

FEDERAL APPEALS PANEL OF THE LIBERAL DEMOCRATS

Determination of Complaint: Graham -v- Hughes 2006/1

1 The Complaint

- 1.1 This is a complaint brought in September 2005 by Mr James Graham against Mr Simon Hughes MP as President. The complaint is attached as Appendix 1.
- 1.2 The respondent replied on 27 October 2006, and such response is set out in Appendix 2.

2 Procedure

- 2.1 The only disputed fact is the nature of what happened at the meeting of the Federal Executive ("FE") on 18 September 2005 ("the September Meeting"). For the reasons set out below, this is not material to the Panel's determination. Accordingly the case was determined on the basis of written representations.
- 2.2 The Panel regrets the delay in determining the case, and apologises to the complainant. We are grateful for his patience.

3 The Constitution

- 3.1 Article 12 of the Constitution, relating to Officers of the Party, provides so far as material as follows:

"12.1 The President shall be the principal public representative of the Party and shall chair the Federal Executive.

12.2 Each of the State Parties shall, by its internal procedures, designate one of its officers to be a Federal Vice-President."

- 3.2 Article 8 of the Constitution, relating to the Federal Executive, provides so far as material as follows:

"8.1 There shall be a Federal Executive, which shall be responsible for directing, co-ordinating and implementing the work of the Federal Party.

The Federal Executive shall elect ... a deputy chair from amongst its members who shall chair meetings in the absence or at the request of the President."

- 3.3 It is important to note the conceptual difference between Articles 8 and 12. Article 12 confers specific powers on the Officers designated therein. Article 8, however, confers upon the Federal Executive a general power as quoted above.
- 3.4 It is therefore clear, **and we so determine**, that the President, acting alone, has no power to make constitutional appointments of any nature.

- 3.5 *Per contra*, the Federal Executive may in general terms make appointments, so long as such appointments do not conflict with any other provision of the Constitution. To give an example, it may appoint a Deputy Treasurer (while the Treasurer alone has no such power). We observe **obiter** that, in considering appointments (other than those explicitly provided by the Constitution), the Federal Executive would be well advised to consider whether the same (and/or their nomenclature) would be likely to give rise to conflict or confusion in relation to appointments explicitly so provided.

4 The Proceedings of the FE

- 4.1 The related Minute of the September Meeting is as follows:

“Deputy Presidents

The President reported that he had asked the following people to serve as Deputy Presidents, explaining that the idea was to be able to share his workload with people, that they would be appointed on a representative basis and focus on specific groups. He also explained that this was a trial. He intended to appoint the following:

Robert Adamson - with special responsibility for disabled people

Jenny Randerson AM - devolved and local government

Claire Rayner - older people

Iain Smith MSP - gay & lesbian issues

Gez Smith - youth & students

Fiyaz Mughal - black and minority ethnic issues

Sue Doughty - women

Some concern was expressed about these roles conflicting with spokespeople and national Vice-Presidents and confusion arising from overlap and lack of clarity. It was agreed that the idea would be reviewed after one year.”

- 4.2 When this Minute was discussed at the subsequent meeting of the FE on 31 October 2005 (“the October Meeting”), it was resolved that the concluding paragraph be altered to read as follows:

“Some concern was expressed about these roles conflicting with spokespeople and national Vice-Presidents and confusion arising from overlap and lack of clarity. It was agreed that the idea would be implemented on a trial basis and the Executive noted that James Gurling opposed this idea. The Executive agreed that this would be reviewed after one year and that in the future the FE would know who the President intended to appoint before doing so.”

- 4.3 The complaint was filed between these two meetings of the FE. Its *gravamen* was as follows:

“It was announced at the Federal Executive meeting on 17 September 2005 that the President had created 9 [sic] “Deputy Presidents”. This information was supplied as information only, was not listed on the meeting's agenda and the FE was not permitted to come to a view as to whether this was appropriate or not.”

- 4.4 Had the matter not been further considered by the FE, we would have upheld the complaint. However, the FE considered the matter further at the October Meeting, and formally resolved that “*the idea would be implemented on a trial basis; would be reviewed after one year; and that in the future the FE would know who the President intended to appoint before doing so.*”
- 4.5 The FE was, in our view, within its *vires* in taking this decision, albeit by way of amending the previous Minute. In considering the matter further now that the trial period has elapsed, the FE will wish to take into account the comments we make at paragraph 3.5.

5 Conclusion

- 5.1 As stated in paragraph 3.4, ***we determine*** that the President, acting alone, has no power to make constitutional appointments of any nature.
- 5.2 However, the action of the FE at the October was ***intra vires***, and cured the defect of the original ***ultra vires*** decision of the President.

9 November 2006

PHILIP GOLDENBERG

DAVID IVE

CHRIS WILLMORE

Appendix 1

The Complaint

1. Name: James Graham

Address: 19 Village Road, Finchley, London N3 1TL

Telephone: 07956 487515 email: semajmaharg@gmail.com

Party Membership Number: 4804430

2. The details of the Party body or officers with whom you are in dispute (with names as necessary): **Federal Party President (Simon Hughes MP)**

3. The grounds for your proposed appeal (n.b. the Panel will not simply re-hear your case):

It was announced at the Federal Executive meeting on 17 September 2005 that the President had created 9 "Deputy Presidents". This information was supplied as information only, was not listed on the meeting's agenda and the FE was not permitted to come to a view as to whether this was appropriate or not.

At least one appointee, Fiyaz Mughal, is already publicly describing himself as "Deputy President of the Liberal Democrats" (<http://www.ethnic-minority.libdems.org/> - front page).

I contend that it is not in the President's power to create these positions on three grounds:

- a) The Party Constitution already makes provision for the creation of "Vice Presidents," a role which is generally regarded as being synonymous with "deputy president".
- b) The Party Constitution does not state nor imply that the President has the power to create positions or give individuals titles by fiat; by contrast the Party Constitution specifically empowers the Federal Executive to create sub-committees and appoint Deputy Chairs to chair FE meetings in the President's absence. The power to create such positions, if at all, is therefore in the hands of this committee.
- c) Allowing the President to give individuals specific titles by fiat goes against the character and nature of the Party Constitution, as outlined in the Preamble.

Vice Presidents

The terms "deputy president" and "vice president" are generally regarded as interchangeable. The Collins English Dictionary defines a vice president as "a president's *deputy* [my emphasis] or assistant: an officer next below the president." Type "deputy president" into Wikipedia and it automatically redirects to its page on "vice presidents".

Vice Presidents are defined in the Federal Constitution:

Each of the State Parties shall, by its internal procedures, designate one of its officers to be a Federal Vice-President. (12.2)

The creation of a separate post of “deputy president” would cause significant confusion. Constitutionally, the Vice Presidents depute in the absence of the President, so it is questionable what role the deputy presidents fill. To what degree can the spoken views of a deputy president be regarded as *ex cathedra* when they have no formal role and are entirely unaccountable to anyone but the President? Moreover, there is huge potential for misunderstanding among the wider membership and general public about the precise standing of these deputy presidents. While formally they have no role in the party itself, their titles suggest a degree of seniority which would be entirely misplaced. It will certainly not be clear to the average person that Deputy Presidents have no formal party role, are unelected, only answerable to the President himself and have a separate role to Vice Presidents.

We already have deputy presidents in all but name: the State Party appointed Vice Presidents. It is not appropriate to allow others to call themselves “deputy presidents,” especially when they have no role defined in the constitution.

The President’s Powers and the Federal Executive

The party cannot adopt an approach that anything not prohibited by the constitution is permitted; the result would be chaos. It would mean that any senior officer – and potentially member – could declare a wide range of extra powers and responsibilities. On the other hand, the constitution will never be capable of covering all eventualities. It is therefore important to see how to make a ‘best fit’ of what we have.

The powers of the President are strictly limited:

*The President shall be the principal public representative of the Party and **shall chair the Federal Executive** (my emphasis). (11.1)*

Thus, while the President is the public spokesperson of the party, his/her ability to make executive decisions rests in the hands of the Federal Executive (“*which shall be responsible for directing, co-ordinating and implementing the work of the Federal Party*” [8.1]).

This view is backed up by two other clauses:

The Federal Executive shall elect a deputy chair from amongst its members who shall chair meetings in the absence or at the request of the President. The Federal Executive thus constituted may co-opt such persons and for such periods not exceeding one year as it thinks fit (but so that there shall not be more than three persons co-opted at any time) who shall be entitled to attend and speak but not vote. (8.1)

The Federal Executive shall have power from time to time to establish, appoint and remove members of, and vary committees and sub-committees, which shall be responsible to it and which shall report regularly. (8.2)

It is hard to see how it can be argued how the President, clearly defined as subordinate to the Federal Executive in 11.1 can be said to have the power to make appointments, given that in both these specific examples this is clearly a power held by the Federal Executive (in the case of deputy chairs, this includes the President’s own deputies). Indeed it could be argued that the deputy presidents as a whole constitute a committee and therefore must be appointed by the Federal Executive.

The Character and Nature of the Constitution

The Liberal Democrat Constitution is a liberal document. The party's preamble states, among very many other things, that:

- *We aim to disperse power...*
- *[We] oppose all forms of entrenched privilege...*
- *We believe that sovereignty rests with the people and that authority in a democracy derives from the people.*

Notwithstanding the limitations of the UK's own unwritten constitution, there is no place in our party for individual patronage. The President's actions here set a precedent that titles and offices can be handed out simply by Presidential fiat. Such a power, throughout history, has been used as a means for expanding influence and control, which is why our party has such a proud history of opposing it from the House of Lords down to the village hall level.

If there is a place for creating such positions, it is for the Federal Executive to decide or, ideally, something that should be decided at party conference level.

4. The ruling that you would wish the Panel to make in your favour:

To declare the President's creation of "Deputy Presidents" unconstitutional and thus void.

Appendix 2

The Response

There are of course some agreed facts:

1. At the 18th September 2005 meeting I reported that I had asked some people to serve as Deputy Presidents.
2. Appointees have been free to use the description for official party purposes, and the description has been used.
3. The selected quotations taken from the Federal Constitution are correct.

The following facts are also relevant:

1. At the 18th September 2005 meeting, the agreed FE minute records that after I reported that I had asked the following people to serve as Deputy Presidents, I explained that the idea was to be able to share the Presidential workload with people, appointed on a representative basis and to focus on specific groups. I further explained that it was a trial. (I explained that I intended the appointments to be for one year, and personal to the President in office.) The intended appointments were named, with responsibilities: Robert Adamson, disabled people; Jenny Randerson AM, devolved and local government; Claire Rayner, older people; Iain Smith MSP, gay and lesbian issues; Gez Smith, youth and student issues; Fiyaz Mughal, black and minority ethnic issues, and Sue Doughty, women. The FE agreed that the idea be implemented on a trial basis, that this would be reviewed after one year, and that the FE would be told who the President intended to appoint before doing so.
2. I made the appointments with the agreement of the then Leader, and after seeking and receiving the agreement of the seven (not nine) people concerned.
3. The appointments were carefully made to reflect national and regional, and gender and other appropriate balance, and of people drawn from the appropriate recognised organisations of the party: Robert Adamson, Gez Smith, Fiyaz Mughal and Sue Doughty were at the time all senior office holders of LDDA, LDYS, EMLD and WLD respectively. These were not random, fickle or self-interested appointments.
4. The appointments were carefully made in a way to avoid conflict with the territorial positions and responsibilities of Vice Presidents as already provided for by the Constitution, and to be group and issue related, something which the Constitution had not provided for.
5. The appointments were made in the light of my party experience over many years, confirmed in my first months as President, that the Party was often not being represented, by a recognisably senior party person, at events to which we had been invited, or where we ought to be present either to match the other two large parties or for other campaigning purposes. At many of these events one or both of the other parties was often represented by a senior party office holder.
6. The appointments were made to provide some balance in the senior echelons of our party. At the time the Federal Leader and President, Scottish and Welsh Leaders, and Leader in the Lords were all able bodied white men, as were the Deputy Leaders of the Commons and Lords parliamentary parties. I was (and am) of the view that this lack of representativeness was (and is) seriously holding back the party's progress.

7. The appointees were also given specific responsibility for developing people in the party and recruiting others to increase our representativeness at all levels.

8. I have held back from putting the review of this trial onto the FE agenda until this appeal has been determined, but the FE, and the wider party, has and always has had the power to make a decision as to the future of this arrangement if it wishes to do so.

9. At the time I made the appointments, I was aware that the Conservative Party had appointed office holders with specific subject and issue related responsibilities, and benefited from this.

My response to James Graham's arguments are as follows.

1. The constitutional Vice-Presidents are specifically provided for to protect, secure and guarantee the Federal nature of the Party and the FE. The deputy presidents have no constitutional or executive role. As the name implies they are intended to deputise for the President, to be ambassadors or champions or project leaders on a range of specific areas and subjects. Their appointment is also personal to the President. In parts of local government, the parallel is that the Mayor appoints either their consort or their deputy or both, to assist and sometimes deputise, but to serve no longer than the Mayor holds office. In the private sector in this and other countries, and in the voluntary sector both inside and outside politics, there are also such extra or non-constitutional appointments, again limited to the term of office of the appointor. The difference in role is clear from the fact that there is no constitutional conflict, or overlap. The deputies (unlike the VPs) are not and need not necessarily be members of the FE, and have no vote on party decisions by virtue of their appointment. Of course I could have used another title, such as assistant president. The intent was and is to give sufficient authority without implying the most senior authority.

2. The Constitution is silent on this issue, as it is incidentally on deputy leader and deputy treasurer (the other two elected federal posts). This must equally allow a permissive interpretation - particularly if the President seeks to use the Constitution actively, as I have done and do. (I have ensured many previously dormant constitutional and party procedures and activities eg Joint Candidates Committee, Interim Peers Advisory Panel have been brought back to life). I take a very proper and careful approach to the Constitution, which I follow meticulously, and seek to reform where necessary, but apply a Lord Denning type approach! I note that although no Leader has so far appointed a Deputy Party Leader (although there is a provision for an elected Deputy Leader of the Commons Parliamentary party), the Federal Treasurer is not expressly constitutionally empowered to appoint a Deputy or Assistant, but has at least twice done so.

3. The constitutional provisions for deputy chair of the FE or sub committees of the FE relate to the running of the party and the President's role as the chair of the FE. The deputy presidents have no responsibility for running the party, or on the FE. They assist the President in his unique and other role of being the principal public representative of the Party, and their roles are limited to this.

4. For the President to do this is absolutely consistent with the character and nature of the preamble, and evidences our express commitment to 'disperse power, to foster diversity and to nurture creativity'.

5. I repeat that the power to require a different interpretation of the constitution lies with the party members through Conference. All, including President, would of course be governed by any more express provisions. This is where the power properly lies.

6. There is little scope for confusion if the VPs have an internal constitutional role (which they expressly do) and the Deputy Presidents have an external representative role, which is what they have alone been intended to do.

7. There are many initiatives implementing the work of the Federal Party which are not provided by the Constitution; the recent unilateral appointment by the Leader of Steve Hitchens to lead a diversity panel is the most recent example. The deputy presidents are not, and never have been, a committee with any collective function or power.

I therefore ask the Panel to decline to accede to James Graham's request, and to agree that the appointments were not unconstitutional and therefore void, but that this is a matter properly left to the FE and, as appropriate, party members through Conference to resolve further if they wish to do so. I also ask the Panel, if there is doubt, to give the President the benefit of the doubt, on the reasonable basis that the decision was made in the clear belief that it was constitutionally permissible or at least not constitutionally prevented, done in good faith, and with the party's best and wider interests at heart. Thank you.

Simon Hughes. 27.10.06