. The minimum standard rate of subscription is currently £3.92 per calendar month, although there are reduced rates for various categories such as youths, the unwaged and retired. The rate for an unwaged member is £1.96 per month.

18. Chapter 2 Clause II, under the heading “Membership procedures”, provides, so far as relevant to this claim:

“(1) Individual members of the Party shall be recruited into membership in accordance with these rules and any applicable NEC guidelines which shall be issued to Party units and affiliated organisations from time to time...

(2) Without prejudice to any other provision of these rules, and without prejudice to its powers under Chapter 1.VII, the NEC shall be empowered to determine any dispute or question which may arise in respect of membership of the Party, either by considering the matter itself or by referring the matter to the NEC Disputes Panel for a decision. In such cases the NEC’s decision, or the decision of the Disputes Panel as approved by the NEC, shall be final and binding.

(3) ...

(4) The NEC shall issue procedural guidelines on issues relating to membership from time to time...”.

19. Clause II(2) reflects the wider power of adjudication given to the NEC in Chapter I Clause VIII(4), as follows:

“The NEC shall have the power to adjudicate in disputes that may arise at any level of the Party, including between [Constituency Labour Parties (“CLPs”)], affiliated organisations and other Party units, and between CLPs, other Party units and individuals in those units and in disputes which occur between individual members or within the Party organisation. Where the rules do not meet the particular circumstances, the NEC may have regard to national or local custom and practice as the case may require. The NEC’s decisions shall be final and binding on all organisations, units and individuals concerned.”

20. Chapter 4 of the Rule Book deals with elections of internal national officers of the Party, including the Party Leader. It provides:

**“Clause I**

**General Principles**

1. Internal Party elections for officer posts and the membership of national committees shall be conducted in a fair, open and transparent manner, in accordance with the constitutional rules of the Party and any appropriate NEC guidelines.

**Clause II**

**Procedural rules for elections for national officers of the Party**

1. General

A. The following procedures provide a rules framework which, unless varied by the consent of the NEC, shall be followed when conducting elections for Party officers. The NEC will also issue procedural guidelines on nominations, timetable, codes of conduct for candidates and other matters relating to the conduct of these elections.

2. Election of leader and deputy leader.

A. The leader and deputy leader shall be elected separately in accordance with rule C below...

...

C. Voting

...

iii. An Independent Scrutineer will be appointed by the Returning Officer to oversee and verify the ballot, and the results shall be declared at a session of Party Conference.

iv. The timetable for the election, including any freeze date, and the procedures for agreeing the list of those eligible to vote must be approved by the Independent Scrutineer.

...

vi. Votes shall be cast in a single section, by Labour Party members, affiliated supporters and registered supporters.

vii. The precise eligibility criteria shall be defined by the National Executive Committee and set out in procedural guidelines and in each annual report to conference.

viii. No person shall be entitled to more than one vote. Votes shall be cast by each individual and counted on the basis of one person one vote”

I pause there merely to note that, as part of the election timetable (for which the NEC is responsible: Chapter 4 Clause 2(1)(A)), it is envisaged that a “freeze date” may be applied. That is nowhere defined. As will become apparent, however, its proper scope lies at the heart of this claim. I consider it further below (especially at paragraphs 71 and 77-83).

21. Chapter 4 Clause II(2)(B)(ii) provides that, where there is no vacancy, a nomination must be supported by 20% of the combined Commons members of the Parliamentary Labour Party and members of the European Parliamentary Labour Party.
22. Chapter 5 concerns the selection, rights and responsibilities of candidates for elected (external) public office, which, it is common ground do not apply to (internal) leadership elections which are governed by Chapter 4. Chapter 5 Clause I(1) sets out general rules for “selections” of candidates, as follows:

“The following rules shall be observed in the selections of all prospective elected representatives:

A. Rights of members participating in the selection process

i. All individual eligible members of the Party with continuous membership of at least six months (who reside in the electoral area concerned) are entitled to participate in selections. Any exceptions to this must be approved by the NEC.

B. Nominating criteria of members standing for public office

i. In addition to fulfilling any statutory requirements for the relevant public office, persons wishing to stand as a Labour candidate must have continuous membership of the Party of at



least 12 months. Where not otherwise prevented they shall also be a member of a trade union affiliated to the TUC or considered by the NEC as a bona fide trade union and contribute to the political fund of that union. Any exceptions to these conditions must be approved by the NEC...”.

The Rule Book is therefore clear: in respect of selection processes for external posts, subject to waiver by the NEC, an otherwise eligible member may not participate unless he has six months’ continuous membership.

23. Appendix 1 to the Rule Book is the NEC’s statement on the importance to the Labour Party of its members. It includes the following:

“Members enjoy the formal democratic rights of Party membership as stated within the rules. Party members have the right to participate in the formal process of the Party, vote at Party meetings, stand for Party office and elected office as stated within the rules.”

24. Appendix 2 contains the NEC’s procedural guidelines on membership recruitment and retention. The principles governing recruitment are set out at Paragraph 1(A), as follows:

i. Individual members of the Party shall be recruited into membership in accordance with these guidelines either by the appropriate branch, constituency, national or regional Party, or by personal application.

ii. All recruitment to the Party shall be in accordance with these guidelines on membership recruitment which shall be issued to Party and affiliated organisations from time to time, and need to be read in conjunction with section two of the Party’s rules on Membership.

iii. The Party is anxious to encourage the recruitment of new members and to ensure that new members are properly welcomed into the Party and opportunities offered to enable their full participation in all aspects of Party life.

iv. The Party is concerned, however, that no individual or faction should recruit members improperly in order to seek to manipulate our democratic procedures.

v. The health and democracy of the Party depends on the efforts and genuine participation of individual who support the aims of the Party, wish to join the Party and get involved with our activities. The recruitment of large numbers of ‘paper members’, who have no wish to participate except at the behest of others in an attempt to manipulate Party processes, undermines our internal democracy and is unacceptable to the Party as a whole.”

25. Paragraph B of Appendix 2 provides for “provisional membership”, which commences from the date of acknowledgement of an application for membership and fee (Paragraph B(vii)). Unless there is an objection to the application within eight weeks, membership automatically becomes full (Paragraph B(ix)). The only restriction on the rights of a provisional member appears to be that he is unable to vote at branch meetings (Paragraph B(vii)). That is confirmed on the Party’s website (see paragraph 62 below).

### **Procedure for the Election of the Party Leader**

26. Until 1981, only members of the Parliamentary Labour Party were eligible to vote in Party leadership elections. At the Party conference, the voting procedure was changed, extending those entitled to vote to CLPs and that year trade unions, Parliamentary Members being given 30% of the vote, CLPs 30%, and trade unions 40%.
27. At the 1993 Party conference, the voting procedures were altered again. The weighting of votes in the electoral college changed, with MPs, CLPs and trade unions each being given a third of the votes; but, more importantly, the principle of “One Member One Vote” (“OMOV”) was introduced, by requiring trade unions and CLPs to ballot their members individually, with votes thereafter being allocated proportionately.
28. In 2010, the Party introduced a new category of “registered supporters”, with less than full membership, who would nevertheless have their own section of the leadership electoral college once their numbers reached 50,000. Mr McNicol explains (in paragraph 19 of his First Statement dated 29 July 2016) that the principal purpose behind the creation of the new category was “to encourage people to manifest their support for particular aspects of Labour Party policy, in a way which might eventually lead them to exchange their registered supporter status for full membership”. There therefore appear to have been two purposes behind this initiative. First, it enabled the Party to identify supporters, with a view to encouraging them into membership. Second, subject to the restrictions of the electoral system and the number trigger, it gave individuals who were not members of the Party or of affiliated trade unions an opportunity to vote in the election of the Party Leader. However, at least until 2015, there were less than 50,000 registered supporters; and so, in the event, they played no part in the selection of a leader through the electoral college.
29. In July 2013, the then Leader of the Party Ed Miliband MP asked Lord Collins of Highbury to conduct a review on how to take forward his “central objective” of transforming the Party “so that it becomes a genuinely mass membership party reaching all parts of the nation”. Lord Collins’ proposals were set out in a paper published in February 2014, “The Collins Review into Labour Party Reform” (“the Collins Review”).
30. Under the heading “OMOV in Leadership Elections”, the Collins Review proposed the abolition of the electoral college for the election of the Leader, in favour of a new system fully implementing the OMOV principle, i.e. a single section constituency with each eligible individual having one vote of equal weight. Within that, it proposed changes with regard to affiliated trade unions, so that only those members

who took the positive step of becoming “affiliated supporters” would be allowed to vote in leadership elections. It continued:

“Additionally, in line with the principle adopted in Refounding Labour, individuals outside of affiliated unions should be able to register as supporters and participate in the ballot. But they should be required to sign a declaration affirming their support for Labour values. Furthermore, in order to participate in any selection, immediately prior to the ballot they would be required to pay a fee (to be determined by the NEC) and to reaffirm their support.”

That was a key proposal within the Collins Review, designed to extend the franchise for internal elections: in particular, it would enable those who were neither individual members nor members of affiliated trade unions, but who “affirmed Labour values” and paid a fee (to be determined by the NEC), to participate directly in the election of the Party Leader. The Review concluded that:

“The creation of a single section of members and supporters provides the basis for a purer form of OMOV to be used to elect the leader and deputy of the Labour Party.”

31. The Collins Review thus made the following specific recommendations:

- “• The Electoral College for leadership elections should be abolished and replaced in Party rules by a new system based on the principle of OMOV.
- Multiple voting in leadership elections should be ended.
- The eligible electorate should be composed of members, affiliated supporters and registered supporters.
- Members of affiliated organisations who are not already party members may take part in the ballot if they register with the party as affiliated supporters. This will require them to declare their support for Labour values, provide the Party with personal contact details and be on the electoral register.
- Individuals who are not already Party members or members of an affiliated organisation may take part in leadership elections by registering with the party as a supporter. This will require them to declare their support for Labour values, provide the Party with personal contact details, be on the electoral roll and pay the party a fee.
- The NEC should agree the detailed procedures for leadership elections including issues regarding registration, fees and freeze dates.”

It is to be noted that the Collins Review recommended that “the eligible electorate” in respect of leadership contests should include “members”; and, unlike the other two categories of elector (i.e. affiliated supporters and registered supporters), the Review did not propose any criteria restricting the eligibility of members to vote for Party Leader.

32. With regard to registered supporters, Mr McNicol explains (paragraph 21 of his First Statement):

“It was deemed necessary that registered supporters should be on the electoral roll, in order to ensure that applications were genuine i.e. people were who they said they were, and lived where they said they lived. The Party was aware that a system of registered supporters, without the checks applied to members, was potentially open to abuse, and thought that one pragmatic way of preventing that abuse was to insist that registered supporters should be on the electoral roll.”

33. Appendix 1 of the Collins Review comprised proposed rule changes, which included, *verbatim*, those rules which now form Chapter 4 Clause II(2)(C) (the relevant parts of which are quoted in paragraph 20 above). The recommendation that “the eligible electorate” should include members, affiliated supporters and registered supporters is transposed into the rules in Clause II(2)(C)(vi):

“Votes shall be cast in a single section, by Labour Party members, affiliated supporters and registered supporters”.

34. The Collins Review was adopted at the Party conference in March 2014, and the rule changes proposed by the review were specifically adopted. Mr McNicol again explains (paragraph 39 of his First Statement):

“... [T]he recommendations in the Collins Review were adopted at Conference, and form part of the corpus of rules governing the party. The principles upon which the Party is based require it to comply with the democratic will of the membership, as expressed through Conference. Accordingly, the NEC could have been open to challenge if it had departed from the Collins Review proposals.”

35. Mr McNicol continues (paragraph 21 of his First Statement):

“The principles in the Collins Review were applied to the 2015 leadership election, which resulted in the election of Mr Corbyn”.

In that election, he says, it was very widely publicised that non-members could become registered supporters of the Party on payment of £3, and take part in the leadership election. Ballot papers were despatched on Friday 14 August 2015, and the ballot closed on 10 September 2015. A “freeze date” of two days before the start of the ballot was applied, so that any members or registered supporters wishing to take part in the election had to join the Party or apply for registration by noon on

Wednesday 12 August 2015. Mr McNicol explains (see paragraph 22 of his First Statement):

“The reason both for the very truncated freeze date, and the very small payment of £3, was to encourage wide participation in the election, that being the approach that the Party decided to adopt at the time”;

in other words, it was in accordance with the principles and recommendations of the Collins Review as adopted by Party conference.

### **Pre-2016 Leadership Elections**

36. The relevant evidence before me in relation to previous Labour leadership elections is as follows.

37. “Freeze dates” have been applied in every leadership election since 1994. Mr McNicol says (paragraph 16 of his First Statement):

“Indeed, it is inevitable that they must be applied, because otherwise in theory new members could join right up until the very last day of the ballot, and still claim entitlement to vote.”

There needs to be a date upon which the electorate is frozen, so that, in practical terms, they can be balloted.

38. There is specific evidence about the 2007, 2010 and 2015 leadership elections.

39. In 2007, the NEC met on 13 May to agree the formal timetable for the election of the Leader and Deputy Leader, with a “Freeze date for new members to join the Labour Party” of 12.30pm on 1 June. The ballot took place on 22 June 2007.

40. In 2010, the NEC met on 18 May, when the minutes record:

“The NEC agreed that there is no 6 month qualification for this ballot and that all members who have not lapsed their membership as at 12.30pm, Wednesday, 8 September will be eligible to vote. For the purposes of this election, the NEC also agreed to waive the eight week eligibility rule. Eligible to vote therefore means on the national membership system and not lapsed membership.”

41. Mr Oldham submitted that this was an indication that, in 2010, the NEC considered imposing a voting requirement of six months’ membership, but decided not then to do so; but that is not the natural meaning of the minute, which is that the NEC simply (and correctly) acknowledged that the six month qualification in Chapter 5 Clause I(1)(A)(i) of the Rule Book (quoted at paragraph 22 above) did not apply to Chapter 4 internal elections.

42. In any event, ballot papers were to be distributed on 16 August, and the result declared immediately prior to the Party conference on 25 September 2010.

43. The General Election in May 2015 prompted the resignation of Mr Miliband as Party Leader, and an election for a new Leader. That election was the first to be conducted under the post-Collins Review OMOV system. On 17 July, the NEC issued a timetable under which it was said that “all members, registered supporters and affiliated supporters who join before 12pm on the 12 August can vote...” Ballot papers were to be sent out on 14 August, to be returned by 10 September, with the result being announced at a Party conference on 12 September 2015. Mr Corbyn was duly elected Leader.
44. The Party’s 2015 Annual Report (which, as I understand it, was presented at the September 2015 Party conference) emphasised the importance to the Party of the new arrangements for the election of Party Leader. A chapter of the Report was dedicated to the then very recent leadership election, which concluded:

“By the start of July we already had tens of thousands of new people sign up – as members, affiliated supporters or registered supporters. A fantastic achievement so far, but we know that after the May elections, there is more to do.

The innovations introduced to the way we conduct Leadership elections are an important first step but over the months and years we will need to continue to reach out and re-engage with the electorate if we are to return a Labour Government in 2020.”

### **The 2016 Leadership Election**

45. On 23 June 2016, by way of a referendum, the United Kingdom voted to leave the European Union. That resulted in a period of considerable political activity.
46. As I have already described, on 28 June, Mr Corbyn faced a vote of no confidence from members of the Parliamentary Labour Party. 172 Labour MPs voted in favour of the no confidence motion, with 40 voting against. Following considerable speculation as to what might happen next, on 11 July, Ms Eagle formally announced her intention to challenge Mr Corbyn as Party Leader, on the basis that she had the support of 51 members (i.e. 20%) of the Parliamentary Party or the European Parliamentary Party required to bring a challenge under Chapter 4 Clause II(2)(B)(ii).
47. Accordingly, the NEC met on 12 July 2016 to agree the procedure and timetable for a leadership election. For that meeting, as General Secretary, Mr McNicol prepared a paper headed “Labour Leadership Election 2016 – Procedure and timetable” (“the Procedures Paper”). Draft minutes of the meeting are also available, as is the final public document published immediately after the meeting, “Leadership Election 2016 – Procedural Guidelines and Timetable” (“the Published Procedures Paper”).
48. As to eligibility to vote, the Procedures Paper proposed, under the heading “Elector Eligibility Check” (at paragraph 20):

“Labour Party members on the national membership system and not lapsed from membership at the date set on the timetable will be eligible to vote. Affiliated supporters and Registered

Supporters, as defined by the NEC, who have been registered with the Labour Party at the date set on the timetable will be eligible to vote.”

49. With regard to proposed qualifications for registered supporters wishing to vote, those were set out in paragraph 35 of the Procedures Paper, as follows:

“Qualifications

- Must be over 18
- Must be on the Electoral Register with a valid polling number
- Must supply a valid email address, home address and date of birth, and be able to pay the fee online
- In all other respects must meet the qualification criteria of membership of the Labour Party
- Pay a fee of £25
- Must be validly registered by 5pm on Thursday 14 July 2016...”

50. Importantly, the rubric at the head the timetable stated:

“**Timetable and Freeze Date**

The Special Conference at end of the Collins Review concluded that all selection timetables should be, once started, as short as possible. The Collins Report also states: ‘The NEC should agree the detailed procedures for leadership elections including issues regarding registration, fees and freeze dates.’ The Party requires members to hold six months’ continuous party membership on the freeze date to be eligible to take part in a selection.”

51. The timetable itself then went on to say – by the first date in the timetable, namely “Tuesday 12 July” – “Timetable agreed and published. Freeze date for membership eligibility. Registered Supporters applications open”. Registered supporters were to be given until 14 July to apply. Ballot papers were to be dispatched on 8 August, and closed on 31 August, with a view to the result being announced at a special conference on 3 September 2016.
52. The condition that “the Party requires members to hold six months’ continuous party membership on the freeze date to be eligible to take part in a selection” chimes with Chapter 5 Clause I(1)(A)(i) (quoted at paragraph 22 above), which of course does not apply to a leadership election. Furthermore, in his First Statement (at paragraph 17), Mr McNicol says, somewhat ambiguously, that:

“[W]hen the NEC has decided ‘freeze dates’ which did not require 6 months’ for past leadership elections, it has done so by way of explicit derogation from, or at least reference to, the ‘6 month’ principle”.

Mr Cragg submitted that that again suggests that, as at 12 July 2016, Mr McNicol considered the six month membership requirement in Chapter 5 applies to leadership election under Chapter 4.

53. However, Mr McNicol denies that this requirement was mistakenly incorporated into the 2016 procedure. He says that there were three reasons for requiring members to have joined the Party by 12 January 2016 to be eligible to vote in the leadership election (paragraphs 35-37 of his First Statement), namely:

i) By Chapter 5 Clause I(1)(A)(i), members are required to have six months’ membership before they can vote in the selection of candidates for elected office, and:

“The general premise behind that requirement is that members should be able to show (by the length of their membership) that they have not joined the Party simply to select a candidate, but have joined because they are committed to the Party’s principles and programme as a whole. That rationale applies no less to a leadership election, and it was logical to apply the principle by analogy.” (paragraph 35).

ii) The Party was concerned that individuals had become members or registered supporters before the 2015 leadership election merely in order to vote for candidates, and without the intention of participating otherwise in the Party’s activities; and, indeed, it seemed that some individuals may have done so to subvert the Party’s processes for the election of its Leader.

iii) The fact that very large numbers joining the Party, particularly as registered supporters, up to two days before the opening on the ballot in 2015, created considerable practical problems in vetting the applicants.

54. Mr Cragg, polite as ever, but firmly, made it clear that he did not think much of this proffered rationale. The whole purpose of the Collins Review proposals for the election of Party Leader was to enable those who, without necessarily having the commitment to join the Party as a member, held “Labour values”, supported the Party and wished to be involved in the selection of its Leader; and the rationale for the six month requirement appeared to be inconsistent with the principles and specific recommendation of the Review. In 2015, it seems that the main practical problems arose from registered supporters, not from members; and, in this election, it was still open to those who wished to vote to register as supporters in the post-12 July window. They would have to be subject to such vetting as the Party considered appropriate, and would not be the subject of any requirement to show that they had an intention of participating in the Party’s activities but only that they affirmed their commitment to “Labour values”.



55. Nevertheless, Mr Cragg accepted – quite rightly – that this challenge was not based on irrationality; it was made on the basis that, whether or not the NEC might have acted reasonably in imposing the condition, it simply did not have the power to do so. This was the foundation of his main ground of claim, to which I shall turn shortly (see paragraphs 68 and following below)
56. To continue with the chronology, the draft minutes of the 12 July 2016 meeting show that a number amendments were proposed to the procedures put forward in the Procedures Paper, namely that:
- i) registered supporters should have seven days (not two days) to sign up (rejected; although the window for registered supporter applications was moved from 12-14 July to 18-20 July 2016);
  - ii) the freeze date should be 24 June 2016 (rejected, the minute reading: “.... the recommendation in the paper stands: that the Party requires members to hold six months’ continuous membership on the freeze date to be eligible to take part in a section”); and
  - iii) the fee for registered supporters be £25 rather than £12 (accepted).
57. Mr McNicol explains (paragraphs 37 of his First Statement) that he originally proposed a fee of £12 to discourage “paper applications”, and to reflect the additional costs of hiring staff to vet the registered supporter applicants. He says there were two reasons for raising it to £25 (paragraph 41):
- i) For the further discouragement of ‘paper members’.
  - ii) The minimum standard Party membership fee for an unwaged member is around £26 per annum (in fact, it seems, £23.52: see paragraph 17 above), that being the fee for unwaged members. It was logical to bring the fee for registered supporters into rough alignment with that minimum Party membership fee.
- If members who had joined and paid the fee were not allowed to vote, that logic is perhaps not obvious; but, again, the rationale for this is not relevant to the claim as put.
58. With those amendments, the proposals and timetable in the Procedures Paper were agreed by the NEC; and the Published Procedures Paper was released on Friday 15 July 2016. That was in much the same form as the Procedures Paper discussed at the 12 July meeting, with the amendments to which I have referred. Paragraph 20 (concerning “Elector Eligibility Check”, quoted at paragraph 48 above) and the rubric before the timetable (quoted at paragraph 50 above) were identical. However, added to the timetable itself was a new first line, with a date of “Tues 12 Jan”, “Join the Labour Party on or before this date to vote in the leadership election”
59. The Party uses Electoral Reform Services Limited (“ERS”) to administer its elections, including sending out ballot papers, counting votes, and making first drafts of the relevant documentation. ERS also acts as the Independent Scrutineer. Following the NEC’s meeting, the Party contacted ERS to obtain approval of the timetable and

procedures agreed by the NEC, including the freeze date. ERS's position was that it was only able to comment on the practicalities arising from the application of the proposed arrangements, and not on the merits of the election rules themselves; in other words, it could only validate process. With that proviso, ERS approved the timetable and procedures, including the freeze date, in a letter to Mr McNicol dated 26 July 2016.

60. On 20 July 2016, in accordance with the timetable, the candidates for the election were announced. There were by that time but two: Mr Corbyn and Owen Smith MP.

### The Labour Party Website

61. The Claimants joined the Party through the Party's website.
62. At the time the Claimants joined, the website contained a page headed "Terms and Conditions" which stated the following:

- “• By applying to become a member of the Labour Party you agree to accept and conform to the constitution, programme, principles and policy of the Party....
- You also confirm that you are not a member of any other registered political party (save the Co-Operative Party); and you are not a member of any organisation incompatible with membership of the Labour Party.
- Your provisional membership rights commence from the date your membership is recorded on the national membership list.
- Your provisional membership lasts eight weeks and during that time you can attend your Labour Party meetings in a non-voting capacity and your membership can be rejected – you would be advised in writing and depending on the reason you could have a right of appeal.
- Full membership rules and procedures are available in the Labour Party rule book.”

63. Until 13 July 2016 (i.e. at all material times), the website contained a page headed "Membership explained", which included the following paragraph:

#### **“Where could my membership take me?**

As a member, you'll be a key part of our election winning team. *You'll be eligible to vote in leadership elections*, you can help shape party policy, you can attend local meetings and you can even stand as a candidate.

So whether you want to chip in to help us reach our goals because you share our values, or because you have ambitions to

serve your community and country, the only place to start is through joining the Labour Party as a member.

Was that everything you wanted to know? Click here to join now.” (emphasis added).

64. From 13 July 2016, the phrase, “You’ll be eligible to vote in leadership elections...” has been omitted; and the website has included the following further paragraphs with regard to that election:

**“Labour Party members**

Any eligible Labour Party member who became a member on or before 12 January 2016 will be entitled to a vote.

**Registered Supporters**

Registered Supporters who signed up between 5pm on Monday 18 July 2016 and 5pm Wednesday 20 July 2016.”

Across the payment screen there has been the further following warning about joining the Party as a member:

“Please note that this will not entitle you to a vote in the current leadership election.”

**The Consequences of the NEC Membership Voting Requirement**

65. The evidence before me is that the Party had 388,407 members as at 10 January 2016, which rose to 515,000 by 8 July, almost all of the increase being accounted for by new members joining after the referendum vote to leave the European Union on 23 June 2016. Therefore, it seems that the six month membership requirement imposed by the NEC on 12 July 2016 will mean that approximately one quarter of the members of the Labour Party will not be able to vote as members in the leadership election. Some of those excluded – the evidence before me gives no indication of the proportion – applied to be registered supporters in the 18-20 July 2016 window, and will be able to vote as such. However, minors over the age of 14 years, who are able to be members of the Party, are unable to be registered supporters.
66. Although some of the Claimants have indicated that they joined the Labour Party in late June 2016 to support a specific candidate in the leadership election, there is no evidence before me as whether the inclusion of the Party members excluded by the six month membership requirement would benefit one or other of the candidates.

**The Claimants**

67. Each of the Claimants became members of the Party in the period 12 January to 12 July 2016. Four of them joined after the European Union vote, whilst one (Mr Granger) joined on 20 January 2016. One (again, Mr Granger) said in his statement that he would probably apply to be a registered supporter, to enable him to vote in the leadership election. Some suggest that they would be unwilling, or unable for

financial reasons, to do so. In view of his age, FM was unable to join as a registered supporter.

### **The Main Claim**

68. Mr Cragg's primary ground of claim is simply put. It relies solely upon the proper interpretation of the Rule Book, and the scope of the NEC's powers under it. By Chapter 2 Clause I(2), and in line with the democratic foundations of the Party, all Party members have the same rights, "except as prescribed in these rules". By virtue of Chapter 4 Clause II(2)(C)(vi) of the Rule Book – which reflects the principle of OMOV, and the principles and recommendations of the Collins Review which have been adopted by Party conference – Party members have the right to vote in an election of the Party Leader. In the case of the Claimants, there are no relevant exceptions or derogations from that in the Rule Book. It was not open to the NEC to restrict the category of members who can vote, to those who became members before 12 January 2016, as it purported to do, whether by imposing a condition that a member must have been such for six months before a freeze date of 12 July 2016 or by fixing a retrospective freeze date of 12 January 2016. However it is looked at, under the Rule Book, the NEC did not have the power to impose that restriction.
69. Mr Oldham response was also based exclusively upon the Rule Book. He submitted that the Rule Book did give the NEC power to impose that restriction. Although he submitted that that was the clear conclusion from looking at the Rule Book as a whole, he focused in particular upon two provisions.
70. First, he submitted that Chapter 4 Clause II(2)(C)(vii) (quoted at paragraph 20 above) expressly gave the NEC the power to define voting eligibility criteria for the election of the Leader, which power is untrammelled (save possibly, he accepted, by an implied term that it would not be exercised capriciously). That express power was, alone, sufficient to enable the NEC to impose the requirement as to length of membership that it did. Indeed, unless the NEC acted irrationally, he submitted that it would be wide enough to allow the NEC (e.g.) to exclude all registered supporters from a leadership election ballot.
71. Second, and in any event, Chapter 4 Clause II(1)(A) gave the NEC express power to issue procedural guidelines on "timetable... and other matters relating to the conduct of these elections". A freeze date is part of the timetable (see Chapter 4 Clause II(2)(C)). The power to set the election timetable (and, thus, any freeze date) is, again, untrammelled. That provision gave the NEC the power to fix a freeze date at 12 January 2016 which, in substance, was what the NEC did. Even if 12 January 2016 is not properly regarded as a freeze date, this power extends to giving guidelines on "other matters relating to the conduct" of an election. A voting requirement that a member has been such for six months in any event falls within the scope of that.
72. In support of his submissions, Mr Oldham prayed in aid the provisions of the Rule Book which give the NEC the power to interpret the Rule Book (notably Chapter 1 Clause X(5): see paragraph 14 above), and its general function to uphold the Party's constitution (Chapter 1 Clause VII(3)(A): see paragraph 13 above). He also relied upon authorities that have indicated that a court should approach with great caution any claim which seeks relief in the form of interference in the processes of a political

party (see, e.g., Nattrass v United Kingdom Independence Party [2013] EWHC 3017 (Ch) at [15] per His Honour Judge Purle QC, and Foster at [11] per Foskett J).

73. Aply as Mr Oldham mounted these arguments, I prefer the submissions of Mr Cragg, for these reasons.
74. Whilst I accept and fully endorse the proposition that the courts must be careful not to interfere in political matters, the claim before me concerns the proper interpretation of the contract between members of the Labour Party *inter se*. Whilst I understand that that may have consequences within the political sphere one way or the other – although I have no evidence before me as to what those consequences might be – the question with which I have to grapple is apolitical. It is a question of pure law. The question is this: under the contract between members of the Party that is set out in the Rule Book, was there an agreement that the NEC should have the power to restrict the members who are able to vote in the leadership election to those who have continuous membership since 12 January 2016?
75. I agree with Mr Cragg: Chapter 4 Clause II(2)(C)(vi), read with Chapter 2 Clause I(2), indicates that all members are able to vote in a leadership election, unless excluded by some other provision in the Rule Book. That reflects the general democratic foundations of the Party, the Collins Review (whence Chapter 4 Clause II(2)(C)(vi) is directly derived) which intended to increase the leadership voting constituency, and the Party’s 2015 Annual Report.
76. I cannot agree with Mr Oldham’s’ bold contention that Chapter 4 Clause II(2)(C)(vii) enables the NEC to set any criteria for whom may vote in a leadership election, so long as they do not stray into capriciousness.
  - i) The “eligible electorate” for leadership contests was considered by the Collins Review, which concluded that it should include “members” without qualification. That recommendation was endorsed by Party conference. The NEC is bound to comply with and implement that recommendation, which has been transposed into the Rule Book as Chapter 4 Clause II(2)(C)(vi).
  - ii) Clause II(2)(C)(vii) does not purport to give the NEC the power for which Mr Oldham contends. Immediately following (vi) (which, as I have described, includes members in the voting constituency), it merely allows the NEC to define and set out, in “*procedural* guidelines”, “*precise* eligibility criteria” (emphasis added). In my view, those words are sufficiently clear on their face; but they are abundantly clear when read in context. They clearly do not give the NEC the power to set whatever criteria it wishes, subject only to the bounds of rationality. Read in the context of the Collins Review and the push to involve a greater number of people in the election of the leader, and in line with the NEC’s role of implementing the will of Party conference, they deal with the election process: the provision enables the NEC to define, in any honest and reasonable way it chooses, how a member or category of elector is to be identified. In this case, “members” were to be those who were on the national membership system and whose membership had not lapsed at the date set on the timetable (i.e. 8 August 2016) (see paragraphs 48 and 58 above). But the provision cannot be used to redefine “members” in a wholly artificial way, to exclude a category of members from the constituency which Party

conference (in adopting the recommendations of the Collins Review) has determined should be entitled to vote and the Rule Book provides will be entitled vote.

- iii) Whilst acknowledging the caution with which the subsequent practice of the Party can be used to interpret the Rule Book (see Choudhry at [64]-[66]), there is no evidence that the NEC has used (or sought to use) its powers in this way in the past.
77. Turning to freeze date, Mr Cragg’s primary submission is that the freeze date was fixed for, not 12 January, but 12 July 2016. That is the date consistently referred to in the contemporaneous documents as “the freeze date”; and confirmed as the “freeze date” in the response of the Party’s solicitors on 20 July 2016 to the letter before action in respect of this claim. That prospective freeze date was, in itself, within the powers of the NEC. However, Mr Cragg submits that the power to impose a freeze date cannot enable the NEC to impose a distinct voting requirement that a member has to have held membership for six months prior to the freeze date; and there is no such enabling power elsewhere in the Rule Book. However, if 12 January 2016 is regarded as, in substance, a freeze date, then, he submits, the NEC had no power to impose such a date retrospectively.
78. Although, in his oral presentation, the focus of Mr Oldham’s submissions moved to Chapter 4 Clause II(2)(C)(vii) (i.e. the NEC’s power generally to define voting eligibility criteria, dealt with above), his skeleton argument was based firmly on the premise that the question of the freeze date is one of substance and not form; and, in substance, the freeze date imposed for members was 12 January 2016. It was, he submitted, open to the NEC to impose such a retrospective date.
79. There is some force in the proposition that the freeze date is a matter of substance; but I do not consider that, even given the wide area of judgment allowed to the NEC in applying the rules, on the true construction of the rules, a freeze date can be retrospectively imposed as (on Mr Oldham’s argument) the NEC purported to do here, for the following reasons.
80. The phrase “freeze date” did not appear in the Rule Book before the 2016 version. It was introduced by the rule changes that were simply lifted out of the Collins Review. That Review does not define the term either. However:
- i) As a matter of ordinary language, “freeze date” suggests a crystallisation of matters from a current or future time, not a reversion to a past state of affairs.
  - ii) In Jeffers v The Labour Party [2011] EWHC 529 (QB), a case concerning a dispute between the Party and an affiliated organisation, freeze dates were considered; and, in a letter from the Party’s solicitors to the affiliate’s solicitors (quoted by Wyn Williams J at [29]), it was said on behalf of the Party:
    - “What the imposition of the freeze date does is prevent additional individuals seeking to become members, especially by reason of encouragement or inducement by candidates, *after the election process has begun*. This is

standard practice in the case of selection of Parliamentary and local government candidates and at Chapters 19 and 20 of the Party Rule Book and, by custom and practice, in respect of election of officers of Party units.” (emphasis added).

Mr Cragg submitted, with force, that that accurately set out what the Party meant by “freeze date” in this context; and it can be assumed that that is what those conducting the Collins Review must have taken it to mean when they adopted the term and required it to be put into the Rule Book.

81. In fact, there is no evidence that, prior to the Collins Review, “freeze date” had ever been used in any other way in any Party election, or indeed that there had ever been a suggestion that it could be used in that way. That reinforces Mr Cragg’s point.
82. Furthermore, there is no evidence of any suggestion by the Party, the NEC, the Collins Review or any member of the Party that a freeze date could be retrospective, until the Procedures Paper that Mr McNicol prepared for the 12 July 2016 NEC meeting. Indeed, the very opposite. For example, the Party’s website (see paragraph 63 above) confirmed that new members would be able to vote in any leadership election; and there is evidence before me that that was the response of the Party by email and telephone to enquiries made by some membership applicants (although, it should be said, not the Claimants). There is no evidence that it was suggested to any applicant for membership that he might not be able to vote in any future leadership election.
83. Until 12 July 2016, the NEC, the Party and its members (including the Claimants) proceeded on the basis that any freeze date would be prospective, and would not apply until the election process had begun. Prior to that date, it was the common understanding, reflected in the Rule Book, that a freeze date would not be retrospective, but rather prospective from a date after an election process had begun.
84. Those were the two main strands of Mr Oldham’s argument; but I accept his proposition that it is necessary to consider the powers of the NEC in the context of the Rule Book as a whole.
85. However, in my judgment, there is no other provision within the Rule Book which could found a power in the NEC to impose a requirement on members in the context of a leadership election, that they must have been members for a six month period. The two particular provisions upon which Mr Oldham relied do not give the NEC that power for the reasons I have given. None of the more general powers given to the NEC in the Rule Book are of any more assistance to the Defendant’s cause.
86. Generally, although the NEC clearly has considerable powers under the Rule Book, in the context of leadership elections, they are clearly powers to ensure that the process is valid. The guidelines it is able to produce in relation to an election are said to be “procedural”. Mr Oldham submitted that there was no difference between substance and procedure in this area. I accept that there may be circumstances in which the distinction between substance and procedure is difficult to draw – but I do not consider that this is such a circumstance. In my view, looking at the structures within the Party as set out in the Rule Book, it would be extremely surprising if the Rule

Book gave the NEC the power to disenfranchise one-quarter of the Party membership as it purported to do. In my firm judgment, the Rule Book gives it no such power.

87. At the time each of the Claimants joined the Party, it was the common understanding as reflected in the Rule Book that, if they joined the Party prior to the election process commencing, as new members they would be entitled to vote in any leadership contest. That was the basis upon which each Claimant joined the party; and the basis upon which they each entered into the contract between members *inter se*.
88. For those reasons, the Claimants' claim succeeds. For the Party to refuse to allow the Claimants to vote in the current leadership election, because they have not been members since 12 January 2016, would be unlawful as in breach of contract.

### **The Other Claims**

89. I can deal with Mr Cragg's other claims shortly.
90. His submissions in relation to implied terms and misrepresentation were, of course, alternatives to his main ground based upon the Rule Book. As I indicated during the course of debate, given the difficulty in implying terms into a contract such as this, and the clear indication on the website that membership of the Party was the subject of the Rule Book, had his main ground failed, it is unlikely that these alternatives would have found favour. I need say no more about them.
91. In relation FM, his claim succeeds on the main ground – he will be entitled to vote as a member, and so the fact that, as a minor, he could not become a registered supporter and qualify to vote in that way, is of no moment for him. However, Mr Cragg submitted that, even if I were to find in FM's favour on the main ground, I should keep his discrimination ground alive, because the issue it raises may be relevant to other minors who wished to vote as registered supporters.
92. I am unpersuaded. FM's claim is brought on the basis that the Party, as an association, has discriminated against him by reason of age, a protected characteristic under section 4 of the Equality Act 2010. However, any such proceedings have to be brought in the county court (sections 113 and 114 of the 2010 Act). It is true that, although this court may simply strike out proceedings wrongly brought here, it also has power to transfer the proceedings to the county court (see section 40(1)(a) of the County Courts Act 1984, and Restick v Crickmore [1994] 1WLR 420). However, in my judgment, this is not a case in which that discretion ought to be exercised. FM's discrimination claim has become hypothetical, in view of my conclusion on the main ground upon which he relied. On the basis of that conclusion, any minor who became a member between 12 January and 12 July 2016, and who fulfils other relevant criteria, will be eligible to vote in the leadership election. I have no evidence that there are any cases in which a minor wishes to pursue a discrimination claim on the basis that the registered supporter age criterion was discriminatory; but, even if there were, discrimination claims are quintessentially fact-specific, and it should be left to any such individuals to pursue their own claims in the county court.
93. As FM's discrimination claim was simply an alternative to his main claim, which has been successful, I need make no specific order in respect of it.



## **Conclusion**

94. For the reasons I have given, I shall allow the Claimant's claim.
95. The parties have, helpfully, considered the question of relief, and have agreed the following order:
- i) The judgment shall stand as declaratory relief.
  - ii) The Defendant shall pay damages of £25 to each of the Second, Third and Fourth Claimants.
  - iii) There be liberty to apply in relation to relief, on 48 hours' notice.

I shall make an order in those terms.