The Court of Appeal hasn't been getting to grips with my case against the Labour Party for the last eighteen months. I've written to the Lord Chancellor.

My Legal Action against the Labour Party and former General Secretary Iain McNicol

Readers may not be aware, but I have been pursuing legal action against the Labour Party for the last eighteen months, funded by crowd funding. The purpose of this article is to explain what the action is about, where the case is at the moment, and to seek further financial support.

As Len McCluskie said in his recently published book, Always Red, memories of 2019 will fade but 2017 will continue to inspire future generations. In April 2017 Theresa May, with the necessary consent of Jeremy Corbyn, called a snap election. She and almost everyone expected the Tories to win with a much enlarged Commons majority. To meet the challenge, most of the half a million members of the Labour Party were mobilised.

When the votes were counted, Labour achieved its highest vote (12.88 million) since Tony Blair's landslide election in 1997, with a 40% vote share, only 2.3% behind the Conservatives. But this was not because Prime Minister Theresa May performed poorly. The Conservatives' vote share was their best for thirty years. Their vote rose by two and a third million compared to 2015. Labour just did better. Labour's vote rose by three and a half million. Its vote share rose by ten percent – unprecedented since 1945.

So what happened? The total number of votes cast only rose by not much more than a million. Most of the vast nearly six million increase in votes for the two main parties came from the minor parties. It was a battle of the giants over Britain's future. Had Labour won there can be little doubt the UK would now have a customs union with the EU, utilities, public services delivered with less private and foreign involvement, and human rights strengthened rather than weakened.

Given its surge in vote share unprecedented since 1945, Labour gained surprisingly few seats, thirty six, and lost six. Dozens of Labour candidates felt they would have won but for paucity of official campaigning support. Others felt they won despite, rather than because of, official campaigning support. My friend Marsha de Cordova, with whom I worked every day and attended the count (watching the television results alone much of the time with a taciturn Sadiq Khan), was one such candidate. Despite battling daily to prevent resources being diverted to safe Tooting next door, she succeeded in transforming a Conservative majority of 8,000 into a Labour majority of 2,000.

In early 2020 the party prepared a report. It drew on thousands of internal emails and messages. Shami Chakrabarti's 2016 report on antisemitism, commissioned by Jeremy Corbyn at the beginning of his leadership and endorsed by the EHRC in 2020 as being the right approach, had taken a great deal of time to put into operation. The new report was prepared to find out why. Along the way however, evidence was uncovered to the effect that, despite party officials telling the leadership they were adhering to his constitutionally mandated directions for the 2017 general election campaign party officials were actually doing their best to sabotage the campaigning effort. The report was leaked in April 2020 without personal details on messages having been redacted.

Clearly officials had broken the party rule that the leader alone had the power to direct the campaign. They also seemed to have broken the constitutional aim to win the election and put the party in power. There is evidence that they diverted resources away from seats that were

potentially winnable due to the small size of the Conservative majority, and towards seats the party already held with a sizeable majority. And they seemed to have broken the rule to act towards members in good faith.

Not only did the contract between members appear to have been broken on their behalf by its agents. As such they also had a duties to look after members' money and property which apparently they failed to discharge. And they could also be said to have broken the members' promise to each other and to the voting public to do their best to get their manifesto enacted, on the faith of which thousands devoted all their time for weeks and not a little money, and millions spent time listening to and reading about the debate before finally taking the trouble to vote.

In short the democratic process in action in 2017 seemed to have been corrupted. The people responsible would need to be held accountable. Candidates who possibly should be MPs would need to be compensated. Activists would need to be paid their out-of-pocket expenses and lost income. And declarations would need to be made, for example that there is a possibility, maybe even a likelihood, that we have had the wrong government ever since, or else that this probability is insignificant but nevertheless nothing of the kind should ever happen again.

Like many others, I had seen a suspicion of this misconduct at first hand but was shocked at the evidence that it had happened systematically, on a national basis. Statements soon came in from around the country. They evidenced several dozen pairs of neighbouring seats comprising an offensive and a defensive seat. They spoke of relentless instructions from head office via regional HQs to focus effort only on the latter seat of the pair, the one which local knowledge said was safe while the offensive seat was winnable. These pairs of seats lay conceptually on the perimeter of a nationwide hub and spoke arrangement, the hub being at the London region office of the Party rather than its UK head office.

I wrote to the newly elected leader and his designated general secretary but after many weeks I received no reply. I had suggested what had been revealed could be remedied by action by the party against those responsible, together with some sort of compensation to those affected. In the absence of a reply, eventually I obtained an order on 12 June 2020 that they attend and disclose what they were doing about it. This they did, at a virtual hearing on 19 June 2020, and revealed that key people had been suspended. But the party then refused to redact the report as ordered so that it could be placed in the public domain and instead found a judge other than the one presiding on that day. The alternative judge seemed to me to be biased against me but she failed to recuse herself. She struck out the case at a physical hearing precipitately held against my wishes and interest in the court's long summer vacation on 30 July 2020 on reasoning that was riddled with errors.

The Court of Appeal on 2 September 2020 put the costs orders on hold and recognised my barrister's written arguments even though the strike out hearing had been rushed through too fast for him to make them at the time. Without deciding it, the indication was that court felt that the appeal had some merit. Eighteen months later, **its subsequent decisions** still do not explain why any, let alone all, of the grounds of appeal are flawed, which is the implication of not having given the appeal the go ahead. **I have now written to the Lord Chancellor** about this, in my experience unique, situation.

The case raises certain legal issues. Firstly, an unincorporated association such as the Labour Party is held together by a contract between its members based on its rulebook. The judge misrepresented my case that David Evans was being sued in his capacity as a representative of all members of the Labour Party except me, and that Iain McNicol was being sued personally. She

held that David Evans cannot personally be liable for a breach of contract by another individual member under the terms of the rules even though that was irrelevant to my case.

Secondly, my case is a fiduciary claim against McNicol as my agent at the time, in his handling of my money and property invested in the party by virtue of being my agent (and that of anyone else joining the claim, which the court recognised as a potentiality at the first hearing). And thirdly it is a third party claim against the members (represented by David Evans), to the extent that McNicol (and potentially other agents of the party as well, as also recognised at the outset) abused his position as agent of the members other than myself, insofar as he was trying to lose the election, which we and the leader constitutionally in charge were trying to win. The court misrepresented my case in these respects too. And the court totally misquoted my case for restitution identical to that of Lord Scott in the case of *Cobbe*. My case is that the court has made **thirty nine errors** in total.

Three judges have considered the case in the Court of Appeal, on all occasions only on paper, without a hearing. The first decision was made almost immediately, as I have mentioned - Lord Justice Henderson on 2 September 2020. Lady Justice Nicola Davies considered it during the course of last year, as did Lord Justice Warby, in Christmas week. Of the judge's prejudicial conduct, two instances of hiding documents from me until after the hearing, the point has simply not been taken. As to causes of action, the court has repeatedly employed phrases like: the judge's findings "disclose no error" or the judge "made no error". In the only two respects Nicola Davies LJ was not merely conclusory, what she said was not germane; it misquoted my case. Lord Justice Warby mentioned my grounds of appeal only in the final paragraph of his "reasons" and then only indirectly. He summarised the "reasons" of Lady Justice Nicola Davies, saying without explanation merely that they were "sufficient".

These two Court of Appeal judges are at odds with the authorities. In *Municipio de Mariana v BHP Group plc* [2021] the Master of the Rolls made plain that mere conclusory statements are not reasons and that judges should be mindful that directing a hearing may be the best course. In *Wasif*, Lord Justice Underhill said: "*peculiar care must be taken to ensure that all the arguments raised in the grounds are properly addressed. . . . If the grounds are discursive or repetitious, it is the judge's responsibility to analyse them into their component parts*."

What should have been happening at court is the focusing of questions of evidence and the adding of any claimants and defendants on the allegations to be proved. It is this task, as opposed to fencing with the Court of Appeal over its job, which should have been taking up court time since 2020. The question has been raised whether avoiding grappling with specific grounds is more widespread and whether my view about the approach of the Court of Appeal to this case is shared by others. If it is, the question then will be what can be done to induce the court to think again about its responsibility. Alternatively, can the extremely limited Forde enquiry form a basis for getting anywhere near to dealing with misconduct during the 2017 general election?

There is also an upcoming issue about costs. Of the £25,000 raised only £2000 remains. The cost order for the longest of the three hearings is some £12,000. I filed an application late last year seeking to ensure the costs of the other two hearings are consistent with it. If successful, and barring any success at appeal, my liability would be capped at about £25,000. I would feel more comfortable if my solicitor had security for something closer to that sum! I really need to raise another £23,000 to meet the anticipated shortfall. Readers can contribute via my ***crowd justice page***

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