

BETWEEN

THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS

AND

NICHOLAS JOHN GRIFFIN

TANYA JANE LUMBY

SIMON DARBY

(SUED AS OFFICERS OF, AND ON BEHALF OF, THE BRITISH NATIONAL
PARTY AN UNINCORPORATED ASSOCIATION)

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NOTE

FOR THE ADJOURNED HEARING ON

THE 9th MARCH 2010

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Notes:

1. The Equality Act 2006 is referred to as the 2006 Act or the EA.
 2. The Race Relations Act 1976 is referred to as the 1976 Act or the RRA.
 3. A timetable of key matters is attached to the updated bundle of documents.
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1. This is the 4th hearing of this case brought by the EHRC under powers contained in sections 24 and 25 of the Equality Act 2006 for anticipatory relief and to prevent unlawful advertising.
 2. The court is respectfully reminded of the outcome of the three previous hearings, which can be seen in the attached updated chronology.
 3. The first hearing of this case was on the 2nd September 2009; it was adjourned to the 14th October 2009 to permit the BNP to prepare its case.

4. On the 14th October 2009 the BNP sought an adjournment so that the 11th Constitution could be amended, and the court granted the adjournment to the 28th January 2010 on the basis of undertakings by the BNP.

5. Those undertakings were -

(1) as soon as reasonably practicable, but in any event no later than three months from today or the date upon which the provision, set out in paragraph 1(5) of the Schedule 16 of the Equality Bill as presented to Parliament, comes in to force (whether with that paragraph and schedule numbering or otherwise), whichever is the earlier to use all reasonable endeavours to put before, and commend to, the BNP's membership for their approval at a properly convened EGM, a proposed revised constitution, that does not discriminate, either directly or indirectly on any "protected characteristic", as that phrase is defined in clause 4 of the Equality Bill as presented to Parliament; and

(2) from 15th October 2009 until the new constitution referred to in (1) above comes into effect, to exercise his authority as Chairman of the British National Party under its constitution, so as to

a. close the membership of the British National Party to all new membership applications and

b. prevent the British National Party from accepting into membership any new member;

6. The BNP did not amend its constitution by the 15th January 2010. When the matter came back before the court on the 28th January 2010 the BNP asked for more time and a further adjournment so that the constitution could be amended. The court may wish to consider the notes of hearing prepared by the EHRC which are attached as Appendix 1 hereto.

7. The application to adjourn was opposed by the EHRC on the basis that the BNP had not used reasonable endeavours to amend the constitution and this process might be never ending.

8. However in the course of the morning Counsel for the BNP showed the court amendments it was said that the Defendants proposed the BNP should make by an insertion into the text of the 11th constitution.
9. It was said that it was intended to mail the members the next day, in order to comply with the obligations under the 11th Constitution, to give no less than 14 days notice of a general meeting.
10. The lawyers for the EHRC had not previously seen the proposed insertion into the then current text of the 11th Constitution. Indeed it was only read by the court after Mr Griffin attached it together with an addendum as an exhibit to a witness statement (set out on a general form affidavit) which he made over the lunch adjournment.
11. When the lawyers for the EHRC saw the proposed amendment it was obvious that on its face it appeared to substitute indirectly discriminatory provisions for directly discriminatory provisions. However it was not possible to analyse its effect on the 11th Constitution fully.
12. Particular objection was taken to the proposed clause 3.2.2. As a result of this the counsel for the BNP advised the BNP to remove that clause from the proposed insertion and an addendum was written which states -

As a result of legal advice section 3.2.2. has been deleted and the remaining paragraphs of section 3.2 are re-numbered.
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13. The court was informed by Mr Griffin in his witness statement that the proposed insertion and the addendum together with a notice as to the

date and place of the proposed general meeting to amend the constitution would be sent to the members on the next day.

14. As a result the court was persuaded to adjourn this case to the 9th March 2010. However the court considered that Mr Griffin had not used reasonable endeavours as he had undertaken following the hearing of the 14th October 2009 and awarded costs to the EHRC with an immediate payment of £12,500.

15. HHJ Collins CBE made it plain what he wished -

I want the Commission to look at the Amended Constitution and consider its legality before the next hearing.
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16. He therefore ordered that any amended or substituted constitution of the BNP was to be sent to the EHRC by the 19th February 2010. Thereafter the EHRC was to send Points of Claim by the 23rd February 2010 and the Defendants were to send Points of Defence by the 2nd March 2010.

17. On the 19th February 2010 Mr Griffin sent a letter with Document 12.1 attached.

18. Points of claim were formulated on the basis that first it was by no means clear that the 11th constitution had indeed been lawfully revised or amended in accordance with the information given to the court and also the provisions in that version for amendment.

19. Secondly points were taken about the text of two statements which appeared on their face to be self - evidently indirectly discriminatory.

20. When the Points of Defence were filed it became clear that Mr Griffin of his own motion had sought to add back clause 3.2.2 which his counsel had accepted was unlawfully indirectly discriminatory.
21. Meanwhile as the bundle will show the BNP have been attacking the Chair of the EHRC, Mr Wadham and Mr Allen.
22. It also appears that the BNP are running a parallel organisation which remains constructed on the basis of the 11th Constitution to which new members will not or do not have access. It is not clear at all what is the Founders Association, the British Shieldwall Foundation or the Indigenous Forum: see clause 2.8 of Document 12.1.
23. It appears from recent Press Articles that they operate in tandem with Document 12.1 in some way to prevent access to the BNP for persons who are not white.
24. Accordingly it will be necessary at the commencement of the hearing tomorrow to explore exactly what constitutional changes have been made and for the court to make findings in relation to that.
25. Assuming that the 11th Constitution remains on foot in some sense (because there has not been a proper amendment or revision, or because of some shadow organisation taking over the work of the BNP) and that Document 12.1 is cosmetic or a bluff then the existing complaints remain unaltered.
26. Assuming that Document 12.1 is applicable then the Points of Claim set out the case which the Commission will make.

27. Assuming Document 12.1 has been amended by Mr Griffin then additional arguments will be made in relation to clause 3.2.2.

28. The court will be asked to grant a suitable injunctive remedy to prevent the BNP and the Defendants from soliciting membership and from maintaining an association which indirectly or directly discriminates on racial grounds.

ROBIN ALLEN QC
SARAH FRASER BUTLIN
Cloisters
8 March 2010