

Councillor Jo Bird

Membership number A674976

17 April 2019

To Labour Party Legal and Governance Unit
disputes@labour.org.uk

Re: Formal complaint to the Labour Party, General Secretary

Dear Jennie Formby,

I am writing to follow up my complaint about the Labour Party's conduct towards me (Appendix 1: Complaint to Labour, acknowledged on 5 March 2019).

I have now taken legal advice. I am writing to set out my complaints and concerns more fully, with further evidence and detail. I ask that the complaints are dealt with within 14 days. If for any reason this is not possible, I request that by return you let me have a timetable within which each of the issues referred to herein will be resolved.

My complaints are that:

- 1. The NEC decision to suspend me from the party, notified by email dated 4 March 2019, was inappropriate and disproportionate.**

By email dated 4 March 2019, I was suspended from the party purportedly following a complaint regarding comments I had made around 8 months earlier. The suspension was lifted nine days later when the investigation ended and I was issued with a 'warning' pursuant to Rule 6.I.1C.

Following suspension, I was asked to reply to written questions and did so. At no point were any allegations particularised, nor were any formal charges laid in accordance with Rule 6.I.1A. Although the letter, dated 13 March 2019, lifting the suspension and issuing the 'warning', referred to conduct "grossly detrimental to the party" (Rule 2.I.8), that conduct was not in any way set out.

It is plainly right that the Party should investigate all complaints it receives and plainly right that on occasion it should suspend members pending those investigations and any following disciplinary procedures. However, the power to suspend (Rule 6.I.1A) must only be used where appropriate and proportionate and must serve a legitimate aim. Arbitrary use of the power to suspend may cause – and has caused in my case – serious reputational damage.

The suspension was put in the public domain in the context of antisemitism, innuendo I strenuously deny.

The suspension served no legitimate aim. It did not assist the investigation of the complaint, nor did it protect the Party nor its members. It was wholly inappropriate and disproportionate. The suspension was contrary to the Chakrabarti report Recommendation 10 on Interim Suspension and advice given in the report (p18-19). The report acknowledges administrative suspension comes “with inevitable shame and opprobrium”.

Action required:

- a. The NEC should acknowledge to me that the suspension was inappropriate and disproportionate.
- b. The NEC should issue guidance as to when suspension is appropriate and proportionate and when it is not, in accordance with the Chakrabarti report.

2. Labour Party NEC disputes panel issued me with a formal NEC Warning, without particularising the allegations or finding.

By letter dated 13 March 2019 (‘the decision letter’) the NEC stated: “The Panel found you had engaged in conduct that is grossly detrimental to the party.”

At no time prior to that letter or since have any allegations against me been particularised. Prior to the decision letter I had received written questions to which I had responded. In that response I had requested particulars of what was being alleged against me and in particular how my previous conduct and words could be seen to be in breach of Party rules.

It is a fundamental requirement of a fair process that allegations are sufficiently particularised to allow for a full reply. I had given written answers to the questions posed, but given the context, I was anxious to be in as clear a position as possible to respond to any allegations that followed.

Instead of replying to my requests, the Panel has made unspecified and serious findings against me, which have damaged my reputation and that of the Party. The Panel failed to comply with Rule 6.I.1C, which states that any warning should draw “attention to the conduct which in the opinion of the NEC is ... a breach of the constitution, rules or standing orders of the party”.

Further, the ‘warning’ refers to a period of time without setting out what that period is. Both media coverage and the Labour Party response linked my suspension to antisemitism and the finding and ‘warning’ imply that the allegations have been proven. As a Jewish woman, I have found this particularly distressing.

I still do not know what the Panel found to be “conduct that is grossly detrimental to the party”.

Action required:

- a. The 'warning' should be withdrawn because it followed a manifestly unfair process: the allegations and findings have not been particularised, as required by Rule 6.1.1C.
- b. If the Party wishes to pursue a complaint against me it should particularise the allegations and allow me to answer them. In the light of the allegations and my response, the Party can then determine whether the process should move to a disciplinary process, in accordance with the clear process set out in the Party Rules.
- c. The Party should correct the misleading public impression that has been created by its Press Office (Appendix 1) by making an agreed public statement making clear that at no time have my words or conduct been antisemitic.

3. The Labour Party Press Office put undue pressure on me with threats of disciplinary action.

Head office Press Officer, Georgie Robertson phoned me on 4th March, hours before I was suspended, and threatened me with disciplinary action if I did not offer a full and wholesome apology. She failed to provide a requested, suggested apology for two crucial hours, during which time, Countdown's Rachel Riley tweeted and escalated the story.

I did apologise for any offence caused, as that was not my intention. However, I felt bullied into issuing a more fulsome apology because of the threat of disciplinary action.

Action required:

- a. Party officers should be given guidance regarding advice to members concerning making public statements where a disciplinary process might follow. In particular, no member should be advised to make an apology or face disciplinary action.
- b. The Party should acknowledge to me that undue pressure was placed on me to make an apology.

4. The Labour Party informed the media of my suspension, its lifting and sanction, thereby breaching the confidentiality of the process and breaching data regulations.

In the afternoon of 4th March, Jane Logan, North West Labour Party Press Officer sent an email to journalists (Appendix 1). She informed journalists that I had been suspended, using my name, thereby breaching confidentiality of the investigation process.

Confidentiality of the investigation process is spelt out in standard letters I have received:

"The Labour Party's investigation process operates confidentially. That is vital to ensure fairness to you and the complainant, and to protect the rights of all concerned under the Data Protection Act 2018.

I must therefore ask you to ensure that you keep all information and correspondence relating to this investigation private, and that do not share it with third parties or the media (including social media). That includes any information you receive from the Party identifying the name of the person who has made a complaint about you, any witnesses, the allegations against you, and the names of Party staff dealing with the matter.

If you fail to do so, the Party reserves the right to take action to protect confidentiality, and you may be liable to disciplinary action for breach of the Party's rules.

The Party will not share information about the case publicly unless, as a result of a breach of confidentiality, it becomes necessary to correct inaccurate reports. In that case we will only release the minimum information necessary to make the correction."

This complaint is admitted and proven by the Labour Party's own statement issued to journalists on 4 March: "*We can't comment on individual cases on the record as complaints procedures are confidential and we must uphold our responsibilities for data protection but I can confirm on background that now that we have been made aware of Jo Bird's comments, she has been suspended pending investigation.*" [My emphasis.]

Media coverage of my suspension started only 73 minutes after the relevant email was sent to myself. Shami Chakrabarti's report calls immediate publicity "a punishment in itself"¹. Further disclosures were made by the Party regarding the suspension being lifted and a sanction imposed (Appendix 2: Media coverage of Jo Bird)

There were no "inaccurate reports" to correct and therefore the only appropriate reply to media enquiries should have been in accordance with recommendations in the Chakrabarti report (p17) which advised nothing more than "any press inquiries followed up with a standard line that all complaints are followed up expeditiously". The Report added, "The Labour Party should seek to uphold the strongest principles of natural justice, however difficult the circumstances, and to resist subjecting members to a trial by media."

Disclosure of suspension placed undue pressure on decision makers to find against me and impose a sanction, for example to demonstrate zero tolerance approach.

¹Shami Chakrabarti's report, page 18-19, The Power of Interim Suspension. "in cases where an allegation that a member has acted in breach of the rules is before the General Secretary and/or his staff. Indeed, an early lesson that any new General Counsel might offer his/her colleagues is on the application of the vital legal principles of due process (or natural justice) and proportionality. I hope that my earlier comments make clear that I do not subscribe to the view that every allegation of misconduct within the Party is a factional mischief, but nor do I feel that every investigation warrants immediate publicity (a punishment in itself), nor administrative suspension (with the inevitable shame and opprobrium that is likely to follow) - even if the allegation has attracted public controversy" <https://labour.org.uk/.../Chakrabarti-Inquiry-Report...>

Action required:

- a. The Party should acknowledge to me that the Press Office emails and any other contact with journalists concerning my suspension should not have happened and were inappropriate
- b. Guidance should be issued to the Press Office and Party officials in accordance with Chakrabarti's report.

5. Labour Party linked my suspension and sanction to antisemitism, thereby damaging my reputation and that of the Party and undermining the fairness of the investigation process.

Any allegation of anti-semitism is obviously extremely serious for the individual and the Party. This underlines the requirement of basic fairness that any such allegation be properly formulated and that an initial decision that suspension is necessary and justified in the circumstances, pursuant to Rule 6.I.1A, should be reasoned, carefully determined and not arbitrary.

At no point was I informed of the necessity or proportionality for suspension, nor were any allegations ever formulated and requests to do so in my 'response' to written questions remain unaddressed.

Labour Party public statements in Appendix 1 and 2 consistently link my suspension with antisemitism.

Specifically in relation to my case, "A Labour Party spokesperson said: The Labour Party takes all complaints of antisemitism extremely seriously and we are committed to challenging and campaigning against it in all its forms. All complaints about antisemitism are fully investigated in line with our rules and procedures and any appropriate disciplinary action is taken."

As a result of Labour's conduct, I have suffered serious distress and reputational damage.

Making a public link between a Party member (here a Councillor) and antisemitism, before any allegations are even particularised, serves to both damage Labour and the fight against actual antisemitism.

Action required:

- a. The Party should acknowledge to me that no public comment should have been made inferring a link between antisemitism and my suspension.
- b. The Party should issue guidance to the Press Office and officials regarding comments that are appropriate whilst an investigation or disciplinary process is going on, in accordance with the Chakrabarti report.

6. The actions of the Labour Party exposed me to antisemitic attacks, thereby risking my health and personal safety.

It is well known within and outside the Labour Party that I am Jewish. I stated my membership of Jewish Voice for Labour at all stages of selection as a councillor. My Jewishness is stated in the material forming the implied accusations against me.

Knowing I am Jewish, the Labour Party put my mental health and physical safety at risk. I receive ongoing antisemitic abuse as a direct result of the above leaks. Police are treating abuse as hate crime incidents. I know other Labour Party members are dealing with threats of physical attack and death because of the same approach by Labour. I was so scared, I did not leave my house for the majority of days I was suspended. The Labour Party sent me a list of sources of "support available to you while this matter is being investigated". The Police are not included.

This breaches the Party's duty of care towards me as a member.

Given these known and likely risks to myself and my rights, the Labour Party has not upheld its obligations under Data Protection Act 2018. The Labour Party has not 'informed me about the breach of my data without delay, the steps it is taking to mitigate the effects of the breach, provide me with advice on what to do to protect myself and notified the Information Commissioners Office'. <https://ico.org.uk/for-organisations/report-a-breach/pdb-assessment/>

Actions required:

- a. The Press Office and NEC should acknowledge to me that investigation of the complaint should have been kept confidential and that in putting these matters in the public domain they exposed me to antisemitic abuse, or contributed to the volume of such abuse.
- b. The NEC should issue guidance to the Press Office and officials underlining the care which should be exercised in making any public comment which might cause or exacerbate antisemitic abuse.

7. The Labour Party has failed to uphold my basic Data Protection information rights

The Party has failed to fulfil or process my subject access request at all. It has been more than one month since you acknowledged receipt of my subject access request. I expect to receive a copy of all records regarding myself, without delay, including correspondence related to my recent suspension and a list to show with whom the Labour Party has shared my data.

I asked a reasonable question on 10 March, "I would like to know why and how complaints and suspension have been made at this time, in this way and by whom?" This information will help me assess the level of risk against me including personal safety.

I am concerned that the Labour Party has not handled my personal information properly. I understand that before reporting my concern to the Information Commissioner's Office (ICO) I should give you the chance to deal with it. If, when I receive your response, I would still like to report my concern to the ICO, I will give them a copy of it to consider.

You can find guidance on your obligations under information rights legislation on the ICO's website (www.ico.org.uk) as well as information on their regulatory powers and the action they can take.

Action required:

- a. The Labour Party should send a full response to my subject access request, within one calendar month. If you cannot respond within that timescale, please provide reasons and tell me when you will be able to respond.

8. The Labour Party has not responded to my complaints about bullying

I made a formal complaint about bullying from another Labour Party member on 18 March 2019. However, my complaint has not been acknowledged although it is relevant to my suspension and 'trial by media'.

Action required:

- a. Process my complaint promptly and according to proper processes

In conclusion

I have set out the remedies I seek under the heading of action required after each of my complaints. The Labour Party should honour its own rules, codes, policies and contracts with its members. The Labour Party has a duty of care towards me, including protection from bullying, breach of data and confidentiality. I expect the Labour Party to remedy the situation and ensure that this will not happen to myself nor others again.

Yours sincerely

Councillor Jo Bird