[Letter on headed notepaper of Edwards Duthie Shamash]

Dear Dr Scott-Samuel,

We are instructed by Dr Brian Fisher [redacted] and Ms Jean Hardiman-Smith [redacted], in their capacity as officers of the Socialist Health Association ("**SHA**"). Dr Fisher is the elected Chair of the Association ("**the Chair**") and Ms Hardiman-Smith is the Honorary Secretary ("**the Secretary**") of the Association.

We are writing to you in connection with the legal proceedings which have been threatened to be brought by:

1) Mr Andrew Thompson
2) Ms Vivien Walsh
3) Ms Caroline Bedale and
4) Mr Tony Beddows,

Our clients have been provided with a Draft Claim Form and a Draft Application for an Injunction in respect of proceedings which are proposed to be issued in the Birmingham County Court on 27 July 2020 ("**the Proposed Proceedings**"). A copy of this letter is being sent to Mr Thompson, Ms Walsh, Ms Bedale and Mr Beddows and this letter should be treated as sent to each of them as well as being sent to you.

In the event that, despite the matters set out below, anyone to whom this letter is sent issues proceedings and makes an application for an injunction, that person will be required to provide a copy of this letter to the Court at the time that the application is made. Any application for an injunction (whether made on notice or without notice) which does not specifically draw the Court's attention to this letter would be a serious breach of duty and may lead to an application for contempt of court.

Summary of the Position.

The claim that our clients have acted in breach of the terms of the SHA Constitution is manifestly without any form of legal merit. If proceedings are issued against our clients they will be robustly defended. We will make applications for legal costs orders against both any individual Claimant and against you pursuant to section 51 of the Senior Courts Act 1981 in accordance with the principles set out in *Symphony Group Plc v Hodgson* [1994] Q.B. 179 and recently reaffirmed by the Court of Appeal *Deutsche Bank A.G. v Sebastian Holdings Inc & Anor* [2016] EWCA Civ 23. It is plain that you are the moving force behind this dispute. The Court will not allow you to use others to front up the litigation and thereby avoid liability for costs.

The background.

Our clients have explained the background to the current dispute. In summary, this dispute appears to be a small part of the well reported tensions between different factions both within the Labour Party and outside the Labour Party on the broad left of British politics. The tensions in the SHA largely mirror tensions between those on the "left" of the spectrum in British politics, largely associated with the former leadership of the Labour Party, Momentum and a series of other groupings, and those who are more on the "centre-left" of British politics and to largely identify with the current leadership of the Labour Party.

Those tensions, to some degree, came to a head in the SHA elections in February 2020. The result of these elections largely mirrored the results of other electoral processes relating to those on the left of the political spectrum in the United Kingdom. Those elected to positions of responsibility within the SHA appear to be in the majority whereas you and the proposed Claimants, who have firmly identified allegiances with the former leadership of the Labour Party, have less control than previously. It follows that this proposed legal action is part of an attempt by you and your supporters to regain control of the SHA and thereby overturn the decisions made by SHA members in the recent election. That background of complex allegiances represents an important backdrop to the key facts in the current dispute and it would not be appropriate for the Court to be asked to adjudicate on these matters without being properly cited on the positions taken by all parties.

The SHA.

The SHA is an unincorporated Association which has approximately 1000 members. It has a written constitution which was adopted at an Annual General Meeting of the SHA on 17 March 2018 ("**the Constitution**"). The legal position is that the Constitution acts as a contract between the members of the unincorporated Association *inter se*. This was explained by the Court of Appeal in *Evangelou & Ors v McNicol (Rev 1)* [2016] EWCA Civ 817 at §19(a) as follows:

> *"The contract is found in the rules to which each member adheres when he or she joins the association: see Choudhry v Tresiman [2003] EWHC 1203 (Comm) at [38] per Stanley Burnton J"*

Clauses 9(a) and (b) of the Constitution provide:

> *"a) The Association shall be governed by an Annual Meeting of the members, which shall determine the policy of the Association.*
>
> *b) The execution of the decisions made at Annual and Special Meetings of the members, and the administration of the affairs and property of the Association shall be vested in the Central Council"*

Accordingly, the property and affairs of the SHA are vested in the Central Council between Annual Meetings (or Special General Meetings). Membership of the Central Council is set out in clause 10 of the Constitution which provides as follows:

> *"a) The Central Council shall consist of the principal Honorary Officers (Chair, Honorary Treasurer and Honorary Secretary), twenty directly elected members, branch delegates (see below), and a representative from each nationally affiliated organisation. The Council may elect up to 4 Vice Chairs from amongst its members to support special areas of work.*

b) For each 30 members or part thereof each branch shall be entitled to elect one of its own members to the Central Council.

c) SHA Scotland and SHA Wales shall each appoint representatives on the same arithmetical basis.

d) The Central Council shall elect functional officers at the first meeting after the AGM. The Central Council may co-opt a maximum of 5 members in addition to elected members to fill functional positions.

e) The Central Council shall normally meet quarterly.

f) Between Central Council meetings, the elected Honorary Officers will be responsible for the running of the Association.

g) The Central Council shall at its discretion make provision for expenses of members attending Central Council meetings.

h) The quorum for the Central Council shall be eight, which shall include two honorary officers.

i) Any member of the Association may attend meetings of the Central Council. Such member may join in the discussion at the discretion of the Chair, but has no vote.

j) All decisions of the Central Council shall be taken by majority vote of those present.

k) Any member of the Council who without good reason or apology fails to attend two successive meetings shall be deemed to have resigned"

Membership of the Central Council following the February 2020 AGM.

An Annual General Meeting of the SHA was held on 29 February 2020. The timetable leading up to the 2020 AGM was set by the members of the Central Council elected at the 2019 AGM, as you are well aware because you were the Chair at the time. Nominations were received for the 20 directly elected members, voting took place and these individuals were duly elected. Four of such members were found to be in arrears with their membership subscriptions and thus ineligible to stand. They have been removed and the next 4 persons on the ballot are treated as having been elected.

Nominations were also received for the position of Chair, Honorary Secretary and Honorary Treasurer. The members voted in contested elections and Dr Fisher was duly elected to be the Chair, Ms Hardiman-Smith was elected as the Secretary and Ms Irene Leonard was elected as the Honorary Treasurer. As far as we understand matters, there is no dispute concerning the validity of the elections for these officer positions.

The Constitution permits, but does not oblige, branches to elect delegates from the branch to be members of the Central Council. Each branch is entitled to elect one delegate for each 30 members. Hence, a branch that has 30 members is entitled to elect one delegate, and a branch which has 95 members is entitled to elect 3 delegates. Once delegates have been properly elected by a branch in accordance with the Constitution, those delegates become voting members of the Central Council.

Clause 13(b) explains how branches are required to function in order to elect delegates under the Constitution. It provides:

> *"b) Branches are expected to give 4 weeks notice of their AGM and 2 weeks notice of ordinary meetings. Following the completion of the 2017-18 electoral cycle in April 2018,all future Branch AGMs must take place between 12 and 3 weeks prior to the commencement of the national Central Council (CC) election process (ie, between 12 and 3 weeks prior to the call for national CC nominations). Those elected as CC delegates at Branch AGMs are not permitted*

to stand in the national CC elections during the same electoral cycle – though they can of course stand for national officer roles"

Accordingly, any branch that wishes to take advantage of the opportunity to elect one or more delegates to the Central Council is required to hold its Branch AGM between 12 and 3 weeks prior to the date set by the Central Council for the call for nominations for the 20 members of Central Council who are elected by the members generally. The purpose of this timetable is to ensure that there is no duplication between individuals who are elected as branch delegates and those who are elected by the members generally.

The United Kingdom held a General Election on 12 December 2019. Our clients accept that many members of the SHA were actively involved in the election. However, the timetable for the 2020 SHA AGM was properly set by the then Central Council and there was ample time for SHA branches to meet in accordance with the constitution following the election. Even if that were not the case, there is no power in the Constitution for the mandated timetable to be varied because of a General Election or for any other reason.

The failure of branches to follow the mandated timetable.

It has recently become clear that a number of SHA branches failed to hold their Annual General Meetings in accordance with the timetable mandated by the Constitution. In particular, a number of branches including the Manchester and Oxfordshire branches held their branch AGMs in the period immediately prior to the SHA AGM, and purported to elect delegates to the Central Council. We have seen a draft witness statement from you dated 25 July 2020 in which you appear to suggest that, in your role as the then Chair of the SHA, you gave these branches permission to hold AGMs outside of the mandated timetable and thus permitted them to elect delegates to the Central Council despite failing to follow the compulsory requirements set out in the Constitution.

The powers of the SHA Chair.

Clause 10(f) of the Constitution provides that, between Central Council meetings, "*the elected Honorary Officers will be responsible for the running of the Association*".

Accordingly, the running of the Association falls to the Honorary Officers collectively between Central Council meetings. However, there is no provision in the Constitution which permits Honorary Officers to act in breach of the terms of the Constitution or to authorise anyone else to act in breach of the terms of the Constitution. Honorary Officers of the SHA are members of the SHA and are accordingly required to act in accordance with the terms of the Constitution like every other member.

In particular, the Chair of the SHA has no power to permit a branch to exercise its power to nominate a delegate to the Central Council by following a process which breaches the mandated timetable set out in the Constitution. Whilst the current Chair has no direct knowledge of the discussions which took place between you and branch members officers in, for example, the Manchester and Oxfordshire branches in the period running up to the 2020 AGM, whatever conversations took place, they cannot have lawfully authorised SHA branches to hold an AGM and nominate a delegate to the Central Council in circumstances where individual branches had missed the opportunity to do so by failing to follow the mandated timetable set out in the Constitution. We appreciate that, in order to attempt to pursue sectional political advantage, you may have sought to persuade branches that they were entitled to break the rules. However neither you nor the branches had the legal right to do so.

In this context it may be of some relevance that the Constitution was amended at the 2018 AGM and accordingly the mandated timetable was recently and specifically approved by SHA members as part of the contract between themselves.

The Court of Appeal has recently considered the law in this area in *Dominic Kelly v The Musicians' Union* [2020] EWCA Civ 736. That case affirms that the true meaning of the terms of a contract (in that case trade union rules) is a matter for the Court and not a matter for the interpretation of the officers of the trade union. Accordingly, as a matter of law, it is irrelevant as to whether you thought you had power to permit branches to waive the mandatory procedural rules or not. If, on the true construction of the Constitution, you had no such power, your actions in purporting to permit branches to hold late AGMs have no effect in law.

We note that you have made broad allegations concerning "*custom and practice*" suggested that this permitted the officers of the SHA to approve branches to act outside the terms of the rules when a general election takes place. There is nothing specific in the Constitution which allows this and the first general election following the adoption of the present form of the Constitution was in December 2019. Accordingly, they cannot have been any established "custom and practice" upon which you relied to authorise breaches of the terms of the Constitution. In any event, the timetabling rules are clear. In the *Musician's Union* case the Court of Appeal said:

> *"22. The effect of the cases, in particular Arnold v Britton , is that the clearer the natural meaning of the centrally relevant words, the more difficult it is to justify departing from it. In Arnold v Britton the majority of the Supreme Court adjusted the balance between the words of the contract and its context and background by giving greater weight to the words used. …"*

In this case the relevant words of the Constitution are extremely clear and no departure from that timetable is permitted by the terms of the Constitution. Branches have a fixed window of time in which to hold their AGMs if they wish to take advantage of the power to nominate a delegate to the Central Council. If they fail to do so, then the power cannot be exercised at any other time and the branch has lost its opportunity to do so for that year. Further, given the clear terms of the Constitution, it is plain that there is no overriding discretion given to Chair to permit branches to breach the terms of the Constitution, particularly in circumstances where that power has been exercised for the purpose of giving political advantage to individuals who the Chair considers will support his personal political objectives.

What have the Chair and Secretary done?

There does not appear to be any substantial dispute that a number of persons purporting to be "delegates" to the Central Council were not elected by branches during the time window permitted by the Constitution ("**the Improperly Elected Delegates**"). Accordingly, even though the Improperly Elected Delegates were reported to the AGM as having been elected

by branches in accordance with the Constitution, and therefore were persons who asked to be treated as being properly elected to be members of the Central Council, the correct position was that Improperly Elected Delegates had no standing to be treated as delegates to the Central Council.

The Chair and Secretary are required to act in accordance with the terms of the Constitution. Given that a number of persons who claim to be delegates to the Central Council are, in fact, Improperly Elected Delegates, the Chair and Secretary would be acting in breach of the terms of the Constitution if they treated the Improperly Elected Delegates as being lawfully elected members of the Central Council.

It follows that, in substance, this element of your complaint against the present Chair and Secretary is that they are acting in accordance with the terms of the SHA Constitution. It follows that you can have no valid legal complaint about the Chair and Secretary doing so. In particular, we note your reference to an "estoppel" in your witness statement. Unlawful actions cannot give rise to an estoppel.

Financial matters.

The witness statements and Particulars make various references to the financial affairs of the SHA. In particular Ms Leonard complains "*I have not been given access to and control of the Paypal account*".

The true position is more complex. The SHA operates a current and savings bank account with the Co-operative Bank. The Chair and Secretary do not presently have access to these accounts but understand that approximately £20,000 sent to the credit of the SHA in the Savings account and about £13,000 stand to the credit of the SHA in the current account at the end of June 2020. The Chair and Secretary are not signatories to these accounts. They understand that the signatories are the former officers, including you. The Chair and Secretary do not know whether arrangements have been made between the former officers and Ms Leonard to provide that Ms Leonard is now a signatory on the bank account.

You and the other former officers have not yet signed bank mandates in order to remove your right to sign cheques or otherwise act as an authorised signatory on the bank account but have refused to do so. The Chair and Secretary have been informed by the Co-operative Bank that they will not change the approved signatories for this account unless the former approved signatories sign a change of mandate. Accordingly, in practice, the Chair and Secretary of the SHA are not sighted on the operation of the SHA bank account.

The position concerning the "*Paypal*" account is as follows. This is an account which is used by members to pay membership subscriptions. The PayPal account has both financial and personal information about the approximately 1000 members of the SHA. In practice, money is received into the PayPal account and monies are then transferred from account to the Cooperative accounts by the SHA administrator, Mr Ken Smith (who as you are aware is contracted to provide administration services to the SHA). Mr Smith is married to the Honorary Secretary but reports to the Chair.

The SHA is a data controller under the terms of the Data Protection Act 2018 ("**DPA**") and under Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) ("**GDPR**").

It is correct that Ms Leonard has asked Mr Smith for full access to the PayPal account. If "full access" is given, it would lead to Ms Leonard having access to the personal data relating to members of the SHA, as that data is available to anyone who has access to the PayPal account. Ms Leonard has been provided with a complete set of transactions to explain all money that has passed into and out from the PayPal account but has not been provided access to the PayPal account because that would mean providing Ms Leonard with access ot the personal data relating to individual members of the SHA. The SHA does not have the explicit consent of members to provide this level of detail to anyone other than the SHA's nominated "data controller", namely Mr Smith.

Accordingly, whilst a complete financial record has been provided to Ms Leonard in order to assist her to discharge the duties as Treasurer, she has not been given full access to and control of the PayPal account. Indeed, the SHA would be acting unlawfully if it provided Ms Leonard with non-financial, personal data relating to SHA members.

We consider that Mr Smith is acting entirely lawfully in protecting the personal data relating to SHA members. However, we accept that Ms Leonard has attempted to insist on repeated occasions that she is entitled to full control of the PayPal account. The problem with that approach is that there is a very substantial danger that there is no technical way of giving Ms Leonard access to the PayPal account without also giving her access to the personal data, and we are unable to do that. The Chair and Secretary are not prepared to allow personal data relating to members to be accessed by anyone in breach of the SHA's duties as a data controller. Hence Ms Leonard is being given full access to all financial information about the PayPal account but the Chair and Secretary cannot lawfully provide access to non-financial information.

The Chair and Secretary therefore consider that the allegations made of financial impropriety in connection with events since the AGM has no merit whatsoever. The Chair and Secretary fully accept that there may well have been serious financial impropriety in the period prior to the AGM, but a proper investigation into those matters cannot be undertaken until you and the other former officers are prepared to sign a change of bank mandate so that the financial position of the SHA can be properly understood. The Chair has encouraged Ms Leonard to follow up any irregularities herself as she wants to do. She doing so right now Mr Smith has responded with detailed explanations where he can. That, however, is not a criticism that can be levelled at the current Chair and Secretary.

Accordingly, the vague and unparticularised allegations made in the Claim Form and in the witness statements proposed to be sworn in these proceedings cannot possibly support a case that the Chair and Secretary have acted in breach of the terms of the Constitution.

The meeting of the Central Council due to take place on 1 August.

A meeting of the Central Council has been called for 1 August 2020. It is proposed that this meeting take place by "zoom" due to the restrictions on the holding of meetings in person as a result of the present coronavirus pandemic. Making such arrangements is plainly lawful in the current circumstances.

There is plainly no justification for an injunction to restrain this meeting taking place. For the reasons set out above, this meeting will, of course, only recognise properly elected or appointed members of the Central Council in accordance with the Constitution. However, one of the issues the properly elected or appointed members of the Central Council will need to debate is whether the Central Council should call a Special General Meeting in order for the members to decide whether to waive the procedural breaches which resulted in various branches not appointing delegates to the Central Council.

We accept that it would be open to all members of the SHA to take the decision to waive these procedural breaches. Alternatively, it would be open to 30 members of the SHA to propose a resolution that the SHA should waive the breaches and to require that issue to be determined at a Special General Meeting under clause 17 of the Constitution. It seems to us to be ludicrous for you to attempt to prevent the meeting taking place on 1 August when 1 of the issues that the Central Council will have to consider at the meeting is a process which may result in the Improperly Elected Delegates been treated as being properly elected. We are therefore mystified as to why you might wish to seek to prevent this meeting going ahead.

Your request for a Special General Meeting.

Clause 17 of the Constitution provides as follows:

> ***"17 Special General Meeting***
>
> *A Special General Meeting shall be called for the purpose of considering any particular resolution (a) on the decision of the Central Council, or (b) at the request in writing of not less than 30 members setting forth the terms of the resolution for consideration. Not less than two weeks' notice of any Special General meeting must be sent to all members"*

Clause 17 provides for 30 members of the SHA to propose a resolution which, once proposed, should be considered at a Special General Meeting of all of the members ("**an SGM**"). It seems to us that the proper procedure to be followed when 30 or more members do submit such a resolution is that arrangements for a SGM must then be considered by either the officers or by the Central Council. We have seen a resolution which purports to have 57 members supporting it. In this case, given the Central Council is due to meet within a few days, the officers have proposed that the request for an SGM is put on the agenda for the meeting of the Central Council on 1 August. We cannot see that this step can possibly be objectionable.

The practical details for setting the date and place of the SGM are a matter to be decided by either the officers or by the Central Council, pursuant to their general obligation to manage the affairs of the Association. We do not consider that these can be the subject of a mandate within the resolution because, by definition, no decision has been made to approve the resolution at the time that it is submitted. However, once the date, place and time of the meeting has been set, all members must then be given at least 2 weeks notice of the terms of the proposed resolution and the date, place and time fixed for the meeting.

We understand that you are asking the Court to restrain the SHA from convening a meeting of the Central Council on 1 August 2020 and to permit an SGM meeting to be held on your proposed date of 8 August 2020. It seems to us that this is a nonsensical proposition because, as at today's date, the time, date and place of the meeting has not been fixed by either the officers of the SHA or by the Central Council and no notification has been given to the 1000 members that such a meeting is to be held. Further, we understand that you are seeking to require the SHA to hold this SGM by means of an online meeting as opposed to being a meeting in person. The officers are extremely concerned about the proposal because this would appear to disenfranchise anyone who does not have online access. The officers do not underestimate the challenges of arranging a meeting at which, at least, some members will be able to attend in person (even if others attend online) during the present pandemic. The discretion to decide the right way to hold such a meeting lies with the Central Council. We cannot see how you can possibly ask the Court to substitute itself for

the Central Council in exercising the discretionary powers to decide the best way to hold such a meeting.

It follows that, in all the circumstances of the case, the proposed application for an injunction is misconceived. Further, in any event, the information that you are presently proposing to put before the court only refers to a tiny part of a complex picture, as we have attempted set out in this letter.

Any application by a party for an injunction, particularly on a without notice basis, is required to make full and fair disclosure of the entire circumstances related to the subject matter of the injunction. It is perfectly plain that the present material fails to do so.

We therefore hope that this explanation will assure you that the Chair and Secretary are proposing to act entirely in accordance with the terms of the Constitution and are proposing a scheme under which the SHA members are given a proper opportunity to consider your resolution at an SGM and even are considering a scheme to allow the Improperly Elected Delegates to be treated as if they were properly elected. In no circumstances, there is no room whatsoever for the Court to issue injunctions in the form of the proposed application.

We thus trust that you will see that issuing legal proceedings will be entirely pointless.

The consequences of issuing legal proceedings.

If you and the proposed Claimants decide to issue legal proceedings and are successful in persuading a Judge to hear this matter prior to 1 August 2020, the SHA will be obliged to incur substantial sums in legal costs in preparing witness statements to explain the reasons why the application for an injunction is completely misconceived. The SHA will also instruct this firm and counsel to attend Court (either in person or remotely depending on the manner in which the hearing is fixed) in order to oppose the application for an injunction.

In accordance with the usual arrangements, we will prepare a Schedule of Costs. Once, as we consider it is inevitable, the application for injunction is refused we will invite the Judge to undertake a summary assessment of those costs and to fix a sum which will become

immediately payable. Whilst we do not know precisely how much will become payable, we anticipate that it will be not less than £10,000. We will seek an order to make you and each of the Proposed Claimants jointly and severally liable for the payment of any costs order.

We make it clear that we are not explaining the cost consequences of any application in order to threaten anyone from commencing legitimate proceedings. However, we consider that it is appropriate that you should be properly aware of the financial consequences of issuing proceedings and failing to secure injunctive relief.

Yours faithfully,

Edwards, Duthie Shamash.