



FSU
FREE SPEECH UNION

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Green Party Executive Committee



26 June 2024

Dear Committee Members,

No-fault suspensions of Green Party Members

The FSU is a non-partisan, mass membership public interest body that stands up for the free speech rights of its members and campaigns for free speech more widely. We write on behalf of two our members, Zoe Hatch and Jude English. Both have been active members of the Green Party of England and Wales, and held elected office. Both have been subject to disciplinary procedures by the party, resulting largely from their involvement with the Green Party Women group, and the positions they have openly taken on the issues of sex and gender.

We believe that the treatment of our two members, and the handling of wider issues pertaining to sex and gender, have implications for freedom of expression and its proper place within political parties. We are therefore writing to draw your attention to concerns we have with how the Green Party may not be giving due regard to the importance of this fundamental democratic principle in its handling of policy discussions.

We ask that you give these matters careful and serious consideration. We have seen evidence to suggest that the problem extends well beyond the two members on whose behalf we write here, and may be systemic to the Party. Disciplinary procedure is being weaponised to settle legitimate debate around policy and bypass the democratic process. For reasons set out below, we believe this may be unlawful.

Factual and conceptual background

The issues relate to the debate between two schools of thought on sex and gender. This is a debate which is taking place not just within the Green Party, but within wider society.

The first school of thought, which may be described as the 'gender identity' belief, summed up by the statement 'trans women are women, trans men are men, and non-binary identities are valid'. This view is also written into the Green Party's charter of Rights and Responsibilities, at RR530.

The second school of thought is the so-called 'gender critical' ('GC') belief. This can be characterised as the view that biological sex is real, that it is immutable, and that it matters. It is by now the law, following the case of *Forstater* and others, that GC beliefs are protected beliefs under the Equality Act 2010, meaning that it is unlawful to discriminate against those who hold such beliefs in certain circumstances.

At the FSU we do not have a position on the debate between gender critical and gender identity ideologies, nor would we presume to suggest to a political party what position, if any, that party ought

to adopt. However, as an organisation we wish to ensure that whatever position our members seek to adopt, they are able to argue their case freely in accordance with the law, without impediments placed upon them by illegitimate policy or procedure.

Zoe and Jude have both taken a strong position on the GC side of this debate. They are both former members, and co-chairs, of Green Party Women (GPW), a group formed under paragraph 5 (xii) of the Green Party constitution, which advocates for women's rights within the party. As such, they have sought to ensure that this body represents the rights of women as they understand them. And they have also been involved with the Green Women's Declaration, a manifesto of sex-based rights within the context of eco-politics and which seeks to influence GPEW policy.

Zoe was elected co-chair of the GPW group in 2023. At the Green Party conference in October of that year, a banner belonging to Green Women's Declaration was torn down in front of conference-goers by another officeholder, who accused the women standing nearby of being transphobic. Zoe subsequently sent an email to GPW members assuring them that their concerns about treatment of women in the party were understood and the GPW committee would continue to represent them. Shortly thereafter, she was placed on a no-fault suspension ('NFS'), and in March 2024 she was expelled from the party. Before and after her suspension, Zoe made multiple attempts to draw the attention of the Party hierarchy to problems surrounding the expression of gender critical beliefs within the party, including two whistleblowing complaints.

Jude was elected co-chair of the GPW group at the beginning of 2024. She also sat as a councillor on Bristol City Council as part of the Green group. She was placed on a 'no-fault suspension' from the party in March 2024, following her appearance on a webinar with a well-known barrister to discuss women's rights. The grounds for her suspension are that her actions brought the Party into disrepute. Her suspension has had the effect that she was unable to stand again as a candidate in the 2024 local elections.

Reasons do not justify suspension

It is beyond the scope of this letter to go into detail on the particulars of the cases against our members. This is a matter on which they reserve their full rights and may take further action. But we shall consider a few representative points here to highlight what appears to be bias and prejudice in the decision-making, where procedure is being used as a tool to avoid debate over policy, and the implications for our members' free speech rights, as well as broader implications for the political process.

The primary reason for Zoe's suspension, given repeatedly in the decision notes, was to deprive her of access to mailing list software, lest she send out 'unauthorised communications'. While it is not conceded that she had any intention of sending such communications, it is certainly the case that suspension, as a means to prevent her doing so, was both draconian and unwarranted. Zoe had access to the software not in her capacity as a member of the Party, but because of her position as co-chair of GPW, and because of technical factors such as her holding passwords, etc. If GPRC sought to deny her access to the mailing list for the alleged purpose of preventing 'unauthorised communications', it could have simply rescinded her login credentials. Suspension of her membership *tout court* was both a clumsy and disproportionate way of achieving the purported aim.

In the reviews of Zoe's suspension pending investigation, GPRC notes that 'despite lengthy submissions, there was [sic] no discussions or submissions by ZH of how she would mitigate the risks she posed'. This is an inherently prejudicial statement, which strongly indicates that the mind

of the GPRC had already been made up about the outcome of an investigation which was still supposedly ongoing, i.e., they had already decided that Zoe posed some kind of risk. They then took the decision to further penalise her by extending her suspension, on the ground that she did not agree with that assessment and did not offer 'mitigations' for her alleged wrongdoing but instead made submissions to the GPRC in which she argued that her actions were justified and that she did not pose any kind of risk. Requiring admission and mitigation of guilt before it is proven flies against all norms of procedural fairness.

In Jude's case, the record of GPRC's decision appears wholly irrational and not to adequately grasp the underlying issues. The complaint was that appearing on the women's rights webinar would somehow bring the party into disrepute. The 'GPRC Guidance on what constitutes "bringing the Party into disrepute"' defines the concept as follows:

... if a member's behaviour causes the party to be held in low or negative esteem by its own members and/or the wider public... One key point is that although all members must abide by the Code of Conduct, no member has to agree with all elements of GPEW political policy, and disagreeing with party policy is not in itself a way of bringing the party into disrepute (though where an organisation is in conflict with the Philosophical Basis, and/or the Core Values of the party, this is more problematic).

The Core Value that the webinar is alleged to contravene states:

A healthy society is based on voluntary co-operation between empowered individuals in a democratic society, free from discrimination whether based on race, colour, gender, sexual orientation, religion, social origin or any other prejudice.

It was asserted without evidence by the complainant, and apparently accepted by GPRC, that the mere fact of expressing gender critical views is transphobic, i.e., somehow discriminatory or prejudiced. It is well established that gender critical beliefs are not inherently prejudiced or discriminatory; instead, a particular manifestation of those beliefs might be made in a discriminatory fashion. However, despite referring to multiple excerpts from the webinar video, the complainant could not point to any example of an utterance which was actually discriminatory, instead providing examples of gender critical views, making the argument circular. Given that the 'disrepute' guidance specifically allows for disagreement with Party policy, all that remains is an unevicenced claim that the webinar would somehow lead to the party being held in 'low or negative esteem'.

Thus, the implication carried by the complaint and subsequent GPRC ruling seems to be that women meeting in the absence of men to discuss their rights is inherently disreputable, or would be shameful to the Green Party if it were discovered to be happening. This lamentable ruling falls far short of basic liberal decency. It is a position one might more readily expect from the Taliban, rather than a supposedly progressive political party in 21st century Britain.

The flimsiness of the GPRC's decisions, combined with the background and lead-up to the reports, would lead an objective observer to conclude that the underlying reason for their decisions was not the complaints and any meaningful risk to the party posed by Zoe and Jude's continuing membership, but rather a further step in a campaign of victimisation against women in the Party on the basis of their expression of gender critical beliefs.

The recent local election results have provided a useful point of comparison. On 2nd May, a newly-elected Green councillor, Mothin Ali, shouted 'Allahu Akbar' and said that his victory was on behalf of the people of Gaza. This attracted considerable criticism and press attention, focused on how, and whether, the Green Party chose to address his actions. Notably, while the Party said they would investigate, Mr Ali has not been suspended via the NFS suspension scheme, which is ostensibly designed to handle such rapidly-evolving situations posing risk to the party in the public eye. While it is not suggested here that NFS would have been an appropriate sanction, and the FSU emphatically supports the right of Mr Ali to express his opinions, there is a clear disparity between the handling of that case, and the cases of our members, who have attracted nowhere near the level of criticism directed at the Party and yet whose conduct allegedly merited immediate suspension.

The law

The relationship between the Green Party and its members is governed in the first instance by the law of contract as well as by various statutes, including the Equality Act 2010, the European Convention on Human Rights (ECHR or 'the Convention') as implemented by the Human Rights Act 1998 and common law.

Equality Act

As an unincorporated association, the Green Party has duties under section 101 of the Equality Act (EqA), which provides (*inter alia*) that the Party may not discriminate against a member by depriving them of membership, or varying the terms thereof, or by subjecting that member to any other detriment by virtue of a protected characteristic, such as their philosophical beliefs.

Fundamental Party Rights and the case of Shahrar Ali

At the time of material decisions being made, the protected status of gender critical beliefs was, or ought to have been, known to the Green Party, as both Zoe's expulsion and Jude's suspension came after the County Court judgment in *Shahrar Ali v Reason and Nott*. This saw an award of damages against the Party for its actions in discriminating against someone for expressing GC beliefs.

The case also gives a useful exposition of how the relationship between the Party and its members works, and the interaction between s.101 of the EqA and Convention rights.

The right to freedom of expression is protected under Article 10 of the Convention, and that includes the liberty to express GC beliefs, as was affirmed in *Higgs v Farmor's School* [2023] ICR 1072, which also recognised that manifestation of GC beliefs engages Article 9 rights to freedom of conscience. While it is possible that some particular expressions of GC views may go too far and, when set in the balance, be beyond what can be protected in law, it is emphatically not the case that this applies to *any* expression of these views, particularly when articulated in a reasoned, thoughtful manner as our members have done.

There is also an inherent tension between the rights of individuals to hold particular beliefs and to express them, and the Article 11 right to freedom of association. This is particularly acute in the case of political parties, which at their core are associations of people who hold certain political beliefs in common.

To resolve this apparent tension, the *Ali* judgment describes certain 'fundamental party rights', in particular that party members may:

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.

This means that members of a party do not necessarily have to agree with or adopt every element of party policy. In the case of our members, they have advocated against RR530. They have organised within the party, both within the GPW special interest group and more widely, to try to select candidates who agree with GC beliefs, and to argue against those who do not.

In *Ali*, the court considered how s.101 should be 'read down' so that it is compatible with Convention protections. The conclusion of the court was that while s.101 would have wide application to a variety of factors, it could not have been Parliament's intention to curtail fundamental party rights by means of that section. 'Detriment' in the context of that section should therefore be construed so as not to prevent other members of a party from exercising those rights.

The court's circumscription of section 101 very specifically relates to members who exercise their fundamental party rights to advocate – sometimes robustly – for or against particular positions. Those who are aggrieved by that behaviour cannot claim in discrimination for any detriment they perceive they have experienced as a result. In the case of our members, it is acknowledged, therefore, that criticism they might endure from those who hold gender identity beliefs is not a 'detriment' in the sense of the EqA; it is accepted that it is part of the rough-and-tumble of politics, provided it does not degenerate into outright abuse.

In the case of our members, however, no conflict between party rights and EqA rights arises. They have exercised their own fundamental party rights, to advocate for GC positions as part of their wider campaigning on issues pertaining to women and girls. They have subsequently been subjected to detriments, namely suspension or deprivation of membership, precisely because of their exercise of those rights with regards to a protected belief. Unlike in *Ali*, therefore, there is no need to read down the provisions of the EqA: in this situation the protections of the EqA work in harmony with the exercise of party rights. By extension, allowing our members to exercise their fundamental party rights cannot, without further evidence, be regarded as a 'detriment' to those who hold gender identity beliefs or identify as transgender, and it is not apparent from the records of GPRC's decisions that any such evidence exists.

While the court held that party officials may, in principle, be dismissed for publicly breaching party policy, and that such a removal would not necessarily constitute belief discrimination contrary to s.101 of the EqA provided a proper procedure was followed, our members are not caught by this narrowing of s.101. Whereas Dr Ali as a party spokesman could be seen to speak authoritatively on behalf of the Party, our members have acted merely as individuals and as officeholders within the GPW special interest group. It would make no sense to tolerate these so-called 'liberation groups' within the Party if they could not argue for changes to party positions so as to better serve the constituencies they represent.

Moreover, there is also a difference between removing someone from post as an officeholder, and depriving them of membership of the party altogether, whether on a temporary or permanent basis via suspension or expulsion. These are two different categories of sanction; the former, per *Ali*, may be justifiable in certain circumstances where the individual departs from party policy, whereas the

latter is a highly improper means of handling policy disputes, and if done solely on the basis of members manifesting a protected belief in accordance with their fundamental party rights, outright discriminatory.

Conclusion

It is for your Party to determine how best to handle an internal matter. However, it is apparent that there has been a fundamental breakdown in the handling of complaints and in the relationship between the Party and its members. This has resulted in the mistreatment of members that infringes on their Convention rights, in particular the right to freedom of expression, and is moreover discriminatory in nature.

Given that the discrimination here appears to be systemic (we are aware of a number of other individuals suspended on similar pretexts), an external review by an independent investigator and subsequent report would give the Party the assurance required that the extent of the problem has been understood, and what steps are necessary to correct it.

In any event, we would be grateful if you could confirm:

1. whether the Party considers GC beliefs to be inherently discriminatory or disreputable
2. what protections the Party has in place for members who hold GC beliefs and who wish to advocate for them internally
3. what measures the GPRC employs in assessing complaints to ensure that they are not vexatious, i.e., using the disciplinary process as a weapon in political disputes.

In addition, we believe Zoe and Jude should be immediately reinstated, as should all other women on GPW-related no fault suspensions, to full membership in good standing.

Yours faithfully,

THE FREE SPEECH UNION