

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Hayes v Pack & Ors [2022] EWHC 2508 (KB)

High Court of England and Wales, King's Bench Division, Johnson J, 10 October 2023

An application for an injunction to prevent expulsion as a member of a political party.

Key words: Political Party, England and Wales, Member, Injunction, Expulsion, Natural Justice

1. The Liberal Democrats party (the party) is an unincorporated association and political party in the United Kingdom.
2. Ms Hayes was a founding member of the party, holding many positions over the years, and in 2020 was elected to the Federal Board of the party for a three-year term.
3. In 2022 Ms Hayes was expelled as a member of the party on the basis of a complaint by the party president.
4. A panel heard the complaint and found that Ms Hayes' conduct was not in the best interests of the party, and constituted bullying of a member of staff in breach of the party's constitution and code of conduct.
5. Ms Hayes applied to the Court for an order that:
 - The respondents be prevented from enforcing the panel's decision until the court gave a final judgment on the claim that Ms Hayes proposed to bring; and
 - The respondents do nothing to prejudice Ms Hayes' position in relation to the forthcoming elections for the President of the Federal Board of the Liberal Democrats.
6. The respondents were the President of the party, and members of the panel, who were sued as a representative of all members of the Liberal Democrats except Ms Hayes.
7. Ms Hayes did not issue a claim form, and the Court identified her claim from the materials filed in the proceedings, including alleged breaches of natural justice being an implied term to comply with the rules, and additional terms articulated in pre-action correspondence.
8. The Court noted that (at [29]):

The purpose of an interim injunction is to further the overriding objective of dealing with the case justly. An interim injunction is usually made in extant proceedings to ensure that the purpose of an otherwise viable claim is not defeated without court oversight prior to trial, and that a position is preserved that enables the court to secure the ends of justice at trial.

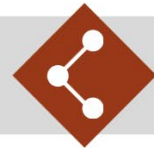
9. The Court found that Ms Hayes had ample time to start her claim (5 weeks), and had offered no explanation for the delay, mitigating against the Court exercising its discretion to grant an injunction.
10. Although the matter was decided on these grounds, the Court examined whether 'it is otherwise desirable to do so in the interests of justice' to grant the injunction.
11. Ms Hayes had to show that the underlying claim was sufficiently meritorious to justify the grant of injunctive relief, and that the balance of convenience weighed in favour of the grant of relief.
12. The Court indicated that it was not persuaded that Ms Hayes had established that she was likely to succeed in showing that the panel's decision was flawed.
13. The Court noted that a refusal to grant an injunction would mean that Ms Hayes was unable to put herself forward for election as President of the party. This was not something that could be compensated by an award of damages, but could be remedied by an injunction.
14. However, the consequences of granting an injunction would occasion significant prejudice to the party and its members if it subsequently turned out, at trial, that Ms Hayes was lawfully expelled from the party. The Court noted that the law recognised the undesirability of enforcing a contract of service where there had been a breakdown of trust and confidence and (at [68]):

In the event that Ms Hayes is elected President, the damage to the party, and its members, would be more extensive. It would mean that the party would have as its President a person that it had expelled and whose Presidency would be dependent on the outcome of court proceedings. It would raise questions about the validity and sustainability of decisions made by the President in the period between her election and a subsequent order revoking the injunction. It would also have the consequence that the candidate who would otherwise have been elected President would be prevented from serving as President for their full tenure, and the members of the Party would be denied the benefit of the service of that President for their full tenure.

15. Further, the balance of convenience fell strongly against the grant of an injunction as Ms Hayes did not show that she would be likely to succeed at trial.
16. The Court found that Ms Hayes was not entitled to an injunction because:
 - when Ms Hayes was informed of her expulsion, the matter was not sufficiently urgent to justify the grant of a remedy before starting a claim;
 - it was not, on the facts of the case, in the interests of justice to grant an injunction before starting a claim;

- the underlying proposed claim did not have sufficient merit to justify the grant of the injunction; and
- Ms Hayes had not shown that the balance of convenience favoured the grant of an injunction.

IMPLICATIONS



This case illustrates the difference between Australian and English law on the nature of unincorporated associations.

In this case, the Court stated the law as (at [53]):

Ms Hayes is on strong ground when she contends that there is a contract between the members of the party (so, at the relevant time, including Ms Hayes), reflected in the party's constitution and rules: *Conservative and Unionist Central Office v Burrell* [1982] WLR 522 per Lawton LJ at 525D. So too, when she contends that it is an implied term of that contract that any disciplinary proceedings will be conducted in accordance with the principles of natural justice: *Lee v Showmen's Guild of Great Britain* [1952] 2 QB 329 per Denning LJ at 342. More broadly, I am prepared to assume that Ms Hayes will succeed at trial in establishing implied terms to act fairly and rationally: *Rothery v Evans* [2021] EWHC 577 (QB) per Cavanagh J at [168] (and for the detailed reasons given by Cavanagh J in his analysis at [131] – [177]).

In Australia, the High Court decision in [Cameron v Hogan](#) [1934] HCA 24 is binding authority. This case is authority for the principle that disputes arising from the application of the rules of an unincorporated political party are not justiciable unless they fall within exceptions, being a member's proprietary interest (often trust rights), or if the rules were contractually binding. The recent statements in [John Setka v Noah Carroll & Ors](#) [2019] VSC 571 [Asmar v Albanese](#) [2022] VSCA 19, [Asmar v Albanese \(No 4\)](#) [2021] VSC 672, and [Camenzuli v Morrison](#) [2022] NSWCA 51 all acknowledge this view of the law in Australia.

VIEW THE CASE



This case may be viewed at <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/KB/2022/2508.html>

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