

UK High Court rejects ban on 130,000 Labour members voting in leadership contest

By Julie Hyland
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The Labour Party's National Executive Committee (NEC) saw its attempt to prevent 130,000 members voting in the upcoming leadership election overturned by a high court judge Monday. The NEC declared that it will "appeal this ruling in order to defend the NEC's right, as Labour's governing body, to uphold the rule book, including the use of freeze dates."

The NEC had ruled that only members who joined before January 12 would be allowed to participate in the election. Five party members challenged the arbitrary NEC cut-off point in the high court, which was aimed at excluding supporters of leader Jeremy Corbyn from September's ballot.

Corbyn is being challenged by Owen Smith. The contest, precipitated by right-wing Blairites in the Parliamentary Labour Party (PLP), has been the occasion for a series of anti-democratic measures aimed at overturning the result of last September's leadership election, which saw Corbyn win by a massive majority.

Initially, the right wing hoped to force Corbyn to stand down through mass resignations—first of 60 members of the shadow cabinet and then a motion of no confidence backed by 172 MPs, together with a media witch-hunt—led by the *Guardian*—slandering his supporters as bullies and thugs. Such methods were necessitated by the fact that the right have little chance of winning a leadership contest.

When this campaign failed to dislodge Corbyn, efforts were made to rig the election. The NEC meeting on July 12 voted narrowly—by 18 to 14—that, as the incumbent, Corbyn had an automatic place in the leadership contest. Many in the PLP had insisted that Corbyn would require the 51 nominations of any potential challenger. This would have effectively barred him from the contest, as he does not have the

support of 51 MPs.

However, the same NEC meeting agreed to ban new members of the party from voting in a leadership contest. Those who had been party members for less than six months were to be excluded, unless they were prepared to pay a £25 fee (up from £3) to be a registered supporter and to do so within a specified two-day window. This could have disenfranchised 130,000 members.

The NEC took this decision after Corbyn and several of his supporters had left the meeting. Labour membership stood at 388,407 on January 10, with more than 120,000 people having signed up as party supporters to back Corbyn in the earlier leadership challenge.

Since January, membership has risen again to 515,000, with 129,726 people joining between the June 23 referendum on UK membership of the European Union (which resulted in a majority for Leave) and July 8. Most are thought to be Corbyn supporters, angered by the moves to remove him in the wake of the Brexit vote.

This is higher than the increase in Labour support under the leadership of Tony Blair, but with the important difference that many of those who signed up then did so as supporters of his efforts to shift Labour further to the right. In contrast, those joining Labour over the last period believe in Corbyn's pledge to be reclaiming the party "for the left."

This accounts for the continued efforts to restrict the ballot. On July 28, High Court judge Justice Foskett threw out a legal challenge brought by millionaire Labour donor and Blairite Michael Foster to the NEC's decision to allow Corbyn onto the ballot. Foskett ruled that the NEC was "right to conclude that Mr. Corbyn was entitled to be on the ballot paper without the need

to obtain any level of nominations.” Referring to the relevant clauses in Labour’s constitution, which refer only to a “challenger” requiring nominations, Foskett said they “reveal a natural and ordinary meaning that seems to me to be entirely clear.”

The latest high court challenge was made by five party members: Christine Evangelou, the Rev Edward Leir, Hannah Fordham and Chris Granger; the fifth person was named only as FM as he is under 18 years of age. The legal fees to bring the challenge were crowd-funded, raising more than £30,000 so far towards the £40,000 costs. A statement explains that all five are Labour members since January 12. They had originally called on the party to “to reconsider its decision to deny new members a vote in the forthcoming leadership election,” but when this failed decided that the “only way we can retrieve our rights is by taking the Party to court.”

“When we joined the Party, the web site said, ‘As a member, you’ll be a key part of the team. You’ll be eligible to vote in leadership elections’,” they explained, calling on “all those concerned by democracy in the Labour Party to help us take on this battle for the rights of the 130,000 excluded members.”

Stephen Cragg QC, representing the five, asked Mr. Justice Hickinbottom to rule that the NEC had misapplied party rules and that the appellants were entitled to vote in the poll. Anyone going by Labour’s web site or its rule book would have concluded that they had the right to vote in the leadership election upon joining the party, Cragg said. Instead, the five “paid their dues and found to their surprise they had been excluded from the present election.

“We say they have been wrongly excluded by breach of contract from the right to vote. We say there is nothing in the Labour Party rule book that suggests a limit on the members who can take part in the leadership election.”

Lawyers for the Labour Party and General Secretary Iain McNicol argued that the NEC had “specific power” to impose the bar as part of its duty in drawing up an election timetable and there had been no contractual breach or misrepresentation.

In his 95-paragraph written judgement, Hickinbottom rejected the NEC’s claim, ruling that it was not within its rights to impose such a restriction, which represented an unlawful breach of contract. “It would

be extremely surprising if the rule book gave the NEC the power to disenfranchise one quarter of the party membership as it purported to do,” the ruling states. “In my firm judgement, the rule book gives it no such power.”

“At the time each of the claimants joined the party, it was the common understanding as reflected in the rule book that, if they joined the party prior to the election process commencing, as new members they would be entitled to vote in any leadership contest. That was the basis upon which each claimant joined the party; and the basis upon which they entered into the contract between members. For those reasons the claimants’ claim succeeds.”

He further ordered the NEC to repay three of the claimants’ £25 fee.

Hickinbottom reluctantly granted the NEC leave to appeal by Thursday but warned, “I have taken the firm decision that the rules do not give NEC the power to restrict the voting rights of members as it purported to do. I am not sure I am convinced that the contrary is arguable.”

Labour now faces potential legal costs of hundreds of thousands of pounds should its appeal fail. Not only would it have to pay all legal costs for both sides, but it would have to refund the £25 supporters fees paid by the 130,000 in order to vote, more than £3 million.

Once again Corbyn and Shadow Chancellor John McDonnell held out an olive branch to the right. McDonnell called on Smith to “join with us in backing party members and calling on the Labour Party not to appeal and attempt to disenfranchise members.”

The “Labour Party bureaucracy” must now “act sensibly and play by the rules for rest of this leadership election,” he said.

Corbyn, to no avail, launched a petition urging the NEC not to appeal the decision, telling party members, “We need you!”

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